A LEGAL REVIEW OF UPPER COURT RULINGS ON STATUTORY RAPE IN MALAYSIA

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ABSTRACT

In Malaysia, statutory rape is an offense which application can be confusing, not just to the public but within the legal fraternity too. Statutory rape cases refer to sexual relations involving individuals under the legal age of consent specifically sixteen, where the law considers the consent to be invalid even if given voluntarily. The law being a common wealth inheritance, has little to do with shariah law which is a must for the Muslims in Malaysia. The origin and purpose it was legislated for, are foreign to Malaysians too. This paper attempts to review some upper court decisions in cases involving statutory rape in Malaysia. Analysis involves Federal court to Court of Appeal cases ranging from 1966 to 2015. Varying judgments have been decided when dealing with perpetrators of statutory rape cases ranging from mild to hard punishments. This paper looks into how the development of the law has changed according to time. The determining factors shaping the development in these countries are unique and varies depending the religious and societal forces at work. This paper uses qualitative research approach with doctrinal legal research. This study will provide a deeper understanding of the statutory rape law in Malaysia. It is expected to give an impact to the Malaysian legal system specifically the legislators, judiciary and the lawyers. This will in turn contribute to well-being of the society as a whole, especially the female minors under 16 years old (teenage girls).

Keywords: *Statutory rape, upper court decisions, female minors under 16 years old*

INTRODUCTION

According to data in the Department of Statistics (DOSM) annual crime statistics report, there were 3,102 sexual crime cases reported in Malaysia in 2020, increasing steadily to 3,179 cases in 2021 and 3,303 cases in 2022. About half of these crimes were committed against those under the age of 18, but the proportion of minor victims was higher when it came to more serious offences such as rape (85.6 per cent in 2022) and incest (89 per cent in 2022). In other words, there were 8.7 sexual crimes reported in Malaysia every day, with 4.1 of them being rape or incest cases committed against children. Statutory rape is one of the sexual crimes against children.

In 2023, The Malay mail reported that the Children's Statistics, Malaysia, showed that in 2022, 3,013 cases of minors were involved in criminal activities, with a simultaneous increase of 9.5 percent in sexual offences involving children during the same period. The exact breakdown of these sexual offences is not stated, but statutory rape is certainly one of them. Of this figure, 73.5 percent of children in need of care and protection are Bumiputera, with a significant number surpassing other ethnic group. The majority of Bumiputera in Malaysia are Malays who are Muslims. Therefore, this means that this demographic of children is highly vulnerable to serious criminal involvement.

PROBLEM STATEMENT

Section 376(2) of the Penal code has meted out heavy punishments for statutory rape offences but upper court decisions on these cases differs. Some are harsh and some are lighter. What are the factors leading to such difference? As a strict liability offence, statutory rape law is meant to protect and prevent exploitation of teenage girls under 16 years old. Nevertheless, statistics are showing that there are more and more statutory rape cases committed with or without consent towards and amongst teenagers under sixteen indicating the problem still persists.

RESEARCH OBJECTIVE

The objective of this paper is to examine the factors leading to the decisions made by the upper court judges in statutory rape cases.

METHODOLOGY

This paper uses qualitative research approach with doctrinal legal research due to the nature of the research. The types of approach utilised is descriptive and analytical. Data will be obtained from primary, secondary and tertiary sources of information.

BACKGROUND

A look at how Malaysian upper courts came into judgments is necessary because judges interpret the law passed by legislators and settle disputes in society after the accused is tried accordingly. Judges are deemed to be the gatekeepers of morality, civilisation and peace in a society. Cases of statutory rape will be heard in session court first because of jurisdictional matter. This study will only look at mostly cases appealed to Court of Appeal and Federal Court. According to doctrine of binding legal precedent (stare decisis), cases from these upper courts will bind decisions in the lower courts with Federal Court case being the highest of them all.

Statutory rape is a strict liability offence under section 375(g) of Malaysian Penal code, punishable with section 376(2) of the same act. As such, it is a serious offence. Actually, the word 'statutory rape' does not appear in the act at all. It is a term coined to reflect the nature of the offence. In this offence, the victim must be a minor/child of 16 years old and below. However, the offence is not gender neutral.

