

TOWARDS A COMPARATIVE LEGAL ANALYSIS ON THE ISSUE OF PAEDOPHILIA IN MALAYSIA

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Given the seriousness of child sexual crimes in Malaysia, and the growing public concern about this area of offence, law enforcement agencies need a committed and coordinated approach in detecting and countering paedophilia. Thus, the government recently established a proactive, intelligence-driven investigative task force called Sexual Crimes Against Children under the Prime Minister Department, which is to introduce the most effective law enforcement against paedophilia, etc. By establishing the specialist task force in this way, offenders are likely to be detected, traced, identified and apprehended far earlier, with less resource, than with the traditional complaints-based approach. Recently, One of Britain's worst paedophiles, which posted on the so-called "dark web" as he abused up to 200 Malaysian children, has been subjected to 22 life sentences. Briton Richard Huckle (born 14 May 1986) is a convicted sex offender of Paedophilia. He was arrested by Britain's National Crime Agency (NCA) after a tip-off from Australian Police and convicted of 71 counts of serious sexual crimes against children while posing as a teacher, photographer, and devout Christian in Malaysia.¹ Huckle has been described as Britain's worst ever paedophile by both the media and the prosecution team, despite only being 28 years old at the time of his arrest, and on 6 June 2016, he was given 22 life sentences with a minimum prison term of 25 years before being eligible to apply for parole. How do the Malaysian Penal Code and Islamic law (Shari'ah) protect children against paedophilia and other sexual abuse? Does the existing law provide an adequate protection to the children in Malaysia?

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I. Introduction

There have been arguments on whether paedophilia is a sexual orientation or a behavioral pattern (Seto, 2012). However, there is no gain saying that this an anti social behavior which puts children at risk in public places and over the internet (van der Walt & Eloff, 2015). According to WHO (1999), child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend; is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent. Pedophiles take advantage of children and their inability to consent to sexual demands online and offline. Recent findings shows that emotional congruence with children is a major pattern in among pedophiles (Hermann, McPhail, Helmus, & Hanson, 2015). Thus, the need to protect minors and early detection has become paramount in among social institutions.

There is dearth of literature on the statistics and effect of pedophile behavior on family and victims in Malaysia. Recent developments in the case of the British pedophile have been very devastating despite the huge sentence handed down by the court. The country as a whole has been held responsible for failing to preventing unsuspecting pedophiles who have been taking advantage of young citizens (Soon, 2016). The nature of responsibility upon the different segment of society isn't certain enough to warrant blanket blame. However, there is the need to place responsibility of preventing this devious act beyond the law enforcement agencies and the judiciary. Branford *et al.* (2013) examines the approach to dealing with sex offenders whether they require punishment , help or control. Approaches to tackling the menace of sexual offences against children could be institutional, social, legal and communal. Thus, It is the objective of the criminal law to protect children from sexual crimes, abuse and exploitation. While much of the media focus is on high profile cases where children are raped or abducted by adults, the sad truth is that male and female children are far more commonly the victims of abuse, both physical and sexual, at the hands of family members or adults in relationships of trust. As international travel and the Internet have blossomed, so have the opportunities for child

abuse and the need for a firm legal response. The Malaysian Penal Code has few sections specifically designed to protect children and tends to rely on the offences of general application.²

The existing legislation on sexual offences against children, i.e. Malaysian Penal Code is reactive in its provision. There is no legal duty upon public and societal institution to monitor behavioural pattern institution Institutions Malaysian Penal Code has few sections specifically designed to protect children and tends to rely on the offences of general application. However, there are currently no specific legislation pertaining to sexual offences against children and paedophilia in Malaysia.

