

## AN ANALYSIS OF THE MARITAL RAPE EXEMPTION IN SINGAPORE

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### I. ORIGINS AND LEGISLATIVE AMENDMENTS

The marital rape exemption rule has always been a point of contention in Singapore law. Prior to the 2007 Amendments to the *Penal Code*,<sup>1</sup> s 375 clearly stated that “sexual intercourse by a man with his own wife [...] is not rape” under all circumstances.<sup>2</sup> The origins of this rule dates to 1736 where it was stated by Sir Matthew Hale that “the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself in this kind unto her husband, which she cannot retract”.<sup>3</sup> This law was adopted by the drafters of the *Penal Code* which provided a blanket immunity for husbands in marital rape and subsequently injected into the Singapore law system with the implementation of the *Penal Code*.

Up until 2007, Parliament had not done much to alter the seemingly preposterous law that lay within the *Penal Code* despite debate in local news forums and criticism by high-profile individuals. The topic was finally addressed in Parliament by then Senior Minister for Home Affairs, Associate Professor Ho Peng Kee.<sup>4</sup> Professor Ho maintained that marital immunity would not be abolished altogether, but proposed a new law offering “protection to women whose marriages, are, in practical terms, on the verge of a breakdown or have broken down, and who have clearly signalled that they are withdrawing their implicit consent to conjugal relations, so

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<sup>1</sup> (Cap 224, 2008 Rev Ed Sing).

<sup>2</sup> *Penal Code* (Cap 224, 1985 Rev Ed Sing) s 375 as repealed by *Penal Code (Amendment) Act 2007*, No. 51 of 2007, s 68.

<sup>3</sup> Matthew Hale, *History of the Pleas of the Crown* (London 1736) vol I, at 629.

<sup>4</sup> *Parliamentary Debates Singapore: Official Report*, vol 83 at col 2175 (22 October 2007).

that their husbands are forewarned that marital immunity has been lifted.” While this Amendment to marital immunity was met with approval, many Members of Parliament felt that the change was not drastic enough to protect the needs of women trapped in such marriages. In particular, the specificity of situations where the exceptions would be invoked was a concern for many.

Following the amendment to the *Penal Code*, the new s 375(4) provides that the husband’s marital rape immunity against his wife will be lifted under 5 situations:

- (a) his wife was living apart from him—
  - (i) under an interim judgment of divorce not made final or a decree nisi for divorce not made absolute;
  - (ii) under an interim judgment of nullity not made final or a decree nisi for nullity not made absolute;
  - (iii) under a judgment or decree of judicial separation; or
  - (iv) under a written separation agreement;
- (b) his wife was living apart from him and proceedings have been commenced for divorce, nullity or judicial separation, and such proceedings have not been terminated or concluded;
- (c) there was in force a court injunction to the effect of restraining him from having sexual intercourse with his wife;
- (d) there was in force a protection order under section 65 or an expedited order under section 66 of the Women’s Charter (Cap. 353) made against him for the benefit of his wife; or
- (e) his wife was living apart from him and proceedings have been commenced for the protection order or expedited order referred to in paragraph (d), and such proceedings have not been terminated or concluded.

## II. AN AMENDMENT OF LIMITED IMPACT?

Whilst the new Amendment allows for some exceptions to marital immunity, it only caters to a limited class of women. There is a huge lacuna in the law that vulnerable wives who have yet to take any formal action against their husbands will find themselves helpless against the marital

immunity rule. This is clearly highlighted by the factual matrix in the case of *Public Prosecutor v N.*<sup>5</sup> In that case, the wife moved back to her parents' home due to the her husband's threats to kill her. She later met her husband on the promise of a peaceful talk. However, they ended up quarrelling and he dragged her back to their matrimonial home before having sexual intercourse with her against her will. As the case was decided prior to the 2007 Amendments, the husband was fell within the marital immunity from rape and was not charged.

Even under the new law, there would not be a different outcome to the case. The wife had not commenced legal proceedings or formalised any written agreements to live separately. Therefore, the husband would still have marital immunity from rape. The new exceptions implemented therefore serve but a limited use in providing protection for women in these relationships.

### III. AN ARCHAIC RULE THAT SHOULD BE ABOLISHED ALTOGETHER?

The author submits that there has been insufficient action taken against s 375 of the *Penal Code*. Instead of merely voting for a repeal of the marital rape exemption, what ought to be done is a complete abolishment of s 375 altogether. Then Senior Minister of State for Home Affairs Associate Professor Ho Peng Kee stated that the parliament took this Amendment approach because it strikes the right balance between the needs of women who require protection, general concerns about conjugal rights and the expression of intimacy in a marriage. He also mentioned that abolishing marital immunity altogether will likely change the complexion of marriage drastically with negative impact on the marital relationship between husband and wife. This approach however, is sorely outdated.

