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We often see comments calling for offenders to be caned repeatedly, jailed for life, or even executed but a dispassionate view of issues is what is needed, says SMU's Benjamin Joshua Ong.



Indonesian maid Khanifah had her teeth knocked out and broken. (Photo: Indonesian Embassy Singapore)

SINGAPORE: I feel anger and disgust towards the horrific deeds of Tay Wee Kiat, Chia Yun Ling, Zariah Mohd Ali and Mohamad Dahlan, who seriously abused their foreign domestic workers (FDWs) and were convicted or had their sentences enhanced in August.

A firm response to their acts – and similar acts by others – is entirely warranted.

But in determining what our response is, we must not forget that “the only justice that can be attained by mortals, who are fallible and are not omniscient, is justice according to law; the justice which flows from the application of sure and settled principles to proved or admitted facts”, as English judge William Bagnall put it.

Paradoxically, even as criminal law embodies society’s revulsion at certain crimes, it must do so in a dispassionate, principled manner.

When we are faced with the most egregious acts, the adherence to established principle can be challenging, but remains important to the service of justice.

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Tay Wee Kiat and his wife Chia Yun Ling seen outside the State Courts. (Photo: TODAY/Nuria Ling)

### PROPORTIONALITY IN SCREENING

We often see comments in response to news reports of serious crimes involving FDW abuse calling for offenders to be caned repeatedly, jailed for life, or even executed. The comments are often the same regardless of the severity of the crime.

But does a person who slaps a domestic worker once and then shows genuine remorse deserve the same consequences as one who repeatedly causes severe physical injuries?

The law would make no sense if both receive equally severe sentences. And if domestic worker abuse deserves the death penalty, how are we to punish murderers?

One key principle we must keep in mind is proportionality: The punishment must fit the crime.

The label “maid abuse” is useful shorthand. But there can be degrees of abuse, each warranting a different response. In order to respond to criminal conduct sensibly, we must first recognise the conduct for what it is, and for what it is not.

Consider the case of Lim Choon Hong and Chong Sui Foon (who starved an FDW). Even as Chief Justice Sundaresh Menon described their conduct as a “deplorable” violation of “human dignity”, he refused to pass the maximum possible sentence.



Ms Ei Phyu Tun was left with lacerations on her back and bruising on her legs. (Photo: Ei Phyu Tun)

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This was because, as cruel as the acts were, at least the offenders had not “act[ed] cruelly purely out of the gratification that one derives from inflicting such cruelty. That ... would be an even more egregious case”.

Even heinous crimes must be treated in a proportionate manner.

## RETRIBUTION, DETERRENCE AND REHABILITATION

The next step in determining the punishment is to ask why punish? The law recognises four aims of sentencing: Retribution, deterrence, rehabilitation and incapacitation.

Retribution refers to how punishment signals society’s intolerance for crime. Deterrence refers to the fact that punishment teaches both the offender and the general public a lesson, thereby dissuading people from offending.

In addition, a sentence often has rehabilitative effect. In the case of imprisonment, this is achieved by strict regimentation as well as programmes organised by the Singapore Prison Service.

One might suppose that only a long term of imprisonment can deter or rehabilitate a person. But this is not necessarily so.

In 2017, Chong Yee Ka was convicted of beating a domestic worker. But the court recognised this was due in part to psychiatric disorders which caused her to act irrationally.

Justice See Kee Oon found she had shown genuine remorse and commitment to seeking treatment, making it unlikely that she would re-offend.

Therefore, all that was needed to deter her was a large fine. The need for retribution did not outweigh this.

So there are other ways to meet the goals of sentencing which can replace or supplement imprisonment when it comes to FDW abuse.



File photo of foreign domestic workers undergoing a training programme at an employment agency in Singapore.

Besides fines, another possibility is a large compliance bond – a sum of money paid by an employer with a relevant criminal history, which will be forfeited if the employer re-offends.

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The sum may need to be very large to be effective as some have pointed out. Nonetheless, a compliance bond can still be a useful tool in principle.

## INCAPACITATION

Incapacitation refers to making it impossible to offend. Imprisonment incapacitates a person by making it physically impossible for him to commit most crimes.

The difficult question is: Should incapacitation last beyond imprisonment? After serving his sentence, should a convicted abuser be prohibited from hiring a domestic worker?

The general rule is that incapacitation ends upon release from prison. A former burglar is free to enter any residential estate; a convicted molester is not banned from taking the train. So there must be something to justify incapacitating measures that last even after imprisonment.

One justification is that some crimes involve the abuse of one's privileges in a manner that poses an especially high degree of harm to others. Hence, drink-drivers are disqualified from driving, and a lawyer convicted of corruption or dishonesty is prohibited from practising law.

But even then, the prohibition is not indefinite. The offenders eventually get a chance to prove that they have repented and rehabilitated themselves.

Returning to the context of domestic worker abuse - should a convicted abuser be subsequently prohibited from hiring a domestic worker, and, if so, for how long?

The argument for a prohibition is that domestic worker abuse exploits an especially large power imbalance between employer and employee.

I do not disagree but wonder whether we can also approach the problem from another angle: By seeking to reduce the imbalance.

The Ministry of Manpower already attempts this by interviewing domestic workers whose employers have a history of abuse. Provided that these employers are not allowed to interfere in these interviews, and the interviews take place sufficiently frequently, this can be useful.



File photo of a foreign domestic worker.

In addition, domestic workers could be apprised of prospective employers' criminal histories that involve FDW abuse.

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These two measures would put more power into the hands of domestic workers. The first would allow them to report abuse more effectively. The second would enable them to make a more informed choice as to whom to work for.

To be sure, these steps can only reduce, and not necessarily eliminate, the power imbalance. For example, FDWs may still face systemic socio-economic pressure to stay with abusive employers. Therefore, hiring bans will remain a useful tool.

Nonetheless, we should not see incapacitation as the only way to tackle the problem of domestic worker abuse.

#### THE GOALS OF CRIMINAL LAW

Ultimately, the uncomfortable truth is that criminal law exists not only to protect us from crime, but also to protect criminals from us – from our basest desires for vengeance – even as we recognise and respect victims' suffering.

This is not to deny that long prison sentences and subsequent incapacitation will always be a useful tool of criminal law – in some cases, the only viable tool.

Nonetheless, such tools must be deployed in a principled manner. Further, we should not rule out other measures to prevent abuse in other cases.

Finally, we must remember that the hope that offenders can improve themselves – as dim as it may seem – is a key principle of our criminal justice system.

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