

Reforming Gendered Rape Definitions: A Comparative Doctrinal Analysis of Malaysia's Penal Code and Canada's Sexual Assault Framework

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ABSTRACT

This paper examines the doctrinal limitations of Section 375 of the Malaysian Penal Code, which adopts a gender-specific definition of rape that effectively confines principal liability to male offenders and restricts the offence to penile–vaginal penetration. This statutory structure creates significant prosecutorial gaps where female sexual offenders are involved and may result in unequal legal protection for victims, including male victims. These concerns raise broader constitutional implications under Article 8 of the Federal Constitution and compliance considerations in light of Malaysia's international obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Using a doctrinal comparative approach, the study contrasts Malaysia's rape framework with Canada's gender-neutral sexual assault model under Section 271 of the Canadian Criminal Code, as enacted through amendments introduced by Bill C-127 in 1983. The Canadian framework criminalises non-consensual sexual touching regardless of gender and centres liability on consent rather than anatomy, reinforced through consent-centred judicial interpretation and protective procedural mechanisms. The comparative findings suggest that Malaysia's current approach may be difficult to reconcile with purposive equality reasoning and contemporary expectations of comprehensive legal protection against sexual violence. This paper accordingly proposes reform of Section 375 towards a gender-neutral model, drawing on Canada's consent-based framework to strengthen accountability, enhance victim protection, and promote doctrinal coherence.

Keywords: Rape law; sexual assault; gender neutrality; Penal Code s. 375; Criminal Code s. 271

INTRODUCTION

Several jurisdictions still conceptualise sexual violence in a gendered paradigm, where a male is the perpetrator and a female is the victim. Such a traditional conception has an impact on statutory creation, prosecution, and social attitudes towards sexual violence. This gendered framing is entrenched in the Penal Code of Section 375 in Malaysia, which determines rape in a manner that only acknowledges the man as the perpetrator and the woman as the victim. What it means is that female offenders will not be chargeable with rape, despite how heinous the act is, and the prosecutor will have to look at other crimes like outraging modesty, harm-related crimes, or being a party to the crime. The effect of this is the inconsistency of doctrines and dissimilar punishment.

In comparison, Canada uses a model that is gender-neutral and includes sexual assault in Section 271 of the Criminal Code, which does not specify the gender identity of either the perpetrator or the victim of the crime. Liability is dependent on whether there is consent or not, as opposed to anatomy. The split between Malaysia and Canada creates serious concerns connected with equality before the law, protection of victims,

appropriateness of the doctrines, and the possibility of the gender-specific definitions of rape being justified in modern law practice. The present research, thus, analyses similarities in the legal treatment of female-perpetrated sexual violence in the Malaysian law and Canadian law in terms of statutory framework, judicial interpretation, prosecutorial limitation, and constitutional and human law implications at large.

Section 375 of the Malaysian Penal Code puts in place severe conceptual and practical limitations when it grants the idea of rape as being limited to penile-vaginal penetration by a man perpetrator. The immediate effect is the exclusion of women from the principal liability in rape, even where their actions are similar to rape in non-gender-neutral structures. This generates some legal and social problems.

Firstly, the legal framework causes juridical incoherence in the prosecution since women cannot be charged as principal offenders, requiring them to lean on other alternative provisions that are not commensurate to the severity of rape and can undermine the principle of proportionality in the sentencing results. Second, the framework establishes soft assurances of protection of victims, especially in the case of male victims and those who are the victims of female offenders, whose experience is not legally defined as rape. Third, the statutory use of gender language strengthens the stereotypes that women cannot commit severe cases of sexual violence, which influences policing, reporting, prosecution, and judicial reactions. Lastly, Malaysia runs the risk of comparative disadvantage in contemporary legal norms because elsewhere in the world, like Canada, gender-neutral models can offer coherence to doctrines and equal protection. All these reasons support the idea that the legal position of Malaysia should be reviewed in detail, and whether it is possible to adopt a more inclusive approach.

Four interrelated research questions inform this study, and they organise the comparative legal analysis of female sexual offending based on the rape and sexual assault framework of the Malaysian and Canadian legal systems. It first analyses how the statutory definition of rape in Chapter 375 of the Malaysian Penal Code excludes the ability to charge female offenders, especially where the offence is gender specific and the legal application of which would, by definition, limit the principal liability to male offenders only (Penal Code (Malaysia), s. 375). Second, it raises the question of whether Section 271 of the Canadian Criminal Code contains a gender-neutral structure that allows prosecuting female perpetrators based on the general principle that liability is determined mainly without permission and not a biological sex or gendered statutory presumption (Criminal Code (Canada), s. 271). Third, it assesses the vast disparities and implications between gender-specific and gender-neutral models, particularly relating to the definition of the law, the prosecution practicability, and the sentencing results, which directly inform the consistency of doctrines and the criminal justice response to sexual violence (Penal Code (Malaysia), s. 375; Criminal Code (Canada), s. 271). Fourth, it examines potential avenues to reform in Malaysia in a bid to add to the provisions of the law in terms of offering equal protection and meaningful victim protection to victims in the event of female sexual offending (Penal Code (Malaysia), s. 375).

