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PARLIAMENTARY SPEECHES

Ministerial Statement on the Review of Sentencing Framework for Sexual and Hurt Offences – Speech by Mr K Shanmugam, Minister for Home Affairs and Minister for Law

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I. INTRODUCTION

1. Mr Speaker Sir, on 8 March the world will celebrate International Women’s Day.
2. Our discussion today on protection of women is timely. We have had some cases over the past few years relating to sexual and hurt offences, which triggered much discussion on whether the sentences imposed were adequate.
3. In September 2020, last year, we started off an important, broad-based conversation on the position of women in Singapore, how we can better deal with the issues they face – not just crimes, but the overall position of women. That review goes beyond the law, beyond the narrow context of sexual and hurt offences.
4. This particular review here, which I am going to speak about, is in the context of sexual and hurt offences. Stiff and effective punishments are necessary, but they are only one part of the picture. The penalties may deter, but they are not going to remove the attitudes behind such conduct. As a society, we must look deeper.
5. The broad-based review will look into how equality and respect for women can be better ingrained in our society and inculcated as a fundamental value from young, and to change mindsets, tackle underlying attitudes and behavioural patterns. We have had many discussions with various groups, many more discussions are planned, and we are on track to

issue the White Paper later this year.

6. Today, for the purposes of my statement, I will focus specifically on our approach on punishments that sexual and hurt offenders will face. Let me start by referencing three cases.

7. First, in September 2019, we had the case of a 22-year-old university student who molested a woman on an MRT train. The Court gave him 21 months' probation. The probation report stated, and I quote, his "good academic performance in school, highlighted his potential to excel in life". AGC appealed against probation. They didn't agree that a sentence of probation was appropriate. The High Court agreed with AGC and imposed two weeks' imprisonment.

8. The second case was in July 2020. A 22-year-old university student caused hurt to his ex-girlfriend. He had put his hands around her neck, choking her, and pressed her eye as well. He was given a 12-day Short Detention Order (SDO), 80-hour Community Service Order (CSO), and a 5-month Day Reporting Order (DRO).

9. The third case in July 2020, a 23-year-old undergraduate used a handphone, recorded a video clip of a female person in the bathroom. He was sentenced to a 14-day Short Detention Order and a 130-hour Community Service Order. AGC felt that the sentence was too light and they appealed, but the sentence was upheld in Court.

10. These cases generated public discussion. There were also other cases where male university students took videos of females in bathrooms. There was a public sense that the sentences were not adequate. Questions were asked: Was there more leniency because of the educational qualifications of some of the offenders.

11. In this speech, I will set out the Government's approach on sentencing adult offenders for hurt or sexual offences. And second, what should be the relevant factors in sentencing.

12. When it comes to sentencing, the Government decides on the policy, puts it before Parliament. The philosophy, principles, what we want to see in laws, what should be the range of sentences, what factors are relevant – those are matters of policy that the Executive works on and puts before Parliament, and Parliament decides. The Courts then apply these laws.

13. Thus, it is for the Government and Parliament to decide whether the punishments are adequate. The Courts look at the laws, the range of sentences, and decide each case on its facts, because sentencing in the end is fact-specific.

II. GENERAL PHILOSOPHY

14. When it comes to sentencing, what should our philosophy be? There are four principles that are often referred to. First, prevention. Where an offender poses a threat to public safety, the sentence should prevent offender from causing further harm. Two, deterrence. The sentence should deter the offender as well as others from similar behaviour in future. Three, rehabilitation. The sentence should, where and to the degree appropriate, seek to encourage the reformation of the offender. Four, proportionate punishment. The sentence should punish the offender, according to his blameworthiness and seriousness of crime.

