

Article

Supervised Child Visitation for Non-Custodial Parent: A Study of Court-Assisted-Visitation and Its Monitoring System in Taiwan*

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ABSTRACT

This article presents a study of supervised visitation services offered by Taipei, New Taipei City, Hsinchu and Kaohsiung districts in Taiwan. It is based on a review of practices and services offered by Visitation and Family Services Centers based at the courts operated by the city/county governments, NGO and private agencies. It is a qualitative research conducted by way of interviews with judges ordering supervised visitation and social workers handling supervised visitation meetings. This study found that the courts started encouraging supervised visitation in separation and divorce cases involving domestic violence and high levels of family conflict after the introduction of the Domestic Violence Prevention Law in 1998. The best interests of the child principle enshrined in Article 1055-1 of the Taiwan Civil Code is the fundamental consideration for judges and social workers to determine if supervised visitation should be allowed, restricted or discontinued. Both legal and non-legal experts are working hand-in-hand to promote continued contact between the non-custodial parent and the children of high conflict, separated and divorced families.

Keywords: *Supervised Visitation, Non-Custodial Parent, Child Visitation, Best Interests of the Child, Family Court*

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I. INTRODUCTION

When the custody of a child is given to one parent, the other parent is usually awarded visitation to ensure the child remains in familial ties despite the separation of his or her parents. Visitation is a statutory right of the non-custodial parent in Malaysia and the courts would usually grant reasonable visitation in a divorce or judicial separation. The courts would not limit or restrict visitation unless it is proven that the welfare of the child¹ would be negatively affected. Even in cases where the non-custodial parent has never developed a relationship with the child or poses a danger like violence or abuse the courts try to keep the parent-child relationship by allowing supervised visitation. Supervised visitation in Malaysia occurs only when the court allows the child to spend time with the non-custodial parent in the presence of a designated third-party like a relative, family friend or lawyer and in a designated place for a specific period of time. However, court assisted-visitation and visitation centers managed by government agency or private organization is not a common practice in Malaysia.

Denial of visitation by custodial parents is an increasing phenomenon in Malaysia especially in cases involving domestic violence and child abuse. The custodial parents normally attempt to convince the court that visitation between the abused child and the abusive non-custodial parent is detrimental to the welfare of the child. Some custodial parents are concerned that abuse or violence will continue to take place during the visitation and others are fearful that the abusive non-custodial parent will use this opportunity to attack the custodial parents who are normally present during the visitation. Supervised visitation is found to have helped ensure the child and custodial parent feel safe during visitation. The non-custodial parent who wishes to repair and re-establish parent-child relationship would also feel at ease if a third party is present to supervise the visitation. Any disputes or issues arising during visitation could be counseled and resolved at the earliest stage.

However, supervised visitation before and during a court proceeding for divorce, judicial separation or criminal charge of child abuse or domestic violence is unheard of and not practiced by Malaysian courts. It has to be arranged with the consensus of the parties with the assistance of their lawyers and sometimes with the intervention of voluntary social workers²

1. The principle is known as the best interests of the child in many jurisdictions and stated so in the United Nations Convention on the Right of the Child.

2. Social Workers Act has not been enacted in Malaysia so those serving as social workers with public and private agencies may not all hold a degree in social work. The social workers are neither professionally trained nor monitored or regulated. Courts engage social welfare officers from Social Welfare Department in family cases involving children.

assisting in family disputes. Nonetheless, as all these are mere informal measures which are not enforceable in court and therefore disputes are seldom resolved resulting in denial of visitation. There is no family mediation or any form of governmental or private agency support or initiative to arrange supervised visitation.

Family court mediation is relatively new and not a mandatory process in Malaysia. Parties with visitation issues hardly use the mediation to resolve their disputes but rather consult lawyers where negotiation between parties would be a hurdle. The existence of a trial period for visitation in the form of court assisted--visitation or at visitation centers run by either the government or private agency before and during court proceedings as practiced in Taiwan appears to assist judges to make appropriate decision as to visitation arrangements and specifications. A monitoring system and well trained social workers would be advantageous and ensure the success of supervised visitation. These measures would ensure the visitation arrangements as prescribed by the courts are complied with and any issues are mediated and resolved without having to return to the courts again and again for a change of custody or contempt proceedings.

The objectives of this research amongst others are to examine the child visitation laws, policies on protection of child welfare structure and system of Taiwan.

This research also studied the trials and mediation by family courts and services provided by the visitation centers which assist the parents, children and family courts in arranging appropriate visitation between non-custodial parents and their children. One of the aims is to observe the court based monitoring (two-sided mirror) system and how it helps social workers and judges to make decision on whether to allow, restrict or deny visitation between a non-custodial parent and his or her child. Finally, it attempts to propose ways to implement a well-structured supervised visitation in Malaysian courts.

This research is significant as it is the pioneer one in Malaysia on Taiwanese family law and family court mediation. Although supervised visitation has been proposed by the Malaysian Bar Council and some lawyers involved in family matters, their debate concerns presence of designated third-party like a relative, lawyer or a social worker in a designated place to observe visitation. No one has suggested a well-structured court-assisted visitation in which the courts and visitation centers play major role to promote and maintain parent-child relationship in a dysfunctional family. This study attempts to close the gap by examining court assisted-visitation system of Taiwan.

This research was conducted by way of a qualitative method based on secondary data through a study of the statutory provisions governing

Taiwanese family law, child related policies, case law and scholarly articles. The primary source of this research is the open-ended interviews conducted with judges/mediators based at Taipei, New Taipei City, Shillin, Hsinchu and Kaohsiung family and district courts providing court assisted-visitation and social workers involved in facilitating visitation at the city-sponsored visitation centers based at the courts. It was to understand how the best interest of the child principle is interpreted and applied by judges and mediators in ordering supervised visitation and by social workers in arranging visitation services that best suits the child. Face to face interviews were conducted sometimes with the help of a Taiwanese interpreter³ but mostly in English or Japanese with judges and mediators involved in deciding custody and visitation cases and social workers tailoring visitation activities between the children and their non-custodial parent.

These interviews were conducted through open-ended questions with the aim of collecting general information about the decision making in supervised visitation from each of the interviewee. Semi-structured questions were asked allowing judges to explain and discuss their own experience and they were encouraged to cite examples of visitation cases they have personally decided or observed. During the interview, the judges shared their experiences and the coordination with social workers, court investigating officers and enforcement officer. They explained the structure of court-assisted visitation in their courthouse and expressed their views about the best interests of the child principle which is the foundation of their decision making. All interviews were conducted informally by way of conversational interviews to allow the interviewees to share their views about the effectiveness of family court and visitation centers' system/programs in providing supervised visitation. In total, a number of thirteen (13) respondents, comprising of judges, mediators, and social workers were interviewed between May and November, 2019. However, this research did not review the case files/program files of the supervised visitation agency/service providers at the family courts and the private centers and interview parents participating in supervised visitation programs due to privacy⁴ policy of the providers and insufficiency of time.

3. I am grateful to Associate Professor Huang Sieh-Chuen, Mr. Hsiao Cheng-Yen and Ms. Ho Chi-Fang, all from College of Law of National Taiwan University, for having kindly interpreted/translated interviews/text materials from Taiwanese Chinese to English on different occasions.

4. The service providers are bound by protection of personal data laws to protect the identity and interaction of the parents and children throughout and after participation in the supervised visitation programs. Requires the consent of the parents and the procedures is tedious as well as time consuming but such a research could be pursued in the future.

II. VISITATION

Visitation is a license for a non-custodial parent to visit children who are under the custody of a custodial parent. A parent having visitation is entitled to visit and be visited by the children.⁵ A child is entitled to have both parents in his/her life after the parents' divorce and this is only achievable through a meaningful visitation.

Malaysia is a common law jurisdiction where judicial recognition is necessary for separation and dissolution of marriage. Mutual divorce agreement is not legally recognized, compelling all civil marriages to be judicially dissolved. It is a sole custody jurisdiction⁶ which vests custody on one parent; custodial parent and allows visitation to the other parent; non-custodial parent.⁷ In Malaysia visitation is a statutory right and is a basis for a non-custodial parent to continue his parental rights and duties towards the child who is not in his or her possession. Visitation is explicitly stipulated as the non-custodial parent's right⁸ and an entitlement of the child under the Law Reform (Marriage and Divorce) Act⁹ (LRA), 1976. Statutory as well as the case law makes it clear that visitation is the right of both the parent and the child and therefore must be regarded as a basic need of children and granted in every divorce or parental separation case involving children unless it causes grave harm to the child's welfare. The courts have reckoned visitation as a fundamental component of parent-child relationship as pronounced by Justice Kamalanathan "it is in recognition of parental right to reach out to their children that the court grants to one, custody and to the other the right of access. This is a statutory right and no wicked manipulation, nor monumental hatred can deprive the mother of the right to access. The right of access is for the mutual benefit of both the parent deprived of custody and for the children."¹⁰ In granting custody and

5. Mogana Sunthari Subramaniam, *Is Visitation between a Child and a Non-Custodial Parent a Right?*, 14 J. INT. PUB. POL. STUD. 207, 207-20 (2009).

6. Section 88 (1) of LRA provides: "The court may at any time by order place a child in the custody of his or her father or his or her mother or, where there are exceptional circumstances making it undesirable that the child be entrusted to either parent, of any other relative of the child or of any association the object of which include the child welfare or to any other suitable person."

7. Joint guardianship may be granted under the amended Section 5 of the Guardianship Act, 1961 and sometimes allowed when the civil court finds that the parties would be able to co-operate in the interest of the child. In 1999, Section 5 which formerly recognized the father as the guardian of an infant's person and property, was amended to vest equal parenting rights on both parents.

8. Section 89(2) (d) of LRA provides "order for custody may give a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody the right of access to the child at such times and for such periods as the court may consider reasonable".

9. Section 89(2) (c) of LRA provides "a child to visit a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody at such times and for such periods as the court may consider reasonable".

10. Foo Kok Soon v. Leony Rosalina [1998] 4 CLJ 289.

visitation, the courts are guided by the welfare of the child principle.¹¹ In a custody case, generally, the Malaysian courts grant sole custody of tender aged children¹² to their mother and reasonable visitation to the non-custodial father. But, if the welfare of the child requires custody to be granted to the father, the mother shall be given regular visitation. The court may take into account the reports of welfare office and other child experts.¹³ The court has discretion to allow visitation, restrict or totally deny visitation based on the needs of the child.

In Malaysia, visitation plans are ordered by the courts. According to the case law, unless the court has concerns about a person's parenting ability, it will generally award the non-custodial parent as much visitation as possible. The courts may grant unrestricted visitation allowing the parties discretion to make arrangements that is suitable for the parents and children.¹⁴ The judges have discretion to make general order of reasonable access indicating parties should co-operate and arrange visitation at any reasonable time and frequency as required in the interest of the child.¹⁵ Some judges prescribe a more specified and structured visitation when the parties have high conflicts and are unable co-operate for visitation such as daily access for certain hours,¹⁶ on weekends between 9am to 6 pm¹⁷ in addition during school vacation¹⁸ or even during religious or cultural festivals. Most visitation attempts fail due to denial by custodial parent so there are judges who have ordered a custodial parent to render every facility, convenience and co-operation to non-custodial parent to make the visitation a reality.¹⁹

It is observed from the case law that visitation plans allowed by the courts varies from a very specific plan requiring compliance of custodial parent to a general one allowing flexibility to the parties to make arrangement that best suits the child and their schedules. At times, courts take into account the fact that parties having high conflicts are unable to negotiate a general plan so a specific plan is ordered. Despite court orders on

11. Section 88(2) of LRA provides "in deciding in whose custody a child should be placed, the paramount consideration is the welfare of the child and subject to this the court shall have regard to the wishes of the parents of the child and to the wishes of the child, where he or she is of an age to express an independent opinion".