Regarding these research questions, we have organised the goals of this article in terms of doctrinal evaluation and the relevance of reform. The initial goal is to study the statutory and judicial interpretation of the provision of the Penal Code, the interpretation of Section 375, as applied to the case of female offenders and, more precisely, the legal constraints imposed by the gender-specific formulation of it (Penal Code (Malaysia), s. 375). The second aim is to evaluate the sexual assault system in Canada according to the gender-neutral ability of Section 271 of the Criminal Code to acknowledge and prosecute the sexual offending behaviour irrespective of the gender of the perpetrator (Criminal Code (Canada), s. 271). The third goal is to establish the procedural and doctrinal gaps in the current strategy of Malaysia, especially where other offences are sought instead of the main provision of rape, and this may lead to the inappropriateness in the consistency and equality in the application of prosecution (Penal Code (Malaysia), s. 375). The last aim is to propose the changes in legislation to be consistent with the establishment of equality and the protection of the victims, according to the constitutional obligation to treat them equally in the law and the wider requirement of the criminal legislation to react to the sexual violence consistently by creating logical statutory frameworks (Federal Constitution (Malaysia), Art. 8; Penal Code (Malaysia), s. 375).

METHODOLOGY AND SCOPE

This paper uses a doctrinal approach to legal research based on intensive textual and interpretative study of legal statutes, existing case law and judicial legal commentaries. An approach that is defined as a doctrinal approach

has been selected because the central issue of concern in this study is not the prevalence or social attitudes measure, but the measure of the construction, interpretation and enforcement of rape and sexual assault on the criminal law. The paper hence considers the consistency and sufficiency of the applicable provisions, especially with respect to liability and protection of the victim in cases of female sexual offending (Penal Code (Act 574) (Malaysia), s. 375; Criminal Code, RSC 1985, c C-46 (Canada), s. 271).

The study is deliberately narrowed down to two major statutory provisions. In Malaysia, the case study is on Section 375 of the Penal Code and its prosecutorial variants in the broader framework of sexual offences. The paper takes into account the impact of the gender-specific formulation of the definition of rape on the outcomes of the doctrines and the possibility of the prosecution of the case, particularly where the female offender cannot be prosecuted as a principal perpetrator because of the statutory interpretation of the offence (Penal Code (Act 574) (Malaysia), s. 375). The section of the criminal code, Section 271, analysed in Canada gives it a comparative reference point since it offers a gender-neutral and consent-centred approach to sexual assault. The Canadian provision is analysed as a legal structure that can prosecute criminals regardless of their gender, which allows assessing the doctrinal coherence and legal inclusiveness on a comparative basis (Criminal Code, RSC 1985, c C-46 (Canada), s. 271).

The doctrinal analysis focuses on four key aspects, including legal definition and statutory design, prosecution mechanisms, sentencing structure, and the overall doctrinal implications that emanate as a result of each legal framework. Specifically, the paper will look at how statutory language and form have a role to play in the ability of the criminal justice system to identify some types of sexual violence as rape or sexual assault, and how that influences the uniformity of the legal castigation and responsibility results. The comparative reasoning is also applied to determine the gaps and strengths so that a more critical analysis of the Malaysian position can be made based on the Canadian approach.

The study, though, will give importance to societal realities insofar as they elucidate doctrinal implications or facilitate legal analysis. The study is intensely dogmatic and lacks empirical research approaches. Based on this, the research is not an interview, prevalence survey, or psychological profiling research, but rather a theoretical framework applied. It then aims at generating legally based findings and reform-based debate by a systematic interpretation of the statutes and comparative legal analysis.

LITERATURE REVIEW

Malaysian doctrinal framework and gendered statutory structure

The sexual offence regime in Malaysia has stuck to a definition of gender-specific rape as provided in Section 375 of the Penal Code. Under this clause, rape is understood mainly in the form of penile vaginal penetration between a man and a woman, thus constructing the perpetrator as a man and the victim as a woman in terms of the law (Penal Code (Act 574) (Malaysia), s. 375). Such a doctrinal construction represents the historically acquired knowledge of rape law under the impact of colonial criminal law and lengthy heteronormative beliefs about sexual violence as an inherently male-driven and female-oriented crime. This statutory formulation has elicited criticism because it does not correspond with the current reality of sexual violence, especially the acknowledgement that sexual offending may not be limited only to the penile vaginal penetration paradigm and may involve women as perpetrators.

