

JAG WELCOMES SPECIAL COMMITTEE IN PARLIAMENT, 21 JUL 2004

The Joint Action Group Against Violence Against Women (JAG) warmly welcomes the setting up of a Special Committee at the Parliamentary level to seek public opinion before amending the Penal Code and Criminal Procedure Code (CPC). JAG lauds the government's effort in improving legislation and procedures to curb the country's escalating sexual crimes.

For nearly two decades, JAG comprising Women's Centre for Change (WCC), All Women's Action Society (AWAM), Women's Aid Organisation (WAO), Sisters in Islam (SIS), Women's Development Collective (WDC) and MTUC Women's Section, has been campaigning and lobbying for legal reforms and improved social services for victims of sexual crimes. Specifically, JAG has submitted memoranda on amendments to the rape laws, domestic violence and a sexual harassment bill. Until recently, we received little feedback to our memoranda and recommendations.

In September 2003, the Anti-Rape Task Force, including JAG members, submitted a comprehensive Memorandum on Laws related to Rape to the government seeking for, amongst others, a wider definition of rape under Section 375. This included rape through the insertion of any part of the body or object into the vaginal or anal orifice as well as to recognise aggravated rape like custodial rape, gang rape and marital rape. But what has been announced recently is a proposal to amend only the Unnatural Offences Section 377CA of the Penal Code.

The proposed amendment S377CA reads:

Sexual connection by object

"377CA: Any person who has sexual connection with another person by the introduction of any object into the vagina or anus of the another person shall be punished with imprisonment or a term which may extend to twenty years and shall also be liable to whipping."

We wish to raise several major concerns to the proposed amendment:

1. Issue of consent

The proposed amendment does not address the issue of consent. The issue of consent is central to the whole issue of sexual violence. A sexual crime is committed when consent is not freely and willingly given, or given under duress. The amendment disregards the matter of consent, which is fundamental in this instance. By equating the act of rape with consensual sexual relations, the severity of the violence and trauma experienced by rape victims is trivialised.

2. Widening the Definition of Rape

The proposed amendment is limiting with its narrow definition which includes ONLY the use of objects. It does not take into consideration other forms of sexual violence. . While the proposed amendment recognises rape through the use of objects, it is just as crucially important to recognise rape involving the insertion of bodily parts in the vaginal or anal orifice e.g. the perpetrator's use of fingers into vagina or anus. Furthermore, aggravated rape like gang rape, rape of the disabled, rape of pregnant women and rape of women under custody and detention needs to be seriously considered. The Memorandum submitted in September 2003 spells out these proposed amendments.

3. Implications

As it stands, the proposed S377CA is particularly disturbing as it can be viewed as an intrusion into the private lives of citizens. The implication of excluding the issue of consent means that the amendment can be interpreted as any person engaging in consensual sexual act can be deemed as committing a criminal offence. Consensual sexual acts are private matters and therefore, lie in the prerogative of the two consenting adults. Any amendment to regulate the sexual lives of its citizens cannot be supported.

Hence we find that even though an amendment like S377CA may have been drafted with good intentions, the result is contrary and limited. Given the above, JAG cannot overemphasise the important role of this appointed Special Committee to seek public opinion on amendments to the Penal Code and CPC. We need to ensure any amendment or bill be scrutinised thoroughly before the Parliament passes them.

JAG hopes that the Special Committee will also invite relevant NGOs such as JAG members to participate in such debate on amendments and bills involving the lives of women and children. For many years, JAG members have been providing support services to victims of rape survivors and sexual crimes. JAG members are also working actively with government agencies like the police, hospital and welfare department to improve social services for these victims.

As citizens and concerned NGO, we share the same vision with the Honourable Prime Minister in that everyone should play their role in effecting a better society for Malaysians.

We wish to see our present and future generations free from violence on the streets, homes and workplaces.

Women's Centre for Change Penang

On behalf of JAG

21 July 2004

