

PATRIARCHY, VICTIM BLAMING, AND SEXUAL VIOLENCE IN MALAYSIA: A FEMINIST LEGAL ANALYSIS

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Abstract

This article explores the relationship between patriarchy and victim blaming in cases of rape and sexual violence. It explores how women's dependence on, and subordination to men has been used to blame victims in cases of rape and sexual assault. The article will examine how patriarchal norms that are deeply entrenched in existing laws, traditions, religion, and social practices have been used to blame women in cases of rape. The study adopts a qualitative discourse analysis using a feminist lens by examining case law, legislation, academic literature, published reports, and other relevant primary and secondary sources to explore the relationship between patriarchy and victim blaming. It will also explore how victim blaming attitudes have and continue to be used as a tool to absolve the perpetrator from their crimes. The findings demonstrate that patriarchal norms continue to shape legal, social, and institutional responses to rape by reinforcing victim-blaming attitudes, scrutinising women's behaviour and morality, and shifting responsibility away from perpetrators, thereby creating significant barriers to justice for victims of rape and sexual violence. The article concludes by arguing that patriarchal norms can be destructive and obstructive in achieving fairness and justice for victims of rape and sexual violence. Therefore, immediate steps must be taken to address victim-blaming attitudes by propagating more gender equality practices and instilling such practices in all levels of society and state institutions.

Keywords: Patriarchy, victim blaming, rape, sexual violence

I INTRODUCTION

Unlike many other interpersonal crimes such as robberies or muggings, victims of rape and sexual violence assault are particularly vulnerable to being blamed for their own victimisation.¹ Among the critical factors promoting victim blaming are cultural influences, religion, social practices, and gender roles. Although each of these factors is worthy of its own discussion, they stem from patriarchal beliefs and norms that reflect men's desire to dominate, control, and assert power over women.² Patriarchy is a system where men dominate women, although the form and degree of oppression has varied considerably in different cultures over time.³ It justifies male dominance by maintaining women's inferiority and instability.⁴ Patriarchy denotes a social structure where the actions and ideas of men are dominant over women.⁵ This imbalance of power has led to a situation where men as a social category are able to oppress women individually and collectively.⁶ Within this setting, acts of rape and sexual violence are minimised and trivialised by apportioning blame to the victim while excusing the actions of perpetrators.⁷ Such an environment facilitates the 'rape culture' because common social beliefs and attitudes

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¹ Steffen Bieneck and Barbara Krahé, 'Blaming the Victim and Exonerating the Perpetrator in Cases of Rape and Robbery: Is There a Double Standard?' (2011) 26(9) *Journal of Interpersonal Violence* 1785; Brittany L Acquaviva and Christi L Gullion, 'A Qualitative Analysis of Victims' Perceptions of Procedural Justice for Sexual Victimization' (2024) 31(14) *Violence Against Women* 3632, 3632–3656.

² Ibid.

³ Deniz Kandiyoti, 'Bargaining with Patriarchy' (1988) 2(3) *Gender and Society* 274; Mayank Gupta, Jayakrishna S Madabushi and Nihit Gupta, 'Critical Overview of Patriarchy, Its Interferences With Psychological Development, and Risks for Mental Health' (2023) 15(6) *Cureus* e40216 page 1 - 11 <<https://doi.org/10.7759/cureus.40216>>.

⁴ Zubia Mumtaz, Umber Shahid and Adrienne Levay, 'Understanding The Impact of Gendered Roles on The Experiences of Infertility Amongst Men and Women in Punjab' (2013) 10(3) *Reproductive Health* 1.

⁵ Uthara Soman, 'Patriarchy: Theoretical Postulates and Empirical Findings' (2009) 58(2) *Sociological Bulletin* 253.

⁶ Ibid.

⁷ Claire R Gravelin, Monica Biernat and Caroline E Bucher, 'Blaming the Victim of Acquaintance Rape: Individual, Situational, and Sociocultural Factors' (2019) 9(1) *Frontiers in Psychology* 02422.

encourage people to associate sex with violence, normalise sexual violence, and minimise the seriousness of sexual violence.⁸ Rape culture according to the Encyclopaedia of Rape is a complex set of beliefs that encourages male sexual aggression and supports violence against women.⁹ A rape culture believes that men are sexually aggressive biologically while women are sexually passive and are meant to be dominated by men.¹⁰ According to Powell, such attitudes play a key role in shaping the way individuals, organisations and communities respond to rape and sexual violence.¹¹ It also affects the criminal justice system and instil men's entitlement to sex and women's bodies. Consequently, victim blaming attitudes become accepted as a normal form of defence and becomes a legitimate reason to justify sexual assaults. Thus, this article will explore how victim blaming attitudes have and continue to be used as a tool to absolve the perpetrator from their crimes. It will also examine how patriarchal norms that are deeply entrenched in existing laws, traditions, religion, and social practices have been used to blame women in cases of rape and other sexual offences.

A Sexual Violence

According to the World Health Organization, sexual violence is defined as 'any sexual act, or attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work'.¹² Coercion in this sense may involve psychological intimidation, blackmail, threats or in situations where a person is mentally incapable of understanding the situation.¹³ Rape is a form of sexual violence and is defined as an act that entails 'physically forced or coerced penetration (even if slight) of the vulva or

⁸ Irina Anderson and Kathy Doherty, *Accounting for Rape: Psychology, Feminism and Discourse Analysis in the Study of Sexual Violence* (Routledge, 2008) 126.

⁹ R Field, 'Rape Culture' in M Smith (ed), *Encyclopedia of Rape* (Greenwood Press, 2004) 174.

¹⁰ Ibid.

¹¹ Anastasia Powell, 'Rape culture: Why our Community Attitudes to Sexual Violence Matter' *Analysis and Policy Observatory* (online, 17 September 2014) <<https://apo.org.au/node/41333>>.

¹² Etienne G Krug et al (eds), *World Report on Violence And Health* (World Health Organization, 2002) 149.

¹³ Ibid; J Jin et al, 'Commentary: Coercion in Psychiatry: Lessons Learned from Trauma-Informed Care' (2023) 68(2) *The Canadian Journal of Psychiatry* 86 <<https://doi.org/10.1177/07067437221125884>>.

anus, using a penis, other body parts or an object'.¹⁴ Sexual violence can also include other forms of assault involving a sexual organ, including coerced contact between the mouth and penis, vulva, or anus.¹⁵ In Malaysia, rape is defined under section 375 of the Penal Code as having sexual intercourse with a woman against her will or without her consent, or by instilling fear of death or hurt to herself or any other person.¹⁶ Section 376 of the Penal Code also prescribes rape to include sexual intercourse with a girl under 16 years of age regardless of any consent that might have been given.¹⁷ Those who are convicted of rape under section 375 of the Penal Code can be imprisoned up to 20 years with whipping. The punishment of imprisonment for a term between 8 to 30 years with whipping not less than 10 strokes can also be imposed on persons who are convicted of under-aged rape (statutory rape), raping a pregnant woman, causing a woman to commit suicide due to the rape and several other circumstances.¹⁸ While sexual violence can be directed against both men and women and encompass various forms of sexual assault such as sexual harassment, sex trafficking, rape, and sodomy, this article will mainly focus on rape with minimum discussion on other forms of sexual violence.