As early as the 1940s, the commentary on the doctrines in Malaysia has recognised the limited scope of Section 375, especially the legal definition of sexual intercourse in the context of rape. According to the medical legal commentary, Malaysian rape legislation focuses on vaginal penetration by the penis, regardless of its amount, which indicates the limited anatomical nature of the section and the problem of including other types of coercive sexual violation in the category of the rape offence (Nadesan & Omar, 2002). Likewise, legal commentary has criticised the restrictive framing as not capturing the full range of ways through which consent can be vitiated in favour of coercion, fear, deception, or incapacity or how non-consensual sexual violations can take place under means not captured in the statutory definition of rape (Malaysian Bar, 2003).

Because Section 375 prohibits rape on the part of male offenders only, there are sources of doctrinal and practical implications. Under Section 375, female offenders cannot be prosecuted as the main perpetrator even in a situation where the circumstantial facts imply actions that would constitute rape in a gender-neutral context. Instead, investigators can invoke any of the other options, including outraging modesty in Section 354, abetment in Section 109, or object-based sexual connection in Section 377CA (Penal Code (Act 574) (Malaysia), ss. 354, 377CA, 109). Such dependency on alternative offences fractures prosecutorial practice. It can lead to inconsistent sentencing results due to the lack of doctrinal seriousness and symbolic condemnation of rape that is applied to substitute offences. These gaps also produce an expressive damage: the law labels the violation as rape, which is a special moral and legal slur that cannot be applied even in cases where the violation is similar to rape in its nature.

Another doctrinal issue that was raised in the literature is the fact that gender-specific rape definitions restrict the acknowledgment of non-statutory or non-men victims such as male victims of sexual violence by females. In comparative criminal law scholarship, these exclusions are often linked to under-reporting, stigma and institutional unwillingness since victims might feel that the law does not acknowledge their victimisation as rape or does not provide the same amount of protection. Thus, there is an emerging trend in the literature to view statutory gender restrictions as not a matter of neutral drafting but as a form of structural restrictions affecting those outcomes of enforcement, as well as how sexual violence is perceived in society.

The Canadian gender-neutral framework and evolution through Bill C-127

Canada has been widely referred to as one of the most successful comparative jurisdictions that shifted the gender-specific rape offences to gender-neutral sexual assault paradigms. Bill C-127 succeeded in bringing about Canadian reforms as it substituted the traditional rape and indecent assault with a multi-tiered regime of sexual assault based on consent, coercion, and harm (Canada, 1983). The government assessment reports have pointed out that the reforms were aimed at modernising the sexual violence law, reducing gender bias, and dealing with the weaknesses of traditional rape law, where stereotypes on women and opposition affected the prosecution process as well as conviction (Department of Justice Canada, 1991).

One of the key post-reform regime doctrines of Canada is that the post-reform regime shifted towards the conceptual neo-liberalism, which is a shift out of the anatomy-based definitions and into a consent-based system. According to Section 271 of the Criminal Code, sexual assault is further defined in a way that it applies regardless of gender identity, such that one can be prosecuted for sexual violence due to non-consensual sexual touching and not due to penetration of certain parts of the body (Criminal Code, RSC 1985, c C-46 (Canada), s. 271). This neutrality of the genders has made it dogmatic to charge the women offenders in the same category of offence, which bridges the gap of accountability that is present in the jurisdictions that define rape based on gender.

The Canadian jurisprudence has been important in laying down the foundation of consent-based doctrine. The Supreme Court of Canada in *R v Ewanchuk* refused the concept of implied consent. It stated that consent has to be free and must be expressed positively, and that the courts should not depend on stereotypes and assumptions based on the conduct of the complainant (*R v Ewanchuk*, [1999] 1 SCR 330). This case has been hailed as having laid the foundation of re-evaluating how the courts conceptualise sexual autonomy, as well as making certain that the liability in the area of sexual assault is founded on legal principle and not social myths (LEAF, 1999). In *R v JA*, the Supreme Court added to the case by stating that the advance consent could not be effective where a complainant is unconscious, which supports the rule that the consent must be a continuous and contemporaneous agreement (*R v JA*, [2011] 2 SCR 440). All these cases bring a clear picture of how the doctrinal development of the Islamic world has come to form a coherent and rigorous consent framework that can cover various factual circumstances without gender exclusions.

Those who have studied Bill C-127 have also observed that the reform was informed by feminist criticism of the old rape law, which encompassed the fear that rape laws were too narrow, too penetration-oriented, and social stereotypes about so-called real rape and victim resistance (Hinch, 1988). This literature can be used to argue that the framework used in Canada not only has more inclusive procedures but is also more normatively robust in articulating gender equality, sexual autonomy and coherent accountability.

