

Joint Action Group for Gender Equality (JAG) Statement on Marital Rape

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The Joint Action Group for Gender Equality (JAG) is deeply disappointed by the de facto Law Minister, Nancy Shukri's statement on June 10th that the government has decided not to criminalise marital rape. Currently, Section 375 of the Penal Code contains an exception that states that sexual intercourse by a man with his wife is not rape. This is regardless of the wife's consent or lack thereof.

The exception reflects a lack of awareness by legislators of the dynamics of rape, and especially the impact of rape within marriage. Statistics gathered by religious authorities in Selangor state that "rough sex" is one of the top reasons for divorce amongst Muslim couples. This trend of sexual violence within marriage is further reflected by police statistics from 2013, which show that 31% of victims faced sexual violence from their partners, or former partners including boyfriends, fiancés, and ex-husbands. The Parliamentary Select Committee report in 2004, which stated that recognising marital rape would conflict with Shariah law and other religions, is a grave misuse of religion as no religion would ever espouse any form of violence or coercion in marital relations.

There was an attempt to criminalise rape within marriage in 2007 through Section 375A of the Penal Code, which states that any husband who causes fear of death or hurt to her life in order to have sex shall be punished for a term which may extend to five years. Unfortunately, Section 375A amounts to a compromise which fails to recognize the current reality of many married women who have sex forced upon them by their husbands, by not just physical means, but mental, emotional and economical means as well.

Given the above, it is alarming that the Home Minister has revealed that no charges have ever been filed under Section 375A of the Penal Code since it came into force on 7 September 2007. Notwithstanding that Section 375A is an inadequate tool to combat rape in marriage, this statistic reflects the government's failure to uphold its legal obligations under UN Convention on the Elimination of All Forms of Discrimination against Women (which Malaysia ratified in 1995) in creating awareness of women's rights. There has been little effort on the part of the government to highlight that husbands are not supposed to force their wives to have sex; that wives who have been raped by their husbands can take legal action against them; or to address the difficulties, shame, and embarrassment faced by women on reporting crimes of such an intimate nature.

It is shocking that our country continues to allow marriage to be a license for a man to force sex on his wife. The reality is that rape and sexual violence occurs within marriage, and sadly represents a common form of domestic violence. The continued refusal by the government to fully recognize marital rape as a crime is demeaning to women nationwide as it denies a woman the right both over her body and to say no in a marriage. Furthermore, it exposes our lawmakers' outdated acceptance for the absolute submission of a wife to her husband.

JAG calls upon the government of Malaysia to remove the exception to marital rape in the law as a clear rejection of the violence that has been perpetrated against women under the guise of marriage, and to increase its efforts to combat domestic sexual violence in our country.

Endorsed by the Joint Action Group For Gender Equality:

1. All Women's Action Society (AWAM)
2. Association of Women Lawyers (AWL)
3. Perak Women For Women (PWW)
4. Persatuan Kesedaran Komuniti Selangor (EMPOWER)
5. Sabah Women's Action Resource Group (SAWO)
6. Sisters In Islam (SIS)
7. Tenaganita
8. Women's Center For Change (WCC)