

Should Gender Equality be Imposed in Section 375 Penal Code?

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ABSTRACT

One of the most horrifying tools of terror employed against women is sexual violence. However, a significant portion of victims are men. Numerous studies have found that women are sexually abused more frequently than gender stereotypes would imply. The law only recognises "the penetration of the vagina by a man" as the necessary ingredient to establish that rape or sexual activity occurred, hence a man cannot be legally raped by a woman. The claim that only women can be victims of rape because only men can penetrate the vagina. Nevertheless, rape affects both men and women equally. Several stereotypes make it challenging for a man to publicly disclose a history of rape or sexual assault. These downplay the severity of the crime and discourage males from asking for help. The purpose of this article is to do research on the impact of the rape provision in cases of male rape and to determine whether the stated provision should promote gender equality. The method employed in this article is qualitatively based. The article finds that rape is a gender specified crime. The provision for rape mainly only classifies for women but not men. Therefore, the provision of Section 375 should be improved and amended as it is possible for a woman to rape a man. Speaking of rape, it is still illegal whether it is committed against a man or a woman.

Keywords: criminal law, rape, gender equality, male rape, sexual assault, equality

INTRODUCTION

Section 375 of the Penal Code stated that a man is said to commit "rape", have sexual intercourse with a woman under a few circumstances where it is against the woman's will and consent or the consent is given by the woman but was obtained due to the fear or death or hurt to herself, or the consent is given by mistake of the woman in which she thinks that the consent was given to her husband, or the consent was given during the time where she is unable to understand the consequences or the consent was given by using his position of authority over her and if the consent was given but the woman was under 16 years of age. In summary, Section 375 of the Penal Code clearly establishes that rape is a crime committed by a man against a woman.

GENDER EQUALITY AND RAPE PROVISION

Gender equality is when everyone has the right to pursue whatever career, lifestyle choice, and abilities they want regardless of

their gender. This means that their rights, opportunities, and access are not limited to it. Women, men, trans, and gender-diverse people, children and families are all affected if there is no gender equality. Therefore, gender equality should be imposed in any kind of circumstance as it will prevent any violence against either women or men. A society that values both women and men equally is considered as much safer and healthier. Everyone should know that gender equality is a human right as everyone can benefit from it. Gender equality is a term used to improve and respect women's rights in society. However, that does not specifically mean that other members of society do not face prejudice due to gender inequality. As can be seen under section 375 the Penal Code, the rape provision can only be applied to a man. Only men can commit rape towards women. This shows that there is gender inequality in the provision of Section 375 as it only favours women and believes that a woman is incapable of raping a man.¹ (Fernandez, 2019). Therefore, it should be discussed and revised back whether gender

equality should be imposed in Section 375 Penal Code.

ISSUE RAISED IN SECTION 375 OF THE PENAL CODE

In Malaysia, there are zero cases or reported cases regarding “male rape” or men being a victim of rape. Rape is known as a gender crime as it constitutes that only a man can be the accused and a woman as a victim (Javaid, 2018). This was based on section 375 of the Penal Code which stated that only a man can rape a woman. A man cannot be legally raped by a woman as the provision is limited to “the penetration of the vagina by a man” as the element to prove that rape or sexual intercourse happens. The statement that the penetration of the vagina by a man, constitutes that only a woman can be a victim of rape. This provision is biasing towards men as only women are subjected as a victim of rape.² Even though it is “rare”, rape can also happen to anyone regardless of sexual orientation or gender. Which is to say that men can also be a victim of rape. The stereotypes that said men cannot be a victim of rape need to be changed. As there is a saying that goes, everyone is equal before the law. Thus, men should receive the same treatment as a victim of rape, and women can also be the accused and shall be punished under section 376 of the Penal Code. Therefore, the issues that arise here are whether a man can be a victim of rape and whether gender equality should be imposed in Section 375 of the Penal Code.

APPLICATION AND ANALYSIS OF SECTION 375 OF THE PENAL CODE

Section 375 of the Penal Code stated that the act of rape was committed by a man against a woman under seven circumstances. Based on the provision, there are a few conditions that need to be fulfilled to constitute that a person commits rape. First condition is that the accused is a man. The second condition, the victim is a