III. SEXUAL AND HURT OFFENCES

15. I will now deal specifically with sexual and hurt offences.

16. The Government takes a tough approach on sexual and hurt offences. We have made significant amendments over the years to enhance the protection for victims of sexual and hurt offences. I have set them out in [Annex 1](#). With your permission, Mr Speaker, Sir, may I ask the Clerks to distribute [Annexes 1](#) and [2](#). Members may also access these materials through the SG PARL MP mobile app.

17. In 2019, we amended the Penal Code and the Protection from Harassment Act (POHA). Under the amended provisions, those who commit sexual and hurt offences against vulnerable victims, face enhanced penalties, that would include victims in intimate and close relationships with the offender, children under the age of 14, domestic workers and physically or mentally disabled victims, who are substantially unable to protect themselves from abuse, neglect or self-neglect. Offenders who commit offences against such vulnerable victims are now liable for up to twice the maximum prescribed punishment.

18. For example, if you take the unfortunate case of the Myanmarese foreign domestic worker, Ms Piang. If those facts had taken place after 1 January 2020, then those found guilty could face much higher punishments.

19. Giving another example, there was a case some years ago, where a husband and wife abused their foreign domestic helper. The husband had slapped, punched and kicked the victim, hit her with canes and bamboo sticks, and pushed her against a cabinet. The wife had slapped and punched victim. They were convicted of numerous offences, including voluntarily causing hurt under the Penal Code. The husband was sentenced to 43 months' imprisonment, the wife was sentenced to two months' imprisonment. If those assaults had taken place after 1 January 2020, their sentences are quite likely to have been higher, because the penalties have been enhanced.

20. We also specifically made criminal, acts like voyeurism, and dissemination of intimate images without consent. These have become more prevalent with technology. The conduct were offences previously, but not specifically identified as a voyeurism offence or a dissemination of intimate images offence. Voyeurism, for example, previously, would have been charged under insulting a person's modesty. Dissemination of images, for example, would have been charged under distributing pornography.

21. The maximum penalty for voluntarily causing hurt has been increased from two to three years' imprisonment. We have also enhanced penalties under POHA for harassment of persons in an intimate relationship with the offender, and for repeated breaches of Protection Orders.

22. Both the Penal Code and POHA amendments took effect on 1 January 2020, and the amendments apply to offences committed on or after that date.

23. In 2018, the CPC and the Evidence Act were amended. The accused and Counsel were required to seek the court's permission before questions could be asked about a victim's physical appearance, sexual behaviour, where these do not relate to the charge. We also prohibited the release of the identity of victims before a complaint is made and the default position for trials is closed-door hearings when the victim testifies. We also allowed the use of physical screens to shield victims from seeing the accused when testifying in court.

24. Earlier in 2012, the Evidence Act was amended to remove provisions based on outmoded assumptions about victims of sexual offences.

25. When it comes to sentencing of adult offenders who commit sexual and hurt offences, our position is that the sentences must reflect that such acts are deeply offensive to our fundamental values. Outrage of modesty is not merely an offence that a man commits because he is tempted by the way a lady dresses. Voyeurism is not merely a thoughtless act that a young student commits in a moment of folly. These and other similar offences, whether committed against a female or male victim, should be dealt with seriously. These actions must be seen as an affront to our fundamental values.

26. There can in general, be no excuses for these offences. Mitigation pleas based on the offender's educational qualifications or academic potential should not carry much weight. For such offences, principles of proportionate punishment and deterrence should generally take precedence over rehabilitation. This means – if you touch a woman inappropriately without her consent, if you upload intimate images of an ex-girlfriend or any other woman, if you video-record a woman showering, you must face serious consequences in law.

27. And you shouldn't be able to come to Court and say you have a bright future, you will go far and so on. You can go far, but first, serve the sentence.

28. If we make examples of some offenders, however bright their potential outlook in life, then the message of deterrence will likely be stronger.

29. I am going to ask the Ministry of Education to summarise these points and send to all students, boys and girls, so that everyone understands where we stand. They must realise that a moment of folly can lead to very serious consequences, and we will make sure our laws reflect this severity. That said, there may be exceptional circumstances. Let me give a couple of examples.