Comparative scholarship: doctrinal coherence, victim protection, and sentencing

The comparative literature is always keen to note that rape legislation that is based on a definition of penetration based on gender is likely to bring about doctrinal exclusion and division. An anatomy-based and gendered model is manifested in Malaysia through the dependence of Section 375. In Canada, it is a gender-neutral consent model, which conceptualises sexual violence generally and structurally on the sexual assault paradigm (Penal Code (Act 574) (Malaysia), s. 375; Criminal Code, RSC 1985, c C-46 (Canada), s. 271). This sectarianism has enormous consequences for legal consistency and the protection of victims. In an environment where a law confines rape to certain anatomical acts and male perpetrators, prosecution has to rely on the adjustment of facts to a limited definition or the replacement of charges. As a result, the doctrinal definition of sexual violence has been divided into multiple offences.

Another aspect that has been brought out in comparative scholarship is victim protection. The Canadian system, with its rape shield measures and updated evidentiary criteria, aims at minimising the effects of sexual history evidence and stereotypical thinking. These mechanisms formed a part of the larger reform package that was to increase the dignity of the victims and to improve their prosecution outcomes (Department of Justice Canada, 1991). Conversely, the regime of Malaysia does not offer similarly organised protective frameworks to its concept of core rape, and its treatment of female offending through substitute offences can also make access to a stable legal status of the victim more difficult.

Sentencing considerations further enhance the comparison. Section 718 of the Criminal Code of Canada (Under the Criminal Code, RSC 1985, c C-46 (Canada), s. 718) has not been gender differentiated in its Canadian sentencing principles, which focus on proportionality, denunciation, deterrence, and harm and vulnerability. Malaysia still, however, has retained procedurally-influenced sentencing differences, such as the lack of whipping of women under Section 289 of the Criminal Procedure Code. This can create inequality in the practice of sentencing, even in cases where the offence is similar (Criminal Procedure Code (Act 593) (Malaysia), s. 289). The literature thus indicates that statutory definitions, as well as sentencing systems, all influence the opportunity or otherwise of criminal law to attain doctrinal equality among classes of offenders.

Last, comparative critique includes research and data visibility. The gathering of empirical data and legal inquiry on sexual offending across gender lines is made straightforward by the contributions of the reforms used in Canada, resulting in a gender-neutral structure of offences. Gendered drafting in Malaysia is a cause of legal invisibility of female offending in rape statistics, which constrains scholarly research and policy formulation. According to the literature, when legal categories are unable to identify specific types of offending, structurally constrained data development and theoretical enrichment become impossible.

Theoretical Framework

The Descriptive Model of Female Sexual Offending (DMFSO) is a gender-informed account of the nature of the ways and reasons women perpetrate sexual crimes by tracing offence pathways and defining the most vital factors of vulnerability and offending relationships. The model was initially formulated to overcome a longstanding weakness in the structure of the sexual offending research: the propensity of theoretical models to form the male offending samples and then generalise them to female offending without appropriate adjustments (Gannon et al., 2008). The DMFSO thus comes in as an offence-process model, which clarifies how female sexual offending evolves and relates the background vulnerability and contextual stimuli to the planning or impulsiveness of the offence, and the responses to the offence in an integrated way (Gannon et al., 2008).

The most significant aspect of the DMFSO is that female sexual offending may be committed at the relational level, in the caregiving, rights, and intimate relations, when the relationships of trust and access are used to exploit vulnerable people. The model demonstrates that in this context, offending may be hidden or disclosure made difficult by the relationship structure around it, as the relationship structure can counteract suspicion and minimise disclosure (Gannon et al., 2008). The dimension is more specifically pertinent to legal analysis since stereotypical doctrinal conceptualisations of rape as male-perpetrated are likely to diminish the gravity, complexity, and factuality of the patterns of female offending. By showing that female sexual offending can take

place under recognisable routes as opposed to exceptional cases, the DMFSO renders the central thesis that rape and sexual assault legislation ought to be able to encompass offending behaviour regardless of gender.

The empirical studies that followed this further enhanced the DMFSO by re-investigating and perfecting offence styles of women who sexually offend. Gannon et al. (2014) discovered that female sexual offenders exhibit different styles of offences and reiterated that the pathways to offences are not the same as the traditional male-centred views of offenders. This is the perfect amount to argue that any legal framework that is based on the use of shallow stereotypes is possibly abusive to accountability in the sense that it does not embody patterns of offence that are already well understood in the criminological literature (Gannon et al., 2014). The DMFSO, in the context of the given study, thus serves as a conceptual foundation of the theoretical basis of the doctrinal criticism. When there is female offending in recognisable forms, the criminal law definitions that construct (structure-wise) such female offenders are not only incomplete but also outdated in theory and conceptually incongruent.