Sexual violence against women are regarded as violations of human rights in which the dignity and equality of women are not recognized.¹⁹ Feminist scholars argue that sexual violence against women is often a result of unequal power relations between men and women and is also strongly influenced by cultural factors and values.²⁰ Within sociocentric and ego-centric cultures, the roles and representations of genders, and attitudes toward sexual violence differ.²¹ Cultures which are described as feminist, provide equal power to both men and women while cultures that are described as patriarchal normalises the superior status of men over women. This setting perpetuates the creation of a 'rape culture' that normalises the use of misogynistic language and objectification of women's bodies. Within this setting, rape and sexual violence is glamorised through the media which excuses, normalises, tolerates,

¹⁴ Ibid; JA Siegel et al, 'Yes, (Most) Men Know What Rape Is: A Mixed-Methods Investigation Into College Men's Definitions of Rape' (2021) 22(2) *Psychology of Men and Masculinities* 401 <<https://doi.org/10.1037/men0000337>>.

¹⁵ Ibid; Johannes Bitzer, 'Sexual Violence' in Johannes Bitzer and Tahir A Mahmood (ed), *Textbook of Contraception, Sexual and Reproductive Health* (Cambridge University Press, 2024).

¹⁶ *Penal Code* (Malaysia) s 375.

¹⁷ Ibid s 376.

¹⁸ Ibid s 376 (1) and (2)

¹⁹ 'Violence Against Women', *World Health Organization* (Web Page, 18 June 2026) <<https://www.who.int/news-room/fact-sheets/detail/violence-against-women>>.

²⁰ Gurvinder Kalra and Dinesh Bhugra, 'Sexual Violence Against Women: Understanding Cross-Cultural Intersections' (2013) 55(3) *Indian Journal of Psychiatry* 244.

²¹ Ibid.

and even condone to sexual violence, thereby creating a society that disregards women's rights and safety.

B Gender Equality and Dignity

To ensure equal and safe protection on women, Malaysia has ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in August 1995.²² The CEDAW aims to ensure women's equal access to, and equal opportunities in, political and public life including the right to vote, the right to education, health, and employment, the right to stand for election, and the need to equal protection of laws against rape and other forms of violence (see Article 16).²³ Malaysia has also allowed the CEDAW provisions to be used in its domestic courts. This was visible in the case of *Noorfadilla Binti Ahmad Saikin v. Chayed bin Basirun*,²⁴ who became the first person to successfully sue the Malaysian government for gender discrimination when she was revoked of her appointment as a relief schoolteacher upon her pregnancy.²⁵ Although the CEDAW does not supersede the domestic laws and the Malaysian Constitution, the convention is binding and can be used as a legitimate source to interpret laws regarding gender and sexual violence.

Besides CEDAW, Article 8 of the Malaysian Constitution also prohibits any form of discrimination on the basis of gender 'except as expressly authorised by the Constitution'.²⁶ The Court of Appeal in the case of *Lembaga Tata tertib Perkhidmatan Awam, Hospital Besar Pulau Pinang v Utra Badi A/L K Peruma*,²⁷ had decreed that it is the fundamental right of every person within the shores of Malaysia to live with common human dignity. Gopal Sri Ram JCA in the case stated that a person who is deprived of his/her reputation is also deprived of his/her right to life according to Article 5(1) of the Federal Constitution.²⁸ As such, the right to reputation becomes a part of human

²² *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW'). Malaysia ratified CEDAW in August 1995.

²³ *Ibid.*

²⁴ *Noorfadilla Binti Ahmad Saikin v Chayed bin Basirun* [2012] 1 CLJ 769.

²⁵ Jaclyn L Neo, 'Incorporating Human Rights: Mitigated Dualism and Interpretation in Malaysian Courts' (2012) 18(1) *Asian Yearbook of International Law* 10.

²⁶ *Federal Constitution* (Malaysia) (Incorporating all amendments up to 1 January 2006); Asif Mohiuddin, 'Women's Rights in Malaysia: Understanding Sociocultural and Legal Dynamics' in *Human Rights Law in Egypt and Malaysia: Minorities and Gender Equality* (Springer Nature Switzerland, 2024) vol 2.

²⁷ *Lembaga Tata tertib Perkhidmatan Awam, Hospital Besar Pulau Pinang v Utra Badi A/L K Peruma* (2000) 3 CLJ 224, [39].

²⁸ *Ibid.* See also *Federal Constitution* (n 25) art 5(1).

dignity.²⁹ Based on such a principle, sexual offences have been condemned as the ‘gravest crime against human dignity’, because of the feelings of humiliation, degradation and guilt endured by the victim.³⁰ Although such condemnation is meant to protect women from being sexually harmed, it has also provided a pathway for state institutions to control women’s bodies and behaviour. In this instance, patriarchal norms have been institutionalised in all social structures, including judicial institutions. It has also instilled victim-blaming attitudes and misogynistic views in cases of rape. In this regard, women who deviate from the attributes of an ‘ideal woman’ are often blamed for causing their own victimisation.

C Patriarchy and Victim Blaming

Academic scholars share the belief that traditional cultural values about women’s roles in society, including patriarchy, are widespread in Malaysia.³¹ In a country where the majority of the population are Malay Muslims, the marginalisation of women is intertwined or synonymous with the Malay cultural traditions, values and language, and Islamic precepts and teachings.³² Within the gender binary and divide, man is ‘naturally’ dominant in both identity and status.³³ As Kalthom, Noor, & Wok points out:³⁴

²⁹ Ibid.

³⁰ *Mohamed bin Senik v Public Prosecutor* (2005) 1 LNS 74, [24]; Anna High, 'Sexual Dignity and Rape Law' (2021)(1) *Yale Journal of Law and Feminism* 33.

³¹ O’ Brien, ‘Four paces behind: Women’s work in Peninsular Malaysia’ in L Manderson (ed), *Women’s Work And Women’s Roles: Economics And Everyday Life in Indonesia, Malaysia, and Singapore Development Studies Centre Monograph No. 32* (The Australian National University, 1983) 213; Cecilia Ng and Leng Chee Heng, ‘Women In Malaysia: Present Struggles And Future Directions’ in Cecilia Ng (ed), *Positioning Women In Malaysia: Class And Gender In An Industrializing State* (Macmillan, 1999) 176.