Below is the offence section in the Penal Code:

> *"Section 375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:*
>
> *(f)* ***with or without her consent****, when she is* ***under sixteen years of age*** (emphasis added)***."***

The convict of this offence is punishable with imprisonment for a term of not less than ten years and not more than thirty years and shall also be punished with whipping. Punishment for statutory rape differs depending on the age. If she is under 16 years old, the sexual intercourse must be done without her consent. In contrast, if the girl is under 14 years old, the statutory rape is punishable regardless of her consent.

Subsequently, the punishment section in the Penal Code:

> *"Section 376. Punishment for rape*
> *(2) Whoever commits rape on a woman under any of the following circumstances:*
> *(d)* ***without her consent****, when she is* ***under sixteen years of age****;*
> *(e)* ***with or without her consent****, when she is* ***under twelve years of age****;*
> *shall be punished with* ***imprisonment for a term of not less than ten years and not more than thirty years*** *and* ***shall also be punished with whipping*** (emphasis added)."

The statutory rape law has gone through some changes throughout the years. Malaysian parliament had amended provisions relating to age of the victim and punishments. Before 1989, the punishment in section 376 of the Penal Code allocated *"…imprisonment for a term which may extend to twenty years and shall also be liable to fine, or whipping."* Factors influencing the sentence would be whether force or violence were used and the consequential effects on the victim. Case on point would be Brabakaran v. Public Prosecutor [1966] 1 MLJ 64 and Ch'ng Lian Eng v. Public Prosecutor (1983) 1 MLJ 424.

After the 1989 amendment, the punishment was amended to set a minimum "*…term of not less than 5 years and not more than twenty years and shall be liable to whipping."* This amendment takes away the discretionary power of the court by fixing a minimum sentence of not less than 5 years imprisonment.

Currently, the punishment in section 376(2) of Penal Code has been amended in 2016 to set a minimum of "*…****imprisonment for a term of not less than ten years and not more than thirty years*** *and* ***shall also be punished with whipping*** (emphasis added).

To apply the section, statutory rape victims must be divided into two age categories:

1. Below sixteen (16) years of age (without her consent) [section 376(2)(d)]
2. Below twelve (12) years of age (with or without her consent) [section 376(2)(e)]

As such in cases involving consensual statutory rape now, punishment in section 376(2) shall not be applicable for a girl within age gap of between sixteen and twelve. This is due to the fact that section 376(2)(d) specifically stated the word 'without her consent'. By contrast, in section 376(2)(e) the words 'with or without her consent' were clearly spelled out.

UPPER COURT CASES RELATING TO STATUTORY CASES IN MALAYSIA

Not many statutory rape cases were appealed to Court of Appeal, least to Federal Court. Below are some of the cases analysed:

A) Cases with more lenient punishments.

1) PUBLIC PROSECUTOR V ARFAH BIN JASMIN [2007] MLJU 500 HC

In this case, it is noteworthy to observe that the honourable Haji Hamid Sultan Bin Abu Backer, JC (as he was then) stated in his obiter dicta that consensual statutory rape is a misnomer which does not carry the characteristic of a rape at all. Though statutory rape is condemned by law and unaccepted by society and religion, the judge further emphasised that:

> *"Statutory rape must be seen to be more of a social problem and must be addressed through religious and/or moral education by parents and authorities. Imprisonment of offenders will only add to further social problems* (emphasis added)*."*

As such, the learned judge disagreed with the approach taken by the learned Sessions Court judge when passing sentence for this offence as a form of deterrent to our society. The learned judge was not convinced that statutory rape issues can be solved by using law.

2) BRABAKARAN V PP (1966)1 MLJ 64 FC

This is the only statutory rape case that went to Federal Court so far. In this case, the Federal Court lowered the sentence from 3 years imprisonment to 18 months' imprisonment. It was established in the High Court that the victim had consented to the statutory rape. As such the Federal Court lowered the sentence based on 3 factors;

1. the victim was nearing the age of legal consent to sexual intercourse,
2. she did not suffer any psychological after effects, and
3. her future prospect of marriage is undamaged because she and her family can move to another place.

Similarly, in cases of *Nor Afrizal bin Azizan v PP [2012] 6 MLJ 171 CA (Putrajaya), Mohd Salleh bin Mk Mohd Yusof v Public Prosecutor [2005] 4 MLJ 733 CA* and *Public Prosecutor v Mohammad Arfah bin Jasmin [2007] MLJU 500 HC*, the courts concurred with the convictions yet allowed the appeal respectively and lowered the punishments.