woman. Based on section 10 of the Penal Code the word “man” stands for a male human being and the word “woman” stands for a female human being of any age.³ This provision can only be applied to woman against men as it already specifies in the provision that “a man commits rape against a woman” signifying that the act of rape can only be committed by a man. Even if the victim is a transgender, he cannot claim that he was raped as according to section 10 the victim must be a “woman” from born. The third condition to constitute the offence of rape is there must be penetration, as based on the explanation under section 375, penetration is enough to constitute the sexual intercourse necessary to the offence of rape. In the case of *R v Gaston*, the judge stated that “vaginal penetration by the penis constitutes sexual intercourse which is required to be proved for a crime of rape”. Penetration is an important element to constitute that there is sexual intercourse in the offence of rape. The last condition is the act was done under section 375 of the Penal Code where there are seven circumstances. Section 375 of the Penal Code stated that a man is said to commit “rape”, have sexual intercourse with a woman under a few circumstances where it is against the woman’s will and consent or the consent is given by the woman but was obtained due to the fear or death or hurt to herself, or the consent is given by mistake of the woman in which she thinks that the consent was given to her husband, or the consent was given during the time where she is unable to understand the consequences or the consent was given by using his position of authority over her and if the consent was given but the woman was under 16 years of age. If either of the conditions have been fulfilled, then the accused can be punished under section 376 of the Penal Code that stated whoever commits rape can be punished with imprisonment for a term that may extend to twenty years and shall be liable to whipping.⁴ The provision clearly shows and states that only women can be a victim of rape.

CASES RELATED TO SECTION 375 OF THE PENAL CODE

In *Sahrul bin Tola v Pendakwa Raya (PDRM) lpd*, Sandakan case,⁵ the court stated that the first element that need to be proven to constitute a rape is that there is sexual intercourse between a man with a woman. In this case, the accused raped the victim who was a minor in a bathroom and threaten to injure her if she tried to resist against the accused. The element was fulfilled as there was sexual intercourse between the accused who is a man and the victim who is a woman. It is clearly stated in this case, that rape can only happen if there is sexual intercourse between a man and woman.⁶ Then, penetration is an important element to constitute rape. In the case of *State v Gaston*, the victim who returned to her home was confronted by a man who had a butcher knife. The man asked for money and have sexual intercourse with the victim. The victim then called the police and was taken to the hospital. In the hospital, a criminal determined that sexual intercourse had taken place. In this case, the court stated that penetration of the vagina is an important element to constitutes the offence of rape.

In another case, *Bunya ak Jalong v Public Prosecutor, Bunya Anak Jalong*⁷ was accused of raping a girl aged, 15 years of age who became pregnant and give birth to a child. The victim's adoptive mother then lodged a police report, and the accused was charged under section 375(f) of the Penal Code. In this case, the accused stated that there had been no penile penetration, he used his hand or finger that had semen on them after he ejaculated and then he continued to touch the complainant's vagina and inserted the fingers into their vagina. Then the appellant contended that the conception occurred because of the insertion of the semen-stained fingers into the complainant's vagina. Thus, the appellant contended as there was no penetration by penis, there was no rape. The

Court held that there was no penile penetration to the complainant's vagina, so the appellant cannot be charged with rape because the absence of penile penetration.

LACUNAE IN THE MALAYSIAN LAW

According to the literal words of the law, men are not able to charge a file of rape against a woman perpetrator in Malaysia. The Malaysian Penal Code's definition of rape is gendered, implying that the perpetrator must be a male and the victim, a woman. Although most victims are indeed woman, but male victims exist and are currently not protected by any legally binding instrument. Thus, many cases of rape against male by female perpetrator goes unreported and fair justice are not properly served. This also raise an issue of inaccurate data and statistic of rape nationwide.

Under section 375 of the Penal Code, a male offender can be punished with up to twenty years of imprisonment. In an exhaustive list of circumstances, the offender may be sentenced to a minimum of ten years and a maximum of thirty years of imprisonment, along with whipping. However, it is not a loss cost for male victims as they may still be able to file a charge against their female sexual harasser under section 377D of the same Act:

Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

This provision allows a male victim to act against a female offender due to how it is worded without being gender specified. The usage of the word "whoever" allows anyone to be charged with sexual harassment regardless of their gender. The issue of application whether s 377D can be tried before the Court has been raised in

both the case of *Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor*⁸ and *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor*.⁹ In the latter case, Eusoff Chin CJ verify that s 377D deals with any kind of gross indecency act involving any person. This implies gross indecency act between men, between women, and between man and woman. In establishing gross indecency act, it is in the discretion of the Court and no contextual element such as the gender of the perpetrator or the victim needed. Thus, allowing a man to file a charge against a woman in cases of attempt rape or occurred rape against him. It will be in the hands of the Court whether an act of rape in the means of gross indecency has been done upon him. However, this also means that the most exemplary punishment for women for sexual offences against men is five years of imprisonment or the possibility of just paying fine or both. This shows the disregard of how heavy the offence of rape against man is by giving light punishment to the woman perpetrator when a man who similarly conduct the same act would be given a more exemplary punishment.