³² Grace VS Chin and Kathrina Haji Mohd Daud, ‘Negotiating Difference: The Trope of “Anak Derhaka” and Ideological Endings in Bruneian Writings’ (2015) 50 (2) *The Journal of Commonwealth Literature* (‘Negotiating’, 101; Grace VS Chin and Kathrina Haji Mohd Daud, *The Southeast Asian Woman Writes Back: Gender, Identity and Nation in the Literatures of Brunei Darussalam, Malaysia, Singapore, Indonesia and the Philippines, Asia in Transition* (Springer, 2018) (‘*The Southeast Asian Woman Writes Back*’); Puspa Melati Wan et al, *Muslim Women’s Lived Experiences and Intersectional Identities* (Springer, 2025).

³³ Sari M van Anders and Eun Ju Son, 'Men and Women: Gender Ideology and the Gender Binary' (2025) 54(10) *Archives of Sexual Behavior* 3921.

³⁴ Kalthom Abdullah, Noraini M Noor and Saodah Wok, ‘The Perception Of Women's Roles And Progress: A Study Of Malay Women’ (2008) 89(3) *Social Indicators Research* 454.

Women's role is oriented more towards family matters rather than self-fulfilment, implying that when faced with having to make a choice between career and family, family is always given priority. In a way, the present Malay women are caught in a dilemma between the modern challenges of life and traditions. While many are now employed, they are still expected to be responsible for the family and to maintain the traditional perception of a woman.

The portrayal of an 'ideal woman' is unfair as it places a high degree of pressure upon women to prove that they have been raped, assaulted or victimised. An 'ideal' or 'real' rape victim according to Larcombe should not only be morally and sexually virtuous but also cautious, unprovocative, and consistent.³⁵ Vicinus envisioned the 'ideal woman' as 'the 'perfect wife,' a woman who, as well as being a mother, provides all the goods and services necessary to the maintenance of the male-headed household'.³⁶ The inequalities between male and female roles are further obscured by perceiving such roles as 'natural' or 'normal'.³⁷ By normalising gender roles, women internalise society's norms of the 'ideal woman' and they become part of the psyche.³⁸ As a result, women teach and police other women to conform to the attributes of an 'ideal woman' to produce a society in which male power necessitates the subordination of women.

Given the image of an 'ideal' woman, anyone who deviates from these characteristics is considered deviant, defiant, and lacks the credibility of a victim. Similarly, in cases of rape, these attributes are often used as a benchmark in determining the credibility of the complainant instead of focusing on the unlawful act itself. Defence tactics for discrediting rape testimony involve exposing the complainant's alleged failure to comply with the sexual and behavioural standards of the normative victim.³⁹ Although section 146A of the Evidence Act 1950 aims to protect victims from being questioned about their past sexual history and sexual activity other than the accused during cross-examination,⁴⁰ rape victims are still faced with 'humiliating' questions about their clothing and sexual history during trials, and

³⁵ Wendy Larcombe, 'The 'Ideal' Victim v Successful Rape Complainants: Not What You Might Expect' (2002) 10(2) *Feminist Legal Studies* 131.

³⁶ Martha Vicinus, *Suffer and Be Still: Women in the Victorian Age* (Indiana University Press, 1972) ix.

³⁷ D Martin, 'Battered Women - Scope of the Problem' in B Galaway and J Hudson (eds), *Perspectives on Crime Victims* (CV Mosby Company, 1981).

³⁸ S Joseph, 'Patriarchy and Development in the Arab World' (1996) 4(1) *Gender and Development*, 14.

³⁹ Ibid.

⁴⁰ See *Evidence Act 1950* (Malaysia) s 146A.

the court remains slow to interject. They are also expected to act and react in a certain way which reflects their intention to resist the assault.⁴¹ This includes the proportion of strength used in resisting the perpetrator and whether resistance occurred instantly.⁴² Although the lack of resistance does not necessarily entail consent or voluntariness, there is still a tendency to apportion blame to women victims and deflect from the actual scenario. This is because victim blaming allows people to believe that such events could never happen to them.

One psychological phenomenon that contributes to the tendency of victim blaming is known as the fundamental attribution error.⁴³ This phenomenon can be applied to sexual offences because of the patriarchal practices and profound gender bias that exist in communities. The fundamental attribution error involves attributing other people's actions to their character or personality, while attributing their own behaviour to external situational factors outside of their control.⁴⁴ The problem with the fundamental attribution error phenomenon is that it ignores external forces and variables that also might have played a role and underestimates the influence of situational factors.⁴⁵ It also ignores the fundamental principles of law and justice that accord blame and culpability to the perpetrator and not the victim. Furthermore, rape is considered to be a heinous crime worldwide and can also be understood as a pathological assertion of power over a victim.⁴⁶ Therefore, allowing rape and other acts of sexual violence to be justified through victim blaming is by itself a fundamental violation of human rights.

⁴¹ M Amir, *Patterns in Forcible Rape* (University of Chicago Press, 1971). See also the case of *Hj Tahamit bin Hj Jamudin v Public Prosecutor* [2012] 1 MLJ 861.

⁴² Lynda Lytle Holmstrom and Ann Wolbert Burgess, *The Victim of Rape: Institutional Reactions* (Transaction Publishers, 1991); Sandhya Gupta and Krishankant Lawania, 'Understanding Experts' Views on Perpetrators of Homicide and Sexual Assault: Traits, Motives, and Prevention Strategies' (2024) 6(2) *International Journal of Psychology Research* 11, 11–22.

⁴³ Artino AR et al, 'Broadening Our Understanding of Clinical Quality: From Attribution Error to Situated Cognition' 2012 (91) 2 *Clin Pharmacol Ther*, 167; Cassandra Flick and Kimberly Schweitzer, 'Influence of the Fundamental Attribution Error on Perceptions of Blame and Negligence' (2021) 68(4) *Experimental Psychology* 175, 175–188.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Anne L Barstow, 'Rape', *Encyclopedia Britannica* (Web Page, 19 November 2020) <<https://www.britannica.com/topic/rape-crime>>.

II METHODOLOGY

This study was conducted using discourse analysis derived from primary and secondary sources. ‘Discourse’ is simply the way we think, talk, and write, or generally communicate, about a given topic.⁴⁷ Discourses are shaped and constrained by the wider social structure on one hand, and socially constitute the social structure on the other.⁴⁸ Discourses permeating a given society serve to organize and dictate our perceptions of the preferred and dominant ideologies.⁴⁹ Some discourses come to dominate the mainstream (dominant discourses), and are considered truthful, normal, and right, while others are marginalised and stigmatised, and considered wrong, extreme, and even dangerous.⁵⁰ Discourse analysis ‘examines the way knowledge is produced within different discourses and the performances, linguistic styles and rhetorical devices used in particular accounts.’⁵¹ It is a field of research composed of multiple heterogeneous, largely qualitative, approaches to the study of relationships between language-in-use and the social world.⁵² Discourse analysis is used by many fields and has many approaches, methods, and frameworks. As in the article, the underlying factors of victim blaming is highlighted to challenge rhetorical ideas and statements on the ‘idealised’ version of an ‘ideal’ victim by offering a deeper perspective on the relationship between patriarchy and victim blaming.

