

# LIFT MARRIAGE VEIL ON RAPE

**Partial abolition of husband's immunity to persecution won't help abused wives paralysed by fear, denial**

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THE Government has just unveiled its proposed amendments to Singapore's criminal law, one of which is to partially abolish a husband's marital immunity from raping his wife. While this is a step in the right direction, it does not go far enough.

Under the current law, a husband who forces himself on his wife to have sexual intercourse is not guilty of rape – even when the same deed involving a woman not married to him would attract a maximum jail sentence of 20 years plus caning.

Marital immunity is an old English rule dating back to 1736, based on the concept that a woman, upon marriage, becomes the virtual property of her husband – and this includes an unlimited right of sexual access to her. In England, the rule was abolished in 1991.

The proposal in Singapore now is to lift the husband's immunity in three circumstances: Where the wife is living separately under a judgment of judicial separation or interim judgment of divorce not made final; where there is an injunction restraining the husband from sexual intercourse with his wife; and where a wife has a protection order against her husband.

This would mean the wife must take legal steps to terminate her husband's marital immunity – she has to go to court to apply for judicial separation, a divorce, an injunction, or a protection order. Anything short of this will not do.

Yet, it is well known that wives in abusive relationships may not know what to do or live in a state of denial. For those who do not qualify for legal aid, legal representation must be paid for. The Government's proposals will not help such wives.

The changes will also not address the injustice of the present law as demonstrated

in a case decided in 1999.

The man and woman involved were married in 1996, but because of frequent quarrels, the wife moved to her parents' home a year later. During a telephone conversation in August 1998, the wife suggested they get a divorce. The upset husband then threatened to kill her.

About two weeks later, she agreed to his request to meet, but they soon started quarrelling again. The husband then dragged

her into his car and drove back to their matrimonial home. He ordered her into the bedroom, stripped her of her clothes, tied her hands with a

bath towel and gagged her. He then had sex with her against her will.

As her husband, he could not be charged with "rape" – rather, he was charged with voluntarily causing hurt, wrongful confinement and criminal intimidation. He pleaded guilty. The trial judge imposed a total fine of \$7,000.

Following an appeal by the Public Prosecutor against the mild sentencing, former Chief Justice Yong Pung How slapped on an additional 18 months' imprisonment. Although he remarked that "an offence committed against one's spouse should not be treated any less seriously than an offence committed against a complete stranger", CJ Yong's hands were tied by the sentencing maximum of the minor offences.

The recently-proposed changes to the law would still not have seen the husband charged with rape. The victim was living apart from her husband and was thinking about getting a divorce, but legal proceedings were not underway yet.

The Ministry of Home Affairs says the half measure is meant to balance "the needs of women who require protection and the general concerns about conjugal rights and the expression of intimacy in a marriage".

Is there something special about a marital relationship when it comes to sex? Of course there is. We wish there to be as little governmental intrusion into marital privacy as possible.

But where the same conduct between strangers is a criminal offence, such offenders cannot hide behind the shield of marital privacy. Our laws against family violence and child abuse attest to this.

Another argument frequently made is that the rule on marital immunity promotes reconciliation of spouses. This is highly unlikely.

If a husband's use of force to have sexual intercourse with his wife is an isolated act in an otherwise salvageable marriage, it is unlikely the wife will allege rape by her husband.

On the other hand, if the husband is guilty of ongoing physical and sexual abuse, there is nothing in the marriage worth saving.

The interest in protecting women from non-consensual intercourse certainly outweighs any privacy or marital concerns. Married women should be able to say "no" to unwanted sexual contact, just like their unmarried counterparts.

The Government should take another look at its proposals and give married women the protection that they deserve.

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