Cognitive-behavioural theory and cognitive distortions

An alternative approach is the cognitive-behavioural theory, which offers an explanation of how the maladaptive cognitions and distortions in thinking can help to maintain or justify the offending behaviour. Cognitive distortions in sexual offending literature are often regarded as the self-serving beliefs or interpretation systems whereby the offender is allowed to justify, minimise, deny, or normalise sexual damage (Ward & Keenan, 1999). These distortions can be the downplaying of victim suffering, the redefinition of coercion as love or victim compliance being seen as consent. These cognitive processes are important since they show how the accountability of the offenders cannot be deduced easily based on gender stereotypes. In a way, offending behaviour is conditioned by cognitive and behavioural processes that can act between the groups of offenders, including women.

Cognitive-behavioural theory contributes to the doctrinal argument in this study that gender-specific statutory definitions run a risk of eliminating offences that comprise apparent coercion and harm, mainly where the offender employs relational manipulation and rationalisation. Its potential application in Malaysian law is that a rape definition based on the anatomy approach, defined in Section 375, will be insufficient to address the instances of coercive and exploitative sexual behaviour involving female offenders, even though such offending could be underpinned by the very same cognitive distortion mechanisms identified in sexual offender theory. Therefore, cognitive-behavioural theory reinforces the doctrinal critique of the study by clarifying the reason why the invisibility of female lawbreakers in rape law is not a manifestation of nonexistence, but perhaps instead a consequence of the decisions made by law designers based on stereotypes (Penal Code (Act 574) (Malaysia), s. 375).

Conceptual framework linking theory to doctrinal reform

In order to bring the criminological theories into compliance with the doctrinal legal reasoning, the conceptual framework in this study works out three analytical elements. The first one is that of offence reality, which is the fact that female sexual offending has identifiable pathways and offence styles (DMFSO). The second element is the issue of legal recognition, i.e. whether the statutory framework allows for the prosecution of women offenders in the principal category of sexual violence offence. The third element is the issues of justice outcomes, such as equal responsibility of offenders, equal protection of victims, consistency in doctrine, and consistency in the principle of sentencing.

Within this theoretical framework, the rape law in Malaysia is placed as a regime that is less legalised because of the gender-based definition of rape, leading to fragmentation of doctrine, practice of substitution charging, and unequal symbolic denunciation (Penal Code (Act 574) (Malaysia), s. 375). Canada is instead placed as a more legally recognised system since it applies a gender-neutral interpretation of sexual assault under Section 271, which means accountability to all classes of offenders using a consent-centred doctrine (Criminal Code, RSC 1985, c C-46 (Canada), s. 271). In such a way, the conceptual framework justifies the direction of reform of the study, in which the reality of offences is empirically validated, and the legal status is structurally limited; therefore, doctrine reform is needed to provide consistent results on justice.

Overall, DMFSO and cognitive-behavioural theory have a strict theoretical basis to the doctrinal criticism that is presented in this article. They provoke gender stereotypes in the conventional definitions of rape, justify the use of female offending patterns, and affirm the comparative conclusion that a gender-neutral consent-based framework is more effective in meeting the goals of accountability and victim protection. This conceptual foundation helps make the article more convincing in terms of the rationale behind the reforms, as it demonstrates that the definition of gender-specific rape adopted in Malaysia is not only doctrinally restrictive but also does not align with established trends of sexual offending, which were defined in criminological literature (Gannon et al., 2008, 2014; Ward & Keenan, 1999).

Comparative Legal Analysis

Malaysia: Penal Code Section 375 and legal consequences

Section 375 refers to rape as the penile-vaginal penetration of a man into a woman. This definition does not impose the principal rape responsibility on the female offenders, no matter their character or the seriousness of their behaviour. The framework compromises Article 8 on equal protection since it deprives people who are the victims of female offenders of rape provisions. The gendered definition also creates stereotypes about the ability of women to be sexually aggressive, which leads to underreporting and a lack of recognition by the doctrines.

The gender exclusivity can also be subject to constitutional vulnerability when considered through the purposive treatment of Article 8 equality, as the case through the equality scrutiny perspective and judicial commentaries in cases like *PP v Khong Teng Khen* and *Sivarasa Rasiah*, and the additional applicability of the concept to substantive equality reasoning manifested in *Noorfadilla Ahmed Saikin*.

Malaysia: prosecutorial alternatives and doctrinal fragmentation

Section 375 is inapplicable to women, and therefore the prosecutor needs to seek other provisions like Section 109 (abetment), Section 354 (outraging modesty), and Section 377CA (sexual connection by object). Such provisions lack the doctrinal similarity to rape and can restrain the deterrence and symbolic denunciation. Fragmentation yields unfair results, undermines prosecutorial integrity, and does not allow the establishment of rape jurisprudence to deal with male coercion and consent to female offending.

Canada: Criminal Code 271 and inclusive prosecution

Section 271 is gender-neutral and broad in its definition of sexual assault. The structure criminalises non-consensual sexual touching regardless of gender in such a way that female felons can be charged under the same category of law offence. Canadian courts have established a developed jurisprudence of consent, which contains rigid conditions of voluntary consent. The legislative framework continues the uniformity of doctrine and makes it possible to apply rape shield laws and sex offender registration systems. Women criminals can thus be held responsible without evading the doctrines.

