

## **WILL THE MARITAL RAPE AMENDMENTS IN THE BAHAMAS EVER BE USED?**

Judging from the numerous criticisms and comments from the local opinion columns, radio talk shows and internet chat sites, it seems as if most Bahamians applaud the legislative changes to the Sexual Offences Act from a social perspective. On the other hand, the marital rape bill has taken its political course, as do most bills with popular topics (i.e. capital punishment, same sex marriages).

Presently section 15 of the Act indicates that a spouse would be guilty of raping another spouse and liable to imprisonment for a 15 year term under the following conditions:

- When a decree nisi of divorce is issued,
- a decree of judicial separation,
- a separation agreement,
- a notice of petition for judicial separation, divorce, or nullity of marriage,
- a court order for the person not to molest or co-habit with his spouse.

In joining the talk on marital rape we submit our commentary on the proposed amendments to the Sexual Offences Act. While applauding the measures taken to place segments of the country's legislation to an international standard the real issue of whether the amendments will properly be employed and enforced comes to light. Here are our reasons why marital rape amendments will only end up in the legislation catacombs of the Bahamian legal system, hardly exercised, and forever collecting cobwebs on the parliamentary bookshelves:

- *Difficulty in Prosecuting without the Specific Conditions*

The first issue to be addressed as accusation of marital rape will inevitably put a marriage under a heavy duty microscope. Some circumstances may hold elements which may indicate that marital rape has taken place within a marriage, particularly when one of the conditions set under S15 of the Sexual Offences Act are in place. Take these elements however, and the question of consent becomes the highlight of the accusation.

How can one prove that consent had not been given by the victim in a mature marriage where sexual interaction has taken place for years? It will be interesting to see the various circumstances in which accusations of marital rape are made without the conditions of S15 of the Sexual Offences Act. Even in most cases of marital rape in the United Kingdom and other parts of the world, successfully argued marital rape allegations were prosecuted on 'technical grounds' to which conditions similar to those set forth in S15 had existed (i.e. separation of the spouse).

The refusal of the provision of finances suffered by a spouse of a marriage will not suffice, along with other precedential elements which have influenced the judgment of most magistrates and judicial gatekeepers within the Commonwealth, will not

challenge the legal minds of our Magistrate and Supreme Court judges to render any judgment different from the precedential standard of any form of rape.

One can only speculate that the plea of marital rape will be successful in circumstances in which the existence of overbearing acts of domestic violence used to physically and/or psychologically dominate a spouse. Abnormal circumstances in which a marriage may not include sexual acts or ‘heavily controlled’ sexual interaction may influence a successful allegation of marital rape, along with sexual interaction involving acts of buggery, or other sexual acts not sanctioned by a spouse.

For reasons mentioned above, we believe that successful accusation of rape will exist in very limited circumstances hence limiting the enforcement of marital rape legislation.

- *Reporting Allegations of Marital Rape*

Highly unlikely if the couple has yet to undergo separation, divorce, or any other conditions set forth in S15 of the Sexual Offences Act. Furthermore relationships involving children and/or between other relatives are elements which may hinder the possibility of reporting marital rape police officials.

Elements in Bahamian culture have successfully muzzled the numerous acts of domestic violence which take place within a marriage, most of which is attributed to the ‘closeness’ between members of the Bahamian community. The fear of “Putting your name in someone’s mouth...” or making your personal life a subject in the conversation of your friends and relatives, is a fear that most Bahamians do not want to face, as such embarrassing or detrimental moments may have adverse affects on the children of the marriage, relationships with others, and even job opportunities and/or business relationships.

Both perpetrators and victims of domestic violence within the marriage often feel the need to shield themselves and their loved ones from this fear by outright denial or confrontation. Therefore as other acts of domestic violence within the marriage have been shielded by the perpetrator and/or the victim of the marriage, victims of marital rape will more than likely conduct the same act.

- *Police Involvement*

Despite our comments in the previous paragraphs, victims of domestic violence do not have a problem with reporting an act of physical abuse to the police. They are often advised by friends that a report should be made as evidence of the abuse, which is rightfully advised for use in court proceedings or further police reports.

After the report is made however, two actions take place: either the abused spouse does not want charges to be made against the other, and ultimately fails to proceed with the matter, or the police simply fail to proceed with action, because of their strong belief in the likeliness that the abused spouse will not participate in any criminal proceedings against the other.

Certainly if the victim of violent act in a marriage is a male, you can forget about a domestic violence claim to be taken seriously at a police station. One can only imagine if a male were to make a complaint of marital rape.

Save for instances whereby the spouse will have no option but to participate in the criminal proceedings of the marital partner, or in instances whereby serious bodily harm or death take place, will domestic violence within a marriage ever be prosecuted. Therefore, unless the previously mentioned circumstances are in place we believe that there will be a failure to enforce the marital rape law on a spouse of a marriage.

- *Issue of Dependency*

It is unlikely that marital rape will be reported when the abused spouse is financially, physically, and/or psychologically dependent on their marital partner. In these economically challenging times the departure of one spouse may be financially devastating to a family unit. Certainly the emotional and psychological damage suffered by a spouse cannot be imagined, should their beloved spouse end up in Fox Hill prison for a violent act within the marriage.

Although the circumstances involved may influence the effects of the departure of the spouse of a relationship, it is unlikely that acts of marital rape will not be reported for middle/lower income families.

- *Preservation of Misunderstood Christian Morale*

As if the obstacle of preservation of reputation and the wellbeing of family is not enough to deter the possibility of successfully prosecuting marital rape within the Bahamian community, Christian beliefs (rather the misinterpretation of Christian morale) also play a role in limiting the enforcement of marital rape in The Bahamas.

Supplementing the sensation that the majority of the country's population is involved in the Christian faith, often spouses of a problematic marriage are persuaded to 'work it out' before seeking the involvement of the judicial system, in order to 'save' the marriage. Ultimately this would include the quashing acts of domestic violence within the marriage, including acts of marital rape.

Unfortunately many individuals misinterpret the concepts involved in Christianity and often elect to stay in abusive marriages (which may involve marital rape) which may result in the creation of abusive patterns which are accepted by a victim and consequently eliminate any success of a marital rape accusation, while construct a strong defense for the accused. Often Christian principles of the preservation marriage are misunderstood to portray inequalities between husband and wife, and through the ages principles of Christian faith have been used as a tool in restricting the human rights of women in The Bahamas and many other countries. Sadly these misinterpretations continue within the marital homes of today, thus establishing an obstacle in the limited use and enforcement of marital rape legislation in The Bahamas.