12. Section 88(3) of LRA states: "there is however a rebuttable presumption that it is good for a child below the age of seven years to be with his or her mother."

13. Section 100 of LRA provides "when considering any question relating to the custody (including visitation) or maintenance of any child, the court shall, whenever it is practicable, take the advice of some person, whether or not a public officer, who is trained or experienced in child welfare but shall not be bound to follow such advice."

14. *Loh Kon Fah v. Lee Moy Lan* [1976] 2 MLJ 199.

15. *Winnie Young v. William Lee Say Beng* [1990] 1 MLJ 123.

16. *Chan Bee Yen v. Yap Chee Keong* [1989] 1 MLJ 370.

17. *Lee Soh Choo v. Tan Ket Huat* [1987] 1 MLJ 255.

18. *Sivajothi v. Kunathan* [2000] 3 CLJ 175.

19. *Gan Koo Kea v. Gan Shiow Lih* [2003] 4 MLJ 770.

visitation plans, some custodial parents do interfere with visitation by either restricting or denying access totally. Non-custodial parents hardly return to court if they are denied visitation as legal fees are usually high and court process is tedious. Some non-custodial parents give up fighting for visitation considering the best interests of their children who need peace while growing up with the hope that when the children become adults, they could make their own decision to visit the deprived non-custodial parent.

Taiwan is a civil law jurisdiction. The primary source of family law in Taiwan is Part 4 and 5 of the Civil Code of R.O.C., 1930 (Civil Code) which took effect in Taiwan from 1945. This Civil Code was initially influenced by Chinese tradition and custom in family law. Chen & Huang cited Lin in their article²⁰ as saying “When codifying the Civil Code, customs of China were taken into chief consideration. Divorce by mutual consent and wives prefix husband’s surnames are customs originally from ancient China.” It permits marriage to be dissolved by mutual consent between the parties.²¹ If the parties fail to reach consensus, either one may file a petition for divorce on the grounds provided under Article 1052 of Civil Code. In a contested divorce, the parties are required to go through a mandatory mediation²² process. If mediation fails, the parties may proceed for a judicial divorce. Sole custody is common but joint custody is also provided for by the law.²³ Custody, visitation and maintenance can be mutually agreed upon by parties. If parties fail to reach an agreement, the court shall decide these issues.²⁴ The court is vested with wide discretion to safeguard the best interests of the children and as such the court may intervene if the plans agreed upon by parties upon judicial divorce does not serve the best interest of the child.

Visitation is clearly provided for in the Civil Code²⁵ allowing non-custodial parent to make application to the court to continue to have reasonable contact with the child after separation or divorce as well as

20. Yun-Ru Chen & Sieh-Chuen Huang, *Family Law in Taiwan: Historical Legacies and Current Issues*, 14 NTU L. REV. 157, 157-218 (2019).

21. Minfa (民法) [Civil Code] § 1049 (promulgated Dec. 26, 1930, effective May 1, 1931, as amended June 10, 2015) (Taiwan) provides “the husband and the wife may effect a divorce by themselves with their mutual consent”.

22. See Jiashih Shihjian Fa (家事事件法) [Family Act] § 23, para. 1 (promulgated Jan. 11, 2012, as amended June 19, 2019) (Taiwan).

23. Civil Code § 1055, para. 1 stipulates “After the husband and the wife effect a divorce, *one party or both parties of the parents* will exercise the *rights* or assume the duties in regard to the *minor child* by *mutual agreement*. If the mutual agreement did not or could not be done, the court may decide by the applications of the husband or the wife, the authorities concerned, the social welfare institution or any other interested person, or may decide by its authority”.

24. Not only the parties but authorities concerned, social welfare institution or any other interested parties may apply for these reliefs.

25. Civil Code § 1055, para. 5 stipulates that “The court may decide the way and period of meeting or communication with the minor child by the application of the party who could exercise the rights and assume the duties in regard to the minor child, or by its authority. . . .”

pending mediation proceedings and/or trials. The court has the authority to prescribe the manner and duration of the visitation and in doing so, the court may consider the reports of social workers, family investigators, child psychologist or other child experts but is not bound by the recommendation of any of them. Visitation is generally allowed but if the court finds it is not in the best interests of the children, the court may at its discretion vary or terminate the visitation.²⁶ It is to be noted that in Taiwan, the courts would not be able to intervene in visitation plans unless the parties or any interested persons claim trial. The parties in a divorce by way of agreement are not required to file their visitation plans with the any authority. Consequently, in mutual consent divorce by way of agreement between the parties, visitation plans may be totally absent depriving the child of contact with the non-custodial parent.

A study of case law of Taiwan reveals that in the past the courts used to make simple but specific visitation plans. In 1998, a judge at the New Taipei District court held that “from January 1999 until the child’s adulthood, the father may go to the mother’s residence at 8:00 am on the first Sunday of each month to meet with the child aged 7 years old, take him out and take care of him. The father shall send the child back to the mother’s residence before 5:00 pm on the same day”.²⁷ In another case, the judge ordered an overnight stay of a boy aged 3 years old with his mother where the father was awarded custody. The order reads “before the child reaching his majority, starting at 9:00 am on Saturdays of the second, fourth, and fifth weeks of each month, the mother may go to father’s residence to meet with the child aged 3 years old, take him out, and take care of him until the next day. The mother shall send the boy back to the father residence before 7:00 pm on Sunday.”²⁸

In recent years, there is a trend for judges to order specific and lengthy visitation plans inclusive of weekday/weekend visits, summer and winter vacation and lunar New Year. The Shilin District Court²⁹ has in 2018 ruled that the father could visit the child aged less than 7 years old (actual age not mentioned) between 10:00am and 6:00 pm on Saturday for the first six months where the father fetches and drop off the girl from her mother at a specific train to be agreed upon by the parties. From the seventh month, the

26. Civil Code § 1055, para. 5 stipulates that “. . . When the meeting or communication affects the interests of the minor child, the court may change it on the applications or by its authority”.

27. Shinbei Difang Fayuan (新北地方法院) [New Taipei District Court], Minshi (民事) [Civil Division], 87 Hun No. 32 (87年度婚字第32號民事判決) (1998) (Taiwan).

28. Kaohsiung Difang Fayuan (高雄地方法院) [Kaohsiung District Court], Minshi (民事) [Civil Division], 88 Qin No. 72 (88年度親字第72號民事判決) (1999) (Taiwan).

29. Shilin Difang Fayuan (士林地方法院) [Shilin District Court], Minshi (民事) [Civil Division], 107 Jian Qin Sheng No. 364 (107年度家親聲字第364號民事裁定) (2018) (Taiwan).

girl may stay overnight with her father where he fetches her at 10am on Saturday from a train station to his residence and returns her to the mother at 7 pm on Sunday. In addition, the father may keep the child at his residence for winter and summer vacation for a period to be agreed upon by the parties after taking into account the wishes of the girl. The father may also spend time on Lunar New Year/eve on alternate years. The father is allowed to communicate with his daughter at any time by telephone, letter, fax, e-mail, video, internet, gift giving, photo taking, etc. on the premise that the communication does not affect the child's schoolwork or daily routine. The court has further ordered that the mother or any other third party shall not interfere with communication between the child and her father.

In another case,³⁰ the manner and duration of meeting and interaction was held to be as follow: (1) Normal Period: from 10:00 am to 5:00 pm on the first and third Saturdays of each month, the caregiver (the mother) shall let the other party take the child back to his/ her residence; (2) Summer Vacation Period: starting from 10:00 am on the first day of summer vacation until 5:00 pm on the half of the total summer vacation day, the caregiver shall let the other party take the child back to his/ her residence; and (3) Lunar New Year: The first Lunar New Year after the ruling, from 10:00 am on the Lunar New Year's Eve to 5:00 pm on the second day of the Lunar New Year, the caregiver shall let the other party take the child back to his/ her residence. And the second Lunar New Year after the ruling, from 10:00 am on the second day of the Lunar New Year to 5:00 pm on the day before the workday, the caregiver shall let the other party take the child back to his/ her residence. The following years will abide by the preceding rule. And, it was further ordered that when the child who is now 4 years old reaches the age of 16, the decision of whom to live with and the manner or duration of meeting or interaction shall be based on his wishes.

It is interesting to note that the court in Yunlin District Court³¹ case has in addition to overnight stay of the child with the father twice a month (second and fourth Saturday 10am to 7:40 pm on Sunday) allowed communication through video call twice on weekday (Tuesday and Thursday) from 8:00 pm to 8:30 pm. One could only admire the judge's effort to increase the communication between the child and the non-custodial parent via video call as the personal meeting are not frequent because the parties stay in different cities making it difficult for the child to commute to be with the father on every weekend. In another case³² too in addition to a

30. Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 107 Hun No. 272 (107年度婚字第272號民事判決) (2018) (Taiwan).

31. Yunlin Difang Fayuan (雲林地方法院) [Yunlin District Court], Minshi (民事) [Civil Division], 108 Jia Zhan No. 24 (108年度家政字第24號民事判決) (2019) (Taiwan).

32. Taoyuan Difang Fayuan (桃園地方法院) [Taoyuan District Court], Minshi (民事) [Civil

weekend overnight stay on second and fourth from 10am on Saturday to 7 pm on Sunday, the judge allowed daily phone call by the father to the child from 6 pm to 8 pm. Also, stay during school vacation; 20days for summer vacation, 7 days for winter vacation and alternate year for 5 days for Lunar New Year. The judge also imposed strict conditions as to the pickup and drop off of the child and cancellation of meetings encouraging parties to co-operate and cautioned the parties that there must be no behavior detrimental to the physical and mental health of the child who was 2 years old. The Hualien District Court³³ separated the siblings in this case where the older son was given to the mother whereas the younger boy lived with his father, The judge ordered that the older boy visits the father on first and third weekend from 8 pm on Friday to 8 pm on Sunday and the younger boy visits his mother on second and fourth weekend from 8 pm on Friday to 8 pm on Sunday. This arrangement, I believe helps strengthen the relationship between the siblings and with their parents as they are together on weekends with either one of the parents. Both parents shall not inculcate the ideas and thoughts of resisting or rejecting each other into the children and shall follow friendly parent principle³⁴. The judge also ruled that the visitation plan shall be complied with by the parties until the children reach the age of 15. From 15-20 years each child may express their own wishes and the parties are bound to respect and comply with the children's wishes.

At International level, the United Nations Convention on the Rights of the Child³⁵ (CRC) dictates the right of children to have contact with their non-resident parent in its Article 9 (3) which says "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests". The Convention makes it clear that a child and the non-custodial parent shall have regular contact unless the visitation is detrimental to the child and the member states are responsible to make the contact possible through its policy. The UK based Save the Children Organization advocates based on the CRC that the children (1) have the right to live with their parents, unless that would be bad for them. If their parents are separated, they have the right to have contact with both of them, unless that could be harmful for them and (2) both of the children's parents are responsible for bringing them up and should think

Division], 107 Hun No. 673 (107年度婚字第673號民事判決) (2018) (Taiwan).