3) NOR AFRIZAL BIN AZIZAN V PP [2012] 6 MLJ 171

In this case, the Court of Appeal at Putrajaya concurred and reinstated the decision made by the Session Court judge. The charge was made in section 375 of the Penal Code at the Session court. However, the learned Session Court judge applied section 294 of the Criminal Procedure Code (CPC) in sentencing the accused which has the effect of derogating the sentence to a lighter punishment. The ratio decidendi used were that:

1. The appellant was a first offender, had pleaded guilty and was extremely remorseful of what he had done,
2. in the name of public interest (since the appellant was a national athlete, it may serve the public better if the appellant is not imprisoned),
3. it was a consensual intercourse,
4. that he was a youthful offender (19 years old at the time of the offence) and
5. that it was a registrable offence which means it will stay permanently in his record.

The Court of Appeal also emphasised that *"…decisions in cases as such should be decided as per facts and may differ from a set of a facts to another".* As such, effect of this stand is that there should not be any uniformity or a set standard to adhere to in passing judgment relating to statutory rape cases in Malaysia.

In this case, the Court of Appeal reaffirmed again that punishment in this statutory rape case should not be meant for deterrent purpose. In fact, the court stated that they will better serve public interest if the sentence is lighter. YAA Tan Sri Dato' Seri Md Raus Sharif, the then President Court of Appeal (delivering judgment of the court) accentuated that:

> *"Decisions in cases as such should be decided as per facts and may differ from a set of a facts to another* (emphasis added)*."*

Therefore, the Court of Appeal reinstated punishment to consensual sexual intercourse between the 19 years old young man and the 13 years 4 months girl from 5 years imprisonment (as per section 376 of PC) to 5 years bond of good behaviour under section 294 of Criminal Procedure Code (CPC). The Court of Appeal concurred with decision made by the first instance court, Sessions Court to utilise section 294 of the CPC based on the above stated reasons.

B) **Cases with heavier punishments**.

Only in these following two cases, the appellate courts maintained heavier punishments to the convicted person namely *Peilis bin Sami v PP [2012] MLJU 1757 CA (Kota Kinabalu)* and *Nelson a/l Gnanaregasam v PP [2009] 6 MLJ 622 CA.*

1) PEILIS BIN SAMI V PP [2012] MLJU 1757 CA (KOTA KINABALU)

In this case, the appellant was 25 years of age; whilst the complainant was 15 years and four months at the time the offence took place. Both were in a relationship. One day, they went out together after attending a friend's birthday party. The offence took place twice in the same night. The complainant later spent the night at the appellant's place. The complainant's parents searched for her. They were finally reunited with her after the appellant brought her back to Beauford Railway Station.

On appeal, the appellant put forward mitigations as follows:

(a) that both he and the complainant were lovers, and that the sexual acts were consensual;

(b) that the complainant at the time of the commission of the offences was almost 16; and

(c) that the complainant has had sexual experiences with other men previously.

The Court of Appeal refused to consider the mitigations due to the wide age gap difference between the appellant and the complainant. In fact, the court was more inclined to conclude that the appellant took advantage of the complainant who was still very young by *"...reason of her young age and her waywardness, and her close relationship with the appellant*" (emphasis added).

In fact, the allegation that the complainant has had previous sexual relationship with other men, made the court decided that the appellant was not being remorseful of his act. As such, in this case, punishment under section 376 of Penal Code was maintained even though the sexual intercourse act was consensual. The court was adamant to use the punishment as a deterrent effect for the public.

The Court of Appeal affirmed the punishments imposed by the Sessions Court of four (4) years' imprisonment for offence attempted rape and eleven 11 years imprisonment for each of the rape charges. All the three sentences were ordered to run consecutively.

2) NELSON A/L GNANAREGASAM V PP [2009] 6 MLJ 622 CA

In this case, the appellant was charged for raping a girl aged 14 years and four months old, an offence punishable under section 376 of the Penal Code. The sessions court judge convicted the appellant and sentenced him to 12 years imprisonment and five strokes of whipping. This appeal was against the decision of the High Court judge who affirmed the Sessions Court judge's decision.

Four issues were raised by the appellant in this case:

1. Firstly, the appellant had disputed the credibility of the complainant in that the complainant was alleged to have given evidence contrary to the question as to whether she was raped.