The article uses a feminist lens and offers a distinctive approach to research that is multi-dimensional. According to Harding, feminist research is produced for the purpose of action against power.⁵³ In the context of this article, this would be the action against the power of the patriarchal system and the interlinked structures and institutions that intersect to further survey,

⁴⁷ Maryla Klajn, ‘Discourse Analysis’, *Leiden Law School Methods Portal* (Web Page, December 2020) <<https://www.leidenlawmethodsportal.nl/topics/discourse-analysis>>.

⁴⁸ James Paul Gee, *An Introduction to Discourse Analysis: Theory and Method* (Routledge, 2nd ed, 1999).

⁴⁹ Gerald Monk, ‘From Poppies to Ferns: The Discursive Production of a Life’ in George Yancy and Susan Hadley (eds), *Narrative Identities: Psychologists Engaged in Self-Construction* (Kingsley Publishers, 2005) 87.

⁵⁰ Ibid; Nicki Lisa Cole, ‘Introduction to Discourse in Sociology: A Sociological Definition’, *ThoughtCo* (Web Page, 7 August 2019) <<https://www.thoughtco.com/discourse-definition-3026070>>.

⁵¹ Dawn Snape and Liz Spencer, ‘The Foundations of Qualitative Research’ in Jane Ritchie and Jane Lewis (eds), *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (Sage Publications, 2003) 200.

⁵² Melissa NP Johnson and Ethan McLean, *International Encyclopaedia of Human Geography* (Elsevier Ltd, 2nd ed, 2020).

⁵³ Nicola A Harding, ‘Co-Constructing Feminist Research: Ensuring Meaningful Participation While Researching the Experiences of Criminalised Women’ (2020) 13(2) *Methodological Innovations* 1.

control, and oppress women.⁵⁴ The research conducted for this article is generally confined to the analysis of written texts, including case laws, books, journal articles, legislation, published reports, newspaper and magazine articles, and websites of non-governmental organizations (NGOs), covering the period from 1970 to 2021. Statistics are also taken from the NGO websites, which provide data obtained from the police and government agencies in Malaysia. As well as this, research on Brunei, India, and other countries is derived from newspaper reports and official websites. The most common keywords used for this analysis are terms and phrases which include: ‘rape’, ‘victim-blaming’, ‘patriarchy’, ‘sexual violence’, ‘victim blaming attitudes’, ‘gender roles’, and ‘ideal woman’. This article demonstrates how victim-blaming attitudes have acted as an obstacle for victims of rape and sexual violence to achieve fairness and justice in court and in the eyes of the public.

III THE INSTITUTIONALISATION OF PATRIARCHAL NORMS

While women’s rights and participation in all levels of political and socio-economic sectors continue to soar, the gender binary and divide where man is ‘naturally’ dominant in both identity and status continue to be sustained throughout centuries. This has resulted in ‘male supremacy’ or ‘male dominance’ and created patriarchal stereotypes. The general dominant stereotypes position women as weak, inferior, passive, and dependent on men, while men are presumed to be naturally aggressive, strong, superior, and independent. Within these settings, men are perceived as naturally aggressive,⁵⁵ and women are expected to guard and police themselves from being assaulted by men.⁵⁶

The concept of patriarchy is embedded in social structures and has become a defining feature of societal structures. In Southeast Asian countries such as Malaysia, Indonesia and Brunei, as well as in South Asian countries such as India, states often reproduce patriarchal attitudes and sustain male dominance and power in society. Accordingly, women are placed in subordinate positions, which conveys the message that their ability to make decisions cannot be trusted.⁵⁷ This perpetuates women’s dependency on men

⁵⁴ Ibid.

⁵⁵ Lucia-Mihaela Grosu-Rădulescu, ‘Objectification of Women and Violence in What the Body Remembers’ (2016) 8(1) *Rupkatha Journal On Interdisciplinary Studies in Humanities* 86.

⁵⁶ Daniel Riffe, Stephen Lacy and Frederick G Fico, *Analyzing Media Messages: Using Quantitative Content Analysis in Research*, (Lawrence Erlbaum Associates, 2nd ed, 2005).

⁵⁷ Alistair McFadyen, *Bound to Sin: Abuse, Holocaust, and the Christian Doctrine of Sin* (Cambridge University Press, 2000).

and sustains men's dominance and power over women. To sustain the patriarchal system, gendered identities are formed through processes of socialisation within families, schools, religious institutions, government agencies and the media.⁵⁸ These institutions, among others, instil culturally appropriate attitudes and behaviours in individuals and maintain practices of gender hierarchy by generating conformity and compliance through systemic and structural control.⁵⁹

Based on research conducted in Malaysia in 2015, it was found that primary schools overly relied on 'masculine'⁶⁰ textbooks for girls' education.⁶¹ In this context, women are often shown in textbooks to be mostly involved in domestic and indoor activities while men had a higher presence in professional roles.⁶² While this itself can be strongly disputed and condemned for dictating gender roles, an infographic requiring girls to protect their modesty or risk being shamed and ostracised by friends and family was also found in a Malaysian school textbook for nine-year-olds in 2019.⁶³ The infographic received strong condemnation from women NGOs and activists and has been removed from the textbook. More recent studies of Malaysian primary school textbooks similarly found that women continue to be represented through traditional gender roles, passive characteristics, and caregiving responsibilities, while men are more commonly portrayed in active, authoritative, and professional roles.⁶⁴ Another recent example can be seen through an article which was published in the Health Ministry's website entitled 'Emotional Impact on Sexual Harassment Victims'.⁶⁵ The article cited 'physical

⁵⁸ Michael J Carter, 'Gender Socialization and Identity Theory' (2014) 3(2) *Social Sciences* 242.

⁵⁹ Ibid.

⁶⁰ Masculine textbooks in this article refers to masculine generic constructions or merely male referenced, and the association between all masculine generic nouns and pronouns.

⁶¹ Kazi Md Mukitil Islam and M Niaz Asadullah, 'Gender Stereotypes and Education: A Comparative Content Analysis of Malaysian, Indonesian, Pakistani and Bangladeshi School Textbooks' (2018) 13(1) *PLoS ONE* 1,1–24. This research was also conducted in Indonesia, Pakistan, and Bangladesh.

⁶² Ibid.

⁶³ Mayuri Mei Lin, 'Malaysia Revises 'Victim-Shaming' School Textbook' *BBC News* (online, 16 January 2019) <<https://www.bbc.com/news/world-asia-46888332>>.

⁶⁴ Pitchayada Mekhirunsiri and Mala Rajo Sathian, 'Gender Biases Represented in Malaysian and Thai National Language Textbooks for Primary Schools' (2024) 26(2) *Jurnal Pengajian Media Malaysia* 77. Puteri Ayufiza Asmuni, 'Reinforcement of Gender Stereotyping in Malaysian Primary English Textbooks' (2023) 14(3) *Arab World English Journal* 66.