33. Hualien Difang Fayuan (花蓮地方法院) [Hualien District Court], Minshi (民事) [Civil Division], 108 Jia Yi Diao No. 4 (108年度家移調第4號民事判決) (2019) (Taiwan).

34. Friendly parent principle refers to a practice in the Western courts where the parent who renders co-operation and support to the other parent to have relationship with the child is awarded the custody of the child. In Taiwan, based on my interviews with the judges I observed that the judges encourage parents to support each other to maintain relationship with the child.

35. Promulgated by world leaders in 1989.

about what is best for them.³⁶

Having ratified the CRC in 1995, Malaysia legislated the Child Act in 2001 to protect the rights and interests of children below the age of eighteen and made relevant amendments to Penal Code³⁷ and Domestic Violence Act, 1994³⁸ to reflect its initiatives to prevent children from being abused in a family setting. Taiwan, although not a signatory to the CRC as it is not a member of the United Nations, had legislated the Implementation Act of CRC in 2014³⁹ paving path for its President to sign the Accession to the CRC in 2016. It has invited international experts to review its first report on the CRC submitted voluntarily to the United Nations in 2017. To a question on whether there was any pressure from other countries for Taiwan to implement the CRC, Judge Chang Hsia-Chi proudly clarified “No, Taiwanese legislators wish to have laws conforming to the CRC and therefore enacted the Implementation of Act of the CRC in 2014 and invited five international reviewers to review State report in 2017”,⁴⁰ in which review she was involved as a representative of the Judicial Yuan. Even, before the Implementation Act of CRC was promulgated, Taiwan has shown its dedication and commitment to protect the interests of the children by incorporating the best interests of the child principle to Article 1055-1 of the Civil Code in 1996, It introduced the Family Act in 2012 requiring all districts to form Family Services Center by the year 2014 to safeguard the interests of children affected by disputes in the family. Taiwan’s Domestic Violence Prevention Act, 1998 compelled every city to have a child visitation center to encourage meeting between children and their non-living parent.

36. <https://www.savethechildren.org.uk/content/dam/gb/reports/humanitarian/CRC19-child-friendly.pdf> (last visited Sep. 24, 2020).

37. Section 376A on incest protects children below eighteen from being sexually abused by those in familial relationship with them like parents, grandparents and siblings.

38. Protects children from being subjected to violence in the family and allow for interim or normal protection order to be made by the court to safeguard the children and provides under Section 15 for a guardian, relatives or other appropriate persons to represent the child in an action against a family member of the children.

39. Article 2 of the Implementation Act of the CRC stipulates that the CRC shall have the effect of domestic law. Article 9 of the Act stipulates that governments at all levels shall review existing laws and regulations based on the provisions of the CRC and add, amend or abolish any laws and regulations inconsistent with the provisions, as well as improve administrative measures, by 2019. [As documented in *The Implementation of the Convention on the Rights of the Child: Initial Report Submitted under Article 44 of the Convention, Republic of China (Taiwan).*]

40. Interview on 5/6/2019. (Judge Chang kindly came to the College of Law, National Taiwan University for the interview).

III. SUPERVISED VISITATION

Visitation may not be allowed in cases where the child's safety is in danger or the well-being is affected by the unwarranted behavior of the non-custodial parent. However, if contact is regarded to serve the best interests of the child, the court may order supervised visitation. Supervised visitation refers to contact between a parent and his/her child in the presence of a third party. It is regarded as an alternative to terminating contact altogether, strikes a balance between the custodial parent's interest in protecting the child, the non-custodial parent's right to meaningful access to the child, and the child's welfare.⁴¹ The purpose of supervised access, also known as supervised visitation and exchange services, is to provide a protected setting for parent-child contact when such contact presents risk following parental separation, child abuse, or neglect, or after an extended interruption of contact.⁴² In general, supervised visitation is deemed necessary in cases involving domestic violence, child abuse, high conflict between divorcing parents, substance, drug or alcohol use by non-custodial parent.

Straus states some situations which require supervision for safe access which include: when a non-custodial parent is impaired by alcohol or drug abuse, mental illness, or retardation; when there is a risk of abduction; when a child is refusing to visit; when a custodial parent is denying access; when there has been no prior contact or an extended interruption; or when there are contested allegations that a child is at risk for any of these reasons. Availability of supervised visitation allows contact between the parent and child to continue temporarily while the court assesses conflicting allegations or when risk to a child is proven and ongoing.⁴³

Supervised visitation is not a common practice in Malaysia. In high conflict situations, interaction between the parents is reduced by the intervention of their family members or lawyers. If supervised visitation is allowed by the court, lawyer's⁴⁴ office is sometimes conveniently used as visiting spot by the non-custodial parent to meet and interact with his/her children. In the case of *Savinder Kaur v. Tharman Singh*,⁴⁵ a father who had

41. Margaret Tortorella, *When Supervised Visitation Is in the Best Interest of the Child*, FAM. LAW Q., 30, 199-215 (1996).

42. Janet R. Johnston & Robert B. Straus, *Traumatized Children in Supervised Visitation: What Do They Need?*, FAM. C. REV., 37, 135-58 (1999).

43. Robert B. Straus, *Supervised Visitation and Family Violence*, FAM. LAW Q., 29, 229, 231 (1995).

44. Reliance on lawyers to resolve family dispute is yet another legacy of the British colonization in Malaysia. The term "family lawyers" does not refer to lawyers practicing family law but connotes to lawyers attending to a particular family's affairs. Many families in Malaysia have their own lawyers to attend to their legal issues because almost all the matters are resolved in adversarial manner.

45. *Savinder Kaur v. Tharman Singh* [1985] 1 MLJ 273.

been divorced on the ground of cruelty consisting of drunken bouts involving vulgar abuse of his wife and children, was granted supervised visitation for a few hours a month to be held at the solicitor's office because it was found to be in the welfare of the children. In contrast in the case of *Harban Singh v Baljit Kaur*⁴⁶, the learned judge held that the court has discretion to deny visitation if an exceptional circumstances warrants it in the welfare of the child. In this case the father's vulgar abuse and violence of the mother in the presence of the tender aged children was deemed to cause irreparable emotional harm to the children and therefore, visitation was denied. The judge in this case did not consider supervised visitation but denied visitation altogether.

In the case of *Baheerathy v Gunaselan*⁴⁷, the father was given interim access to visit the children on every Friday with supervision by an officer and/or interpreter of the Family Court. Access by the father at the court premises had not been regular and he was absent quite frequently. For most of the times when he was present for access, and if both children were together, they would be screaming or shouting at him. The first child was ordered to be sent for psychiatric or psychological help or counselling in order to heal her relationship with her father. The court further held that in the first three months, the child would not be seeing her father, after which, she would be seeing her father in the presence and assistance of the psychiatrist/psychologist/counsellor. This would be a period to test whether there should be further access given to the father. The court allowed a weekly supervised access of three hours on every Sunday from 11am to 2 pm at McDonald's restaurant. The judge was of the opinion that the first child would not be in any danger or her welfare jeopardized by the weekly access since such access is to be supervised. The judge allowed either one of the paternal grandparents to accompany the father during visitation of the second child to assist in bonding between the father and the child and also for the good of this child to have the love and nurture of not only her father, but that of her paternal grandparents.

In Taiwan, courts started encouraging supervised visitation⁴⁸ in cases involving domestic violence, high conflict and probable harm/risk to the child after the introduction of the Domestic Violence Prevention Law (DV Act) in 1998. In light of the DV Act, DV Centers were formed in stages in all city and county in Taiwan to offer protection to DV victims who were mainly women. DV & Family Cases Centers were gradually set up in the courts to offer advice to DV victims who are involved in criminal or family cases. In adherence to the DV law, Taipei City implemented policies to have

46. Unreported case, [1998] Originating Summons no. 24-525-1997.

47. *Baheerathy v. Gunaselan* [2012] 6 MLJ 868.

48. Widely known as court-assisted visitation or monitoring visitation in Taiwan.

visitation center in every county and the courts handling family issues in Taipei started referring cases for supervised visitation to these centers to support parent-child relationship.

Before 2012, supervised visitation was ordered by court after trial/mediation but the new law under Family Act 2012 authorises the judges to order supervised visitation during trial and pending delivery of judgement. This new law has provided a mechanism for the judges to see how parents co-operate and support each other and the children before a custody order is made. Professor Lai⁴⁹, a mediator, I interviewed commented that the new law helps “change the attitude of judges and mediators towards visitation”. She explained that the DV Act “provides for all cities in Taiwan to have DV centers which includes consultation and counselling services as well as setting up parent-child visitation center. Moreover, the Family Act allows and empowers the judges to direct/rule supervised visitation pending judgement. The judges/mediators can now ask the parents to try out visitation and learn to work together as friendly parents before the court makes a final order as to the most appropriate visitation plan. Parents will attempt to behave well if they each wish to have the custody of the children. Joint custody is also possible if parents reduce their conflict and co-operate to care for the children”.

Based on the interviews that I have conducted at the courts with the judges and supervised visitation centers with the social workers in Taipei, New Taipei City, Shilin, Kaohsiung and Hsinchu, I gathered that there are two types of supervised visitation namely visitation supervision and visitation exchange. Visitation supervision is where the social workers facilitate parent-child meetings at a visitation center stationed at the court or operated by the city/county hall. It is usually based on a court referral or order pending or after a final judgement. Cases in mediation could also be referred to visitation centers to observe co-operation between the parents or if the parent living⁵⁰ with the child refuses visitation. Upon the pronouncement of a judgement, visitation center at the court cease to facilitate visitation. Visitation exchange takes place where the visitation center offers exchange service (drop off-pick up) namely the living parent hands over the child to the social worker and then the visiting parent⁵¹ comes by to fetch the child for a meeting outside the center. The visiting parent shall drop off the child at the center at a fixed time as ordered by the

49. Professor Emily Lai Yueh-Mi, academician and mediator as well as trainer of social workers serving at child visitation centers in Taiwan, interview on 1/7/2019.

50. Living parent is a common term used in Taiwan for custodial parent (upon judgement) and/or parent living with the child (pending judgement).

51. Visiting parent refers to non-custodial parent (upon judgement) and/or parent not living with the child.

court or agreed by the parties at the suggestion of the social worker. The child will be returned to the living parent by the social worker. In both the supervised visitation methods, the parties have minimum or no contact during the visitation/exchange due to the presence of the social workers. During the visitation period which may last between three months to a year, the parents are trained to arrange and handle the meetings by themselves. The parents are offered parenting education by the court and/or visitation centers to create awareness on the importance of them considering the best interests of the child when making any decision pertaining to the child including the visitation arrangements.