Next, Section 354 of Penal Code implied that whoever assaults or uses criminal force to any person with intent to outrage modesty of that person shall be punished with imprisonment for a term which may extend to ten years or with fine or with whipping or with any of two of such punishments. Section 354 of Penal code is not a gendered crime as it uses the word “whoever” so the accused and the victim can be either a man or a woman. The ingredients of the offence were laid down in the case of *Public Prosecutor v Kamarul Azamin bin Mohammad*:¹⁰

- (a) There must have been assault or use of criminal force on a person; and
- (b) Such assault or use of criminal force must have been made:
- (c) With attention to outrage modesty; or

(d) With knowledge that the person’s modesty was likely to be outraged.

In the case of *Public Prosecutor v Ali bin Ahmad*,¹¹ the accused was charged under section 354 of the Penal Code for outrage modesty where he assaulted and used force on the victim who was the passenger in the bus that was driven by him. The accused assaulted the victim by touching the victim’s breast and forced the victim to touch his penis with intent to outrage modesty. In this case the elements to establish the offence of outrage modesty had been fulfilled. Thus, the accused pleaded guilty to the charge and the judge convicted and sentenced the respondent to six months imprisonment and a fine of RM5,000. The comparison between section 375 and section 354 of Penal Code is that section 375 already specifies the gender of the victim and the accused, however section 354 did not mention the gender and instead used the word ‘whoever’.

The last provision regarding the fact that women cannot be a perpetrator can be seen under Section 377A. According to section 377 A, it’s related to carnal intercourse against the order of nature. Any person who has sexual connection with another person by the introducing of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature. Penetration is sufficient to constitute the sexual connection necessary to the offense described in this section. There are few elements that should be taken care of to charge someone on this section. The first element is the accused must be a man. Offences under this section, only involve acts committed by man only not woman. The man must use his own penis and not anything else. However, the victim can be both female and male under this section. The second element is there should be penetration. This section emphasizes admission is adequate for sexual intercourse. Penetration here means penetration of the genitals and penetration

into the anus or mouth. The third element is penetration into anus or mouth of the other. The man who had sex had penetrated the anus or mouth of another person. This act is not a common one in intercourse. For the last element is consent. Under this section, for convictions under this section, the act is done by mutual consent, however, only the accused will be punished. For cases without consent it will fall under section 377C.

THE LAW IN THE UNITED STATES OF AMERICA (US)

In other countries, rape against male by female perpetrator has been criminalized. Unlike Malaysia, the United State Federal Bureau of Investigation (“FBI”) has replaced the definition of “rape” with terms which allows a wider interpretation of law in 2013.¹² Before the year 2013, the Uniform Crime Reports (“UCR”) had collected data on rape offence pursuant to its earlier definition of rape which is “the carnal knowledge of a female forcibly and against her will”. Currently, the definition of rape under the UCR is as follow:

*Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.*¹³

Prior to the redefinition, report on rape from most States with a more extensive interpretation of rape was not reported by the UCR as it did not conform to the federal government’s narrow definition of rape. (Justice, 2012) By redefining the term, not only does this uphold gender equality but it also lead the way for a more precise data and statistic. As the new definition has form a more inclusive umbrella, the reports of rape (including rape against male by female perpetrator) will statistic to produce a more comprehensive statistic.

REALITY OF FEMALE

With little to no reported case of rape perpetrated by a woman on a man, victims are left unheard and to assumed that the offence that has been done against them is a norm. This is because men are to be seen as more assertive of the two gender and are not susceptible to being assaulted by the woman but and always want to engage in sexual intercourse.¹⁴ Subsequently, if a man to portray as a victim of rape, he is likely to be scrutinized and shamed by society. (Vitelli, 2020) Thus, making it more than difficult for a man to report the offence that has been done against him. There is also a believe that a man can defence himself from ever being raped by a woman but there are scenarios that would prove otherwise.¹⁵

For instance, a person may spike an aphrodisiac to drug another person therefore he or she becomes incapable to rationalize or give consent to the sexual intimation that is done to him or her. Other than that, a person may also threaten another person which cause apprehension if the other person does not give his or her will to conduct a sexual intercourse. This also links to the idea of man not conforming to the ‘ideal victim’.¹⁶ Generally, the ideal victims fulfill these three attributes which are (1) weak and vulnerable, (2) reliant and (3) malformed. Thus, contributing to the idea that a male victim will not be easily believed if they were to speak up and not fall into the sphere of victimization but instead, scrutinization.¹⁷

PRECEDENTS CASES

Although there is unanimous understanding that man is also susceptible to rape by woman perpetrator, it is in the power of the governments to contribute a strong diplomatic effort to examine the legal and ethical issues of existing provision. In the case of *Suharman bin Mohamed Noor @ Ismail v Public Prosecutor and Anor*¹⁸

Appeal, the High Court of Muar states as follows:

While rape is an offence against women, on the other hand, men too can be a victim of sexual offences such as carnal knowledge against the order of nature.