⁶⁵ Tan Mei Zi, 'Health Ministry Slammed Online for Victim-Blaming Sexual Harassment Article, Other Questionable Posts Still Up' *Malay Mail* (online, 13 April 2021) <<https://www.malaymail.com/news/life/2021/04/13/health-ministry-slammed-online-for-victim-blaming-sexual-harassment-article/1966168>>.

attractiveness', a 'charming personality', and a 'sexy body shape' as factors that 'invite' unwanted sexual attention from men, and will 'indirectly' cause sexual harassment to occur.⁶⁶ Like the earlier example, this post that was uploaded in 2016 has also been recently deleted after strong condemnation from NGOs and women activists. Such forms of education not only perpetuate the victim-blaming culture but also normalise rape and violence against women.

The institutionalisation of patriarchal norms is also visible in judicial institutions, particularly in rape and sexual offences. Although the definition of rape in Malaysia encompasses a broader scope and set of circumstances,⁶⁷ cases have always coalesced around the presence of force and resistance in acts of rape. In this regard, female complainants who do not display visible signs of stress or marks of physical violence will be discredited and less likely to be believed by law enforcers and the judicial system. As a consequence, those who have experienced a lower degree of physical victimisation or who are unable to present sufficient evidence that they have been raped or sexually assaulted may be blamed by the judges, juries, media, community, or the legislature for causing their own victimisation.⁶⁸ In these situations, women are blamed because they do not conform to stereotypical constructions of a 'real' rape victim. For example, in the case of *Hj Tahamit bin Hj Jamudin v Public Prosecutor*,⁶⁹ Steven Chong J, the Trial Judge in this case, convicted the accused, a 60-year-old retired army officer of two offences of attempting to rape a 14-year-old girl pursuant to s376 (1) and 511 of the Penal Code. The accused was also convicted of attempting to have carnal knowledge of a girl under 16 years of age contrary to the Unlawful Carnal Knowledge Act, Chapter 29 on 7 April 2010. The accused was sentenced to nine years imprisonment on the first offence, 11 years imprisonment on the second offence, and three years on the third offence, making it 14 years in total, and he appealed to the Court of Appeal ('COA') in Brunei Darussalam. Upon hearing submissions from his counsel and the prosecutor, the COA sustained the convictions but felt that the 14 years' imprisonment was excessive. Mortimer P held:

The appellant caused none of the serious harm which attended most instances of the full offence. He was not responsible for the girls having to

⁶⁶ Ibid.

⁶⁷ Not just limited to consent and free-will.

⁶⁸ Edna Erez, 'Women as Victims and Survivors in the Context of Transnational Human Trafficking for Commercial Sex Exploitation' (2013) 81(1) *Revue Internationale de Droit Penal* 551; Barton L Ingraham, 'The Right of Silence, the Presumption of Innocence, the Burden of Proof, and a Modest Proposal: A Reply to O' Reilly' (1996) 86(2) *The Journal of Criminal Law and Criminology* 559.

⁶⁹ *Hj Tahamit bin Hj Jamudin v Public Prosecutor* (n 41).

*testify; there was consent, no resistance, force or trauma, no distress to mother and family and no loss of virginity. Both girls were sexually experienced and there was no loss of innocence. The appellant had served his country in the army for 19 years and was now over 60 years of age. These were weighty matters of mitigation to which effect must be given without belittling the seriousness of the offences committed (see paras 36–38).*⁷⁰

This case indicates the seriousness of victim-blaming attitudes in courts. It demonstrates how the victim's sexual history and lack of 'resistance' are used to reduce blame on the appellant (accused), and hence his sentence. It also shows blatant disregard for the victim's dignity and privacy by referring to their chastity, purity and sexual behaviour, but considers the accused's past services to his country. This clearly shows how double standards and patriarchal norms operate in the judiciary system.

On the contrary, the consideration given in the case of *Augustine Foong Boo Jang v Public Prosecutor*,⁷¹ sought to consider the various circumstances and imbalance of power held between the victim and the accused – maid and employer. In this case, the accused was charged for raping his maid, and the defence counsel alleged that the maid consented to sexual intercourse. However, the Judge in this case sought to dispel presumptions of consent by demarcating consent and submission. The learned Judge argued that while consent always imports submission, submission does not necessarily import consent.⁷² This is further illustrated in a report made to the Home Secretary in England which is set out in the judgment of *R v Olugboja*,⁷³ that says:

.....lack of consent is the crux of the matter and this may exist though no force is used. The test is not 'was the act against her will?' but 'was it without her consent'?

.....It is, therefore, wrong to assume that the woman must show signs of injury or that she must always physically resist before there can be a conviction for rape.....

Although the lack of resistance does not necessarily entail consent or voluntariness, there is still a tendency to apportion blame to women victims.⁷⁴ Such practices, which aim to invoke some guilty feeling on the part of the victim, not only revive the victim's trauma of being raped but also blame and

⁷⁰ Ibid 863.

⁷¹ *Augustine Foong Boo Jang v Public Prosecutor* [1990] 1 MLJ 225.

⁷² Ibid.

⁷³ *R v Olugboja* [1981] 3 All ER 443, 447.

⁷⁴ Victoria Nourse, 'The Common Law's Resistance to Gender Violence' (2024) 110(1) *Iowa Law Review* 167.

shame the victim. This can lead to ‘irreparable harm’ and invoke feelings of powerlessness, worthlessness, depression, self-disgust, and even suicidal on the victim.⁷⁵ As a result, rape victims may be reluctant to report their cases to the police for fear of going through vigorous investigation and intense questioning. Many who have lodged reports have also been said to have withdrawn their complaints because of family pressure or for fear of being subjected to the stigma and scrutiny of a rape investigation.⁷⁶ This clearly demonstrates the barriers women face in seeking justice. These obstacles act to silence them from speaking up while perpetuating a culture of impunity for perpetrators of rape.

A The Construction of Women’s Sexuality

The traditional tendency to consider women as subordinate to men has led to the perception of justification of traditional violent practices and gender-based violence as a form of control or ‘protection’ of women. In Malaysia, certain religious interpretations and discourses have at times been used to justify patriarchal norms, reinforce women's subordination, and attribute blame to women in cases of sexual offences. Some Islamic sermons have openly connected or insinuated that women who do not cover their ‘aurah’ and do not wear the ‘tudung’ (hijab) are more likely to become victims of sexual violence. In one sermon entitled “Aurat: Antara Kebebasan dan Maruah Diri” (Aurat: Between Freedom and Self-Dignity), delivered on 6 February 2015, women were encouraged to cover their ‘aurah’ to avoid the evil gaze of men and to prevent negative incidents such as rape, illicit sex, and incest.⁷⁷ Such types of sermons are not only incorrect but also disrespectful, irresponsible, and biased. It also does not make sense as there have been women who have been raped even though they were covering their ‘aurah’.