In Kaohsiung Family Court case⁵², the court ordered supervised visitation for a child who was a witness of domestic violence. The father abused the mother in breach of a Protection Order and the child has attempted to stop the father from shouting at and hurting the mother. Expert evidence shows that the child was emotionally affected due to fear of witnessing violence inflicted on the mother. Social worker and court investigators were appointed by the court and their reports suggested supervised visitation and accepted by the judge. Social worker suggested the visitation to be arranged gradually. The court investigator specifically suggested for supervised visitation to be arranged initially and later for a normal visitation. The court ordered that the father can visit the child twice a month for a year and has to apply to the DV Center at the Administrative or City Hall for the meetings to take place and not at the court vicinity. The specific plan for the supervised visitation is to be drawn out by the DV Center and which shall consider the wishes of the parties. The father has to pay the fees for the supervised visitation for a year. For the second year, visitation plan should be decided by the mutual consent of the parties and if they fail to reach consensus they need to go through the mediation, (failing which go to the court). The court cautioned the mother who has the custody not to deny visitation without valid reasons and she should bring the child to the DV center on time to facilitate the visitation with the father. The venue for meeting is to be decided by the DV center. Father cannot take the child out of the center and must obey the rules of the center. Visitation cannot not involve third party. Other family members need get DV center's approval (DV Center has lots of authority). Both parties cannot change the time and date fixed by the DV Center without informing the center. If anyone falls sick, need to inform the center at least 30 minutes before the fixed visitation time. If father late for more than 30 minutes he can be deprived of visitation on that day. The parties need to respect the wishes of the child. In addition to

52. Kaohsiung Gaodeng Fayuan (高雄高等法院) [Kaohsiung High Court], Minshi (民事) [Civil Division], 108 Jia Shang No. 8 (108年度家聲第8號民事判決) (2019) (Taiwan).

personal visits, the father can also send letters, make phone calls, give presents and exchange photos with the child. The court has allowed both direct and indirect visitation is in this case on top of the supervised visitation.

The following are the account of interviews of the judges, social workers, court investigator and court enforcement officer on how supervised visitation is facilitated in the Kaohsiung, Shilin, Taipei, New Taipei and Hsinchu courts.

A. *Kaohsiung Juvenile and Family Court*

During a focus group discussion at Kaohsiung Juvenile and Family Court⁵³, the court investigator, Mr. Chao⁵⁴ explained that “visitation between the non-custodial parent and child is encouraged by the Kaohsiung courts.” There are two types of cases requiring visitation, namely, (1) DV cases and (2) non-DV cases. DV cases are that governed by the DV Act, involving violence in the family for example when a spouse harasses, controls, threatens or inflicts physical, psychological or economic injury against the other spouse or minor children and/or the minor children witness the domestic violence⁵⁵. Non-DV cases are family law matters filed under Part 4 of the Civil Code.

In DV cases, as explained by Mr. Chao, “the judges suggest visitation based on the provision of the Domestic Violence Prevention Act, 1998 and the court-ordered supervised visitations are facilitated at City Hall by city government appointed visitation services center which employs social workers to arrange appropriate visitation plans. In the non-DV cases on the other hand, the judges decide based on the facts of the case and if supervised visitation becomes necessary it will be facilitated by the Child Welfare League Foundation (CWLF). The CWLF has been appointed and stationed at Parent-Child Visitation Center at Kaohsiung Juvenile and Family Court from Jun to December 2019 to assist judges both in decision making on

53. On June 1, 2012 Judicial Yuan merged with Kaohsiung Court and became Taiwan Kaohsiung Juvenile and Family Court and some programs were commenced. In September 2013 more programs were implemented. It is the first professional family and juvenile court in Taiwan. The judges with professional background and training, with the assistance of staffs from different professions, and in combination of the experts, administrative departments and social resources in the fields such as social work, psychology, guidance, mediation, psychiatry, etc.

54. The court investigation officer during the interview on 6/11/2019 at Kaohsiung Juvenile and Family Court, was Mr. Chao Wei-Chih. He explained the procedures adopted and practices prevalent in the capacity as a representative of the Kaohsiung court. The President of the court, Justice Chung Tsung-Lin and Chief Judge of Family Division, Judge Lin Ya-Lih also explained some procedures and answered the questions.

55. *Jiating Baoli Fangzhi Fa* (家庭暴力防治法) [Domestic Violence Prevention Act] § 2 (1) & (3) (promulgated June 24, 1998, as amended Feb. 4, 2015) (Taiwan).

disputes in dysfunctional families and arranging meetings between non-custodial parent and the child”.

Judge Chung explained that Kaohsiung court arranges the space for supervised visitation but do not have the budget to provide all the required facilities/resources. The city government finances the supervised visitation services by appointing the service provider on a contract basis. The service provider hires social workers to manage and facilitate parent-child meetings. The social workers are well trained and experienced to facilitate visitation. The budget for the services comes from the city/state government. The main tasks of the social workers in supervised visitation is to ensure no physical injury is inflicted to the child during the meetings, decide on whether parent could continue visitation as planned and whether the next/continuing visitation is necessary.

Judge Lin explained Kaohsiung court being the first family court providing all relevant services has many different rooms to offer services to families. There is for example a one-way mirror room which is used by the social worker and the judges to monitor the parent-child interaction during the visitation period. The rooms are well furnished and decorated with beautiful paintings and colorful stickers. Toys are being made available in the room for the child and parent to play together or parent to observe the child play. Sofa is prepared for parents and child to rest and relax. Basically an atmosphere is created where the parent and child could interact comfortably, with ease and less emotional stress. Another room is available for the judges to talk and listen to the child’s wishes. This helps reduce stress on children as they no longer need to speak to judges in a court room setting. Only the judge and the child will be present during this time and a court clerk would record the contents of the speech between the child and the judge’s interaction.

The frequency of visitation and extension at Kaohsiung court said Mr. Chao, again depends on the type of cases: (1) DV cases and sexual assault which are based on DV Law, the visitation plan depends on the court order and usually visitation can be allowed for a maximum of 2 years; (2) Non-DV cases are based on the welfare of the child principle. Normally, four (4) meetings in two (2) months and each visits last for 2 hours. On the 3rd visit the judge may request for parent-child interaction report. The social worker observes the interaction of parent-child and reports to judge and the judge decides on whether to continue or stop the supervised visitation. If judge orders supervised visitation then the visitation center will arrange it. The judge could also order the center to be the place of transferring the child from the custodial parent to the non-custodial parent and social workers helps/train parties to make their own arrangements as to future visitations. Basically, the courts and/or supervised visitation centers help parents who do

not wish to see each other to temporarily arrange for visitation and train the parents to handle their conflict/emotions and eventually work out the visitation details between themselves. It is like a training/course for parents to learn to work together for the benefit of the child. Throughout the visitation period, no payment is imposed by the court or the supervised centers on the parents as the city/state government pays for it.

B. *Shilin District Court*

Judge Kuo⁵⁶ gave explanation about the structure and practices of supervised visitation at Shilin District Court. “There are two types of supervised visitation; DV cases and non-DV cases. (1) Non-DV cases requiring supervised visitation is facilitated by supervised visitation center at Shilin District Court managed by Modern Women’s Foundation, (2) In DV related cases parent and not the children are the victims and therefore it takes time to determine if supervised visitation is required. Pending judgement of DV related cases, parent-child meeting are supervised by social workers of Modern Women’s Foundation. After judgement, DV cases are referred by the Shilin courts to DV center which is appointed by the Shilin city government and situated outside of the court vicinity. In 2019, Child Welfare League Foundation (CWLF) which generally have a good system and sufficient experience in supervised visitation has been appointed by the city government for referrals of DV cases. In a judgement, decision is made on the mode and frequency of visitation by the court and the social workers facilitate the parent-child meetings at the supervised visitation center or arrange exchange supervision. Exchange supervision is where the child is sent to the center by the living parent and picked up by the visiting parent and after the meeting, the visiting parent returns the child to the center to be handed over by the social worker to the living parent. The parents do not communicate with each other but all plans are made through the social worker at the center including postponement and cancellation. The parties need to learn to co-operate with the plans for visitation and eventually arrange their own visitation schedules.”

As to the reason why supervised visitation becomes necessary, the judge commented that “pending trial or after divorce the safety of the child is primary concern. Visitation need to be supervised when visiting parent has criminal records, drug or alcohol addiction, mental illness, anti-social or child suffers from ADHD/autism and the parents does not have the ability to

56. Judge Kuo Yao-Ming gave a group interview at Shilin District Court on 1/8/2019. The group consist of Judge Kuo, a junior probation judge, a court enforcement officer, Ms. Wei Ting-Hsaun, and two social workers of Modern Women’s Foundation, Ms. Huang Hung-Hsuan and Ms. Chen Chu-Yu stationed at the Family Services Center at Shilin District Court.

care for/play with the child. Secondly, where parents are involved in high conflict, not in talking terms, do not co-operate with each other supervised meetings becomes necessary". The judge further explained that "before supervised visitation centers were introduced, parent-child meetings were held in front of police station (practiced about 8-10 years ago). However, it caused fear and emotional stress for the children. Since year 2000, all meetings are held at supervised visitation centers which may still be frightening for some children but in the presence of social workers and in rooms designed for children, children seem to be less stressful".

The enforcement officer, Ms. Wei said that "the judge makes decision on supervised visitation and if the parties do not comply, court administrative officer has the authority to intervene to ensure compliance. If for example, the custodial parent refuses to bring the child for the meetings with the non-custodial parent, firstly, a penalty or imprisonment could be imposed. A penalty of NTD 30,000 (up to a maximum of NTD300,000) could be imposed. For further non-compliance, custodial parent could be imprisoned but usually this method is not adopted by the courts considering the wellbeing of the child who would be deprived of parental care⁵⁷. Secondly, the enforcement officer and police officers will visit the house of the custodial parent to retrieve the child. If the child follows them, the non-custodial parent may meet the child. But, if the child refuses, the officers cannot force the child to meet the parent. The third option is to call the parents for a conference with the judge where the judge advises them or refer them for family counseling⁵⁸. Judges could also opt to refer the parents for parental education which is offered by CWLF. Some parents resist initially but after being told about the impact the children have due to parents' unwarranted attitude, parents co-operate better at times. Although, not a mandatory program, it has its benefits during the court process".

Social workers of Modern Women's Foundation assisting Shilin District Court judges, Ms. Huang and Ms. Chen shared their experience handling parent-child meeting for non-DV cases and DV cases judgement. Ms. Huang said "during or pending trial is very important to train parents with supervised visitation as it serves as a practice for them to co-operate and comply with visitation plans. Children usually have difficulty to form relationship with both parents as children are normally threatened by their parents not to choose the other parent to live with. Sometimes grandparents intervene and make it harder for children to make a choice. Pending trial visitation can be facilitated up to one year. The procedure is the judge refer

57. Brief reference was made by the officer to Enforcement of Judgement Act but not any specific provisions.

58. Reference was made to Family Act 2012, Articles 186-188 regarding investigation and advice by judges.

cases to the center. Social workers and/or court investigator prepares an evaluation of the child. The services of counsellor or other experts are sought if needed to advice the parents. Social worker plans meeting by consulting the parents. 3-4 meetings are arranged and discussion held on 3rd or 4th meeting on whether to continue supervised visitation or parents can on their own arrange the meetings. One final report with case facts will be submitted to the judge. Social worker may make recommendations but they are merely information/reference as the judge is not bound by it. Judges may at any time pending trial seek advice of the social worker and/or observe the parent-child meeting through the one-way mirror⁵⁹.”