II. Definition of Pedophilia

Pedophilia is a psychiatric disorder in which an adult or older adolescent experiences a primary or exclusive sexual attraction to prepubescent children.³ Although girls typically begin the process of puberty at age 10 or 11, and boys at age 11 or 12,⁴ criteria for pedophilia extend the cut-off point for prepubescent to age 13.⁵ A person who is diagnosed with pedophilia must be at least 16 years old, but adolescents must be at least five years older than the prepubescent child for the attraction to be diagnosed as paedophilia.⁶

Pedophilia is termed pedophilic disorder in the *Diagnostic and Statistical Manual of Mental Disorders*, and the manual defines it as a paraphilia involving intense and recurrent sexual urges towards and fantasies about prepubescent children that have either been acted upon or which cause the person with the attraction distress or interpersonal difficulty.⁷ The International Classification of Diseases defines it as a sexual preference for children of prepubertal or early pubertal age.⁸

In popular usage, the word *pedophilia* is often applied to any sexual interest in children or the act of child sexual abuse.⁹ This use conflates the sexual attraction to prepubescent children with the act of child sexual abuse, and fails to distinguish between attractions to prepubescent and pubescent or post-pubescent minors.¹⁰ Researchers recommend that these imprecise uses be avoided because although people who commit child sexual abuse sometimes exhibit the

disorder,¹¹ child sexual abuse offenders are not pedophiles unless they have a primary or exclusive sexual interest in prepubescent children,¹² and the literature indicates the existence of pedophiles who do not molest children.¹³

Pedophilia was first formally recognized and named in the late 19th century. A significant amount of research in the area has taken place since the 1980s. Although mostly documented in men, there are also women who demonstrate the disorder,¹⁴ and researchers assume available estimates underrepresent the true number of female pedophiles.¹⁵ No cure for pedophilia has been developed, but there are therapies that can reduce the incidence of a person committing child sexual abuse.¹⁶ The exact causes of paedophilia have not been conclusively established.¹⁷ Some studies of paedophilia in child sex offenders have correlated it with various neurological abnormalities and psychological pathologies.¹⁸ In the United States, following *Kansas v. Hendricks*, sex offenders who are diagnosed with certain mental disorders, particularly paedophilia can be subject to indefinite civil commitment.¹⁹

Therefore, for definitional purposes, the NCA has chosen to refer to paedophiles as adults who act on their sexual preference for children. In other words, paedophiles are those who prefer and seek sexual activity with children rather than adults. In this context, the term “child” refers to anyone below the statutory age of consent.²⁰

III. Terminologies

The term *pedophilia* comes from the Greek: (*pais, paidds*), meaning “child”, and (*philia*), “friendly love” or “friendship”.²¹ *Paedophilia* is used for individuals with a primary or exclusive sexual interest in prepubescent children aged 13 or younger.²² *Nepiophilia* (from the Greek: (*nepios*) meaning “infant” or “child” which in turn derives from “ne” and “epos” meaning “not speaking”), sometimes called *infantophilia*, is a sub-type of paedophilia; it is used to refer to a sexual preference for infants and toddlers (ages 0-3 or those under age 5).²³ *Hebephilia* is defined as individuals with a primary or exclusive sexual interest in 11 to 14-year-old pubescents.²⁴

IV. Historical Background

Pedophilia is believed to have occurred in humans throughout history,²⁵ but was not formally named, defined or studied until the late 19th century. The term *paedophilia erotica* was coined in an 1896 article by the Viennese psychiatrist Richard von Krafft-Ebing but does not enter the author's *Psychopathia Sexualis* & until the 10th German edition.²⁶ A number of authors anticipated Krafft-Ebing's diagnostic gesture.²⁷ In *Psychopathia Sexualis*, the term appears in a section titled "Violation of Individuals Under the Age of Fourteen", which focuses on the forensic psychiatry aspect of child sexual offenders in general. Krafft-Ebing describes several typologies of offender, dividing them into psychopathological and non-psychopathological origins, and hypothesizes several apparent causal factors that may lead to the sexual abuse of children.²⁸

Krafft-Ebing mentioned *paedophilia erotica* in a typology of "psycho-sexual perversion". He wrote that he had only encountered it four times in his career and gave brief descriptions of each case, listing three common traits:

1. The individual is tainted [by heredity].²⁹
2. The subject's primary attraction is to children, rather than adults.
3. The acts committed by the subject are typically not intercourse, but rather involve inappropriate touching or manipulating the child into performing an act on the subject.