It can be seen here that there is an understanding that man can also be a victim of sexual offence, however it is read conjunctively with sodomy. This illustrates the legislative view on woman-on-man rape and man-on-man rape whereby the latter is given more emphasis. It is necessary to review the existing law as rape should not be a gender-specific crime, but as an offence synonymously to the violation of human rights. The Malaysian is ought to follow the implementation advocacy and research on redefining what rape is, to ensure the life of all individuals regardless of gender is protected.

STEREOTYPES AND PUBLIC VIEW OF SECTION 375 OF THE PENAL CODE

Men are frequently the victims of sexual assault or rape, according to most of the recent research. As previously stated, section 375 of the Penal Code makes no mention of man as a victim. The entire passage said that insertion of the penis into the vaginal canal meant males raping a woman. According to Section 375 of the Penal Code, a man is said to commit rape when he has sexual intercourse with a woman against her will or without her consent. The provision clearly mentions “a man” commits rape, where it shows only a man can commit rape. This means that the offense of rape can only be committed by a man against a woman. A man cannot accuse a woman of having raped him because S 375 does not mean so. Not only in Malaysia, most countries have not allowed a victim of a rape to be a man. The National Crime Victimization Survey, which is completed in 2020, have collected at least 40,000 data points from sexual assault

victims all around the world. According to the data, men were responsible for 38% of the assaults.¹⁹ When compared to 2014, when just 14% of males were assaulted, the number of assaults on men has climbed dramatically.²⁰ The majority of rape incidents in males were not classed as rape. These are due to stereotypes and rape myths in guys. Although much has been done to raise awareness about the condition of female rape survivors, rape and sexual assault of adult males got little research or public attention until recently. Rape myths are fallacies about rape, rape victims, or rapists that are prejudicial and stereotypical.

FIRST MYTH- A WOMAN IS INCAPABLE OF RAPING A MAN UNDER THE LAW

There is an unwritten myth, an assumption, that men cannot be victims of sexual violence in conflict. Men can be and are sexually assaulted. Any men can be raped regardless of size, strength, appearance, age, occupation, race, or sexual identity. These stereotypes thinking it because of people that thinks man is able to defend themselves against an attack of rape.²¹ The masculine stereotype portrays men as being able to protect themselves, which may not always be the truth, it is embarrassing and unmanly in some countries for a male youngster to cry.²² It also can be seen in Section 375 of the Penal Code that, the offense of rape can be only committed against a woman but not man. Clearly stated a man cannot be a victim, they are only recognised as offenders. Socially ascribed traits of masculinity do not leave space for men to assume the role of the victim - they are strong, indestructible; the perpetrators of this kind of abuse, not the sufferers.²³ But in every conflict that women are raped, men are also victims of sexual violence. As long as gender is used to define whether or not an individual can or should fall victim to an attack, those who experience sexual violence in conflict will

not have the platform to seek reparations. There are also saying that if the man is raped, he is a gay. This is also another stereotype since sexual abuse has nothing to do with sexual orientation.

SECOND MYTH- IT IS A MORE SERIOUS OFFENCE TO FORCIBLY PENETRATE SOMEONE THAN TO FORCE THEM TO PENETRATE

There is another myth saying that it is a more serious offence to forcibly penetrate someone than to force them to penetrate. Such cases, where a male victim is forced to penetrate the woman vagina, anus or mouth using his penis and without his consent. These actions are not legally recognised as rape. Instead, these kinds of cases will be classified as sexual assault or even under child protection law if the victim is a male child, but not rape. Unlike rape and assault by penetration, which are indictable offences, both sexual assault and causing sexual activity are either way offences, triable summarily or on indictment, thus reflecting the potential for offences perceived as being comparatively 'less serious' to be criminalized under these provisions.²⁴ However, these myths are wrong because both have similarities, even if they are forced to penetrate or even forcibly penetrate. Both cause physical and emotional harm to the male. Sexual assault is a sexual act perpetrated without full and free consent. It does not matter which gender is the victim, gender does not make someone responsible for being sexual assaulted. Even if a woman asked for it she is forcing a man to penetrate without his consent. This myth is supported by society's tendency to question and blame the person who is assaulted, which in turn can invite self-questioning and self-blame.

