

RAPE IS RAPE, SO HUSBANDS SHOULD NOT HAVE IMMUNITY.

**Andy Ho
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THE last time I was in Washington DC, I made it a point to stand in front of the Supreme Court Building to take in again, not its imposing classical Corinthian style, but those words incised into the marble architrave above its pediment - Equal Justice Under Law.

But many tourists tend to miss the equally important legend carved into the corresponding place on the back of this magnificent edifice - Justice, The Guardian Of Liberty.

I wish equal justice - and liberty - for the wife who is raped by her husband, whom she has to face daily. But under the Penal Code, such a husband cannot be prosecuted. This injustice is derived from the old legal doctrine of coverture where a wife's identity and rights are subsumed by her husband's person at marriage.

Specifically, the wife was understood to have, by consenting to marriage, also forever consented to sex as, when and where her husband desired it. Thus the 'marital rape exemption', which means that a husband is always immune from prosecution even for non-consensual sex with his wife.

But that presumed consent is a meaningless legal fiction when the husband is transformed into an aggressive and violent stranger. This doctrine, in effect, places wives at a disadvantage compared with non-married females.

In the interest of equal justice under the law, Parliament recently tabled amendments to remove this immunity - but only where there is already an interim judgment of divorce or separation, or the spouses are living apart, or the wife has a protection order against her husband.

Sadly, this leaves vulnerable those wives who are dependent on their rapist husbands for material sustenance, who cannot afford to separate from or divorce them - the very women who need the law's protection most.

We are not quite ready to protect such wives, so we are just criminalising a narrower range of offences committed within marriage.

But this does not sound right in an era when almost every aspect of women's subordination to men under the law - including a husband's right to assault his wife non-sexually - has been rejected.

Rape is rape, so the marital rape exception should be completely erased. In fact, sociologists have found marital rape to be even more traumatic than stranger rape for while wives suffer the same physical injury, psychological trauma, guilt and self-reproach as victims of stranger rapists, they also feel betrayed, trapped and isolated.

For while a stranger rapist is someone you do not know, a husband rapist is the very person who has taken marriage vows to honour, cherish and protect you. And you still have to face him afterwards - day after painful day.

One argument for keeping the exemption is that the husband- and-wife relationship is said to be grounded in an intimacy that outsiders must not scrutinise. It is an intrinsically private context that supposedly cannot survive if the law were to enter beyond the veil.

Proponents may speak grandiloquently of sheltering the shared intimacy of the marital relationship as if that benefits the wife equally. But this protects the husband's privacy at the cost of physical injury and emotional trauma for the wife.

In this matter, the interests of husband and wife are not aligned: He is typically and disproportionately richer, stronger and bigger than she is. The exemption perpetuates the power imbalance and enables husbands to engage in clearly pugnacious behaviour while denying wives access to the law's protection.

A related argument is that the exemption affords couples time for reconciliation whereas any legal intrusion is likely to poison the remaining vestiges of love and closeness in the marriage.

But it is rape that destroys marital harmony, not legal intrusion, so the wife is likely to conclude that she is better off without a rapist for a husband and that reconciliation may not be in her best interest anyway.

If the victim decides she is better off working with law enforcement to prosecute a crime against her person, why does the system then deny her what she considers to be in her best interest? Probably because we were brought up believing that no husband can ever rape his wife.

Another excuse offered is that the exemption is to prevent vindictive and vengeful wives from falsely alleging rape, especially those who are trying to claim more money in a divorce settlement.

There is, in fact, no empirical evidence that divorcing wives are more likely to make false charges of marital rape where the law permits it. For example, although both England and Ireland have erased the marital exemption for more than a decade, few husbands have been charged and fewer yet brought to trial.

Actually, this rationale pivots on the cultural myth that marriages are generally love relationships where spouses mutually support each other and marital harmony abounds. We are loath to admit that many unions degenerate into adversarial relationships shot through with antagonism, conflict, loathing, skirmishing - and outright war.

Given this cultural denial, what people fear most about marriages is not the possibility of rape but wives betraying their husbands - with false allegations. At any rate, the world over, there is generally a longstanding cultural strain of refusing to believe the woman who cries 'rape'.

Putting away the blinkers, we will see that there is no good reason not to call a rapist one, regardless of how he may be related to his victim. Sex, even in marriage, must be consensual.

In the interests of equal justice under law - and liberty - for these wives, Parliament should reconsider abolishing marital immunity altogether when the Bill comes up for its final reading.

NO SANCTUARY

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