Ms. Chen explained the procedure during the supervised visitation. “It is facilitated by the social worker who received the child from the living parent and then oversee the meeting by between the visiting parent and the child. The social worker will also be present in the room with the parent and child and play the role of an observer. The scheduled 1-2 hours of meeting is for the parent and child to interact. Sometimes, a trainee social worker will also be present to observe and learn how to facilitate the visitation. The social worker only intervenes if either the child or parent become hostile, behave disrespectfully or child shows unwarranted fear. If there are more than one child, they can all meet together but if the siblings prefer not to or are uneasy meeting in a group, separate meetings can be scheduled. The in-courthouse visitation meetings are only facilitated pending trial and during mediation. After pronouncement of judgement or reaching agreement in mediation, parents need to make their own arrangement or resort to have visitation meetings at city-run visitation centers”.

C. *Taipei District Court*

Judge Lee⁶⁰, a mediator-judge at Taipei District Court at Xindian was of the view that supervised visitation is important for the safety and welfare of the child. She offers mediation to parents who are unable to reach agreement on family issues. Her main concern is the best interests of the child as two out of five cases in Taipei courts involves children. She feels that a parent who alienate the child from the other parents does not automatically loses right to custody but an evaluation of the case as a whole is necessary to offer relevant support to parents undergoing conflict. She explained that Taipei has

59. Judge Kuo Yao-Ming gave a group interview at Shilin District Court on 1/8/2019. On the day of the interview, there was a supervised visitation meeting and with the permission of the visiting parent and Judge Kuo Yao-Ming, I was allowed to observe the meeting for a short while through the one way mirror with the judge, where the visiting parent and her two children were talking and being observed in person by a social worker and a trainee.

60. Interview on 7/5/2019 at Taipei District Court at Xindian.

both court-assisted supervision and referral to city operated visitation centers. There are two mediator judges and eight trial judges at family wing (the other is juvenile wing). She says that mediation is better for children than trials because it is emotional and children often take time to trust people and express themselves. Judges/mediators can investigate cases by appointing the court investigator⁶¹ and/or social worker to visit the parties' house, child's school or other appropriate places.

During mediation which according to Judge Lee takes a couple of lengthy sessions, she becomes the observer and allows the parties to negotiate and arrive at decisions, only advising them on legal points. Mediation at Taipei court is conducted in the presence of mediator judge, father, mother and the child/children and usually the lawyers are not present unless the parties insist to be represented. Judge Lee believes that both parents should be in the child's life after a divorce or separation even in cases involving DV unless there is sufficient proof that the child was a direct victim of violence. Mediators judges, she says do not force but suggest or persuade parents to try supervised visitation at the court or other visitation centers of their choice. She requests social worker to provide a detail report of the family, explain to the child about custody and visitation, assist parents to make future plans for children, obtain the child's wishes.⁶² However, she emphasized that the social worker report is a reference and not bound by it to determine if supervised visitation should be continued or stopped.

She said that some children prefer to talk to the judge or social worker than directly conveying it to their parents. She quoted a case as an example where the mother left the home due to conflict with the father and the child stayed with his father cared for by paternal grandmother. The mother met the child at school. The child was scolded by grandmother as she is used to the old fashioned way of raising children. Mother took the child away and appointed lawyer to have sole custody of the child. Child refused to meet the father alone because he was angry that the father made his mother leave their family house but he was afraid to tell the father. The child chose to speak to the judge and told her that he would only see his father in a restaurant for three hours in the presence of his mother or the lawyer or social worker. This was agreed as the initial plan to pacify the child until such time that the child could meet the father by himself and stay overnight on alternate weekends, Chinese New Year and part of school holidays. Judge Lee is of the opinion

61. Due to shortage of court investigators placed at Taipei Court, application is made to Social Department at Local Government and it takes between a few weeks to one month to appoint one and another one to two months for investigation.

62. Child's wishes may change when they are with their parents and without them so sometimes many interactive sessions with the child is necessary and requires confidentiality to avoid parents to use it against each other.

that the court-assisted supervised visitation helps promote parent-child visitation. However, supervised visitation in her view should not be allowed in sexual abuse cases and in cases of parental alienation and where children are victims of DV, visitation may be temporarily stopped. The judges/mediators would then seek experts' opinions on whether the child would be negatively affected if visitation is not allowed to make a decision for the best interests of the child.

Other districts in Taiwan are said to lack resources and collaboration with and support of child experts and agencies but Taipei courts have special rooms to facilitate supervised visitation including the one-way mirror room through which observation is made by the judge/mediator or social worker, among others to assess parenting skills of the visiting parent. The one-way mirror room is well equipped with furniture, toys and books for the child and non-custodial parent to sit comfortably and interact while reading or playing together or simply talk. The parent-child interaction is closely monitored through a monitoring screen in another room via a camera fixed in the interaction room. The parent and child are not able to see the person(s) observing their interaction although the parent may have the knowledge that the interaction is being silently observed. The advantage of this distant observation system is that the judges, mediators and social workers can observe the parent-child interaction through the monitoring screen or the one-way mirror to decide if the visitation should be continued, limited or discontinued to safeguard the child.

The Taipei District Court also has access to court investigator, social workers and guardian ad litem⁶³ as well as non-judge mediators to help make supervised visitation meaningful for parents and children. It also offers parental education classes which are not mandatory but parents are encouraged by judges/mediators/social workers to attend. This classes were pioneered by judge mediators at Taipei courts. Parents attend classes conducted by experts like psychologist, psychiatrist, lawyers, social workers and judges. It is conducted by way of group sessions where couples having family problems are grouped into small groups with two experts to have discussion and exchange of ideas. Judge Lee explained that as the spouses participate in different groups with different people having similar issues, they can identify the causes of their own problems and heal themselves emotionally to make logical and realistic decisions. The experts are hired by the court and the classes are offered free of charge for the participants. Judge Lee expressed her hope for the parental education course to be made

63. Guardian ad litem is appointed by the court under Article 109 of the Family Act, 2012 and the required fees are to be borne by the parents. The Guardian would be the representative of the child and submits a detailed report on family perspectives to the court within 2-3 months of the appointment. The Guardian can attend mediation.

mandatory in the near future requiring all divorcing couples to participate in order for them to make sound decisions as to their divorce and children.

Ms. Cheng, the supervisor for visitation at Taipei District Court⁶⁴ explained how her center assist the judges in supervised visitation. According to her, cases are referred to the center by judges and mediators pending trials or mediation. A case is assigned to a social worker to liaise with parents to construct a schedule for four meetings between the non-living parent and the child. She claims that sometimes due to high level of conflict in the family, parents do not wish to communicate between themselves. The social worker plays the role of intermediary between the parents to arrange meeting schedules that suits the parties and the child. The social worker explains the rules and procedures to be adopted during the meeting including the responsibilities of the parents and the communications allowed with the child. During the meeting the social worker's main task is to be an observer only rendering suggestions if necessary to safeguard the interests of the child. In cases where the child was abused in the past, social workers are vigilant during meetings to avoid violence. Another main duty is to obtain the wishes of the parents and child if they wish to continue the visitation at the center. If the parents' communication improves, suggestion will be made to the judge/mediator for parties to arrange their own private meeting schedules. If parties are unable to interact between themselves, suggestion is made to continue another four sessions of meeting in the presence of a social worker. She says there are cases where visitation is held at the center for one year because the parents simply do not learn to cooperate.

D. *New Taipei District Court*

Judge Chang⁶⁵ of New Taipei District Court explained that supervised visitation was started at her court after the DV Act was enacted. The DV Act, she says gives judges wide discretion to decide on visitation plan, vests city/local government with obligation to provide public visitation center in compliance with the CRC and warrants social workers to play very important role to facilitate supervised visitation. In her observation, "after the DV Act was implemented, some judges tried supervised visitation on their own to resolve conflicts in family and DV cases. In 2005, New Taipei City Local government encouraged visitation through its DV Prevention Center. After the introduction of Family Act 2012, visitation became more popular whereby judges can allow visitation to be monitored at court, local

64. Cheng Yu-Tien, serving as Supervisor of Visitation at Domestic Violence & Family Cases Service Center at Taipei District Court gave an interview on 15/5/2019.

65. Interview on 5/6/2019.

government or private centers operated by NGOs. Supervised visitation is allowed in cases pending divorce to analyse whether the parent-child relationship could be improved. It is a temporary measure before a final order of visitation plan is made by the court. The temporary supervised visitation (pending divorce) is held at the court with the assistance of the social welfare officer, court investigator and/or guardian ad-litem. Permanent visitation (after divorce) based on court order is facilitated by the local government or the NGO private centers. Child's best interests is the main concern of the court and also all other matters concerning the child".

She further explains that "the temporary visitation is known as third party monitoring system and was introduced to protect the child. The monitoring system needs special facilities and New Taipei, Taipei and Kaohsiung has the facility, namely, the one-way mirror and/or monitoring screen with a camera fixed in the interaction room to supervise parent-child interaction. Not in all cases but in cases where DV is present and where the child was also abused or child was the witness of violence or there's high conflict between the parents. Judge Chang emphasized that if there is DV in the family, psychological well-being of the child is affected. If the child is afraid of the abusing parent, it is detrimental to his/her growth. Visitation is therefore, monitored where child's reaction and visiting parent's behavior is observed by the social worker/judge. She said that visitation can be stopped by the social worker if it affects the child negatively or the parent misbehaves during the visitation. However, a court order is required to stop future visitation. Social worker or court investigator may make recommendation to discontinue visitation and the judge shall decide based on the best interests of the child".

Judge Chang told that "New Taipei District Court started providing other services such as matrimonial consultation at its Family Services Center, divorce mediation and parenting education to complement visitation. Budget for the equipment comes from the court or the local government or NGO. The court does not charge fees for supervise visitation, however, if the court appoints a social worker NTD 50-200 per time is charged and to be borne by the visiting parent. New Taipei City local government too does not charge a fee. In 2019, Fountain Visitation Center has been appointed by the New Taipei Local Government to facilitate permanent visitation. Social workers and/or interpreters as well as translators able to communicate in foreign languages are available in some cities including New Taipei City to assist foreign parents battling divorce, child custody and visitation. Although the numbers are somehow insufficient, courts and visitation centers attempts to provide foreign language staffs to facilitate the needs of foreign parents during supervised visitation".

E. Hsinchu District Court

Judge Hsu⁶⁶ of Hsinchu District Court narrated that district courts at Hsinchu has jurisdiction over family matters. Unlike, Taipei City, Hsinchu does not have special facility to provide monitoring visitation. Supervised visitation is allowed by judges if it serves the welfare of the children as safety matters most. It is gathered from the interview that at Hsinchu the judges may as prescribed by the law allow supervised visitation pending trial in DV cases but no facilities are available at the court building. Simply put, there is no in-house/court-assisted supervised visitation center at Hsinchu District Court. DV cases which requires supervision are referred by the judges to DV Prevention Center operated by Hsinchu local government and the social workers would facilitate the visitation based on the court order. In non-DV cases where conflict between the parties are less, parties are encouraged to make visitation arrangements by themselves. However, in high conflict situations, the judges may seek the assistance of social workers to be present at court to facilitate exchange visitation on a case by case basis.

Judges at Hsinchu have their own directives or practices to facilitate parent-child visitation. Judge Hsu explains that she has specific rules for the parents to conform at her court during the supervised visitation. One interesting rule is parents communicate to arrange visitation through email or text message and that each party must reply within 48hours to an email/message. She has two well-trained social workers to assist her with supervised visitation. She trained them on the court procedures and the way to co-operate with court officers and judges. These social workers help the court to facilitate supervised visitation and help to promote parenting skills. Judge Hsu observes the parent-child visitation and proposes necessary interventions including investigation by court investigator, appointment of guardian ad-litem, consultation with child experts, counselling for parental conflict and/ parenting education. She makes it very clear that she is not bound by their recommendation but uses their suggestions as reference to preserve the best interests of the child.