THIRD MYTH- RAPE IS A GENDER SPECIFIC CRIME

There many arguments on rape are a gendered crime. This is because in many

countries rape is provision that are made for women. In Malaysia, according to section 375 its only stated penis enters the vagina, which means a man penetrating a woman.(Shivani, 2022) The vast majority of perpetrators of sexual violence are men but women can do and do commit sexual offences. The law states that rape is defined as non-consensual penetration with a penis. This means that women cannot legally be charged with rape, but they can be charged with a sexual assault. In India, rape in men is classified as intercourse against the nature under section 377 but not rape under Section 375. Although in 2013, rape and sexual assault was gender neutral. The term "rape" was changed to "sexual assault".²⁵ However, this was opposed by many feminisms group, that made the government to change to the term rape where only man can rape women. The next example can be seen in Indonesia, according to the Penal code Article 285, rape is sexual violence that is done on a woman. The action of rape in men is classified as "vulgar action" under article 289, where the punishment for this provision is maximum 9 years imprisonment compared to rape 12 years.²⁶ In the UK, rape in men is not classified as criminal offences, although in Sexual Offences (Scotland) act 2009, men can be both victims and perpetrators. According to this act, men are only classified as victims of sexual assault cases not rape. In China, according to the criminal law of China, article 236, rape only can be committed against women. In 2011, first rape case in a man occurs, where a security guard was accused of raping an 18-year-old male. However, he was later convicted for intentional injury rather than rape.²⁷ He was sentenced to one year prison and pay 20,000 Yuan compared to the rape provision where the punishment is at least 3 years imprisonment. Although, sexual assaults and rape can be classified as the same, the punishment given to both is different. The myth that women cannot be perpetrators prevents these individuals

from being held accountable and silences their victims who are even less likely to disclose that they are victims of perpetrators.²⁸

ARGUEMENT AGAINST THE JUSTIFICATION

Male rape is a form of sexual violence that remains largely unrecognized and underreported (Davies, 2002). According to a study conducted by the National Crime Victimization Survey, approximately 38% of rape victims in the United States are male (Greenfeld, 1997). However, due to the stigma and shame associated with male rape, many victims choose not to report their experiences (Bhugra, 2008). There are lots of myths about rape, sexual assault, sexual abuse, and other types of sexual violence that cause serious harm. These myths about rape in men can affect how victims think.²⁹ Male rape can have severe physical and psychological consequences for the victim. Physical injuries can include trauma to the genitalia, anal sphincter, and rectum (Kaplan & Sadock, 2003). Victims of male rape may also experience psychological symptoms such as depression, anxiety, post-traumatic stress disorder (PTSD), and suicidal ideation (Davies, 2002).³⁰ These symptoms can persist long after the incident has occurred, impacting the victim's daily life and relationships (Bhugra, 2008). To the extent that these myths are believed, the rate at which male victims of sexual violence both report their victimization to and receive treatment for it will remain low, and this population will remain hidden. The law should protect both genders against any violation of human rights.

SUGGESTION FOR IMPROVEMENT

The issue that has been identified throughout this research is whether gender equality should be imposed under Section 375 of the Penal Code. Based on the argument and precedent cases mentioned

before, it is possible for a woman to commit rape toward man. Therefore, the suggestion that can be made is section 375 should be amended and extended its scope where it allows a man to be the victim of rape. The crime of rape should be generalized and not be a gender specified crime. Both women and men can commit rape and be the victims of it. Thus, terms such as 'man', 'woman', 'her', 'him', 'herself', and 'himself' in the provision of Section 375 should be replaced by the words of 'any person' or 'another person'.³¹ This also includes the 7 circumstances and 1 exception that fall within the said provision. Below are all the countries that allow male rape.

Table1: List of number of countries that allow male rape.

NO.	COUNTRY THAT ALLOWS FEMALE-TO MALE RAPE	RELATED PROVISIONS
1	<p>United States of America</p> <ul style="list-style-type: none"> ▪ United States has redefined the provision of rape through the FBI's Uniform Crime Report in 2012. <p>The prior definition of rape in the united has not changed ever since the year of 1927.</p> <ul style="list-style-type: none"> ▪ The new definition of rape has encouraged the male victims of rape to seek for help as 	<p><i>"The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."</i> - FBI's Uniform Crime Report in 2012</p>

	they need and it also includes sexual assaults that previously were not covered by definition of rape.				
2	<p>United Kingdom</p> <ul style="list-style-type: none"> The previous English law did not include rape of males as a criminal offence. Rape of males is only considered as non-consensual buggery. However, through the new provision given by the Criminal Justice and Public Order Act 1994, the United Kingdom has now recognized male to be the victims of rape. Sexual Offences (Scotland) Act 2009 and Sexual Offences (Northern 	<p><i>"Penetration of the "mouth, anus or vagina with [the defendant's] penis" is sufficient for rape" –</i></p> <p>Sections. 1(1)(a) Sexual Offences Act 2003.</p>			
					<p>Ireland) Order 2008 men can be both perpetrators and victims.</p> <ul style="list-style-type: none"> Even though the two provision allows male to be the victim of rape, female still however cannot be legally charged with 'rape' in all parts of United Kingdom. Female must be instead charged with other offences such as sexual assault, sexual penetration or causing sexual activity without consent.
4					<p>India</p> <ul style="list-style-type: none"> The Indian government on 2012 has decided to change the definition of rape but it was criticized on the grounds that it would harm
					<p><i>"Rape and sexual harassment crimes were gender neutral" - 2013</i></p> <p>Criminal Law (Amendment) Ordinance.</p>

