

RAPE IS RAPE, NO EXCUSES PLEASE.

**Leigh Pasqual
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SINGAPORE is in the middle of a review and public consultation exercise conducted by the government on its proposed amendments to the Penal Code. A significant number of amendments are being proposed to the sections related to 'Sexual Offences'.

Many of the proposed amendments are progressive and in keeping with the Government's attempts to bring the Penal Code up to date. But there is one big sticking point - 'marital immunity'.

As the law now stands, a husband cannot be prosecuted for raping his wife: marital immunity exists for a man who engages in non-consensual sexual intercourse with his wife who is 13 years of age or above.

In 1996, the issue of criminalising non-consensual sex between spouses was raised as part of a public consultation exercise to amend the Women's Charter. The idea was rejected.

Now, 10 years later, in its proposed amendments, the Government has re-opened the issue. It is proposing that a man can now be charged with raping his wife - but only under three conditions. The conditions put the onus on the wife to seek legal action - she must be living separately from her spouse while waiting for a divorce to be finalised; must have a court injunction against her spouse; or must have obtained a protection order against him. Marital rape, therefore, is only a crime some of the time.

The notion of marital immunity is based on the notion of conjugal rights, going back several centuries, when no husband could rape his wife because her consent to marriage meant also her consent to sex at any time and under any circumstance. This notion was linked to the treatment of a woman as the 'property' of first her father, then her husband, to do with as he wished.

Most progressive societies, thankfully, have moved on since then.

The principle of equality of all people is enshrined in the Constitution of Singapore, and the Government has made efforts to promote gender equality - nationally and internationally - by becoming, for example, a

signatory to international agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women.

Numerous government initiatives to tackle family violence have been developed between national agencies and community groups to increase protection and assistance for victims. The National Family Violence Networking System, set up in 1996, links multiple access points such as the police, prisons, hospitals, social service agencies and the courts to provide comprehensive assistance to victims. The Promoting Alternatives to Violence community initiative set up in 1999 provides a continuum of services from interventions to remedial and empowerment programmes for both victims and perpetrators of violence. These and other initiatives have received global attention and been lauded for their effective response to gender-based violence by other governments and civil society actors.

This begs the question - why are the proposed amendments in the Penal Code, while positive steps forward, only going so far? If the attempt is genuinely to afford increased protection for women from domestic violence, and to bring the Penal Code in line with what a safe and secure society means in today's context, why not remove marital immunity entirely? It would seem to be the most basic of human rights of both men and women to be able to say no to sex. Why should this right be waived for women in certain cases, and particularly within the supposed safe haven of marriage, of all places?

The various objections raised by those who want to maintain marital immunity have been debated in the press. Straits Times senior writer Andy Ho, arguing in favour of criminalising marital rape, tackled the issue of the difficulties in proving or disproving such rape. He wondered if this was reason enough to keep marital immunity for husbands in the Penal Code, and questioned why this crime, while difficult to prove, should not be criminalised when there are other hard-to-prove crimes that are.

At the heart of the matter lie two important concerns. First, there is a sense that the law, while seeking to convict wrongdoers, deter crime and offer protection for men and women, seems to favour one gender over the other. Perhaps rape should be recognised as an offence that can be committed by both men and women, if only so that marital immunity could then at least be applicable to both spouses.

Second, there is a sense that the notion of women as male property still exists in the spirit of the law. Any condoning, however limited, of

a husband forcing himself on his wife without her consent will lend credence to this.

There is an unfortunate tendency in many debates around gender concerns to reduce arguments to an 'us versus them' context. This is unhelpful, for the issue at hand is not about women versus men, or women seeking more rights than men. Large numbers of men treat their wives with dignity and respect, enjoy a healthy sexual relationship with their spouse, and would find abhorrent any notion of forcing a woman to have sex against her will.

There are others, however, who are perpetrators of violent behaviour, who take their stress, anger and frustrations out on those deemed less powerful than them, oftentimes their spouse.

While it is widely acknowledged that violence against men by women (most notably psychological abuse), and violence against women by women (maid abuse for example) does exist, empirical evidence points overwhelmingly to the fact that the perpetrators of violence against females are mostly males.

There is an oft-quoted statistic that states that, worldwide, one in three women will have been physically abused in her lifetime, most often by an intimate partner or someone known to her.

The statistic, while not literal as violence rates differ between countries and between settings within countries, is well-supported by findings from large-scale studies on gender-based violence.

The most recent of these is a landmark report released by the World Health Organisation last year. In a survey that collected data from 24,000 women from 15 sites in 10 countries representing different cultural settings, the WHO found that the proportion of women who had ever experienced physical or sexual violence (or both) by an intimate partner ranged from 15 to 71 per cent, with most sites falling between 29 and 62 per cent.

Physical abuse in intimate relationships is almost always accompanied by psychological and sexual abuse. The proportion of women who reported sexual abuse by a partner ranged from 10 to 50 per cent, while one third to half of all women who experienced abuse reported both physical and sexual abuse.

These figures, already alarming, are yet considered much lower than

real numbers. Domestic violence continues to be vastly under-reported. Many women in abusive relationships live in a climate of terror - it is not just violence but the threat of violence that prevents them from seeking help.

Women who are poorly educated, or financially dependent on their spouse, or unwilling to cause distress to their children, are also not likely or easily able to seek help. These women will fall through the cracks because they cannot secure the three conditions necessary to obtain protection from a sexually abusive spouse. Their silent suffering would be enshrined, so to speak, in the law.

We are at an important juncture in the development of our society. As Singaporeans, we have been presented with an opportunity to take a stand against violence. There are, sadly, still many cultures that condone or at least tolerate a certain amount of violence against women. Let us not be one of them.

The writer is director of the Singapore Institute of International Affairs and former media officer of the UN Development Fund for Women. This article is written in her personal capacity.