Judge Hsu is of the view that if parents are adequately guided and trained during the visitation, the cases rarely return to court with further disputes. She tells the parents, “show me how good you are not how bad the other parent is”. She shared a case where she awarded custody of a three of child (girl) to the father because the mother instead of focusing on her child’s well-being kept complaining about the father. The father on the other hand never blamed the mother but was planning on caring for the child. Although

66. Interviewed Judge Hsu Tsui-Ling, on 20/12/2019 at National Chengchi University after she presented a paper at the Conference on Child Visitation.

a girl child of tender age needs the care and love of her mother but the judge felt that the father would be a better and friendly parent than the mother in this case. As to visitation, she said that both parents must show they are each responsible to make the visitation work. She prefers a plan where the living parent send the child to the visiting parent and after visitation, the visiting parent returns the child to the living parent's home. She also feels that the longer the supervised visitation plan is the better trained the parents are to make their own arrangements thereafter. In her experience a parent-child visitation is usually arranged for four to twelve times per case and very few cases require more than twelve visitations.

To a question whether the judge would direct visitation to be held at a lawyer's office as sometimes practiced in Malaysia, she was skeptical because to her legal firms may be boring for children as they do not have anyone to play with and they may not want to continue visitation. She says that social workers interact with the child while he/she waits for the visiting parent to arrive for visitation or the living parent to fetch them home creating a pleasant and stress-free environment as compared to a legal firm/police station or even a public place like a McDonald/Starbucks. Judge Hsu said that when the visiting parent is a drunkard or drug addict the child should not be forced to see that parent. The visiting parent must give up his/her bad habits to earn the right to meet up with the child. Supervised visitation would be meaningful only if parents take responsibility and place importance on the best interests of the child.

IV. THE BEST INTERESTS OF THE CHILD DOCTRINE

The underlying principle for the protection of children in modern era is the best interests of the child as enshrined in the CRC⁶⁷. Almost in all jurisdictions around the world the courts, mediators, lawyers, social workers and even parents adhere to this principle when decisions concerning children in family disputes are made. The best interest of the child is regarded as a gender neutral concept which allows mothers and fathers to equally compete for child custody. Generally, the court hears all evidence and testimony of the parties, and enters a decree that best serves the child. Factors the court usually considers include the age, physical, and mental condition of the child and that of the parents; the existing relationship between the child and each parent; the presence of extended family; the role each parent has played in the past and can make in the future in the child's upbringing; the propensity

67. Article 3(1) of the United Nations Convention on the Rights of the Child states "In all action concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

of each parent to encourage continuing contact between the child and the other parent; any history of family abuse; and the preference of the child.

It is interesting how the perception of children's interests transformed over time to what it is today in child custody. Patriarchy was a norm in many traditions in the West and East and judicially recognised for centuries. It is a notion that man had natural authority over his wife and children. Traditionally and legally, the father was entitled to the custody of the children of a marriage and could deny a mother access to her children. Wright wrote "judges in England in the eighteenth and most of the nineteenth centuries unhesitatingly enforced a father's unlimited right to custody of his children in every case where he had not forfeited his paternal rights through some malfeasance, such as cruelty or desertion."⁶⁸ Grossberg's comments on judicial patriarchy in America "the assumption of patriarchal authority by the bench rested to a significant degree on the nineteenth century's increasingly rigid segregation of homebound female and worldly male functions. It represented a refined version of the distinction between the male authority to govern the home and the female responsibility to maintain."⁶⁹

East Asian countries like Taiwan⁷⁰ and South Korea⁷¹ faced enormous challenges to reconcile Confucius's patriarchy ideology with the democratic concept of gender equality. Traditional family values such as the preference of a male heir to continue the family lineage, treating women as child-rearing machines and impeaching mothers of their rights over children in divorce were prevalent in these patriarchy-laden nations. Lee explained "after World War II, Taiwanese families were regulated by the Family Code of 1930 where many traditional family norms continued to be preserved and enforced. It was not until the reform starting from the mid-1990s that the patriarchal family tradition gradually faded away and the landscape of family law had radically changed."⁷² Kim explains "prior to the revisions, a woman who filed for divorce, even if the grounds were charges of physical or mental abuse, automatically lost custody of her children unless the man waived this right through a special custody agreement. Under the revised law, the father no longer enjoys automatic custody of his children upon

68. Danaya C. Wright, *De Manneville v. De Manneville: Rethinking the Birth of Custody Law under Patriarchy*, 17 L. H. REV. 247, 247-307 (1999).

69. Michael Grossberg, *Who Gets the Child? Custody, Guardianship, and the Rise of a Judicial Patriarchy in Nineteenth-Century America*, 9 FEM. STUD. 235, 235-60 (1983).

70. See Hung-En Liu, *Mother or Father: Who Received Custody? The Best Interests of the Child Standard and Judges' Custody Decisions in Taiwan*, 15 INT'L J.L. POL'Y. & FAM. 185, 185-225 (2001).

71. See Kim Rosa, *The Legacy of Institutionalized Gender Inequality in South Korea: The Family Law*, 14 B. C. THIRD WORLD L.J. 145, 145-162 (1994).

72. Lee Li-Ju, *The Constitutionalization of Taiwanese Family Law*, 11 NTU L. REV. 273, 273-331 (2016).

divorce. Rather, this right is determined either by the couple's mutual agreement or by the Family Court."

Although Japan was not heavily influenced by Confucianism as compared to Taiwan and South Korea, subordination of women was apparent in family and at workplace. Kazui stated "The Meiji Civil Law enacted in 1890 placed all Japanese families under strict patriarchy. . . . women were confined to the home and their main function in marriage was to raise a son so that the family could extend its lineage. Thus if a woman was infertile, the husband could easily divorce her without challenge."⁷³ Under Islamic Law⁷⁴, although the mother is upon divorce entitled to the custody of her tender age children, the father remains the natural guardian of infants and their property.⁷⁵

The twentieth century marks a shift from paternal centric practices to maternal preference. By the end of the century the maternal presumption had become well ingrained that it was rare for a mother to lose custody of her tender aged children. Consequently, legal precedents in many Asian and Western countries illustrates the tendency of judges determining child custody based on the seemingly gender neutral standard of "the best interests of the child".⁷⁶ However, broad judicial discretion and the vagueness of law in providing unambiguous standards for assessment have led to reliance on and reinforcement of prevailing stereotype decisions on the best interests of the child. The main concern of legal scholars is that judges evaluate "the best interests of the child" based on their own bias and values as rightly pointed out by Guggenheim "the best interests standard necessarily invites the judge to rely on his or her own values and biases to decide the case in whatever way the judge thinks best. Even the most basic factors are left for the judge to figure out."⁷⁷

Kohm having examined the American and English jurisprudence pointed out that "before the middle of the 1800s, this new and emerging American family law jurisprudence (of the best interests of the child) placed a duty to children upon parents and courts paramount to common law rules which were previously dictated by parental rights alone."⁷⁸ In England, the

73. Miyuki Kazui, *The Influence of Cultural Expectations on Mother-Child Relationships in Japan*, 18 J. APPL. DEV. PSYCHOL. 485, 485-96 (1997).

74. Islamic Law is practiced by Asian countries like Malaysia, Singapore, Indonesia, Thailand and Myanmar.

75. See Taslima Yasmin, *Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations*, 12 A. J. COM. L. 233, 233-56 (2017).

76. See PHILIP ALSTON, *THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS* (1994); Stephen Parker, *The Best Interests of the Child-Principles and Problems*, 8 INT'L J.L. POL'Y & FAM. 26, 26-41 (1994); John Eekelaar, *The Interests of the Child and the Child's Wishes: the Role of Dynamic Self-Determinism*, 8 INT'L J.L. POL'Y & FAM. 42-61 (1994).

77. MARTIN GUGGENHEIM, *WHAT'S WRONG WITH CHILDREN'S RIGHT* 306 (2005).

78. Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in*

court in the Anonymous⁷⁹ case, declared the best interests of the children trumped the father's rights to custody, "for the protection of the children themselves" endorsing acceptance of the best interests of the child as a guiding principle in custody dispute.

Legal scholars may concede that the law of custody has moved from strict adherence to patriarchy to an absolute presumption of maternal preference. When both parents are equally fit to be the child's custodial parent but joint custody is not a suitable option, must the judge flip a coin to decide the custodian? The concept of primary caretaker was founded to assist judges however it was later alleged to be a guise of maternal preference standard when judges still chose mothers over fathers to be the primary caretaker. On the determination of the child's wish, the debate was on whether a child can be considered as a person having a distinctive identity from the parents to own his/her individual rights. The scholastic discussions revolved around the "will theory" and "interest theory"⁸⁰ causing more confusion than clarity for judges worldwide; not shedding much light on the judges' evaluation of the child's wish. The latest trend in the courts on custody and visitation disputes is to put the child's needs before parents.

In Malaysia, the statutes make it perfectly clear that it is the child's welfare that should predominate. Thus, the question that is asked by the court or the presiding judge in guardianship, custody or visitation dispute shall be "what serves the welfare of the child". The Malaysian courts has sought guidance from the English cases⁸¹ for the interpretation of the phrase, "the paramount consideration shall be the welfare of the child"⁸². The term 'welfare'⁸³ has always been given a wide import as stated by Lindley LJ that 'But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.'⁸⁴ The Federal Court of Malaysia held in a family dispute that "when all the relevant facts, relationship, claims and wishes of the parents, risks, choices and other circumstances are taken into account and weighed,

American Jurisprudence, 10 J.L. FAM. STUD. 337, 337-76 (2008).

79. Anonymous 61 Eng. Rep. 260 (Ch.) (1851), cited from *id.* at 364.

80. John Eekelaar, *The Emergence of Children's Right*, 6 OXF. J. LEG. STUD. 161, 161-82 (1986).

81. English authorities prior to the coming into force of the English Child Act, 1989 is still persuasive in Malaysian courts. In *Re Ko (an Infant)* Edgar Joseph Jr. J stated that 'it is clear that the difference in wording is without distinction' and accepted that 'English authorities, explaining their effect, have been consistently relied upon by our courts.'

82. Welfare of the child is similar in meaning to the best interests of the child. The English common law has adopted the welfare of the child doctrine way before the CRC was promulgated by the international community.

83. It could be equated to "interests" of the child.

84. *Re McGrath (Infants)* 1Ch 143 at p. 148, [1893]

the course to be followed will be that which is most in the interests of the children's welfare".⁸⁵ The case of *Wong Phila Mae v. Shaw Harold*⁸⁶ list down some of the factors taken into account by the courts in evaluating the welfare of the child: the conduct of the parties, the wishes of the parents, the wishes of the child where he or she is of an age to be able to express an independent opinion, a young child would be best looked after by its mother, which party can offer better security and stability, that siblings should not be separated.