	<p>the interest of female rape victims.</p> <ul style="list-style-type: none"> On 2013, Criminal Law (Amendment) Ordinance has announced that rape and sexual harassment crimes were gender neutral. The term rape was substituted with sexual assault. However, this new amendment received strong objections from the feminist groups which consequently made Indian Government to restore back the term rape and state that only male can be the rapist of female. 	
6	<p>Philippines</p> <ul style="list-style-type: none"> Philippines has made new amendment where it allows male to be the 	<p><i>"An act of sexual assault" by any person either by "inserting his penis into another person's mouth</i></p>
	<p>victim of rape through the 1997 amendment of Revised Penal Code 1930.</p> <ul style="list-style-type: none"> Rape committed against male is considered as sexual assault where it carries lesser penalty - 12 years of imprisonment. 	<p><i>or anal orifice" or inserting "any instrument or object, into the genital or anal orifice of another person" - Article 266-A 1997 amendment of Revised Penal Code of 1930.</i></p>
7	<p>Singapore</p> <ul style="list-style-type: none"> Male rape is not acknowledged in Singapore. 	<p><i>"The act of a man penetrating a woman's vagina with his penis without her consent" - Section 375(1) Penal Code</i></p>

The reason for the said recommendation is by the provision of Article 8 Federal Constitution - "No one should be discriminated against by their gender". Article 8(1) of the Federal Constitution generally states that everyone is equal in the eyes of the law and entitled to the right of equal protection of it. Meanwhile, Article 8(2) prohibits any types of discrimination to be made against any citizens on the ground, one of it, gender. The word gender is incorporated into the provision of Article 8(2) as a foundation for non-discrimination in July 2001 in acknowledgment of women's contribution to national progress.³² As a result, it is reasonable to assume that the change was made to improve and respect the rights of women in

Malaysia in a variety of ways. Indeed, numerous attempts have indeed been made over the years by both the government and non-governmental organizations (NGO) to adhere to the Constitutional amendment from the legal, economic, and healthcare perspective.

However, the provision of Article 8(2) should have now been understood broadly to remove any kinds of gender discrimination, rather than focusing just on empowering women. This is due to other members of society having faced prejudice in other ways as well. Therefore, there is an urgent need to consider this issue in a larger context so that other members of society might benefit from this historic addition to our Constitution.³³ Gender, unlike sexes, is socially produced. It indicates that the social qualities, activities, and behaviours connected with certain members of society are not essentially natural. As a result, the goal of the gender equality principle is to eliminate the disadvantages that are placed on someone based on cultural definitions of his or her function in society. For example, community generally identify masculinity with males, whereas femininity is linked with attributes such as weakness and softness. All the preceding instances are evidence of gender prejudice. If Article 8(2) is to be given a broad reading, the fact that section 375 of the Penal Code enables certain types of gender discrimination violates it. As a result, its better propose to widen the scope of the rape offence in order to reconcile with Article 8(2) of the Federal Constitution, as Section 375 of the Penal Code is judged incongruous with Article 8(2).

In the process of widening the scope of section 375, there must be certain challenges needed to overcome such as the prevalent patriarchal culture that has been deeply rooted in our society. The problem of rape could be viewed through the eyes of the male-dominated Parliament. However, this issue might be solved by forming a special select committee on the reformation of Section 375 of the Penal Code, which

would include representatives from the Attorney General's Chambers and the Royal Malaysia Police, among others. The goal of these special selection committee is to propose appropriate revisions to the definition of rape based on their area of expertise, public polling, and references to international jurisdictions. It is suggested that the members of this committee should be composed of an equal number of men and women. Throughout the years, the committee's recommendation has proven to be quite compelling, as seen by the addition of the Penal Code Section 377CA in 2006. The Special Select Committee on Review of Penal Code (Amendment) 2004 and Criminal Procedure (Amendment) Act 2004 suggested, and Parliament approved Section 377CA of the Penal Code. Section 377CA is viewed as a minor step taken by Parliament in recognizing non-penile penetration as a type of bodily violation. Therefore, the amendment of Section section 375 can be made if there is a special committee appointed to revise and suggest Parliament amend it.

CONCLUSION

In conclusion, the provision of section 375 of the Penal Code should be amended. A rape should not be a gender specified crime. The fact that section 375 imposed such gender inequality shows that the provision violates the rights of a person under Article 8(1) and (2). Therefore, the provision of Section 375 should be improved and amended as it is possible for a woman to rape a man. The reason for such a demand to amend the section is that if there is a situation where a man was sexually assaulted by a woman, the only provision that he could rely on is section 377D where the punishment is much lighter compared to the punishment of rape. The provision of Article 8(1) clearly stated that everyone has the equal right to the protection of law but the fact that a man cannot rely on section 375 shows that the provision violates it.

