

FAMILY CANNOT BE A PLACE OF VIOLENCE, 16 SEP 2004

SUHAKAM (Human Rights Commission of Malaysia) in its report to the Parliamentary Select Committee proposing amendments to the Penal Code and Criminal Procedure Code recommended among other things that marital rape (later clarified as sexual abuse, violence within marriage) be recognised as a penal offence. Although by no means the only recommendation in its report, the recommendation on marital rape was highlighted in the press and drew strong opposition, mainly from Muslims.

Muslim religious intellectuals described SUHAKAM's suggestions as going against Islam and ruining the institution of marriage (Mingguan Malaysia 21/22/8/04). Stating the obvious, SUHAKAM commissioner Prof Datuk Hamdan Adnan defended SUHAKAM's recommendations (NST 23/8/04) saying, "Rape is violent and cruel and indeed should not happen between a husband and wife" (NST 24/8/04). He went on to add that no religion condones violence (STAR 24/8/04).

Why the Furore?

Utusan Malaysia reported in 22 August 2004 that the Mufti of Perak, Datuk Seri Dr Harussani Zakaria "mengganggap permintaan SUHAKAM itu sebagai menentang hukum Tuhan, turut berpendapat bahawa pandangan sedemikian adalah pengaruh dari Barat yang kini memberikan hak secara berlebihan kepada golongan wanita" adding that "Oleh itu, budaya Timur yang dipegang oleh rakyat Malaysia tidak harus dicampuradukkan dengan gaya hidup Barat".

Religious Advisor Tan Sri Abdul Hamid Othman was reported (NST 23/8/2004) to have said, "the subject of marital rape, when a husband forces a wife to have sex against her will, is relevant only to non-Muslims" adding that "Islamic law is adequate to check a husband's abuses" as a Muslim wife can turn to Syariah Court if she is dissatisfied or treated cruelly and demand a divorce under a procedure called fasakh.

The Women's Minister, Dato' Seri Sharizat herself was reported to be of the opinion that marital rape is a family matter and advocated that the issue be looked at in this manner (NST24/8/04).

It is unfortunate that although all these Muslim intellectuals and politicians appear to acknowledge, or at least not deny, that in reality, husbands do abuse their wives including raping them, they are content to advise such wives to seek their remedy by asking for divorce.

Alternatively, according to some, if marital rape were to be legislated against, it should only be applicable to non-Muslims. So while a non-Muslim husband can be charged for raping his wife, a Muslim husband will only be charged with "ill-treatment of wife" under the Syariah Family

Enactment. Why should the Muslim husband not be punished like other Malaysian husbands when he rapes his wife? Why would providing protection for women against violence in their own homes be considered giving women excessive rights (hak secara berlebihan).

Fact: Rape is not Sex. Rape is Violence.

When Serbian irregulars/soldiers systematically raped Bosnian women, no one thought that the soldiers merely wanted sex. More recently when Iraqi women detainees were raped in Abu Ghraib prison, with at least one impregnated, no one thought the American soldiers were only having sex.

No victim who has been raped considered the act to be merely sex. It is a violence which is aimed at violating the victim in one of the most humiliating ways.

Any violence, wherever committed is a crime not only against the victim but against society and the state. Violence is never a private matter whether it be committed on the streets or in the sanctity of the home. That is why under our law, it is the state and not the victim that prosecutes.

The argument that violence committed in the home by husbands is a family matter and, therefore, should not be subject to criminal penalty was raised against the Domestic Violence Act when it was promulgated in the 1990s. Fortunately, the majority of Malaysians and our parliamentarians agree that domestic violence victims should be granted the right to apply for protection orders from the courts and thus the Act was passed by Parliament.

Islam is a religion of peace which exhorts Muslims to uphold human dignity. To say that Islam abhors cruelty and violence is an understatement. Allah (swt) commands us to “Eschew all sin open or secret.” Sûrah al An’am 6.120 (translation Yusuf Ali). The message of Islam is universal and without exception. Malaysian Muslims’ abhorrence of all forms of violence against women is not, and cannot be said to be, drawn from western influences.

How should Muslim husbands treat their wives?

The Prophet Muhammad (saw) himself treated his wives with nothing less than love, respect, and tenderness. Abdullah bin Umar reported that during the lifetime of the Holy Prophet (saw), the companions treated their wives most politely for fear that a Commandment concerning them might be revealed. (Bukhâri)

Once the Holy Prophet (saw) chastised abusive husbands by saying “Today seventy women have visited Muhammad’s house – all complaining against the harsh treatment of their husbands. The men who have misbehaved in this manner are certainly not the best amongst you.” (Ibn Majah) In fact Abu Hurairah reported that the Holy Prophet (saw) said, “The most

perfect of the believers in faith is he who is the best in conduct, and the best of you are those who are the best to their wives.” (Tarmizi)

Allah (swt) further commanded in Sûrah ar Rum 30.21, “And among His Signs is this: That He created for you mates from among yourselves that ye may dwell in tranquility with them, And He has put love and mercy between your (hearts), Verily these are Signs for those who reflect” (translation Yusuf Ali)