Taiwan appears to be legislatively and judicially progressive in safeguarding the best interests of the child. The courts in Taiwan had since 1996 applied the best interest of the child standard in family disputes as stipulated in the new Article 1055-1 of the Civil Code. Although Article 1055-1⁸⁷ lists factors for the consideration of the judges, they are not exhaustive and the judges still retain wide discretionary powers⁸⁸ in applying the best interest of the child standard in child custody determination. This was reflected in interview based empirical researches conducted by Liu.⁸⁹ He examined 70 cases involving custody disputes between 1998 and 2000 to find out the factors considered by judges when they apply the new law to determine the best interests of the child. His research pointed out that the judges did not consider all the factors as listed in Article 1055-1 of the Civil Code but they have randomly referred to some of the factors such as the interview report of social workers (45.5%), occupation and economic resources of the parents (38.6%), wishes of the child (31.8%) and the age of the child (27.3%). He proposed that judges should stop using economic competence as a necessary factor in determining custody thus undermining gender equality and child's best interests.

Liu continued in another research to investigate how judges applied the best interests of the child principle in custody disputes by using a snowball

85. *Mahabir Prasad v. Mahabir Prasad* [1982] 1 MLJ 189, 193.

86. *Phila Mae v. Shaw Harold* [1991] 2 MLJ 147.

87. When the court makes the jurisdiction in the Article of 1055-1, it should be decided in accordance with the best interests of the minor child, consider all the conditions and the visiting reports of the social workers, especially check the following contents: (1) The age, sex, numbers and healthy condition of the minor child. (2) The willing of the minor child and the need of personality development. (3) The age, occupation, character, health condition, economical ability and the life style of the parents. (4) The parent's willing and attitude of protecting and educating the minor child. (5) The emotional feelings between the parents and the minor child or between the other persons living together and the minor child. (6) Whether one parent takes actions to hinder the other of exercising rights and assuming duties of the minor child. (7) The tradition, culture, and values of different ethnic groups.

88. By virtue of Article 575-1 of the Code of Civil Procedure which is the new law enacted in 1999, judges have wide discretionary powers. Article 575-1 stipulates "The court may take into consideration the facts not alleged by the parties and the court shall make necessary investigation into the facts and evidence".

89. Liu, *supra* note 70, at 185, 186.

sampling method of research interviews with nineteen judges. He argues that the “new law does not make all the changes expected because the law is being carried out by actors who have old skills, old thoughts and old habits”.⁹⁰ Huang & Shao in their pioneer research employing decision tree learning method analysed 448 cases decided between 2012 and 2014, involving 690 children, whose parents are Taiwanese and they both wish to acquire custody but the court ruled sole custody. Their findings show that primary caregiver, child’s wish and parent-child interaction are the three most significant factors considered by judges in Taiwan and that the mothers (80%) are more likely to be the sole custodian of children. They also claim that occupation and economic resources of the parents which was once considered an important factor in child custody in 2000, no longer affect judges’ decisions today.⁹¹ This research through the decision tree method shows the factors being considered by judges under Article 1055-1 are not all-encompassing but there is a certain preference among the judges that could be useful for lawyers to predict the outcome of their cases and scholars to capture the judicial trend.

To bridge the gap in literature, I have examined case law and interviewed some judges in Taiwan to understand how they perceive and have applied the best interests of the child principle in supervised visitation application. In a decided case,⁹² the mother was awarded sole custody and the father is allowed visitation with the child by the Kaohsiung Juvenile and Family Court. The father filed an appeal to change supervised visitation to a normal visitation. The child has had 30 times supervised visitation with the father. The mother claimed that the child was sexually abused but evidence was insufficient to prove her claims. The court of second instance, observed that during the supervised visitation the father did not harm the child and therefore it ordered a normal visitation. The mother appealed to the Supreme Court (SC) as she is not satisfied with the visitation plan decided by the second instance court. The SC disagreed with the second instance court. The medical report from the hospital shows that the child has been assaulted. The year before the ruling, medical record shows that child has separation anxiety disorder. The child and the father went through supervised visitation but every meeting did not exceed 2 hours and social worker or relatives were

90. Hung-En Liu, *Custody Decisions in Social and Cultural Contexts: In-Depth and Focus Group Interviews with Nineteen Judges in Taiwan*, 17 COLUM. J. ASIAN L. 225, 289-305 (2004).

91. Sieh-Chuen Huang (黃詩淳) & Hsuan-Lei Shao (邵軒磊), *Zhuoding Zinyu Qinquan zhi ZhongyaoYinsu: Yi Juezeshu Fangfa Fenxi Xianguan Caipan (酌定子女親權之重要因素：以決策樹方法分析相關裁判)* [What Factors Determine Child Custody in Taiwan? Using Decision Tree Learning on Court Decisions], 47 TAIDA FAXUE LUNCONG (臺大法學論叢) [NAT’L TAIWAN U. L.J.] 299, 325 (2018).

92. Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 106 Tai Jian Kang No. 74 (106年度台簡抗字第74號民事裁定) (2017) (Taiwan).

present. The question was whether overnight visitation should be allowed? The SC found that the second instance court has failed to consider the child's wishes and the expert's medical opinion in determining the overnight stay. As these factors forms the core of the best interest of the child in this case, the SC overruled the decision of the second instance court.

To a question on the discretion of the family court judges in allowing supervised visitation and evaluating the best interests of the child, Judge Chang of New Taipei District Court responded by pointing out that judges in Taiwan have wide discretion under Article 1055 of the Civil Code to allow supervised visitation in non-DV cases if there be high conflict between the parties. She affirmed that visitation is not a right of non-custodial parent but is allowed by the judges to protect the best interests of the child. She explained that it is trite law in Taiwan that supervised visitation is allowed if it serves the best interests of the child and that the main objective of the judges is to safeguard the best interests of the child and that the judges give due consideration to all factors relevant to the well-being and safety of children. Allowing an abused child to have contact with an abusive visiting parent may not serve the interests of the child and therefore judges need to wisely use their discretion to decide on whether to supervise the contact with the assistance of the social workers or discontinue contact altogether.

The judges whom I interviewed shared their evaluation of the best interests of the child when considering supervised visitation. Judge Hsu of Hsinchu District Court feels that parental alienation does not serve the best interests of the child. It is very hard she says for a judge to detect alienation by parents as the alienating parent may try to convince the judge that the visitation does not serve the well-being of the child. She shared a case in which the mother hired a lawyer to convince the judge that the father is a bad person. The mother complains so much about the father and feels that the child should not meet the father. Judge Hsu felt it was in the best interests of the child to stay with the father who was concerned about the emotional trauma to the child because he never blamed the mother for the breakdown of the marriage. The friendly parent behavior of the father was seen to serve the best interests of the child in this case.

Judge Kuo of Shilin District Court confirms that he takes into account the wishes of a child in evaluating the best interests of the child. He says he asks and/or talk to a child aged between 6 and 16 years to know their wishes. He has through the help of social worker observed the wishes of a child aged three through the child's drawings. He clarified that social workers help train children to speak to judges. Many children undergoing supervision tend to form a good bond with social workers and express their wishes on custody and visitation. Although, judges are not bound by the social workers' suggestion or child's wishes, Judge Kuo expressed that he tries to understand

the child's bonding with the parents in determining the best interests of the child principle. Upon reaching 16 years old, he says that a child can express willingness to continue or stop visitation. In the interests of the child, he would discontinue visitation if the visiting parent is found to be uncooperative, abusive or totally lacks parenting skills and compassion.

Judge Lee of Taipei District Court considers the best interests of the child as the key factor in supervised visitation cases. She is a mediator judge focusing mediation as a means to resolve family issue considering the well-being of children. She shared that many children are fearful of telling their feelings/wishes to their parents. She had a few cases in which the children after a few mediation sessions request to speak to her on their will. Although she is aware that children can be influenced by parents to say what they like or not, she with the assistance of social workers and court investigators allows the child to express their wishes and suggest parental meetings to help child overcome their fears and misconceptions.

Professor Lai also serving as a mediator places primary importance in best interests of the child and explains that children are usually subjected to parental alienation. She takes all her cases seriously and wants both parents to come to an agreement that serves the best interests of the child. She feels parenting education helps changes parents' attitude and their thoughts which helps them make better decision for their children. She hears the child's wishes and that of the parents and guide the parents to arrange visitation that best suits the child so that children feel appreciated and not considered themselves as the cause of the divorce.

Betty Sung,⁹³ a social worker at Taipei District Court confirmed that she assess the best interests of the child in a visitation arrangement by taking into account the factors provided in Article 1055-1 of the Civil Code. She explained that not all the factors are necessarily present in all cases so the assessment is based on the facts of each case. When the judge/mediator refers a case, she schedules meetings by taking into consideration the parents' availability and that of the Center. She explains the procedures and schedules of meeting to the child. The child's wishes are sought and any objection is deal with carefully to identify parental alienation. The younger the child the more cautious she is as they may not be able explain their parent's brain washing. Older children according to her has issue trusting the social workers and are capable to making up stories so here too she has needs to observe the interaction closely to recommend to the judge at the third or fourth meeting, whether visitation needs to be continued or otherwise. If the child is exhibits fear or tantrum, most often the visitation

93. Betty Sung Ming Ping, serving as social worker at Domestic Violence & Family Cases Service Center at Taipei District Court gave an interview on 15/5/2019.

meeting is cancelled or postponed giving the parent opportunity to change attitude. If the child is psychologically, emotionally or physically during the meeting then there is issue of bonding which is dealt with by recommending counseling for the parent or child.

Child's wishes, the age of the child and friendly-parent attitude were the common criteria that the judges I have interviewed relied on to determine the best interests of the child. These judges considered child as having autonomy to decide their life as they grow up thus their wishes and emotional well-being were given primary consideration. The parents having positive attitude towards each other and the child were preferred to have interaction with the child.

V. FINDINGS

The DV Act paved path for visitation centers to be formed and operated by all the cities and counties in Taiwan to encourage contact between separated parent and child even when there is allegations or presence of violence in a family. The Family Act later provided the structure for visitation to be provided pending trials and mediation allowing the judges and mediators to assess parental co-operation and parent-child interaction before final judgement. Domestic violence is traumatic for the children but even more traumatic is the thought of not being able to see the abusive parent if the parents separate or divorce due to violence in the family. Generally, as family violence may be harmful to children, visitation may be seen as to be unsuitable by judges/mediators but supervised visitation at visitation centers managed by the courts or operated by city government or private agencies provides an avenue for parent-child interaction and continued relationship. The court-assisted visitation also aids contact between the non-living parent and the child where the parents are unable to arrange visitation by themselves. The assistance, guidance and support provided by the social workers and judges/mediators prepares the parents to eventually work out visitation arrangements on their own considering the needs of their children. The court-assisted and city-run visitation systems in Taiwan promote parent-child visitation, support co-operation between the parents and safeguards the best interests of the child.

Judges/mediators/social workers handling family matters are well trained in their field of expertise. They are required to have the academic qualification and are usually trained on job in various family issues. Young judges/mediators are legally qualified but lack experience in handling family issues and the same goes to the social workers. Senior judges train the young judges/mediators and social workers on court procedures and cooperation with parents and court personnel. I gathered that they all deal with child

related cases in a professional manner. The workers and court investigators assist the judges/mediators to gather information about the child, parents, home environment, school and other facts related to parenting and protection of the child. Their expertise, initiatives and experience help children in dysfunctional families to maintain ties with their non-living/abusive parent. My observation is that the judges/mediators that I have interviewed are all legally well versed and passionate to safeguard the best interests of the child as they each make their own arrangements with the social workers, court investigators and enforcement officers to understand the strain and difficulties faced by the parents and children in continuing contact. They utilize the monitoring system in the court to observe visitation meetings before arriving at their decisions. They also encourage parenting education because they realize the necessity of the parents having the knowledge and skills to make wise decision for their children. The measures taken by these judges show their personal interest to help all the parties to smoothly fix their marital and child related issues.