He mentions several cases of pedophilia among adult women (provided by another physician), and also considered the abuse of boys by homosexual men to be extremely rare.³⁰ Further clarifying this point, he indicated that cases of adult men who have some medical or neurological disorder and abuse a male child are not true pedophilia and that, in his observation, victims of such men tended to be older and pubescent. He also lists *pseudopaedophilia* as a related condition wherein "individuals who have lost libido for the adult through masturbation and subsequently turn to children for the gratification of their sexual appetite" and claimed this is much more common.³¹

Austrian neurologist Sigmund Freud briefly wrote about the topic in his 1905 book *Three Essays on the Theory of Sexuality* in a section titled *The Sexually Immature and Animals as Sexual Objects*. He wrote that exclusive pedophilia was rare and only occasionally were prepubescent children exclusive objects. He wrote that they usually were the subjects of desire when a weak person “makes use of such substitutes” or when an uncontrollable instinct, which will not allow delay, seeks immediate gratification and cannot find a more appropriate object.³²

In 1908, Swiss neuroanatomist and psychiatrist Auguste Forel wrote of the phenomenon, proposing that it be referred to it as “*Pederosis*”, the “*Sexual Appetite for Children*”. Similar to Krafft-Ebing’s work, Forel made the distinction between incidental sexual abuse by persons with dementia and other organic brain conditions, and the truly preferential and sometimes exclusive sexual desire for children. However, he disagreed with Krafft-Ebing in that he felt the condition of the latter was largely ingrained and unchangeable.³³ The term *paedophilia* became the generally accepted term for the condition and saw widespread adoption in the early 20th century, appearing in many popular medical dictionaries such as the 5th Edition of *Stedman’s* in 1918. In 1952, it was included in the first edition of the *Diagnostic and Statistical Manual of Mental Disorders*.³⁴

V. Paedophilia and Legal Implications

Pedophilia is not a legal term,³⁵ and having a sexual attraction to children is not illegal.³⁶ In law enforcement circles, the term *pedophile* is sometimes used informally to refer to any person who commits one or more sexually oriented crimes that relate to legally underage victims. These crimes may include child sexual abuse, statutory rape, offenses involving child pornography, child grooming, and fondling, stalking, outrage of modesty, molestation, indecent behavior and exposure. One unit of the United Kingdom’s Child Abuse Investigation Command is known as the “Paedophile Unit” and specializes in online investigations and enforcement work.³⁷ Some forensic science texts, such as Holmes (2008), use the term to refer to offenders who target child victims, even when such children are

not the primary sexual interest of the offender.³⁸ FBI agent Kenneth Lanning, however, makes a point of distinguishing between pedophiles and child molesters.³⁹

VI. Sexual Crimes Against Children in Malaysia

In Malaysia, sexual offences against children are primarily dealt with through the offences of general application. The main options under Malaysian Penal Code are as follows:

A. Outraging Decency (Gross Indecency) Against Children

Section 377D of the Malaysian Penal Code defines the offence of outraging decency as follows:

“Any person who, in public or in 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”.

In Malaysia, therefore, the offence is gender neutral and can involve men or women against children. It is also an offence that can be committed in public or in private. The phrase ‘outraging decency’ has no clear limits but has been defined as behaviour that would be considered grossly indecent against children by any right thinking member of the public.⁴⁰ To some extent, the meaning of a phrase such as this will depend on the context in which it is used, cultural perceptions of indecency, and the scope of other criminal offences.⁴¹

B. Section 375 (g), if a man penetrates the vagina of a female under 16 with his penis, the offence is rape, irrespective of any suggested consent. Under s 376 (d) and (e), higher penalties apply where the victim is under 12 years and where the offence is committed against a child between 12 and 15 without her consent.

C. Section 377A, if a man has ‘sexual connection’ with a male or female child by introducing his penis into the child’s anus or mouth, he commits the offence of carnal intercourse against the order of nature irrespective of any suggested consent.

