

Dear Prime Minister,

I. THE REPEAL

The offence of “rape” under Section 375 of the Penal Code (the “Code”) means the non-consensual penetration by a man, using his penis, of a woman’s vagina. Section 375(4) provides that, except in limited circumstances inapplicable to the majority of married women, this act will not amount to rape, if the perpetrator and the victim are married to each other. Similarly, Section 376A creates the offence of “sexual penetration of a minor under 16”, and Section 376A(5) provides (subject to the same limitations) that this offence will not be committed where a man uses his penis to penetrate a girl under the age of 16, if the perpetrator and victim are married to each other.

We, the undersigned, write to you as citizens and residents of Singapore, to support the complete repeal of Section 375(4) and Section 376A(5). As a result of this change, the Code will not distinguish between cases of rape where the perpetrator and the victim are married to each other (“marital rape”) and other cases of rape. All non-consensual penetration of a woman’s vagina by a man, using his penis, will amount to rape. The same penalties will be available to a court upon conviction of a perpetrator of marital rape, as with any other kind of rape. This proposal is the “total abolition of marital rape immunity”.

II. MARITAL RAPE IS VIOLENCE

Non-consensual sexual penetration is a severe form of violence. This is recognised in the Code and our case law, and is a fundamental part of the shared values of Singaporean society. The existence of Section 375 (rape) and Section 376A (a statutory rape law which presumes minors cannot consent to sexual activity) and their application to cases of rape other than marital rape demonstrate this. The same is true of Section 376, which carries similar penalties, and criminalises other forms of non-consensual sexual penetration (e.g. penetration of the anus or the mouth, penetration with parts of the body other than the penis). There is no “marital” exemption to Section 376, nor is there any “marital” exemption for orally or anally penetrating a minor under Section 376A.

Except in extremely limited circumstances such as self-defence, violence is criminal. Every human being deserves the protection of the law from violence against their person. The values of our society do not accept that this should change simply because the victim is married to the perpetrator. Our laws do not carry “marital exemptions” for any

other kind of violence, and there is no justification for it in the context of marital rape. No one is granted special permission under the law to punch their spouse. Marital rape is simply beating with a sexual organ instead of a fist. The total abolition of marital rape immunity will remove an unjustified inconsistency in our approach to sexual violence.

We believe this will enhance the institution of marriage. Marriage should not require one spouse to be deprived of protection from violence by the other spouse. The total abolition of marital rape immunity will reflect our deeply cherished values, which hold that marriage should be based on a loving partnership of people who enter a relationship of mutual trust and respect. Violence, including non-consensual sexual penetration, destroys family relationships, and the state is right to punish it as a criminal act.

III. CURRENT EXCEPTIONS ARE INADEQUATE

Currently, Section 375(4) and Section 376A(5) do allow for some cases of marital rape to be treated as rape. These are, primarily, where the perpetrator and victim are “living apart” and certain steps have been taken to terminate the marriage (e.g. proceedings for divorce or separation), or steps have been taken to obtain a public protection order or injunction against sexual intercourse against the perpetrator.

This is inadequate. Marital rape is a form of violence, and all people in Singaporean society should be protected by the law against violence to their person, without having to make legal arrangements. Engaging these legal procedures presents particular difficulties for minors and/or women who have physical or mental disabilities, especially where they are in a position of dependence on the adult and/or able-bodied spouse. Court orders are not always available as the facilities for them are subject to operating hours. Moreover, women should not have to predict whether they will be subject to violence (or, as is often the case, suffer violence first, possibly multiple times) and make applications for court orders before the Code recognises sexual violence against them as an offence. Every instance of marital rape – not just the second, or third, or fourth – should be treated as an offence.

IV. MECHANISMS FOR ENFORCEMENT EXIST

The total abolition of marital rape immunity will not present any significant practical difficulties. Singapore’s criminal justice system has a number of procedures in place for dealing with allegations of crimes. The police, the Attorney-General’s Chambers, and the courts must

consider the evidence available in order to determine whether someone accused of an offence merits a conviction. If there is insufficient evidence to prove the offence beyond reasonable doubt in a court of law, an acquittal should result. But the effect of Section 375(4) and Section 376A(5) is that even in cases where evidence of guilt is clear-cut, the act of non-consensual penile-vaginal penetration will not be considered rape.

Marital rape should be subject to criminal justice procedures in the same way as every other crime. The criminal justice system is already used to dealing with rape cases where the perpetrator and victim were known to each other previously – according to Singapore Police Force statistics, this was the case in almost all incidents of rape in 2005 and 2006. The criminal justice system is also accustomed to dealing with cases of family violence, including violence perpetrated by one spouse against another. Section 376 and the aspects of Section 376A that concern oral and anal penetration mean that the criminal justice system is already required to deal with allegations of non-consensual sexual penetration between spouses. The total abolition of marital rape immunity removes an inconsistency whereby, without justification, one particular form of non-consensual penetration is treated differently from all other forms of violence.

V. CONCLUSION

On the basis of the above, we the undersigned ask you, as our democratic representative, to take immediate steps to completely repeal Section 375(4) and Section 376A(5) of the Code and bring about the total abolition of marital rape immunity.