30. An offender for example may have a very low IQ that affected his judgement as to right and wrong, or a serious mental illness that had a causal link to the offending conduct.

31. Relevant offender-specific mitigating factors should generally continue to be taken into account. These factors should be assessed on a case-by-case basis, with due consideration given to the harm caused to the victim and the need for deterrence.

IV. FURTHER REVIEW OF LAWS & POLICIES

32. With this in mind, I will set out three steps that we are going to take now. One, increase in penalties for three specific sexual offences. Two, AGC will generally object to rehabilitative sentences for adult offenders who commit certain sexual and hurt offences. Three, a guide on sentencing will be published.

33. First, increase in penalties for three sexual offences. We, as Members know, I've been coming repeatedly to amend these laws, and you can see that in [Annex 1](#). We've been constantly reviewing. We did a further review of our penalties for sexual and hurt offences in the Penal Code, including voyeurism, distribution of intimate images, outrage of modesty, and voluntarily causing hurt.

34. In our view, the maximum penalties are properly calibrated for most of these offences. And we have set them out in [Annex 2](#). There are, however, three areas where we intend to increase the maximum punishments.

35. First, outrage of modesty (OM) under s 354(1) of the Penal Code. From 2016 to 2020, on average, we had 1,190 cases of OM reported each year, which is about 24% higher than the previous period of 2011 to 2015. We want egregious cases to be dealt with more severely. We will increase the maximum imprisonment term from two years to three years.

36. Second, where sexual activity in the presence of a minor takes place, or sexual images are shown to a minor between the ages of 14 and 16. And if you compare that with exploitative sexual activity in the presence of a minor or showing a sexual image to a minor who is between the age of 16 and 18 years, these two offences are similar in nature to offences involving sexual communications with minors. We will therefore correlate the penalties, increase the maximum sentence from 1 year to 2 years' imprisonment.

37. Second, unless there are exceptional facts, AGC will as a general rule, object to rehabilitative sentences for adult offenders who commit certain sexual and hurt offences. Where adult offenders – I emphasise adult – commit sexual and hurt offences, the need for proportionate punishment and deterrence must take precedence over rehabilitation. This is a matter for the Government to decide, it is a matter of policy. I have discussed this with AGC and AGC agrees with our view.

38. Therefore, AGC will hereafter generally object to rehabilitative sentences, such as probation and community-based sentences, where the offenders are adults who commit certain types of hurt or sexual offences. I should add that that is a general position they have taken anyway, but they are going to be much stricter about it. We will give due consideration to exceptional circumstances, which may justify deviation from this general position. We have to, in Parliament, and executive, and of course AGC in court. For example, where the facts of the case are such that rehabilitation should be the dominant sentencing consideration.

39. You take a situation, where a first-time adult offender with an intellectual disability touches a woman. It may, in certain circumstances, better serve the public interest to impose a rehabilitative sentence with appropriate conditions, to reduce the likelihood of future reoffending, rather than impose an imprisonment term.

40. Take another example, where the offender suffers from a treatable psychiatric condition that contributed to the commission of the offence. A Mandatory Treatment Order may be more appropriate.

41. The third step we will take would be to publish a guide on sentencing in Singapore. To better educate the public about the sentencing process, MHA and MinLaw have worked with AGC and the Law Society, and we have prepared a Guide on Sentencing in Singapore.

42. This Guide explains the sentencing process in our courts, and addresses important questions of public interest like: (i) What are the objectives of sentencing?; (ii) What are the common types of sentences imposed by the Courts?; (iii) What factors do the Courts take into account during sentencing?; and (iv) How do the Courts decide what sentences to impose? The Guide will be published on MHA, MinLaw and AGC websites.

43. Therefore, if I may summarise this part, in respect of sexual and hurt offences, Based on what I have said, it should be clear: an offender will not receive a lighter sentence simply because he has higher educational qualifications, or has better prospects in life.