FINDINGS AND DISCUSSION

The comparative study indicates that the existing rape system in Malaysia is still doctrinally restrictive, and such restriction creates structural accountability loopholes in the context of female sexual offending. The main challenge is the legal definition of rape in Section 375 of the Penal Code, the construction of which assumes that rape is a gendered phenomenon, according to which the perpetrator must be a man and the victim must be a woman. Consequently, the criminal law does not simply introduce a slight restriction on the process of charging. Instead, it introduces a deeper exclusionary phenomenon where some manifestations of sexual violence are theoretically out of the conceptual category of rape simply due to the gender of the offender. Such a doctrinal framework defines the general reaction of the criminal justice so that the female offenders are not charged as the leading actors of the crime of rape even in the situations where the act is executed by coercing, causing severe harm to the other person and non-consensual penetration by other means than penile-vaginal intercourse (Penal Code (Act 574) (Malaysia), s. 375).

One of the notable results of this paper is that the Malaysian model forces prosecutors to apply the statutory equivalents that are not doctrinally similar to rape. Practically, where a woman offender commits an act that is similar to rape in terms of coercion, violation and harm, the prosecution can be filed in relation to crimes like outraging modesty, abetment or object-related sexual offences. Although these clauses can permit action of some sort, they are not equivalents in any sense of the word but are merely doctrinal equivalents. As a result, the criminal justice system will be threatened with downgrading the serious sexual violations, thereby creating a situation where the label used in the legal system no longer corresponds to the damage the victim has suffered. This difference is not just figurative; it has an impact on sentencing, mass opinion, deterrence and the moral reproach that accompanies the crime. Also, the dependency on various substitute provisions discontinues the prosecution plan. It can diminish uniformity regarding treatments of the sexual violence cases, especially where the factual situation does not easily conform to the few statutory types of situations offered (Penal Code (Act 574) (Malaysia), s. 375).

Further, the results show that the gendered definition of rape in Malaysia leads to imbalanced victim protection, such as the deprivation of victims at the hands of female perpetrators of the rape system. This leads to a critical doctrinal implication: the protection of the law does not proportionate to the protection of harm or wrong committed but instead is mediated by the gender suppositions of statutory writing. This kind of organisation strengthens the stereotype that rape is a crime committed by men and implicitly undermines the acknowledgement of men as victims or victims of women. The result is a legal system that has the unintended effect of deterring reporting by victims of situations in which they do not consider their experiences to be legally understood as rape and thus, strengthens underreporting and invisibility of the law in that situation (Penal Code (Act 574) (Malaysia), s. 375).

It is also shown in the discussion that the restrictive definition given in Malaysia is constitutional, especially in terms of the provisions of equality in Article 8 of the Federal Constitution. The main issue here is the fact that, by subjecting certain victims to the protection against the rape law, which is unequal, the law casts doubt over the equal protection as well as equal treatment in the criminal justice system due to gendered assumptions. Although the Federal Constitution does not specify the exact formulation of criminal offences, the relative results indicate that a criminal law systematically underrepresents a type of offender (female offenders) and hence systematically underrepresents victims of that particular type, who may face challenges when evaluated on an equal basis. In this perspective, the results of the study coincide with the opinion that rape legislation needs to be designed to defend victims and hold offenders liable for harming as a result of wrongful acts and not gender bias. This underlines the fact that the rape law in Malaysia can be refined to be more consistent with the constitutional promises of equality (Federal Constitution (Malaysia), art. 8; Penal Code (Act 574) (Malaysia) s. 375).

Besides the constitutional aspects, the Malaysian stance has a human rights implication at the international level, especially as far as the principles of CEDAW are concerned. The results indicate that in cases when gender-based assumptions are institutionalised in the definition of criminal law, the state might not achieve full-fledged protective structures against sexual assault, particularly in applying equal protection to the victims and equal responsibility to the offenders. Although CEDAW is generally elaborated as the protection of women as a victim, the general concept is that the law is not supposed to be discriminatory and instead, should take positive protective steps against gender-based violence in a way that does not contradict equality and justice. The current structure runs a risk of generating unequal treatment and unequal protection in the situation where the hurt the victims are preoccupied with is supposed to drive the agenda (Convention on the Elimination of All Forms of Discrimination against Women, 1979; Federal Constitution (Malaysia), art. 8).