For example, Noor Suzaily Mukhtar, who was brutally raped, sodomised, and killed on a bus in 2000 was wearing a long skirt and ‘tudung’ during the incident. Therefore, it is pertinent to understand that rape involves more complicated dynamics than failure to ‘cover your aurah.’ It involves the

⁷⁵ Karen G Weiss, ‘Too Ashamed to Report: Deconstructing the Shame of Sexual Victimization’ (2010) 5(3) *Feminist Criminology* 286.

⁷⁶ Imran Ariff, ‘120 Rape Cases Seen, But Only Three Went to Trial’ *FMT* (online, 2 May 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/05/02/120-rape-cases-seen-but-only-three-went-to-trial/>>.

⁷⁷ Chong Eng, ‘Sermon Shouldn’t Keep Blaming Attire for Rape’ *Malaysiakini* (online, 9 February 2015) <<https://www.malaysiakini.com/news/288719>>.

intention to humiliate victims physically, mentally, and verbally.⁷⁸ In other words, rape is the result of unequal power relationships between perpetrators and victims. Therefore, the ‘cover up your aurah’ message does not assist victims of sexual violence but instead shifts the blame from the perpetrators to the victims.

The blaming attitude does not only come from the religious sectors but also individuals from all walks of life and educational backgrounds. According to Moor, attitudes and characteristics possessed by women have been polemicised by men to place rape offences on women.⁷⁹ For example, in July 2020, Norazizi Samsudain, an MRSB Baling lecturer, disputed the study findings of an infographic (pie chart) on his Instagram account on the causes of rape which the Women’s Centre of Change (WCC) had earlier issued.⁸⁰ According to WCC’s findings, the police statistics indicated that around 80 per cent of rape victims are females below 18 years of age and nearly 65 per cent of rape victims are reported to be children (including babies and toddlers).⁸¹ Out of this percentage, almost 80 per cent of incest victims were below 15 years of age, and over 90 per cent of child rapes are committed by trusted family members or friends.⁸² Norazizi however, claimed that only two out of ten cases are ‘real’ rape cases while the majority of cases involve consensual sexual encounters. He also blamed the victims for displaying ‘improper’ clothing and behaviour.⁸³ Norazizi’s statement suffered massive online backlash, and his video was deleted after receiving a 25,000-signature petition to remove the posting.⁸⁴

According to the UN Special Rapporteur on violence against women, stereotypes contribute to the violation of human rights and fundamental freedoms for women.⁸⁵ The World Bank found that 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner

⁷⁸ Juliet L Darke, ‘Sexual Aggression’ in WL Marshall, DR Laws and HE Barbaree (eds), *Handbook of Sexual Assault: Issues, Theories, and Treatment of the Offender* (Springer, 1990) 55–72.

⁷⁹ Avigail Moor, ‘She Dresses to Attract, He Perceives Seduction: A Gender Gap in Attribution of Intent to Women’s Revealing Style of Dress and its Relation to Blaming the Victims of Sexual Violence’ (2010) 11(4) *Journal of International Women’s Studies* 115.

⁸⁰ ‘Victim Blaming Perpetuates Silence, Injustice — WCC’, *Malay Mail* (online, 7 July 2020) <<https://www.malaymail.com/news/what-you-think/2020/07/07/victim-blaming-perpetuates-silence-injustice-wcc/1882170>>.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ United Nations, *Gender Stereotypes and Stereotyping and Women’s Rights* (Report, 2019) <https://www.ohchr.org/documents/issues/women/wrgs/onepagars/gender_stereotyping.pdf>.

violence or non-partner sexual violence; seven per cent of women have been sexually assaulted by someone other than a partner; 38 per cent of murders of women are committed by an intimate partner; and 200 million women have experienced female genital mutilation/cutting.⁸⁶ Although these figures show the severity of violence against women, many of the crimes committed against women originate from misogynist mindsets which originate from patriarchal practices and are regularly legitimised through state institutions. In this instance, victim-blaming strategies have also been institutionalised, including in courts.⁸⁷ This is because cultural practices and religious beliefs have been used to subjugate women and ensure that women remain subservient to men and can be controlled by the state. Therefore, states tend to offer only limited criminal justice towards female victims to ensure that women conform to the moral codes of the ‘ideal woman’.

B Limited Criminal Justice Protection Towards Female Victims

The public and policy makers tend to expect the victim to be sexually blameless.⁸⁸ That is, women whose behaviour violates traditional gender norms (such as by engaging in risky behaviour like casual sex, consuming drugs or alcohol, or hitchhiking) are often considered to be partially responsible for their own victimisation.⁸⁹ The consequence of such an approach is to place culpability for any victimisation onto victims themselves.⁹⁰ Blaming the victim allows the victimisers to convince themselves that the victim is guilty of some

⁸⁶ World Bank, *Gender-Based Violence (Violence Against Women and Girls)* (Report, 2019) <<https://www.worldbank.org/en/topic/socialsustainability/brief/violence-against-women-and-girls.print>>; L Sardinha et al, 'Global Prevalence of Non-Partner Sexual Violence Against Women' (2024) 102(8) *Bull World Health Organ* 582, 582–587 <<https://doi.org/10.2471/blt.23.290420>>.

⁸⁷ Sandra Walklate (ed), *Victimology: The Victim and the Criminal Justice Process* (Routledge, 2013); Ezzat A Fattah, 'The Victims and Their Victimiziers' in Ezzat A Fattah (ed), *Understanding Criminal Victimization: An Introduction to Theoretical Victimology* (Prentice-Hall Canada, 1991); Susan SM Edwards, *Policing 'Domestic' Violence: Women, the Law and the State* (Routledge, 2025).

⁸⁸ Jo Doezeema, 'Loose Women or Lost Women? The Re-emergence of the Myth of “White Slavery” in Contemporary Discourses of Trafficking in Women' (2000) 18 (Winter) *Gender Issues* 23; Jesús de la Torre Laso and Juan M Rodríguez-Díaz, 'The Relationship Between Attribution of Blame and the Perception of Resistance in Relation to Victims of Sexual Violence' [2022] *Frontiers in Psychology* 1, 1–11 <<https://doi.org/10.3389/fpsyg.2022.868793>>.

⁸⁹ Amy Rose Grubb and Emily Turner, 'Attribution of Blame in Rape Cases: A Review of the Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming' (2012) 15(5) *Aggression and Violent Behavior* 443.