2. Secondly, the appellant disputed the decision of the alleged facts in relation to the appellant on the ground that the Sessions Court had accepted the evidence which allegedly did not corroborate the complainant's allegation that she was raped by the appellant. The court accepted the supporting evidence obtained from the semen found on the mattress in which a DNA test was conducted of the said semen that matched the DNA profile obtained from the blood specimen of the appellant. The appellant disputed the conduct of the police in obtaining the exhibit and also the chemist's opinion.

3. Thirdly, the appellant submitted that the Sessions Court judge had misdirected himself in not applying the correct principle as in the case of Mohamad Radhi bin Yaakob v Public Prosecutor [1991] 3 MLJ 196. According to the appellant, no reason was given as to why the appellant's version was not credible and did not raise any reasonable doubt.

4. Fourthly, the appellant complained that the sentence imposed was too excessive on the ground that there may be an element of consent.

The appeal dismissed. The sentence was maintained with 12 years' imprisonment and five strokes of whipping.

The Court of Appeal observed that parliament had taken action to enhance a maximum sentence which could be imposed for statutory rape offences. The sentence had also reflected the gravity of the offence which involved public interest as naive women and teenagers could be exploited. In this appeal the damning act was committed by her own neighbour. In this case, the victim is naïve due to the fact that her intelligence is a bit low and that she was still a minor. The Court of Appeal emphasised that the issue of consent was irrelevant in statutory rape cases under the Penal Code. As such the Court of Appeal deem public interest must be protected by giving a maximum sentence to reflect the seriousness of the offence.

3) MOHD SALLEH BIN MK MOHD YUSOF V PUBLIC PROSECUTOR [2005] 4 MLJ 733 CA

Here, the appellant was convicted by the Sessions court for two offences of raping two under-age women and was sentenced to imprisonment of five years and a half for each offence, the terms to run concurrently. The offence was punishable with imprisonment of not less than five years and not more than 20 and was also punishable with whipping as per section 376(2) at that time. The appellant appealed to the High Court against conviction and sentence. The Public Prosecutor also appealed against the sentence, deeming it inadequate. The appellant's appeal to the High Court was dismissed and the Public Prosecutor's appeal was

allowed and the sentence was enhanced to ten years' imprisonment and three strokes of whipping for each offence, the terms of imprisonment to run consecutively.

The appellant appealed to the Court of Appeal against the decision of the High Court. As regards conviction, the appellant raised only one issue, which was proof of the age of the two women (N and F) at the date of the alleged offences, that is, there was no proof of the age of the women were under 16. It was the appellant's contention that the prosecution had sought to prove the age of the two women by means of a photocopy of birth certificate and a photocopy of identity card, but the photocopies were not admissible as certified true copies under section 76 of the Evidence Act 1950 ('the Act').

The appellant met the girls at Pekan Rabu and pretended to be a film producer and later as a bomoh. The girls and another lady friend aged 22 years old agreed to follow him to Batu Hampar for a picnic. The offences were committed there. He was 'curing' them of 'sial' or bad luck using lime they bought on the way there and then committed the offences with them consecutively. These offenses were reported to 2 policemen on duty by a bystander who watched the incidences. The policemen apprehended the appellant at the crime scene.

Nevertheless, it was established too that the two women (N and F) were of loose characters. It was normal for them to sleep at friends' house and "bersiar-siar' whenever they felt like doing so. In fact, right after the incident, they went on to have consensual sexual intercourses outside wedlock elsewhere with two other men they just met afterwards at a narrow lane in Batu Hampar. Later, they made a police report against these men. They ended marrying these two men instead.

The court in this case dismissed the appeal on conviction. Nevertheless, appeal on sentence allowed. Accordingly, the Court of Appeal affirmed those sentences imposed by the Sessions Court, namely five and a half years for each offence, consecutively.

The ratio decidendi in the case are as follows:

1. The Court of Appeal regard the admissibility of F's identity card as proof of her age, due to the fact that it was not an issue in the courts below, as such not an issue before the Court of Appeal.

2. Age is not an aggravating factor in this case. For the sexual intercourse to constitute the crime of rape it was necessary in the first place that the women be under 16. If they had been 16, it would not have been an offence at all. The women in this case were not far from 16. Age would have been an aggravating factor for sentencing if the girls had been, say, 10 years old.

3. The public interest in curbing the rampancy of a crime must be weighed against the equally important public interest in having sentences meted out that fit the circumstances of the crime. Where the court is given the power to pass a sentence within a prescribed range, the court, while taking note of public clamour, must not allow itself to be carried away by it into forgetting the importance of weighing the penalty to be imposed against the circumstances of the offence.