NOTES

- ¹ Fernandez, J. A., & Mohamad Nor, A. (2019). Enough of This Nonsense! Rape Is Rape: A Malaysian Perspective. *Journal of Humanistic Psychology*, 0(0). <https://doi.org/10.1177/0022167819883724>
- ² Javaid, A. (2018). The criminal justice system and male rape: Processing male rape cases. *Male Rape, Masculinities, and Sexualities*, 195–230. https://doi.org/10.1007/978-3-319-52639-3_6
- ³ Section 10 of the Penal Code, Act 574
- ⁴ Section 376 of the Penal Code, Act 574
- ⁵ [2018] MLJU 754
- ⁶ [1986] 198 Conn. 435
- ⁷ [2015] 5 MLJ 72
- ⁸ [2021] 2 MLJ 323
- ⁹ [1999] 2 MLJ 241
- ¹⁰ [2020] MLJU 1741
- ¹¹ [2010] 2 MLJ 547
- ¹² US Department of Justice, (2014). Crime in the United States 2013 – Rape. Retrieved on 1 June 2022 from <https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/violent-crime/rape#:~:text=The%20United%20States%20Department%20of%20Justice%20Archives,> (2012). Updated Definition of Rape. Retrieved on 1 June 2022 from <https://www.justice.gov/archives/opa/blog/updated-definition-rape>.
- ¹⁴ R. Vitelli, (2020). Why Aren't Male Victims of Sexual Abuse Speaking Out? Retrieved on 1 June 2022 from <https://www.psychologytoday.com/intl/blog/media-spotlight/202004/why-arent-male-victims-sexual-abuse-speaking-out>.
- ¹⁵ Kassing, L. R., Beesley, D., & Frey, L. L. (2005). Gender role conflict, homophobia, age, and education as predictors of male rape myth acceptance. *Journal of Mental Health Counseling*, 27(4), 311–328. Retrieved on 1 June 2022 from <https://doi.org/10.17744/mehc.27.4.9wfm24f52kqgav37>.
- ¹⁶ BBC, (2022). Man accused of spiking denies sex assault in Middle Barton. Retrieved on 23 June 2022 from <https://www.bbc.com/news/uk-england-oxfordshire-61916834>.
- ¹⁷ C. Schwobel-Patel, (2015). Nils Christie's 'Ideal Victim' applied: From Lions to Swarms. Retrieved on 1 June 2022 from <https://criticallegalthinking.com/2015/08/05/nils-christies-ideal-victim-applied-from-lions-to-swarms/>.
- ¹⁸ [2020] MLJU 2258
- ¹⁹ Rachel E. Morgan, Ph.D., and Alexandra Thompson, BJS Statisticians National Crime Victimization Survey: Criminal Victimization Statistics. 2020

<https://bjs.ojp.gov/library/publications/criminal-victimization-2020-supplemental-statistical-tables>.

²⁰ *ibid*

²¹ Heilpern, D.M, 1998. *Fear or Favour: Sexual Assault of Young Prisoners*. Lismore, Southern University Press.

<https://livingwell.org.au/information/unhelpful-myths-about-the-sexual-assault-and-rape-of-men/>.

²² "Male Victims of Domestic Violence". Hiddenhurt.co.uk.

http://www.hiddenhurt.co.uk/male_victims_of_domestic_violence.html

²³ Shivani Supramani. "Male rape not recognised by Malaysian Law". 2022.

<https://www.thesundaily.my/local/male-rape-not-recognised-by-malaysian-law-XG9008264>

²⁴ Janet Ann Fernandez, Faculty of Education, University of Malaya. "Rape is Rape". 2019. p 8.

²⁵ Male Rapes – Some Myths, Statistics, True Incidents and Legal Insight – Legal Drift. (2022). Retrieved 17 June 2022, from

<http://www.legaldrift.com/male-rapes-some-myths-statistics-true-incidents-and-legal-insight/>

²⁶ Koesnadi. 1992. "Seksualitas dan Alat Kontrasepsi". Surabaya: Usaha Nasional.

²⁷ Male Rapes – Some Myths, Statistics, True Incidents and Legal Insight – Legal Drift. (2022). Retrieved 17 June 2022, from

<http://www.legaldrift.com/male-rapes-some-myths-statistics-true-incidents-and-legal-insight/>.

²⁸ Weare, S. (2018). 'Oh you're a guy, how could you be raped by a woman, that makes no sense': Towards a case for legally recognising and labelling 'forced-to-penetrate' cases as rape. *International Journal of Law in Context*, 14(1), 110-131. doi:10.1017/S1744552317000179.

