

CRIMINALISE MARITAL RAPE.

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THE proposed Penal Code amendments on marital rape leave too much room for improvement.

During public consultations on amending the Women's Charter in 1996, a request to criminalise non-consensual sex between married couples was rejected. The so-called 'marital exemption' remained on the books. This meant that no husband in Singapore could under any circumstance be found guilty of raping his wife so long as she was not under 13 years of age.

A decade later, tentative steps are beginning to be taken to recognise that there is such a thing as marital rape and that a husband may be charged with raping his wife - but only under a few stipulated conditions. These are, first, if she has obtained a protection order against him; second, if she has secured a court injunction restraining him from having sex with her; third, if the couple are living separately; and finally, if they are waiting for a divorce to be finalised.

Lawyers characterise the new position on marital rape as 'full exemption unless living separate and apart'.

But the new position is not good enough because it does not recognise sexual assault between married individuals who are not living separately and apart. (According to the Home Affairs Ministry, however, men who are legally separated from their wives but still living with them will also not be exempted. If so, this should be expressly written into the law.)

The new law places the burden on wives to arm themselves with legal protection. Many women may not be able to afford the legal fees involved in getting such protection.

How did the marital exemption for rape come about? It is a holdover from the mid-17th century when the then chief justice of Britain, Sir Matthew Hale, declared that no husband could rape his wife because to consent to marriage was to consent to sex at any time and under any circumstance. That consent, he said, 'she cannot retract'. He offered no grounds and cited no precedents for his argument. Yet it became accepted in the common law.

Of course, he was writing at a time when marriage was supposed to be a lifelong institution: After all, before 1857, no English court could grant any couple a divorce as marriage was seen to somehow transform a woman's legal personality so it became united with that of her husband. She actually became his property. This unity of husband and wife may be traced to the biblical teaching that a man and his wife are one flesh.

In Singapore, the Women's Charter made it explicit that women could, among other things, own property and that they do not become the property of their husbands. This being so, the marital exemption - or even 'full exemption unless living separate and apart' - is an incongruity.

But those who oppose lifting the marital exception have raised various objections. First, they have argued that if the law were to allow a wife to bring criminal charges against her spouse, then the law itself would be fostering marital discord and hampering reconciliation.

But criminal law is already involved in the life of the family. A husband can be charged for assaulting his wife, say. Since that can arguably also promote marital disharmony, why should rape not be prosecutable?

In any case, the purpose of criminal law is not to save marriages. And in any event, why should a marriage in which rape can occur be saved?

Second, some fear that vengeful, vindictive and/or deceitful wives might falsely accuse their husbands of rape. The 1996 Select Committee on the amendments to the Women's Charter said that marital rape was difficult to prove or disprove. But are there any other crimes that are difficult to prove that are therefore not criminalised?

Moreover, the law is not intended merely to convict but also to deter by making it clear to all what behaviour is acceptable and what is not. In fact, rape is generally underreported because victims fear the social stigma of being a rape victim.

Rape victims also fear coming forward because of the prospect of dealing with the cold, impersonal bureaucracy of the police. They might also fear retaliation by the perpetrator.

Finally, wives who have been out of the workforce for some time may also face economic barriers to leaving their husbands. Given these facts, wives crying wolf seems unlikely.

Third, some claim that marital rape is less harmful than non-marital

rape. The empirical data, however, says otherwise. For example, a study in Canada this year found that partners or ex-partners who sexually assaulted women were equally as violent as strangers who raped them.

The data also suggests that marital rape is actually more traumatic emotionally and carries longer lasting emotional effects. This is because the victim suffers, in addition to the physical assault, betrayal, entrapment and isolation. When the rapist is a stranger, the woman is merely an object of sexual violence. When the rapist is a husband, it is also personal: He knows her personally and intimately, so he is violating her as a person.

Moreover, rape is emotionally traumatic per se not because the rapist is someone you know or do not know, but because the rapist is someone you do not want. Thus spousal rape is a genuine violation and the wife is truly a victim. The law should not provide preferential treatment to husbands who rape their wives.

Marital rape was made a crime in all 50 states in the United States in 1993, while the United Kingdom removed the marital exemption in 1994. Yet studies have shown that, in the UK for example, husband rapists do get off with much lighter sentences than stranger rapists.

What this suggests is that dropping the marital exemption may not be enough. Rather, the law must be amended to address explicitly the improper inference that men who have sexual relationships with women - not just in marriage but also if they are cohabitating or merely dating - may presume consent to future sexual intercourse.

Of course, such a law will not end marital rape. What it will terminate, however, is the notion of ongoing consent that has constrained so much of how law courts deal with marital rape cases, resulting in relatively lighter sentences for husbands who rape their wives.

The time has come to recognise the autonomy and honour the dignity of wives.