

A LEGAL ANALYSIS ON MARITAL RAPE IN MALAYSIA

By

Muhammad Syafiq Bin Mohd Sahar (2010712037)

Mohamad Arif Aizuddin Bin Masrom (2010559273)

Mohamad Zakwan Bin Mohamad Anuar (2010385079)

Submitted in Partial Fulfillment of the Requirements for the Bachelor in Legal Studies
(Hons)

Universiti Teknologi MARA

Faculty of Law

October 2008

The students/authors confirm that the work submitted is their own and that appropriate credit has been give where reference has been made to the work of others.

ACKNOWLEDGEMENT

First and foremost, we would like to express our greatest gratitude to, Madam Mimi Sintia bt. Mohd Bajury for her patience in guiding us, her encouragement, advices and useful criticisms to our research project paper which greatly inspire us to complete this research. At the same time we would also take this opportunity to thank our parents, brothers and sisters and all fellow friends that have shared their thoughts on this issue. The production of this paper would not be possible without their strong support and understanding and with the blessing of Allah S.W.T.

ABSTRACT

The purpose of this research is to analyze the issue of marital rape in Malaysia from the legal perspective. In the first phase of the project, we discuss the current law and situation of marital rape in Malaysia. Then, we compare the law with other countries that have applied it such as Scotland and United States. The second phase of the project, we carried out field work in the context that we handle questionnaires to the respondents that relates to this issue and to the public in order to receive their feedback. The final phase of this project is where we conclude our research and recommend solutions that can be done by the legislature and authorities in Malaysia in order to handle this issue efficiently.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Contents	iv
List of Cases	viii

CHAPTER ONE: RESEARCH PROPOSAL

1.1	Research Background	1
1.2	Problem Statement	3
1.3	Research Objectives	5
1.4	Conceptual Framework	5
1.5	Legal Framework	6
1.6	Comparative Study	7
1.7	Theoretical Framework	10
1.8	Research Methodology	14
1.9	Scope of the Research	14
1.10	Limitations of the Research	15
1.11	Significance of the Research	15

CHAPTER TWO: THE BACKGROUND, CIRCUMSTANCES AND POSITIONS OF MARITAL RAPE IN MALAYSIA

2.1	Background	17
2.2	Positions in Malaysia	19

CHAPTER THREE: COMPARATIVE STUDY WITH UNITED STATES AND SCOTLAND

3.1	History and Development of Marital Rape in United States and Scotland	26
3.2	Types of Marital Rape	30
3.3	Case Study	31
3.4	Comments and Criticism	34

CHAPTER 1: RESEARCH PROPOSAL

1.1 Research Background

"Marital rape" is defined as sexual intercourse by the husband with his wife without her express consent. The husband and wife must be legally married and recognised as a married couple, having the same rights and obligations under the law¹. It can also be called as a spousal rape. This issue is controversial since it involves with the relationship of husband and wife in a matrimonial institution. For the record, in 2005 alone, as from the survey conducted by World Health Organization (WHO), more than 50% of women in Ethiopia, Bangladesh, Tanzania and Peru reported having been subjected to physical or sexual violence by intimate partners, with figures reaching a horrific numbers of 71% in rural Ethiopia². In Malaysia, as in the subject of rape, out of 133 sexual offenders imprisoned in Sungai Buloh and Kajang's prison, only 20 out of this 133 committed their sexual offence against the person who's unknown to them³. Additionally, by looking from the report made by Dr Norliza Chemi, 72.9% of rapists in Malaysia are those who are intimate and known to the victim⁴. Throughout the world, numbers of countries (104) had already criminalized such act and this includes Common Law countries such as Scotland and England⁵

Right before 2006/2007, Malaysia does not cover any provision regarding sexual domestic problems, as even in the Penal Code itself, provides the Exception

¹ Mohamad Yunus, Mohamad Ismail (2005) The origin, development and modern application of the law relating to marital rape: a comparative legal appraisal. Malaysia Current Law Journal, 6. i-xvi. ISSN 0127-0699

² Wong L.Z "Arresting marital rape" The Star (Online) November 26, 2007 available at <http://thestar.com.my/lifestyle/story.asp?file=/2007/11/26/lifefocus/19519427&sec=lifefocus> accessed on 19 December 2012

³ Zarizana A.A "Family Cannot be a Place of Violence" WCC: Women's Centre for Change Sept 16, 2004 available at <http://www.wccpenang.org/media/archive/79/> accessed on 19 December 2012.

⁴ ibid

⁵ Wong L.Z "Arresting marital rape" The Star (Online) November 26, 2007 available at <http://thestar.com.my/lifestyle/story.asp?file=/2007/11/26/lifefocus/19519427&sec=lifefocus> accessed on 19 December 2012