

SENTENCING DISPARITIES IN RAPE: A LEGAL REVIEW

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ABSTRACT

Rape is a serious sexual crime and it is a growing problem in Malaysia. It degrades the human's value and demarcates women's dignity. In Malaysia, although harsh punishment have been provided for rapist, these set of sanctions are not compulsory in nature. It is the discretionary powers of the court in punishing the offenders. Thus, sentencing disparities emerged in consequences of different approaches used by courts.

This study intends to review the sentencing disparities in rape offence in Malaysia as to what extend does the court departed from statutory sanction laid down in Penal Code for rape offence. Other than that, this study also analyzes the different approaches used by the states of Virginia and Minnesota in handling this issue.

For this purpose, the relevant provisions in the Penal Code Act 574 are reviewed and judgments given by the courts are also taken for analyzing the factors sentencing disparities. There are loopholes in the existing laws that can be improved in order for the court to achieve consistencies in giving sentence to the rapist. A sentencing guideline is proposed as a recommendation from our team.

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CHAPTER 1

INTRODUCTION

1.0 BACKGROUND

There are numerous sorts of sexual offenses that happened these days in our nation. The most well-known sexual offense that happens in Malaysia is rape according to the media masses. In Malaysia, an individual is said to commit the offense of rape when he had a sexual intercourse under one of the circumstances in Section 375 of the Penal Code (Act 574) and the punishment is managed under Section 376(1) of the same code.¹

Envision this circumstance, Abdullah Juraimi, a bank chief aged 23 years, raped a person of 14 years of age. Under the Penal Code, Abdullah Juraimi could be rebuffed with detainment for a term which may stretch out to twenty years and whipping. In the event that he is sentenced by Judge A, who accepts that rapist and other sexual wrongdoers are pulverizing the country, he may get the most extreme punishment of twenty years in jail and whipping also. However, if he was being sentenced by Judge B, who believes that imprisonment and whipping are not effective tools for punish the offender of a sexual act, he may be imprisoned for a shorter duration.

Sentencing is the last phase of discarding a case in a court. It is a judgment in a criminal court expressing a punishment forced after the charged individual conceded or has been discovered blameworthy for the said charge. Sentencing disparities allude to a conflict in criminal sentencing which is the consequence of unreasonable and unexplained reasons, instead of a genuine utilization of attentiveness in the requisition of the law.² In the interim, sexual offenses alluded to illicit sexual contact that normally includes a power upon an individual without consent or is inflicted upon who is incapable of giving consent (as because of age or physical or mental incapacity) or who places the rapist in a

¹ Penal Code (Act 574)

² Sentencing Disparity and Discrimination: A Focus on Gender. (n.d). Retrieved June 10, 2014 from http://www.sagepub.com/upm-data/27008_4.pdf