D. Section 377CA, it is an offence for any person, male or female, to introduce any ‘object’ into the vagina or anus of another without consent. However, for this offence, it appears that the

prosecution must prove absence of consent except where the child is under 12 years of age. It may also be noted that the word 'object' does not appear to include parts of the body.

E. Section 354, the offence of assault with intent to outrage modesty will apply to sexual touching falling short of the forms of penetration covered by the other offences. However, here again it will be necessary to prove absence of consent unless the child is under 12 years of age.

F. Section 376A, incest may be a potential charge if one of the specified relationships exists. However, the offence is limited to 'sexual intercourse' and does not cover other forms of intra-familial abuse.

G. Section 321, where the victim suffers bodily pain, disease or injury as a result of sexual abuse, the offence of voluntarily causing hurt (s 321) may apply. Importantly, the law provides that the age of consent for the purposes of hurt offences is 18 years.⁴²

VII. Paedophilia and Outraging Modesty Against Children

The offence of outraging modesty of a child (often termed as 'child molestation') is quite distinct from the offence of outraging decency. It is an offence that can be committed by men or women and is an aggravated form of assault or criminal force accompanied with a sexual motive. The prosecution must therefore prove all the physical and fault elements for criminal force or assault, including that the victim did not consent (if involved adults). The Penal Code also requires proof that the accused intended to outrage modesty or knew that his or her acts were likely to outrage modesty. Section 354 of the Penal Code reads as follows:

"Whoever assaults or uses criminal force to any person (including children), intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with whipping, or with any two or punishments".

The Penal Code does not define the word 'modesty' and the Code drafters provided no comment on its meaning. This may be partly because views about what constitutes an outrage to modesty may vary over time and according to the context, in which the incident

occurs, as well as the society, race and faith of the victim.⁴³ The difficulties of providing a precise meaning and appropriate definition are reflected in the following definition of modesty in the Indian case of *Rupan Deol Bajaj v. KPS Gill*,⁴⁴:

“Modesty is the quality of being modest and in relation to young women means ‘womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct’. The word ‘modest’ in relation to women is defined ... as ‘decorous in manner and conduct; not forward or lewd; shame fast.’⁴⁵

Interpreted literally, this raises some problems because women who are not ‘scrupulously chaste’ in thought, word and conduct deserve the law’s protection against non-consensual sexual touching just as much as other people.⁴⁶ Although defining modesty presents some interesting theoretical challenges, most cases do not present difficulties in practice. Rather than searching for a definition, it is probably best to note the types of behavior that have given rise to convictions in local cases. They include a tutor touching the breasts and the thigh of a student;⁴⁷ hugging kissing a girl;⁴⁸ grabbing a girl from behind and squeezing breasts;⁴⁹ touching a secretary on the back and slapping her lightly on the buttocks;⁵⁰ and an acupuncturist kissing and nibbling his victim’s toes.⁵¹

The two key mechanisms that will differentiate acceptable forms of contact from criminal offences are the question of consent, which is not applicable to the children and the requirement that the accused intended (guilty mind, *mens rea*) to outrage modesty or knew that the acts were likely to outrage modesty.⁵² For example, a child who attends dancing class may impliedly expect some body touching, and a doctor who carries out a medical examination on a child in accordance with proper medical practices will not be intending to outrage modesty.⁵³

The Penal Code’s focus on the accused’s intention or knowledge is important in resolving what the common law has termed ‘equivocal’ cases. In the English case of *R v. Court*,⁵⁴ the accused spanked a girl child the buttocks through her clothes when she was in his shop. When why he had done so, he replied: ‘Don’t know! Buttock fetish I suppose’. There was no doubt that he was guilty of an assault, as he

had applied force without consent. However, the English courts experienced some difficulty in deciding whether this was ‘indecent’ assault (based on the accused’s intentions) or just an assault. Under the Penal Code there would be no difficulty: his admissions would undoubtedly lead to the conclusion that he had intended to outrage the child’s modesty, even if the victim had been unaware of his intent.⁵⁵