Firstly, Professor Ho Peng Kee posited that the approach to allow certain scenarios where sexual intercourse within a marriage context would protect the needs of women who require protection. While this is accurate to a certain extent, it does not provide enough coverage for vulnerable women. As Dr Teo Ho Pin mentioned,<sup>6</sup> the focus should be on "helping women in

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<sup>5</sup> [1999] SGHC 255, [1999] 3 SLR(R) 499.

<sup>6</sup> *Parliamentary Debates Singapore: Official Report*, vol 83 at col 2175 (22 October 2007).

marriage[s] to exercise their rights to protect themselves, and not suffer in silence by having forced sex in their marriages". By completely abolishing the marital rape exemption, women trapped in such marriages would have no qualms in bringing a claim against their husbands to help themselves as they would not need to worry about the intermediate step of taking legal action to annul their marriage. This would save them the hassle of falling within the special scenarios stated under the amended s 375.

Professor Ho also mentions that completely abolishing s 375 would lead to a negative impact on the relationship between husband and wife. However, the author opines that a positive impact between husband and wife would be forged instead. While the intention in allowing for marital-rape exemption was to protect the sanctity of a marriage in keeping the husband and wife's life private, it simultaneously opened a can of worms in wrongfully empowering men as the 'dominant' sex. The marital rape exemption provided men with a false sense of empowerment that they would be able to get away with mischievous acts without facing the consequences had they been single when committing such atrocious doings. Rather than privatising their relationship, the marital-rape exemption instead instilled an unnecessary imbalance of power between husband and wife in a marriage. Thus, it highlighted the idea that women would always be subjected to pleasing their husbands limitlessly even if they didn't want to. Effectively, women were not seen as equals in a marriage but rather as a submissive creature at the disposal of their husband's desires.

With the abolition of the marital-rape exemption, the bond between husband and wife would be positively improved. Without a veil of protection, both men and women would be equals. Women would be equally respected in a relationship and they would have no fear of being subjected to doing things against their will. This would no doubt promote growth and understanding within a balanced marriage, which is what the sacred bond between man and woman should represent.

If the Singapore government is unwilling to take drastic change with regards to the marital-rape exemption, they should perhaps look at the opinions of other jurisdictions. In the UK, the country which Singapore 'adopted' the marital rape immunity law from, has completely done away with the marital rape exemption since 1991, along with other major powers such as the United States, France and Australia which have since followed suit. Alternatively, Singapore

could adopt what our neighbour Malaysia implemented in 2007 which made it a crime for a man to cause hurt or fear of death to his wife to have sexual intercourse with her. However, the author stands firm that the best course of action would be to completely abolish the marital rape exemption for the two reasons mentioned above.

#### IV. CONCLUSION

While Singapore is taking a step in the right direction, the repeal of the marital rape exemption rule needs to be expedited. There seemed to be some hint of progress in 2013,<sup>7</sup> when then Nominated Member of Parliament Assistant Professor Tan Kheng Boon Eugene questioned when the Ministry would complete the review on marital rape provisions. Then Second Minister for Home Affairs Mr S Iswaran mentioned that reviewing the provisions related to marital rape was given adequate priority in the Ministry's work. Furthermore, earlier this year on January 27 at the Universal Periodic Review (UPR), Ambassador-at-Large Chan Heng Chee said that Singapore had a strong position on gender equality and would "actively review" the need to repeal marital rape immunity. He also stated that "the repealing of immunity for marital rape is not so much a question of whether the law ought to be completely repealed but that it is more a question of when it would be repealed."

At the end of the day, a repeal would not guarantee the complete protection of vulnerable women. However, an abolishment of s 375 would inherently aid their condition. Whatever the solution, it needs to come fast. While there is no publicly available data about marital rape statistics, one case is arguably too many. There are vulnerable women in marriages that need the protection of the law and until the day marital rape immunity is abolished, they will continue to live in fear and shame. Thus, Parliament needs to provide proof that they are indeed looking at completely repealing the marital rape exemption. lest it remain in Singapore's law system for many more years to come.

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<sup>7</sup> *Parliamentary Debates Singapore: Official Report*, vol 90 at col 20 (4 February 2013).