⁹⁰ Tim Newburn, 'Victims, Victimization and Victimology' in Tim Newburn (ed), *Criminology* (Routledge, (2nd ed, 2013).

injustice.⁹¹ This allows the offender to transform the victim into a person deserving of suffering and justifies the conscience of potential victimisers.⁹² Victim-blaming strategies have also been institutionalised, including in courts.⁹³ While challenging witness credibility is a legitimate aspect of criminal defence advocacy, rape and sexual offence cases frequently involve attempts to undermine the complainant's credibility by scrutinising her behaviour, morality, and sexual history, thereby shifting responsibility from the accused to the victim (as discussed earlier). This is conducted through vigorous questioning in court to establish any provocation or culpability on the part of the victim and also by making insinuations about the victim's morality.⁹⁴ By examining the victim's behaviour and morality, the perpetrator would be able to shift the prevention of responsibility from the offender to the victim.⁹⁵ In this instance, an individual may find it difficult to ascribe to the title of a victim if found to be partly responsible or complicit in certain acts.⁹⁶ In such cases, the judiciary may refuse to recognise that the victim has been raped or deserves the title of a victim.⁹⁷

For sex workers who are often regarded as criminals, sexually deviant, socially inept, and/or mentally deficient, their complaints about rape are frequently trivialised or minimised. In some cases, such complaints will not be regarded as rape, but 'theft of services'.⁹⁸ This is because there is a presumption that a sex worker who has consented to sexual acts for money does not have the right to forfeit her consent.⁹⁹ Therefore, those who complain of being raped or attacked face difficulties in convincing the authorities and are likely to be disbelieved by them because of the stigma that is attached to sex workers.¹⁰⁰ They are also perceived as 'undeserving victims' and will typically

⁹¹ Fattah (n 87).

⁹² Ibid.

⁹³ Walklate (n 87).

⁹⁴ Tania Boyer, Sue Allison and Helen Creagh, *Improving the Justice Response to Victims of Sexual Violence: Victims' Experiences* (Gravitas, 2018).

⁹⁵ Rebecca Stringer, 'Vulnerability after Wounding: Feminism, Rape Law, and the Differend' (2013) 42(3) *SubStance* 148.

⁹⁶ Nils Christie, 'The Ideal Victim' in Ezzat A Fattah (ed), *From Crime Policy to Victim Policy: Reorienting the Justice System* (Palgrave Macmillan, 1986).

⁹⁷ Roger Matthews, 'Female Prostitution and Victimization: A Realist Analysis' (2015) 21(1) *International Review of Victimology* 85.

⁹⁸ Mary Elizabeth Williams, 'When a Sex worker is Raped, it's Rape — Not "Theft of Services"' *Salon*, (online, 14 September 2015) <https://www.salon.com/2015/09/14/when_a_sex_worker_is_raped_its_rape_not_theft_of_services/>.

⁹⁹ Ibid.

¹⁰⁰ Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Simon & Schuster, 1963).

be treated as someone who contributed to their own mishaps.¹⁰¹ In this instance, the legal system perpetuates discrimination and denies access to legal protection or recourse.

Further, Amir¹⁰² suggested that crimes such as rape would not have happened if not without the victim's aid or cooperation, and that there is usually some form of reciprocal action between the offender and the victim.¹⁰³ This victim precipitation theory is founded on the myth that victims can prevent attacks by not engaging in risky behaviours.¹⁰⁴ This stems from the deeply rooted patriarchal attitudes towards sex and women's morality. For example, in a case involving an American postgraduate student of Indian origin in Delhi who was raped in 2015, the Delhi Lower Court convicted Mahmood Farouqi (the accused), a Bollywood filmmaker, and sentenced him to seven years' imprisonment.¹⁰⁵ However, on appeal, the Delhi High Court Judge set aside the conviction and ruled that 'a 'feeble no' could indicate willingness on the part of the victim.'¹⁰⁶ Although the woman had told the court that the accused forced himself on her and ignored her 'no', she stopped resisting at some point, fearing that she may be harmed.¹⁰⁷ The Delhi High Court Judge ruled 'in an act of passion, actuated by libido, there could be myriad circumstances, which can surround a consent, and it may not necessarily always mean yes in case of yes or no in case of no'.¹⁰⁸ This decision attracted substantial criticism and is no longer regarded as reflecting the prevailing legal approach in India. Subsequent developments in Indian criminal law and jurisprudence have reinforced that consent must be an unequivocal and voluntary agreement, and that the mere absence of physical resistance cannot, by itself, be treated as consent.¹⁰⁹

The women's rights activists denounced the Judge's statement, stating that it reinforced stereotypes that a rape was usually the woman's fault and the

¹⁰¹ Jessica M Pollak and Charis E Kubrin, 'Crime in the News: How Crimes, Offenders and Victims Are Portrayed in the Media' (2007) 14(1) *Criminal Justice and Popular Culture* 60.

¹⁰² M Amir, *Patterns in Forcible Rape* (University of Chicago Press, 1971).

¹⁰³ Stringer (n 95).

¹⁰⁴ Ibid.

¹⁰⁵ Anjana Pasricha, 'Rights Groups Furious About Indian Court Decision on Consent in Rape Cases', *Voice of America* (online, 29 September 2017) <<https://www.voanews.com/a/indian-court-rules-feeble-no-could-be-consent-in-rape-case-sparking-furor/4049623.html>>.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Aditya Vats and Anupama Pandit Saxena, 'The Evolution And Significance Of Consent In India's Rape Laws: Analysing The Impact Of The Bhartiya Sanhita, 2023' (2025) 2(7) *International Journal For Legal Research And Analysis* 5, 5–13.

onus of preventing assault lies on her.¹¹⁰ It also coincides with Smart's claim, who argues that 'doubts about the complainant's testimony are routinely generated and women's experiences of sexual abuse discredited when the events of the rape are reproduced as a pornographic vignette'.¹¹¹ As in this case, the complainant (victim) 'is re-scripted as a precipitating agent within a sexualised scenario, effectively disqualifying her from victim status and obviating the accused's responsibility for the events in question'.¹¹² Therefore, the concept of victim precipitation places unreasonable requirements on victims to demonstrate that they are 'real' and 'deserving victims' and revamps the way responsibility and blame are accorded.¹¹³

Overall, the notion of 'blaming the victim' for their own victimisation is problematic because it shifts the focus of the crime committed by the perpetrator to the victim.¹¹⁴ An example is a rape case involving a first-year law student who was gang raped by three final-year law students inside the private university campus in Sonapat district of Haryana, India.¹¹⁵ According to the victim, one of the accused abducted her from the local market on Wednesday afternoon in an SUV.¹¹⁶ She was then raped by all three accused in the vehicle until Thursday before she was dumped near the gate of her varsity.¹¹⁷ The victim also revealed that one of the accused blackmailed her by saying that 'if she revealed the incident to anyone, then pics will be uploaded on social media'.¹¹⁸ The trial court convicted all the accused and sentenced them to seven years' imprisonment in March 2017. However, on appeal, the judges in the Punjab and Haryana High Court agreed to suspend the sentencing term and ruled:

"The victim had a promiscuous attitude and a voyeuristic mind, and that her narrative does not throw up gut-wrenching violence that normally precede or accompany such incidents. The testimony of the victim suggests that there was an alternate story of casual relationship with her friends, acquaintances, adventurism, and experimentation in sexual encounters."

The rulings of the Judges in the above cases suggest that the judiciary is inclined to preclude a person from claiming or being accorded the victim status

¹¹⁰ Pasricha (n 105).

¹¹¹ Carol Smart, 'Law's Truth/Women's Experience' in Regina Graycar (ed), *Dissenting opinions: Feminist explorations in law and society* (Allen and Unwin, 1990) 16.