²⁹ Bhugra, D. (2008). Male Rape. *BMJ*, 336(7649), 290-292. doi: 10.1136/bmj.39469.463252.80

³⁰ Davies, M. (2002). *Male Rape: Breaking the Silence on the Last Taboo*. Jessica Kingsley Publishers.

³¹ Mohamad Ismail Hj Mohd Yunus. (2000). Gender reassignment: A legal perspective on rape. *Malayan Law Journal*, 4.

³² Cawangan Dokumentasi Parlimen Malaysia. (2001). *Penyata rasmi parlimen dewan rakyat:Parlimen kesepuluh penggal ketiga mesyuarat kedua*. Retrieved 23rd May 2015 from <http://www.parlimen.gov.my/hansard-dewan-rakyat.html?uweb=dr&arkib=yes>

³³ *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan Anor* [1996] 1 MLJ 216

REFERENCES

BBC. 2022. Man accused of spiking denies sex assault in Middle Barton. Retrieved on 23 June 2022 from

- <https://www.bbc.com/news/uk-england-oxfordshire-61916834>.
- Cases as rape. *International Journal of Law in Context*, 14(1), 110-131. doi:10.1017/S1744552317000179.
- C. Schwobel-Patel. 2015. Nils Christie's 'Ideal Victim' applied: From Lions to Swarms. Retrieved on 1 June 2022 from <https://criticallegalthinking.com/2015/08/05/nils-christies-ideal-victim-applied-from-lions-to-swarms/>.
- Cawangan Dokumentasi Parlimen Malaysia. 2001. Penyata rasmi parlimen dewan rakyat:Parlimen kesepuluh penggal ketiga mesyuarat kedua. Retrieved 23rd May 2015 from <http://www.parlimen.gov.my/hansard-dewan-rakyat.html?uweb=dr&arkib=yes>
- F Government, U. S. 2014. Rape. FBI. Retrieved 2022, from <https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/violent-crime/rape#:~:text=The%20revised%20UCR%20definition%20of,rape%20and%20incest%20are%20excluded>
- Fagan, A. (n.d.). Why aren't male victims of sexual abuse speaking out? *Psychology Today*. Retrieved 2022, from <https://www.psychologytoday.com/intl/blog/media-spotlight/202004/why-arent-male-victims-sexual-abuse-speaking-out>
- Federal Constitution, Malaysia
- Heilpern, D.M, 1998. *Fear or Favour: Sexual Assault of Young Prisoners*. Lismore, Southern University Press. <https://livingwell.org.au/information/unhelpful-myths-about-the-sexual-assault-and-rape-of-men/>
- Janet Ann Fernandez, Faculty of Education, University of Malaya. "Rape is Rape". 2019. p 8.
- Kassing, L. R., Beesley, D., & Frey, L. L. 2005. Gender role conflict, homophobia, age, and education as predictors of male rape myth acceptance. *Journal of Mental Health Counseling*, 27(4), 311–328. Retrieved on 1 June 2022 from <https://doi.org/10.17744/mehc.27.4.9wfm24f52kqgav37>.
- Male Rapes – Some Myths, Statistics, True Incidents and Legal Insight – Legal Drift. 2022. Retrieved 17 June 2022, from <http://www.legaldrift.com/male-rapes-some-myths-statistics-true-incidents-and-legal-insight/>
- Male rape case may be China's first. (2022). Retrieved 17 June 2022, from https://www.upi.com/Top_News/World-News/2011/01/05/Male-rape-case-may-be-Chinas-first/12021294258161/?u3L=1#ixzz2zU3BLwLW
- M. Mordi, 2019. Why Rape Victims Don't Speak Out. *The Guardian Newspaper*. Retrieved on 1 June 2022 from <https://guardian.ng/features/why-rape-victims-dont-speak-out/>
- Mohamad Ismail Hj Mohd Yunus. 2000. Gender reassignment: A legal perspective on rape. *Malayan Law Journal*, 4.
- Penal Code, Malaysia
- Rachel E. Morgan, Ph.D., and Alexandra Thompson, BJS Statisticians National Crime Victimization Survey: Criminal Victimization Statistics. 2020, <https://bjs.ojp.gov/library/publications/criminal-victimization-2020-supplemental-statistical-tables>.

Shivani Supramani. "Male rape not recognised by Malaysian Law". 2022. <https://www.thesundaily.my/local/male-rape-not-recognised-by-malaysian-law-XG9008264>

The United States Department of Justice Archives. 2012. Updated Definition of Rape. Retrieved on 1 June 2022 from <https://www.justice.gov/archives/opa/blog/updated-definition-rape>.

Weare, S. 2018. 'Oh you're a guy, how could you be raped by a woman, that makes nosense': Towards a case for legally recognising and labelling 'forced-to-penetrate'

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