In comparison, the comparative results indicate that the model of Canada is superior in terms of doctrine in the measurement of the various patterns of offending and provisions of equality in the prosecution of sexual offences to promote legal equality. Section 271 of the Canadian Criminal Code is in a gender-neutral form, according to which a liability of an offender does not depend on sex or biological role but rather is based on the fact of non-consensual sexual contact. One of the strengths of the doctrine is captured in this structure: it does not leave out female offenders by default, but they can be prosecuted under the same category of offence when the wrongdoing satisfies the elements of the offence (Criminal Code, RSC 1985, c C-46 (Canada), s. 271). By so doing, the

Canadian model prevents the doctrinal disunity that can be seen in Malaysia, so that sexual violence can be dealt with in a similar legal framework, one that is capable of encompassing the violation into the various offender types.

Another important discovery was that the consent-based jurisprudence in Canada enhances the effect of coherence and protection of the victims. The Canadian courts have formulated a strict legal interpretation of consent that does not approve implied consent and the existence of a clear voluntary contribution. This clarity of doctrine enhances the framework's ability to react to the forced sexual behaviour regardless of the gender, and it also renders legal evaluation more uniform and less sensitive to stereotypical expectations of the behaviour of victims and the gender of the offender. The Canadian approach, in this regard, is strengthened by the establishment of consent jurisprudence, which squarely bases liability on the unavailability of the voluntary agreement but not on the social expectation or gender-related perception (*R v Ewanchuk*, [1999] 1 SCR 330; Criminal Code, RSC 1985, c C-46 (Canada), s. 271). Implied consent rejection is essential in enhancing symbolic and substantive equality since it diminishes the power of stereotypes and guarantees that victims have their interests adjudicated based on the law and not culture (*R v Ewanchuk*, [1999] 1 SCR 330).

Besides, the other distinctive aspect of the results is symbolic equality. Malaysia has been dependent on substitute charges such that, though prosecution is done, the offence against the law may not be termed as rape, which may reduce the severity given to the offence. In comparison, the Canadian system upholds symbolic equality by the active use of the same type of offence committed by a perpetrator, disregarding gender considerations. This lowers the level of doctrinal separations among types of sexual violence and enhances the expressive aspect of criminal law, which writes of the fact that non-consensual violations of sexual character are equally blameworthy regardless of the sex of the perpetrator or the type of act employed to achieve the violation (Criminal Code, RSC 1985, c C-46 (Canada), s. 271).

Theoretical findings also support the comparative legal conclusions made in this study. Descriptive model of female sexual offending (DMFSO) and cognitive-behavioural theory clarify that female sexual offending is not an exceptional occurrence and can take place in specific ways, situational weaknesses and cognitive errors. The models reinforce the thesis that the legal invisibility of female offending cannot be disregarded or even concealed by statutory design. Instead, the law must be made to identify wrongdoing based on harm, coercion and non-consent as opposed to the identity of the offender. The theoretical understanding of rape as originally male is being more and more untenable under the pressure of these theoretical arguments, as the woman offenders can and will make use of coercion and exploitation that bring about the same harms as rape. In this way, the concept of gender-neutrality in Canada is more consistent with the current criminological knowledge. The framework of Malaysia runs the risk of promoting a dogmatic and symbolic exclusion that is not reflected in the theoretical knowledge of modernity (Penal Code (Act 574) (Malaysia), s. 375; Criminal Code, RSC 1985, c C-46 (Canada), s. 271).

In general, the broadened conclusion and discussion show that the rape law in Malaysia is still limited by the gendered statutory assumptions, which create the gaps in accountability, unequal protection of victims, and fragmentation of doctrine. The gender-neutral practice in Canada is doctrinally consistent, consent-based and equality-oriented, providing a comparative model on how to reform the situation in Malaysia. This paper, thus, places the legislative amendment as not only desirable but a necessity to realise the consistent criminal justice findings in line with the principle of equality and sufficient protection of the victim.

RECOMMENDATIONS

This research indicates that statutory change is required in Malaysia in terms of limiting doctrines as a consequence of the existing wording of Section 375 of the Penal Code. The main suggestion is that Malaysia ought to revise the rape provision to become a gender-neutral law, taking the example of the consent-based law, which is the Canadian sexual assault under the Criminal Code, Section 271. Currently, it is still possible to find in Section 375 a gender-specific designation that limits the liability of principal rape to male defendants and bars female defendants of rape regardless of the character of the violation and the presence of coercion and non-consent (Penal Code (Act 574) (Malaysia), s. 375). The constraint creates lapses in accountability and a lack of

doctrinal integrity in the Malaysian system of sexual offence. Instead, reform must focus on legislative amendment to clarify sexual violation, based on non-consent and harm and not anatomical acts or gendered attitudes in line with principles of modern law and best practice by analogy (Criminal Code, RSC 1985, c C-46 (Canada), s. 271).