¹¹² Larcombe (n 35) 135.

¹¹³ Walklate (n 87).

¹¹⁴ Ibid.

¹¹⁵ Pasricha (n 105).

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

should there be any evidence or suggestion of ‘immoral’ behaviour, or if the victim does not display an attitude which fits the imagery of an ‘ideal’ woman: chaste, responsible, and cautious. As Smart noted, ‘[t]he process of the rape trial can be described as a specific mode of sexualisation of a woman’s body’ with the precise and intended effect of disqualifying her testimony and experience of sexual assault’.¹¹⁹

Larcombe points out that ‘the legal discovery of rape becomes a test of the complainant’s [victim] character and credit, particularly in terms of her sexual morality but also in relation to her moral integrity and trustworthiness as a witness’.¹²⁰ Similarly, in this case, the victim’s characteristics and personal lifestyle were sensationalised to shame and blame her. This shows how victim-blaming strategies are used in judicial systems. By using such strategies, women are constantly kept under control, while men are given the benefit of the doubt even in extreme cases such as the one above. This sustains men’s dominance over women and ensures women remain inferior. Similar situations occur to victims of sex trafficking in Malaysia. According to Anne Keyworth, a social activist who has continuously advocated for stricter enforcement of law in the east Malaysian state of Sabah, ‘some [victims] get fed up and withdraw their complaint while those who persevere feel as if they were treated as the accused and not as victims’.¹²¹ Thus, the justice system in Malaysia has been criticised for being gender biased and unaccommodating to victims of sex trafficking and sexual violence.¹²²

Zedner argues that the victim plays a significant role in the criminal justice process, ‘without the co-operation of the victim in reporting crime, furnishing evidence, identifying the offender and acting as a witness in court, most crime would remain unknown and unpunished’.¹²³ However, state institutions, including criminal justice agencies, often disregard victims’ interests and/or use victims to achieve professional outcomes, such as to win or lose the case in court. Some scholars suggest that these institutions promote a selective justice system, which only acknowledges women who fit the

¹¹⁹ Carol Smart, *Women, Crime and Criminology* (Routledge, 2013) 84.

¹²⁰ Larcombe (n 35) 134.

¹²¹ ‘Malaysia is Failing Victims of Human Trafficking’ *LaCroix International* (online, 22 August 2016) <<https://international.la-croix.com/news/malaysia-is-failing-victims-of-human-trafficking/3733#>>.

¹²² Haezreena Begum Abdul Hamid, ‘Shelter Homes - Safe Haven or Prison?’ (2023) 20 (Special Issue – Home and Homelessness) *Anti-Trafficking Review* 111 <<https://doi.org/10.14197/atr.201223207>>.

¹²³ Lucia Zedner, ‘Victims’ in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (Oxford University Press, 2002) 435.

description of a 'legitimate' or 'real' victim.¹²⁴ According to Walklate, such selectivity is meant to uphold patriarchal beliefs about women (as illustrated in the two examples above).¹²⁵ This is obvious in cases relating to sexual violence where patriarchal norms are applied to determine the victim's credibility. Although there may be laws that restrict evidence of a witness's 'bad character' or sexual history, such as in the Malaysian Evidence Act 1950, this does not prevent the defence from introducing evidence, or asking questions that can be extremely distressing to witnesses. This shows that legislation on its own does not necessarily translate into justice for victims.

While legislative reforms such as section 146A of the Malaysian Evidence Act 1950 represent an important safeguard against unnecessary intrusion into a complainant's sexual history, legal reform alone is insufficient to eliminate victim-blaming attitudes within the criminal justice system. The continued reliance on patriarchal assumptions demonstrates that meaningful reform must also address the attitudes and practices of criminal justice actors. This requires specialised education and continuous professional training for police officers, prosecutors, judges, defence counsel, and other criminal justice practitioners on trauma-informed interviewing techniques, gender-sensitive approaches to sexual violence, and the psychological impact of trauma on victims' behaviour. Such training would enable decision-makers to better understand that delayed reporting, fragmented memory, the absence of physical resistance, or continued contact with the perpetrator should not automatically undermine a complainant's credibility.

Comparative experiences from other common law jurisdictions provide useful guidance for Malaysia. In England and Wales, section 41 of the Youth Justice and Criminal Evidence Act 1999 significantly restricts the admissibility of evidence relating to a complainant's previous sexual history, thereby reducing attempts to discredit victims through irrelevant character evidence.¹²⁶ Similarly, the Crown Prosecution Service and judicial guidance emphasise that rape myths and stereotypes should not influence prosecutorial or judicial decision-making. In Australia, several jurisdictions have introduced legislative directions requiring judges to warn juries against relying on common misconceptions surrounding sexual offences, including assumptions that a genuine victim would physically resist, immediately report the offence, or display a particular emotional response.¹²⁷ These reforms recognise that

¹²⁴ Susan Estrich, *Real Rape: How the Legal System Victimizes Women Who Say No* (Harvard University Press, 1988); Gary D LaFree, 'Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases' (1981) 28(5) *Social Problems* 582.

¹²⁵ Walklate (n 87).

¹²⁶ *Youth Justice and Criminal Evidence Act 1999* (UK) s 41.

¹²⁷ Judicial Commission of New South Wales, *Criminal Trial Courts Bench Book* (Judicial Commission of New South Wales, 2002).

victims respond to trauma in different ways and that credibility should be assessed on the evidence as a whole rather than through stereotypical expectations of the 'ideal' victim.

Malaysia could draw upon these comparative developments by strengthening judicial guidelines governing the conduct of sexual offence trials, issuing practice directions discouraging reliance on rape myths and victim-blaming stereotypes, and enhancing specialised training for criminal justice practitioners. Consideration should also be given to developing victim-centred courtroom practices that minimise secondary victimisation during investigation and trial, while ensuring that victims continue to receive adequate legal protection without compromising the accused's right to a fair trial. Beyond the courtroom, sustained public education campaigns, school-based gender equality programmes, and community engagement initiatives are equally necessary to challenge patriarchal beliefs that perpetuate victim-blaming. Such reforms would complement the existing legislative framework by addressing not only the legal dimensions of sexual violence but also the underlying cultural and institutional attitudes that continue to obstruct justice for victims.

IV CONCLUSION

The prevalence and impact of sexual violence in women's lives is still not publicly acknowledged despite the enactment of laws to protect women from rape and sexual harm. The patriarchal norms discussed in this article have become the basis of women's identity and victimhood. These norms have been instilled through various structures and are reinforced through generations. As such, women are constantly battling with patriarchal ideas and beliefs to justify their identity and rights, even their own victimhood. The law has invariably colluded to oppress women, and this has been done through principles that advantage men and disadvantage women. Making the victim the sole recipient of blame in cases of rape can not only cause severe psychological damage for the victim and risk prolonging the after-effects of the assault, but it also defeats the purpose of having rape and sexual violence laws.