



جمعيت العلماء ومدرسي الدين الاسلامي سنغافورة

Persatuan Ulama dan Guru-Guru Agama Islam (Singapura)
Singapore Islamic Scholars & Religious Teachers Association

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FEEDBACK ON REPEAL OF MARITAL IMMUNITY LAW FOR RAPE

Introduction

Pergas would like to provide feedback on the proposed recommendation to repeal on sections 375(4) and 376A(5) of the Penal Code, which provide marital immunity for rape.

2 Sexual abuse and violence between married couples is a serious concern. Pergas would like to affirm that Islam does not condone violence against women and that women should be protected from sexual abuse. After all, the objective of marriage in Islam is shared tranquillity, love, mercy and a safe atmosphere between husband and wife, instead of misery or pain. This concern will form the basis for our recommendation.

Marriage in Islam

3 According to the Islamic law (shariah), marriage or *nikah* in Islam is defined as a legal agreement and contract between a man and woman sanctioning, among other things, sexual intercourse between the two parties. Thus, it indicates consent for sexual intercourse between the man and woman, for the purpose of fulfilling sexual desire as well as reproduction.

Definition of Rape

4 Meanwhile, rape as defined by the law, is any man who penetrates the vagina of a woman with his penis without her consent or with or without her consent when she is under 14 years of age. Rape itself in Islam is prohibited.

Marital Rape

5 Marriage signifies consent between husband and wife, while rape means forcing without consent. Marital rape thus is an oxymoron. The term rape contradicts with the consent that comes with a marriage. Hence, rape cannot be associated with marriage.

6 This does not mean that Islam permits the husband to coerce the wife. Marriage does not permit sexual violence but should be conducted with love and mercy as enjoined in surah al-Rum verse 21. In fact, Islam teaches a number of sexual etiquettes. For instance, the intercourse should be preceded by kind words and a prayer. Pergas also agree that both man and woman should be protected. If either was forced to have sexual intercourse, he or she should be protected under the law.

7 Pergas is inclined towards the view of majority Muslim scholars, including contemporary Muslim scholars such as Quraish Shihab, renowned scholar from Indonesia, who does not equate forced sexual intercourse without consent as marital rape. Instead, Quraish Shihab categorizes it as torture rather than rape itself. Jonathan Brown, American scholar of Islamic studies, also notes that within marriage, sexual coercion or violence is not regarded as violation of consent, but instead as harm inflicted on wife.

Proposed Amendments to the Penal Code

8 Instead of repealing marital immunity for rape, Pergas is in support of creating a new offence that criminalizes the act without penalizing it as rape, such as the practice in Malaysia. Pergas recommends intensive study of other countries which still preserve marital immunity for rape but created new laws that criminalized sexual violence in marriage without penalizing it as rape.

9 Pergas also recommends strengthening public education to preserve the sanctity of marriage. The public should be reminded of the objective of marriage and that the husband is bound with the obligation to treat his wife with kindness, or in Islamic term *mu'asyarah bil ma'ruf*. *Mu'asyarah bil ma'ruf* also means respecting the

sexual need of the wife. At the same time, married couples should be reminded that sexual intercourse is a conjugal right for both husband and wife. The public should also be educated on recognizing abuse and the available help avenues. With that, Pergas also suggest that marriage preparation course be made mandatory for every couple who wants to get married. The course should also include a dedicated discussion on spousal abuse, including forced sexual intercourse.

10 Pergas hopes that the feedback on the proposed recommendations can be taken into consideration. May the review of the penal code strengthen marriages and family institutions and establish a healthy society for the nation.

Singapore Islamic Scholars & Religious Teachers Association (PERGAS)