This reform can also be constitutionally justified. The gender-neutral rape or sexual assault framework would be more appropriate in harmonising the criminal law in Malaysia with the constitutional equality right in Article 8 of the Federal Constitution, especially equal protection and equal treatment before the law. In cases where the law has systematically disenfranchised the victims of sexual violence by women, the paradigm may produce a victim protection that is unequal and is not consistent with legal thinking based on equality. A change in the laws would thus reinforce the criminal justice framework in Malaysia by making the liability depend on the nature of the wrongdoing and lack of consent, but not the presumptions that are inherent in gender-specific law (Federal Constitution (Malaysia), art. 8; Penal Code (Act 574) (Malaysia), s. 375).

Secondly, reform would enhance Malaysia's adherence to international obligations in CEDAW. One of the most important results of the gendered definition of criminal law is that it could reinforce discriminatory effects because it does not provide full legal coverage to sexual violence. Even though CEDAW is frequently brought up in terms of defending women as victims, the larger principle justifies the necessity to design criminal law in a way that facilitates equality and non-discrimination. The gender-neutral legal system would show the Malaysian negligence to ensure that accountability and protection remain equally accessible and enforceable, which would positively influence the respect of human rights principles and the levels of legitimacy of the legal protection of all victims (Convention on the Elimination of All Forms of Discrimination against Women, 1979).

It is also suggested that it is functional and practical to reform. A gender-neutral archetype would enhance deterrence by sealing the current accountability loopholes and creating a strong legal statement that sexual violence will be prosecuted and condemned irrespective of the gender of the perpetrator. It would also increase prosecutor coherence by easing the use of doctrinal pseudo-substitutions that now disaggregate sexual offence prosecutions and can lead to unequal or disproportional results (Penal Code (Act 574) (Malaysia), s. 375). Moreover, a consent-based model that is aligned with the Canadian law would facilitate greater development of the doctrine in Malaysia, primarily because the future judicial interpretation can be based on the standards of consent and the presence of coercive behaviour in a more coherent way. The model of Canada shows that doctrinal coherence can be enhanced by focusing on the consent, and that judicial development, including the rejection of implied consent and increased consistency in arguments based on consent, is helpful in this regard (*R v Ewanchuk*, [1999] 1 SCR 330; Criminal Code, RSC 1985, c C-46 (Canada), s. 271).

Last but not least, legislative change must be introduced in a systematic process that would facilitate the effectiveness of the concept beyond statutory amendment. This encompasses complementary steps like training enforcement agencies and the prosecutors, enhancing support mechanisms to the victims, and enhancing the gathering of the law and the study of the sexual violence cases of different profiles of the offenders. Although the legislative amendment is the primary focus of the reform, facilitating measures would enhance the uniform application, increase the confidence of victims, and reinforce the practical applicability of the law in the delivery of justice in line with the comparative experiences of the Canadian experience (Criminal Code, RSC 1985, c C-46 (Canada), s. 271).

CONCLUSION

This paper has established that the rape model in Malaysia, as provided in Section 375 of the Penal Code, is still doctrinally constrained because it is a statutory model that has been designed according to gender. This restriction has significant repercussions for accountability, with female offenders not falling under the main rape clause, leading to a structural disparity in the Malaysian sexual offence rubric (Penal Code (Act 574) (Malaysia), s. 375). This, in its turn, undermines the protection of the victim, especially in cases when the victim of female-perpetrated sexual violence cannot obtain rape-based legal protection and when prosecution is forced to use different offences that lack the same doctrinal meaning or symbolic disapproval. These findings thus confirm

that the framework in Malaysia generates fragmentation in prosecution and sentencing and reinforces stereotypes about offender identity, which have since been invalidated in the current knowledge on sexual offending.

Conversely, the Canadian consent-based and gender-neutral model of sexual assault in Section 271 of the Criminal Code provides a more rational legal reaction to sexual violence. The application of non-consent-based liability to ground law enforcement supports legal equality, the ability to prosecute equally offender categories, and the ability to establish doctrinal clarity in the shaping of consent-based jurisprudence (C-46:271(Canada), 2016). The consent-based reasoning with judicial interpretation, as the rejection of implied consent, is the legal commitment to the autonomy of the victims and an equal legal protection (R v Ewanchuk, [1999] 1 SCR 330). This critical difference points to the growing indefensibility of the Malaysian system as a contemporary legal response to sexual violence, especially in the context of the serious doctrinal exclusion that is presented by gender specific drafting.

In conclusion, this paper finds that Malaysia needs to shift to a gender-neutral model of rape or sexual assault because it will enhance accountability, deterrence, and protection of all victims equally. This reform would bring the criminal law in Malaysia closer to the constitutional equality provisions of Article 8 and would assist in greater conformity with its international obligations of CEDAW principles (Convention on the Elimination of All Forms of Discrimination against Women, 1979; Federal Constitution (Malaysia), art. 8). This way, Malaysia would add to the integrity and validity of its criminal justice to sexual violence so that the law is not only in line with the modern-day realities of perpetration, but also in line with the principle of equal protection of the law.

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