V. SENTENCING ADVISORY PANEL

44. There is another important step that we are going to take. The Ministry of Home Affairs and the Ministry of Law have also been considering how we can achieve greater consistency in sentencing and how there can be greater public education about sentencing.

45. We studied the experience in other jurisdictions – England and Wales, and Scotland. We noted that the formation of a Sentencing Body that promulgates sentencing guidelines can be useful. It can enable proactive publication of guidelines to pre-empt or address areas of concern, and that can facilitate a more consultative process. It will allow views of more stakeholders to be taken into consideration.

46. MHA and MinLaw have discussed with various stakeholders, including AGC and the Judiciary. We will set up a Sentencing Advisory Panel. The key function of the Panel will be to issue non-binding sentencing guidelines.

47. To illustrate, if the Panel decides to issue a sentencing guideline for a hurt-related offence, the Panel can set out a sentencing framework, sentencing bands based on the twin factors of harm and culpability. The framework can include relevant aggravating and mitigating factors to be considered in sentencing. The guidelines will be published and be accessible to the public. It will be persuasive but of course not binding on the Courts. The Courts decide each case on the facts before them.

48. We envisage that in working out the guidelines, the Panel will consult other stakeholders where appropriate, and that will provide greater clarity to the public about the likely sentence and the relevant factors to be considered in sentencing, as compared to the current position where the legislation only sets out the maximum penalties.

49. It is expected to be an Inter-Agency Panel. It will comprise stakeholders from the criminal justice system, including members of the Judiciary, AGC, MHA and the Police Force. We will give more details on the Panel later.

VI. REVISITING THE CASES

50. Let me now, in the context of the points I've made, consider again the cases I mentioned at the start of the statement.

51. In the first case, the one in Apr 2020, where the High Court overturned the initial sentence of probation and imposed imprisonment, our view – that was appropriate. That would be the case now with the amendments.

52. The second case, the 22-year-old university student who hurt his ex-girlfriend in May 2019. The sentence in that case was decided in accordance with the law at the time, and rightly so. Had the acts been committed on or after 1 January 2020, he is likely to have been charged under the new Penal Code provisions, for voluntarily causing hurt to a victim with whom he was in an Intimate or Close Relationship. He would have been liable for up to twice the maximum penalty. For voluntarily causing hurt, twice the maximum penalty is up to six years' jail, \$10,000 fine, or both. Because that's the maximum penalty, he would then not be eligible for community-based sentences, which by law, are only generally available for offences punishable with a maximum imprisonment term of not more than three years.

53. In the third case, the 23-year-old university student who committed voyeurism. Before the Penal Code amendments came into force in 2020, such acts were usually prosecuted under the rubric of insulting the modesty of a woman, punishable with up to 1 year's imprisonment or fine, or both. Now, with the introduction of a specific offence of voyeurism which carries double the penalty – two years' jail, or fine. There is now also the possibility of caning.

54. As I said, AGC will also in general object to probation or community-based sentences being imposed in cases involving voyeurism offences. Offenders who commit such offences cannot expect to be treated leniently.

VII. CONCLUDING REMARKS

55. Mr Speaker, I have set out our philosophy, a tough stance towards sexual and hurt offences. Beyond these penalties, the criminal justice system also reflects the values of society.

56. Such acts must be seen as penalising a gross violation of fundamental values in Singapore. The usual mitigating factors will have less force when viewed through this prism. The starting point should be the conduct should never have happened. No excuses. Offenders should expect to face the full force of the law.

57. Society needs to play its part as well to unequivocally repudiate sexual and hurt offences as violations of fundamental values. Collectively, with the right laws and policies, and more importantly, with the right societal mindset in place, we can move towards being a society that fully lives up to our values.

[Annex 1](#) (143kb .pdf)

[Annex 2](#) (137kb .pdf)



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