The Courts concluded that there is evidence that points to the probability that the two girls knew that sexual intercourse was not part of the treatment. It was also established that they were girls of loose character who went on to have sexual intercourse outside wedlock with other men too. But since they were under 16 years old, consent was not an issue and punishments were meted against the male offenders only.

It is important to note in this case that the two girls were having casual sexual intercourse with three men within a short span of time. The first man, the appellant, was charged in court after he was reported by a bystander who witnessed the crime. However, right after that the two girls went to have sex with two other men they just met and later made police reports against the men, crying out statutory rape.

The Court of Appeal affirmed the sentences imposed by the sessions court, namely five and a half years for each offence, consecutively.

BUNYA AK JALONG V PP [2015] 5 MLJ 72 CA (KUCHING)

This case is different. In this case, the Court of Appeal stressed that the scope of rape definition must be widen to include non-penetrable sex. In this case, a report of statutory rape was made after a girl under 15 years of age gave birth to a baby. The appellant was the biological father of the baby through DNA test. It was also proven that the conception had occurred without penetration, where the semen was inserted into the vagina using a finger. The Court of Appeal allowed the appellant's appeal and set aside the conviction because the definition of rape in the Penal Code requires penetration.

This case also highlighted a weakness in Malaysian law which did not cover sexual acts without penetration even if they resulted in pregnancy. The Court of Appeal recommended that the law should be amended to include such acts.

In 2017, an amendment pertaining this issue was legislated through shoulder note Am. Act A1536: section 9, in section 377 of the Penal Code, the parliament had included this sexual act in the definition 'rape' as follows:

Unnatural Offences

Section 377. Sexual connection by object, etc.

Any person who has sexual connection with another person by the introduction of any object or any part of the body, except the penis into the vagina or anus of the other person without the other person's consent shall be punished with imprisonment for a term of not less than five years and not more than thirty years and shall also be liable to whipping (emphasis added).

As such, the parliament has responded quite swiftly to the recommendation made by the Court of Appeal and widened the definition of rape to include non-penetrable sexual intercourse as well.

DISCUSSIONS

The main purpose as to why this strict liability offense was created was to protect and to prevent exploitation of teenage girls under 16 years old on the pretext that they are still young and easily exploited by men. A study has shown that teenagers in Malaysia have only basic understanding of the law relating statutory rape. Often, they are not able to tell the difference between ordinary and statutory rape. Some cases above show that sometimes the offenders are also teenagers. Alas, a strict liability connotes a strict application of the law (especially if the teenage girl is under 12 years old) regardless of the age of the offenders.

The court seems to punish the offenders severely according to section 376 of the Penal Code when the offender's age is much older than the victim. Conversely, the cases above seems to suggest that in situations involving teenagers, the courts gave leeway to the first-time offenders who have shown remorse. The fact that they were consensual sexual intercourse played vital reason for such decisions as well. Instead, they applied section 294 of the Criminal Procedure Code Act 593 (CPC) to mete lesser punishment to the young offenders.

Hence, is application of section 294 of CPC instead of section 376 of PC permissible in statutory rape cases? Does this contradict the essence of the strict liability offense itself as legislated? Below is Section 294 of the CPC:

Criminal Procedure Code

Part VI PROCEEDINGS IN PROSECUTIONS

Chapter XXVII SENTENCES AND THE CARRYING OUT OF IT

Section 294. First offenders

(1) When any person has been convicted of any offence before any Court if it appears to the Court that regard being had to the character, antecedents, age, health or mental condition of the offender or to the trivial nature of the offence or to any extenuating circumstances under which the offence was committed it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties and during such period as the Court may direct to appear and receive judgment if and when called upon and in the meantime to keep the peace and be of good behaviour.

...

(6) ***This section shall not apply****—*

(a) ***if the offender is charged with a serious offence;*** *or...* (emphasis added).

Ibrahim, M. D. in his thesis argued that section 294 of the CPC cannot be used for serious offences such as statutory rape.

In the first instance case of *Nor Afrizal bin Azizan v PP*, the learned Session Court was of the opinion that the requirements in section 294 (1) of CPC have been fulfilled. The Court of Appeal went on in their ratio decidendi that the appellant had fulfilled the requirements of section 294 (1) as stated above. Nevertheless, in this case, there was no mention nor deliberation on the subsequent section 294 (6)(a) which expressly and adamantly exclude the applicability of serious offences from this section.

