VIEW ON LAWS RELATED TO STATUTORY RAPE: A COMPARATIVE ANALYSIS IN THE STUDY OF STATUTORY RAPE LAWS IN MALAYSIA AND REPUBLIC OF INDIA

By

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Thesis Submitted to the Ghazali Shafie Graduate School of Law, Government and International Studies, Universiti Utara Malaysia, in Fulfillment of the Requirement for The Master of Commercial Law
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Kedah Darul Aman
Abstrak

Abstract

It is a criminal liability for a man who had sexual intercourse with the underage girl. Penal Code is the only single law for the criminal offense. Provisions under section 375 (g) of the Penal Code in Malaysia has codified that a man is guilty of the crime of rape through sexual intercourse with a woman under the age of 16. It is immaterial if the sex is done either by consent or without the consent of the woman. The law puts a statutory rape as a strict liability crime. The act of rape itself is able to indicate the intention of the accused. In legal, sexual intercourse by a man with a female under the age of 16 termed as statutory rape. This study was done to see the extent of the existing law used to overcome the crime of statutory rape in Malaysia. In addition, comparisons were made with the Indian to assess the legal interpretation of statutory rape in their country. A comparative analysis of the two countries is at once will show the application of English common law and the extent of which the two countries still rely on common law principles. The study was based on doctrinal research. This includes the use of the statute, the case laws and journal articles. A comparative analysis of the statutory rape laws in Malaysia and India will create an improvement over the existing law. It will also cause the effectiveness on the methods used. This study aims to improve the efficiency of statutory rape laws.
Acknowledgement

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I am most grateful to my wife, daughter and friends for their personal support and utmost patience throughout this challenging journey. I also extend my gratitude to Saudara Cikgu Ayu for his pure kindness and unequivocal support at all times by helping me whenever needed. A mere gratitude is never enough for his help.
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<td>IPC</td>
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<td>Evidence Act</td>
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<td>IEA</td>
<td>Indian Evidence Act</td>
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<td>BEIC</td>
<td>British East India Company</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>Civil Law Act</td>
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<td>Sexual Offences (Amendment)</td>
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<td>(DNA)</td>
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CHAPTER ONE
INTRODUCTION

1.1 Background of the Study

In Malaysia, rape is one of the capital crimes whenever violence is involved in order to assault women for the purpose of having unlawful sex intercourse with force. Statutory rape is the crime similar in nature, but specifically, statutory rape is involved when the age of the victim is less than sixteen years old. Malaysian Penal Code (Act 574) (hereinafter PC) is the only single statute which codified offence of statutory rape in Malaysia.

PC provides provision to sexual relations with women under sixteen years old whether it is committed with the consent of the woman or not is an offence. No matter what the excuses are, if the woman is under sixteen years of age when sex is committed, then it is a statutory rape. This provision is designed for the purpose of protecting those especially the children. Rape offence is defined in section 375(g) of PC when man is said to commit “rape” when having a sexual intercourse with a woman who is less than sixteen years old. Even if it is done with consent, that consent is immaterial and it is not valid under the law. Penetration is sufficient enough to constitute the sexual intercourse related to the offence of rape. Whoever commits the offence in particular, will be punished under section 376(1) of the PC. In reference, section 376(1) PC provide “Whoever commits rape shall be punished with imprisonment for a term of not less than five years and not more than twenty years, and shall also be liable to whipping”.
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Articles 121 to 131A of the Federal Constitution are referring to the source of power in the federal judiciary.

Article 145 of the Constitution refers to the jurisdiction and duties of the Attorney General of Malaysia.
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Gordon Hewart, 1st Viscount Hewart, PC (7 January 1870 – 5 May 1943) was a politician and judge in the United Kingdom.

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Asst. Professor, University College of Law, Osmania University, Hyderabad


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PLAYING GOD: A CRITICAL LOOK AT SUA SPONTE DECISIONS BY APPELLATE COURTS, ADAM A. MILANI, AND MICHAEL R. SMITH. Assistant Professor, Mercer University School of Law; J.D., Duke University; B.A., University of Notre Dame. Associate Professor, Mercer University School of Law; J.D., University of Florida.

Child Witnesses: Evidentiary Reforms Kate Warner Lecturer Faculty of Law University of Tasmania Hobart pg 171

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