Part VIII. Paedophilia and Statutory Rape

Section 375 of the Penal Code provides a man has sexual intercourse (penetration is sufficient) with a woman (V):

- (a) Against V’s will;
- (b) Without V’s consent;
- (c) With V’s consent when it has been obtained by putting V in fear of death or hurt to herself or another, or obtained under a misconception of fact and D knows or has reason to believe the consent was given in consequence of such misconception;
- (d) With V’s consent when D knows he is not her husband and that her consent is given because she believes he is a man to whom she is married or to whom she would consent;
- (e) With V’s consent, when, at the time of giving such consent; V is unable to understand the nature and consequences of that to which she gives consent; or
- (f) With V’s consent, when the consent is obtained by using D’s position of authority over V or because of professional relationship or other relationship of trust in relation to V;
- (g) With or without V’s consent where V is under 16 years of age.

Rape remains a gender-specific offence and is limited to one very specific form of sexual contact, namely, penetration of the vagina with the penis. Cases in Malaysia have held that the slightest penetration is sufficient. Although evidence of semen or DNA assists the prosecution case, such evidence is not required.⁵⁶

A. Punishments and Aggravating Factors

Section 376(2) of the Penal Code provides the accused shall be punished with imprisonment (minimum 5 years, maximum 30 years) and is also liable to whipping in any of the following circumstances:

- (d) V was under 16 and the offence was committed without her consent;
- (e) V was under 12; or
- (f) D obtained V's consent by using a position of authority, professional relationship or other relationship of trust.

B. Sexual Connection of Children by an Object (Digital Penetration)

Section 377CA of the Penal Code was introduced as the 2007 amendments. It is an offence for any person to have connection with another person (including children) by the introduction of any object vagina or anus of the other person without the other person's consent.

There are several points of importance with respect to this section:

There must be penetration of the vagina or anus with an object. The word 'object' is clearly designed to exclude body parts such as the penis, finger or tongue. Rape is left to s 375 and this section does not cover acts such as penetration of the vagina with a finger, or non-consensual cunnilingus.

Although s 377CA does not extend to body parts, it needs to be read in conjunction with s 377A, under which it is an offence for a man to introduce his penis into the mouth or anus of a child irrespective of consent. Thus, offences under s 377CA of the Malaysian Penal Code carry the same statutory penalty as rape, namely, a maximum of 20 years' imprisonment.⁵⁷

C. Paedophilia and Child Molestation

The public describe all child sexual abuse offenders commonly used the term paedophile.⁵⁸ This usage is considered problematic by researchers, because many child molesters do not have a strong sexual interest in prepubescent children, and are consequently not paedophiles.⁵⁹ There are motives for child sexual abuse that are

unrelated to paedophilia,⁶⁰ such as stress, marital problems, the unavailability of an adult partner,⁶¹ general anti-social tendencies, high sex drive, or alcohol use.⁶² As child sexual abuse is not automatically an indicator that its perpetrator is a paedophile.

Some paedophiles do not molest children.⁶³ Little is known about this population because most studies of pedophilia use criminal or clinical samples, which may not be representative of paedophiles in general.⁶⁴ Researcher Michael Seto suggests that pedophiles who commit child sexual abuse do so because of other anti-social traits in addition to their sexual attraction. He states that paedophiles who are “reflective, sensitive to the feelings of others, averse to risk, abstain from alcohol or drug use, and endorse attitudes and beliefs supportive of norms and the laws” may be unlikely to abuse children.⁶⁵ A 2015 study found that paedophiles, who molested children were neurologically distinct from non-offending paedophiles. The paedophilic molesters had neurological deficits suggestive of disruptions in inhibitory regions of the brain, while non-offending paedophiles had no such deficits.⁶⁶