As such the next issue to consider is whether 'statutory rape' falls under the category of 'serious' offences. Fisher, (2011) concluded that seriousness of an offense can be evaluated in various ways. Parliament and society may use different methods in deciding this. Warr's model of offence seriousness can also be used to decide whether an offense is 'serious' (Akdeniz, 2020). It is truly a philosophical question requiring 'intriguing justification' in a modern society (Burnside, 2000). Malaysian legislators have numerously debated in the Parliament that statutory rape is a serious crime (Hansard, 2024).

On the other hand, YAA Tan Sri Dato' Seri Md Raus Sharif, the then President Court of Appeal when delivering judgment in the case of Nor Afrizal bin Azizan v PP [2012] 6 MLJ 171 CA deduced that "Decisions in (statutory rape) cases as such should be decided as per facts and may differ from a set of a facts to another." The honourable judge was of the opinion that this matter must fall under the discretionary power of the court according to the unique set of facts involved. Different facts may require and lead to different repercussion.

After the case of Nor Afrizal, debates entail as to whether section 294(1) of CPC should be used in statutory rape cases. The argument entailed was that this is a serious offence. Therefore, section 294(6) of CPC, which is exemption to the general section on punishment for first offenders should be applicable. In other words, leniency should not be allowed even for first time offenders since statutory rape is a serious offence.

On 7th November 2012, the government announced that they will push for a law to make imprisonment mandatory for first time statutory rape offenders. This move is meant to effectively take away discretionary power of the court to rule otherwise. The then minister in Prime Minister's office (Datuk Seri Nazri Abdul Aziz) further reinstated that section 294 of the CPC shall not be applicable anymore in these cases.

Joint Action Group for Gender Equity (JAG) submitted a petition to ask the government to reconsider the decision. Professor Emeritus Dr Shad S Faruqi, going on similar stand, was also of the opinion that "Sentencing is a judicial function. (*As such,)* Judges must be given the discretion to tailor the sentence to the gravity of the offence" (emphasis added). (Lisa Goh, 2012)

Nevertheless, the more lenient arguments seem to contradict with very soul of the statutory provision which leans towards punishing the strict liability offenders in order to protect teenage girls under 16 years old. It was originally designed to act as preventive and punitive sentence in statutory rape cases. In the end, the debated section 376 of Penal Code was not amended. Discretionary power of the judiciary was upheld.

Reviewing the cases above, it seems to be that there is no exact pattern as to how heavy statutory rape offenders should be punished. So far, it seems that when the age gap between the offender and the victim is wider, the more likely punishment will be heavier. Similar age gap usually indicates consensual statutory rape between two lovers.

In the United States of America, this situation is termed as Romeo and Juliet law. Similar debates occurred there too though the reasons are different (Van Roost et al, 2022). There, initially it was about religious consideration but afterwards it changed to issues of financial burden of the government and tax payers to provide for the welfare of the young single mother and child.

For the Muslims in Malaysia, we have two legal system running concurrently, namely the civil/federal law and shariah law. As can be seen in the cases above, none of them commented thoroughly on the shariah law part. Perhaps this is due to the fact that both disciplines are different in nature and application. Accordingly, in shariah law, rape is sexual intercourse with force and without consent. It is a serious crime.

However, consensual intercourse including statutory rape is zina regardless of age. The issue of consent entailed detailed elaboration and specifications accordingly. Zina is also a serious crime under Shariah criminal law. Shariah law takes great preventive and deterrent measures to prevent and deal with zina to protect the children since even before they were born. It has a great bearing on nasab or lineage of a family. In Shariah law lineage of a family as one of the basic structures in a Muslim family is vital (Mohadi, 2023).

CONCLUSION

This issue is far from being resolved. There are more and more statutory rape cases being reported each year. This may be just the tip of the iceberg due to the fact that more cases may go unreported. Further problems like child marriages and teenage mothers dropping out from school will ensue this offence too. We need to find viable and effective solutions to this issue. There seems to be different approaches taken by civil/federal and shariah law in dealing with the issue. Perhaps, we can shed more light unto it by doing further researches by looking at this issue from both civil/federal and shariah law in Malaysia? Further researches must also be done to study the development of statutory rape law in the United Kingdom and the United States of America.

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