

Let's Make Marital Rape Legal

I really do not like the common term used by many to describe the rape of a spouse by his or her partner--marital rape. Why? The name implies that there is something unique or different between a spouse raping his or her marital partner and stranger rape. I wonder if we never used that term would it have made it easier to accept. Rape is rape, no matter who is the victim. However, we are forced to use that term because for centuries around the world, statutes and laws prohibited a husband from legally being charged for raping his wife. It is embarrassing to acknowledge that so many countries, including ours, seemingly still lacked judicial intelligence and gumption to have equality in our laws.

Regrettable, for decades in most countries around the world, the rape of a spouse by his or her partner was not a chargeable offense. Deborah C. England in her article entitled "The History of Marital Rape Laws" states: "Marital rape was a term that was viewed by the law as an oxymoron until shamefully late in the history of United States of America. Until the 1970s, the rape laws in every state in the union included an exception if the rapist and the victim were husband and wife."

She further explains: "For decades there were the justifications for this marital rape exception. 1) "The British common law view that the contract of marriage includes the husband's "right to sex"—the wife having given consent for all time by entering the contract. 2) The traditional view of wives as the property of their husbands with which they could do as they pleased under common law. 3) The public interest in promoting privacy and harmony in marital relationships, which discouraged the state from interfering in the relationships."

Once again, the discussion about the rape of a spouse being made legally possible is being raised again. We must never stop talking about it until the change has taken place. I am disappointed and ashamed that a growing county like The Bahamas, has so much difficulty adjusting the current laws to make rape inclusive of rape of a spouse by his or her partner. The reasoning and arguments being put forth are inconsistent and impractical.

Do you realize that there is no legal argument to make the murder of a wife by her husband to be a breach of the union of marriage? There is no legal argument to make incest an acceptable act between a mother and son or daughter and uncle because they are blood relatives. Why then do some people, including some religious leaders, political leaders, teachers, parents, spouses argue that a husband cannot rape his wife. It does not make sense.

They many are asking "What if" questions. These "What if" questions are causing us to get stuck and are planting seeds of doubt and fear. In my 2016 article entitled "What If?" I wrote: "Do you realize that "what ifs" can cripple you? Sometimes they are simply frivolous or stupid. They freeze us in a position of nothingness or allow us to become stagnated. What ifs can cripple a relationship, family, and nation. What ifs can even cripple a government."

Why are there so many "What if?" questions when such questions are not being raised for any other existing laws. It is true that persons can lie and falsely accuse anyone, about any malicious act or any crime. The possibility of doing these things does not minimize the power of the law. For decades there have been many wives who, while divorcing their husbands, would falsely accuse them of molesting the children so these wives can have total access to the children. The frequent raising of these accusations by wives in a court of law does not initiate an argument by lawmakers or anyone else that divorce itself should not be legal or that the divorce laws make no sense. That would be unreasonable.

Hence, let's get to work and make marital rape enforceable by law. How can we get this done? It is my opinion that there is no need to create a new law just dealing with the rape of a spouse by his or her partner. All that is needed is the amendment of the current law to remove restriction and repeal of Section 15 of the Act. The Sexual Offences Act Section 3 states: "Rape is the act of any

person not under 14 years of age having sexual intercourse with another person who is not his spouse . . . “ Removing the words “who is not your spouse” would allow the legal definition of rape in our law to include anyone--married, never married, single (not under age 14), widowed, divorced, etc.

Also, it is important that Section 15 of the Act should be repealed. It states: “Any person who has sexual intercourse with his spouse without the consent of the spouse —(A) Where there is in existence in relation to them — (i) a decree nisi of divorce; (ii) a decree of judicial separation; (iii) a separation agreement; or (iv) an order of a court for the person not to molest or co-habit with his spouse, or any other order made under Part II; or (B) where the person has notice that a petition for judicial separation, divorce or nullity of marriage has been presented to a court, is guilty of the offense of sexual assault by spouse and liable to imprisonment for a term of fifteen years.” In other words, only if a wife is being divorced, or is legally separated, etc. can she charge her husband of rape. In the law, there must be no stipulation of social or marital conditions preventing the charge of rape.

My first article in this newspaper on marital rape was twenty-four years ago (1998). I have published at least twenty more since then. For more than twenty-five years there have been nationwide discussions, telecasts, and referendums on the topic. It is now time to end the discussion and act.

We must not allow the misguided, patriarchal, misogynistic beliefs, traditions, and practices of the past, to be used as current arguments against equality of the genders in law. Let us all stand up and make a difference.

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