According to Abel, Mittleman, and Becker,⁶⁷ (1985) and Ward (1995), there are generally large distinctions between the characteristics of pedophilic and non-pedophilic molesters. They state that non-pedophilic offenders tend to offend at times of stress; have a later onset of offending; and have fewer, often familial, victims, while paedophilic offenders often start offending at an early age; often have a larger number of victims who are frequently extra familial; are more inwardly driven to offend; and have values or beliefs that strongly support an offense lifestyle. One study found that pedophilic molesters had a median of 1.3 victims for those with girl victims and 4.4 for those with boy victims.⁶⁸ Child molesters, pedophilic or not, employ a variety of methods to gain sexual access to children. Some groom their victims into compliance with attention and gifts, while others use threats, alcohol or drugs, or physical force.⁶⁹

IX. Paedophilia and Personality Traits

Research on paedophilia in child sex offenders often report that it co-occurs with other psychopathologies, such as low self-esteem,⁷⁰

depression, anxiety, and personality problems. It is not clear whether these are features of the disorder itself, artifacts of sampling bias, or consequences of being identified as a sex offender.⁷¹ One review of the literature concluded that research on personality correlates and psychopathology in paedophiles is rarely methodologically correct, in part owing to confusion between paedophiles and child sex offenders, as well as the difficulty of obtaining a representative, community sample of paedophiles.⁷² Seto (2004) points out that paedophiles who are available from a clinical setting are likely there because of distress over their sexual preference or pressure from others. This increases the likelihood that they will show psychological problems. Similarly, paedophiles recruited from a correctional setting have been convicted of a crime, making it more likely that they will show anti-social characteristics.⁷³

X. Pedophilia and Child Pornography

Consumption of child pornography is a more reliable indicator of paedophilia than molesting a child,⁷⁴ although some non-paedophiles also view child pornography.⁷⁵ Child pornography may be used for a variety of purposes, ranging from private sexual gratification or trading with other collectors, to preparing children for sexual abuse as part of the child grooming process.⁷⁶

Paedophilic viewers of child pornography are often obsessive about collecting, organizing, categorizing, and labeling their child pornography collection according to age, gender, sex act and fantasy.⁷³¹ According to FBI agent Ken Lanning, “collecting” pornography does not mean that they merely view pornography, but that they save it, and “it comes to define, fuel, and validate their most cherished sexual fantasies”.⁷⁷ Lanning states that the collection is the single best indicator of what the offender wants to do, but not necessarily of what has or will be done.⁷⁸ Researchers Taylor and Quayle reported that paedophilic collectors of child pornography are often involved in anonymous Internet communities dedicated to extending their collections.⁷⁹

XI. Protection of Children Against Sexual Crimes: Islamic Perspective

Islamic teachings on humanity and human welfare have been codified in its central religious book known as the Holy Quran, which the Muslims believe was revealed by Allah s.w.t for the mankind. These teachings have often been exemplified by Islamic Prophet Muhammad (saw) as displayed in his sayings and practices (*Sunnah*). To the Muslims, Islam is what the Quran has instructed to do and how Prophet Muhammad (saw) has put them into practice. In Islamic tradition, the idea of humanity has been presented as one of its principal values and the practice of social service at its various forms has been instructed and encouraged.

“Violation” is a term that implies the loss of the sanctity of something or the defiance of what is prohibited or illegal and unlawful in Islam. Clearly, violating what is prohibited is a crime that must be condemned; violators deserve to be punished. The Islamic law forbids any assault on the human body; this is a general prohibition that includes attack by smacking or other forms of corporal harm, including sexual assault on children. The Prophet, Peace Be Upon Him, said:

*“The whole of the Muslim is forbidden to another Muslim; his blood, his property and his/her honour.”*⁸⁰

The Prophet (saw) also said:

*“The Muslim is a brother of the Muslim; he should not betray him nor belie him nor let him down. The whole of the Muslim is forbidden to another Muslim; his honour, his property and his blood. Therein lays piety. There is no bigger evil a man may perpetrate than to debase his Muslim brother.”*⁸¹

To similar effect, the serious damages caused by child marriages burden the parents with the huge responsibility of sparing their children, the consequences of such action. The Almighty Allah says:

“And Spend In The Cause Of Allah [I.E., Jihad Of All Kinds] And Do Not Throw Yourselves Into Destruction [By Not Spending Your Wealth In The Cause Of Allah], And Do Good. Truly, Allah Loves Al-Muhsinin [The Good-Doers].” Al-Baqarah, Verse 195.