All courts either facilitates supervised (court-assisted/ third party monitoring) visitation or refer cases to supervised visitation centers operated by the local government or private organization after the new law on DV (1998) and best interests of the child were introduced (1996). There appears to be some difference in the practice of supervised visitation depending on the facilities made available by the courts and local government. Court-assisted visitation is not available in all the districts in Taiwan. Taipei, New Taipei and Kaohsiung courts have the monitoring system to provide supervised visitation equipped with the one-way mirror through which the judge/mediator/social worker observes the parent-child relationship. In other districts such as Hsinchu, judges with the assistance of social workers plan supervised visitation at the court or refer to DV centers at local government offices/ private organization which are usually equipped with trained staffs and required facilities. The direct involvement of judges/mediators in assessing supervised visitation can only be seen in cases where the monitoring system is available at the court. Where matters are referred to visitation centers operated by local government or private agencies, judges/mediators cease to play the role of supervisors and depends largely on the report of the social workers to determine the suitability of a supervised visitation plan for the child.

Both supervised visitation and exchange visitation is being offered by the courts and/visitation centers in Taiwan and being monitored by judges/mediators/visitation supervisor. The one-way mirror monitoring system is therefore a key factor that allows the judges to play an active role in observing parent-child interactions to determine the best interests of the child. Judges/mediators are not personally present in the interaction room but

observe from the other side of the mirror or through the monitoring screen without being seen by the parent and child. As such the communication between the child and parent is not interrupted. The budget for the facilities is mainly from the local government and in certain courts it is subsidized by the Judicial Yuan. The monitoring system is not provided for by every city or county due to the high structuring and management cost. It should be made available nationwide in all courthouse having high volume of family cases to encourage the judges to actively promote parent-child relationship.

Parenting education is not mandatory but being offered at the courthouse and city-operated Domestic Violence & Family Cases Services Center regularly. This court-connected parenting education in Taiwan is not a standardized program but some form of parenting education is offered at the initiatives of judges, lawyers, academics and social workers. It is tailored with the assistance of family conflict resolution professionals and child experts. Parents having family conflicts are not compelled but encouraged to attend these courses so they can understand their problems and work together to find better solution instead of litigating the matter to win the court case. Lectures and seminars are conducted mainly by family resolution professionals and child experts. Some sessions involve sharing of experiences by judges, lawyers and social workers. The role play method of problem solving seems to benefit the parents in identifying their own problems and improve their communication. I am of the view that parenting education may be more effective if the programs are well formulated, made mandatory and offered in early stage of family conflict.

One-stop multi-purpose service center is only available at Kaohsiung. Kaohsiung Juvenile and Family Court which was formed under the Judicial Yuan to focus on juvenile delinquency and domestic violence has set up a one-stop services center to assist dysfunctional families that includes child visitation services. Since 2014, it also provides family violence services, legal consultation center, legal aid, Child Welfare League Center for family consultation, mental health consultation, women and children protection brigade station, employment service desk, indigenous inhabitants service station, social affairs and household registration services. This is another expansive measure but if budget permits, this should eventually be made available in all the main cities in Taiwan so the parents and children can conveniently have access to all services at one place. Also easy for the judges/mediators to refer the parties to the most appropriate centers for consultation, counseling and interaction.

All the judges/mediators and social workers interviewed made reference to the best interests of the child as the primary consideration in decisions involving children including supervised visitation. They are concerned about the safety, welfare and well-being of children especially in DV cases. They

also encourage visitation in accordance with the DV Act and help to keep both parents in the life of the children. Seeking the child's wishes for parental visitation when the children are in their mid-teenage seems to be another trend in Taiwanese family courts. It is interesting that the court having made a visitation plan in the best interests of the child when they are younger (as parents patria) then allow the child the liberty to make his/her own visitation plans when they become older and matured. This shows that the Taiwanese judges value the autonomy and wishes of matured youngsters. These judges recognize that forcing a grown up child to have contact is injurious to their psychological, emotional and physical well-being and therefore it is best for the youngsters to decide for themselves.

Another point is the scrutiny of parental alienation by the judges with the assistance of the social worker or court investigator. This is a very delicate and subtle issue that may go unnoticed if the judges are not cautious enough to identify it. All the judges, mediators and social workers I spoke to are well aware of the impact of parental alienation on children and are careful to avoid potential psychological and emotional damage to the child. The monitoring system at the court they said helps them to observe the child's attitude towards the visiting parent. If there be any brain washing or threats, they can interrupt the meeting or caution the parents later. It is obvious from the interviews and case law that the parents having positive and friendly attitude is preferred by these judges/mediators to have interaction and continued contact with the child.

VI. PROPOSALS & CONCLUSION

Taiwanese method of facilitating supervised visitation at the court may serve as a good reference for Malaysia. However, the system needs modification to suit the adversarial system where court decision is mandatory and mediation remains as an unpopular alternative. In order to implement a structured and effective supervised visitation system in the Malaysian courts, certain measures need to be taken like reform of laws, adequate facilities, training of facilitators and parenting education.

Legal Reform--Law needs to be enacted and policies formulated to enable judges to consider supervised visitation especially in DV cases to protect the safety and well-being of the child. At the moment, very few judges allow supervised visitation as the necessary structure and facilities are not available at the court or elsewhere. It is more appropriate to call the current practice in Malaysia as third party-assisted visitation as a relative or friend would be present to make parent-child visitation possible. However, no evaluation of its impact on the child is done due to the absence of social workers and/or court investigator. Not only should the Domestic Violence

Act, 1994 of Malaysia and Law Reform (Marriage & Divorce) Act, 1976 be amended adequately to empower judges to allow supervised visitation but Social Workers Act which has been long pending approval has to be enacted to incorporate provisions to train social workers to handle family issues in a professional manner. In the meantime, judges could be encouraged to resort to mediate divorce cases and coordinate some visitation arrangement at the court with the help of social welfare officers pending mediation and trials to evaluate its effectiveness. If this helps parents to communicate and co-parent, measures can be taken to offer supervised visitation as a structured program at the court with other facilities. Mediation need to be encouraged and eventually made mandatory to allow the parties to evaluate issues and reach decisions beneficial to them and their children. Taiwanese method of distinguishing DV and non-DV cases for supervision would be a good method to be taken into account by judges in Malaysia to decide on the method and duration of supervision. Cases involving domestic violence should be given preference for supervised visitation compared to normal separation or divorce cases to minimize the risk of violence against the victim parent and the children during visitation meetings.

Training Facilitators--The judges could make application to the Social Welfare Department for a social welfare officer to be placed in each courthouse. The judges can train the social welfare officers to monitor parent-child visitation. Other court officials like the probation judges and registrars can be coached to monitor in-court visitation. Other services such as family mediation, legal consultation, counselling, parenting courses, domestic violence services, women and children services could be offered at the court by engaging non-governmental agencies which are already providing such services for free at their offices. A collaboration between the court and all relevant agencies and social welfare officers is needed for supervised visitation to be offered professionally at the court. NGOs could be encouraged to provide exchange visitation at their office by seeking the support of police to ensure no kidnapping takes place during visitation. Children are most affected during divorce so early intervention is necessary to minimize emotional trauma. Child experts including psychologist can be engaged if needed by the court to support parent-child visitation and offer parenting education. All the parties must be trained to observe the best interests of the child as the guiding principle for a smooth and successful practice of supervised visitation at the court.

Visitation Facilities--For a start, supervised visitation should be offered in the courts. Providing full facilitation at the court to encourage supervised visitation may not be appropriate as the issue of budget will be raised. Initially, supervision visitation could be offered in legal aid room which is currently available in every courthouse to offer free legal services to the

underprivileged litigants. Special observation rooms should be provided for parents to interact with children in the presence of a social welfare officer and if necessary the judge/mediator or guardian ad-litem could attend together. The drop-off and pick up of the children can be handled by interpreters or court clerk who are present in every court room. Instead of meeting the children in chambers, judges could use this observation room to create a better atmosphere for the children to express their wishes. With trial and error, the facilities could be improved and if parents cooperate and supervised visitation serves the best interests for the child, a one-way mirror room can be eventually set up in the court. The cost of setting up the one-way mirror and monitoring screen rooms may hinder the Malaysian Judiciary from implementing it but if the State or Federal governments provides partial financial support, the judges would support the system. Visitation exchange where the non-custodial parent is allowed to take the child outdoor or for overnight stay might be cumbersome for court personnel to manage as it requires expertise and security measures. Therefore, it would be ideal for the beginning to provide the space for supervise visitation to take place at the court vicinity.

Parenting education could be offered through a collaboration between the Bench and the Bar as well as the Law Faculties. Lawyers, judges, academics and social welfare officers could share their perspectives to educate parents to identify and find solutions to their problems. Child experts, family law experts and NGOs could be engaged to make the parenting education more effective. The structure of supervised visitation and the responsibilities should be focused for visitation to be meaningful for the child. Irrespective of the racial, cultural and religious background, parents need to be encouraged to focus on the best interests of the child so children can continue to have proper contact with the non-custodial parent. Parents need to be encouraged to attend parenting classes prior to or upon filling of divorce or separation. The Bar Council in collaboration with the Law Faculties to hold seminars, lectures, interactive programs for the parents at the Bar Council, universities or community centers to create awareness on co-parenting and conflict resolution through mediation. Courthouse may not be a suitable place for parenting education as Malaysian society's perception of court is to fight a battle.

To sum up, supervised visitation is certainly needed in Malaysia to harness co-parenting and strengthen parent-child relationship following a separation or divorce and especially in cases involving domestic violence. The manner in which it should be provided and assisted by the court has to be well designed with the involvement by all the professionals and supporting team reinforced by clear and unambiguous laws. The Taiwanese structure and experience serve as a good reference for Malaysia to create its own system.

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父母對未成年子女的監督式會面交往： 以臺灣法院之輔助及監督機制 為中心

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摘 要

本文針對臺灣之臺北、新北、新竹與高雄地區的監督式會面交往制度進行研究。監督式會面交往是由各地方法院中的家事服務中心所提供。該中心係由地方政府委託非政府組織以及其他私人機構營運。本文旨在分析服務之實際案例與服務內容。本文以採取質性研究中的訪談作為研究方法，對象為裁定監督式會面交往之法官以及實際執行監督式會面交往的社會工作者進行訪談，以完成本質性研究。研究發現，自從1998年《家庭暴力防治法》施行後，法院於涉及家庭暴力與高衝突之分居與離婚案件中，逐漸鼓勵採取監督式會面交往。臺灣《民法》第1055條之1中之子女最佳利益原則，是法官與社會工作者在裁量是否應該要允許、限制或中止監督探視之重要因素。法律專家與非法律專家皆持續攜手合作，努力使未任親權人之父母與其子女能夠在高衝突、分居、離婚之家庭中繼續保持聯繫。

關鍵詞： 監督式會面交往、未任親權人之父母、子女會面交往、子女最佳利益、家事法院