In Sûrah al Nisa 4.19 with regard to the treatment of wives, it was commanded, “... On the contrary, live with them on a footing of kindness and equity, If ye take a dislike to them, it may be that ye dislike a thing, and God brings about through it a great deal of good.” (translation Yusuf Ali)

Islam grants rights to both husband and wife. Each has a right over the other. While the husband has a right to have sexual relations with his wife, a wife similarly has the right to sexual relations with her husband. The Prophet (saw) himself has advised men not to neglect this duty to meet the needs of their wives. Narrated Abdullah bin Amr bin Al-As, “Prophet Muhammad said, “O Abdullah! I have been informed that you fast all the day and stand in prayer all night?” I said, ‘Yes, O Allah’s Apostle!’ He said, “Do not do that! Observe the fast sometimes and also leave them at other times, stand up for the prayer at night and also sleep at night. Your body has a right over you and your wife has a right over you.” (Bukhâri)

While trying to preserve the rights of married persons to engage in consensual sex with each other, it is alarming that the result of equating sex with rape appears to be condoning violence against women in the home. In punishing rape, the law does not prohibit – or even restrict – married couples from engaging in consensual sex. To equate sex with rape is to equate a caress with a beating or, alternatively, to equate tenderness with violence.

Myth : A Husband Cannot Rape his Wife

The myth that a husband is unable to rape his wife due to irrevocable licence for sex finds its basis not in the Qur’an.

It must be remembered that the exception as provided in Section 375 of the Penal Code in relation to marital rape was introduced by the English based on common law as practised in England before the 1800s. In their justification for not recognising marital rape, English Law Lords often quoted East in his Treatise on the Pleas of the Crown, “a husband cannot by law be guilty of ravishing his wife on account of the matrimonial consent which she cannot retract”. Another commentator, Bell had this to say, “This is true without exception even of the husband of the woman who, though he cannot himself commit a rape on his wife, who has surrendered her person to him in that sort...”

It is patriarchy, not religion that has created this myth. In perpetuating this myth, Muslims are bringing Islam into disrespect and disrepute by using religion to justify and keep alive an ideology that views women as little more than property, a view certainly rejected by Islam. Sûrah an Nisa 4.19 commands, "O ye who believe! Ye are forbidden to inherit women against their will..." (translation Yusuf Ali)

In the landmark decision of *Regina v R* [1993] 1 CLJ 1, even the English have retreated from this intractable and indefensible stance. "Nowadays" says the Law Lord, "it cannot seriously be maintained that by marriage a wife submits herself irrevocably to sexual intercourse in all circumstances. It cannot be affirmed nowadays, whatever the position may have been in earlier centuries, that it is an incident of modern marriage that a wife consents to intercourse in all circumstances, including sexual intercourse obtained only by force. There is no doubt that a wife does not consent to assault upon her person and there is no plausible justification for saying today that she nevertheless is to be taken to consent to intercourse by assault." Otherwise, reasons the Law Lord, "... the case had the strange result that although the use of force to achieve sexual intercourse was criminal the actual achievement of it was not ... This indicates the absurdity of the fiction of implied consent."

Last month, a South Korean court convicted a man of sexual assault against his wife. In Asia Pacific, Australia, Japan, New Zealand, the Philippines, and Taiwan have already criminalised marital rape.

Respect and human dignity

More and more, our lives today are affected by violence. We are afraid to go shopping lest we be injured by snatch thieves; we are afraid to allow our daughters to wait for school buses in the mornings lest they be abducted and raped. At the very least our homes should be violence-free.

In relation to rape, statistics show that most women are not raped by strangers. In a study conducted on, among others, 133 sexual offenders at Kajang and Sungai Buloh prisons, it was found that only 20% of sexual offenders committed their offences against strangers. 80% of rapes were against victims known to the offenders, comprising 30% against friends, 23% against daughters, 16% against relatives, 8% against neighbours, and 1.5% against siblings. As a percentage, Malays comprise 72.9% of such rapists (Dr Norliza Chemi as reported in NST 9/9/2004).

The protection from sexual violence is required most urgently against persons closest to the victims. This includes husbands whom, above all else, take their wives as a trust from Allah (swt).

Unless and until men can regard women with respect and as equal partners not only in the public realm of the workplace and society, but also in the private realm of the family, violence against women will not be eradicated. To combat violence against women, we must look again at the way we hold our values and practise our faith. After all, it is our humanity that must save us from sliding down the slippery slope of violence.

We must start from young believing that our sisters and brothers are equally valued by our parents and teachers, grow up believing each person has equal rights and dignity and deserves respect and equal opportunities, marry each other with the hope of creating lasting and stable relationships based on love, tenderness and respect. Violence has no place in any of these relationships.

Surely the measure of a civilised society is the protection it affords its weakest members. In a marital relationship, there is no doubt who is the physically weaker party. Marital rape, as in any other rape, is a crime stained with violence, and should be legally recognised as such.

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