Thus, if we place this issue under the spotlight and look into what Islamic thought has to offer, we shall find that a number of duties and requirements expected of the couple need a certain degree of awareness and intelligence. But these are only to be expected of those whose faith is solid and who possess the will to make a choice; those who are able to comprehend the Qur'anic verse:

"...And He Has Put Between You Affection And Mercy... (Al-Rum, Verse 21) And The Qur'anic Verse: ...And Live With Them Honourably... (Al-Nisa', Verse 19) And The Qur'anic Verse: And They [Women] Have Rights [Over Their Husbands As Regards Living Expenses] Similar [To Those Of Their Husbands] Over Them [As Regards Obedience And Respect] To What Is Reasonable." (Al-Baqarah, Verse 228).

It has been reported in the Hadith: "Life is an object of delight and its best object of delight is a righteous woman."⁸² It has also been reported: "Let one of you have a thankful heart, a God-praising tongue and a pious woman who aids him (in attaining salvation) on the Last Day."⁸³ It would be difficult to imagine that such an address is directed towards a young girl who is still in need of preparation and care. In its essence, child marriage violates one of the conditions of legitimate marriage, which is consent. Consent must be based on being convinced that the other party is the right person with whom to enter into marriage. In other words, consent implies the right to object in case there is a lack of compatibility; children being married rarely have this right. It is, therefore, a must to follow the rules of Sharia demanding the attainment of maturity as a prerequisite for marriage.

How can young children be protected from sexual crimes?

- this effort requires laws criminalizing the act of pedophilia and allowing for the prosecution of the perpetrators;
- this legal framework needs to be supported by mobilizing members of society, to alert on this criminal act. The mobilization effort should include actions by Muslim scholars, civil society institutions and the mass media;
- the severe health and social damages caused by child marriages burden parents with the responsibility to spare

their children these repercussions. Both society and the state also have responsibilities. Laws should ban child marriages and set an age limit for marriage that is no lower than 18 years. Excuses such as the consent of the parent or guardian and the attainment of financial ability should not be accepted;

- among the most effective measures to eliminate child marriages are laws requiring parents to enrol all their children in school, and
- impoverished families should be provided with the assistance they need in this regard.⁸⁴

Conclusion

To conclude, both in Islamic and secular laws, every child deserves the right to be safe wherever he or she is, and it is our role as parents, community leaders, neighbours, religious figures, technology providers, youth, school administrators and more, to be alert and notify the relevant authorities when we see a child in danger, online or offline.

In order to protect children from further harm, children who have already experienced violence and sexual exploitation must be identified quickly and are able to receive proper support services, and perpetrators must be quickly apprehended and prosecuted. In addition, further mechanisms should be in place to ensure that convicted offenders do not continue to exploit and harm children once they have served their sentences. These monitoring/surveillance mechanisms should include the establishment of a registry of sex offenders, to ensure children are protected within their homes and communities.

As crimes against children blur the lines between online and offline abuse, we must work together with law enforcement and other regulatory agencies to combat child sexual exploitation. When we send a strong message, through coordinated and concrete actions, that child sexual abuse is not acceptable anywhere around the world, the horrific crimes hidden by the dark web will be revealed, more

perpetrators will be arrested and more children will be saved from becoming the victims of Paedophilia.

Although law enforcement plays an important role in detecting and countering sexual crimes against children, the criminal justice system cannot deal with the problem alone; it needs to be curbed holistically. Police, lawyers, the courts, community services, teachers, lecturers, doctors, religious leaders, parents and the media all have the role to play in combating child sexual crimes and a cooperative and coordinated effort is essential to successfully reduce paedophile activity in Malaysia.

Notes

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