

PROTECT OUR CHILDREN FROM RAPISTS AND PAEDOPHILES, 14 MAY 2013

The alleged rapist: a 40 year old restaurant manager, the victim; a 13 year old girl. According to the Star and the Sabah Daily Express on 8 May 2013, the 40-year old man was applying for the withdrawal of the rape charge before the Sessions Court in Kota Kinabalu as he is going to marry the girl. Shockingly, the Deputy Public Prosecutor had not objected to the case being withdrawn, pending the marriage approval before the Syariah Court.

Is this the way our society treats underaged girls where an alleged rapist may be allowed to escape jail sentence by promising marriage? Should parents be allowed to marry off their girl-child for reasons such as poverty, culture or tradition? Surely, laws like the Child Act 2001 and the Penal Code are legislated to protect our vulnerable children and the government has a duty to protect them and ensure that justice is being served. When rape happens to a Muslim child, should she be treated differently from a non-Muslim girl?

Last October, Datuk Seri Nazri Abdul Aziz, the Minister in the Prime Minister's Office, made strong statements about amending criminal laws so that mandatory jail terms will be imposed on those found guilty of statutory rape to address the high incidence of rape involving underaged girls and to protect them against such vulnerability. The government must take action beyond talk to stop alleged rapists and paedophiles manipulating religion and culture to escape jail sentence.

In the Sabah case, since the permission to marry is allegedly pending before the Syariah Court, the issue is whether the Syarie Judge should allow a 40 year old man charged with the serious crime of rape to marry the victim? Secondly, how would a girl-child who is only 13 years old said to be "ready for marriage"? Why is there an exception to the protection accorded to all children in Malaysia, merely because a child is Muslim?

It is well documented that underaged girls who are married off are more likely to face domestic violence and sexual abuse, and that there is an increased risk of death in childbirth for young brides.

At the end of the day when a child needs protection and justice, laws and institutions have failed when a marriage certificate is used to legitimise sex with children. What happens to society when the promise of marriage is a means to escape prosecution of statutory rape? Can we expect an alleged rapist to treat his victim-wife with decency and respect, worse still if she is a child?

The Attorney General's Chambers and the Syariah Court should exercise their good judgment and discretion to prevent such deplorable acts from continuing, and preventing abusers from manipulating the justice system.

The Joint Action Group for Gender Equality (JAG) unequivocally calls for the following:

1. That the Syarie Judge rejects the marriage application for the 13 year old girl, due to her inability to give a valid consent or that she is mentally unfit for marriage.
2. The Public Prosecutor to reconsider allowing the withdrawal of rape charges merely due to marriage, based on the existing clear facts of statutory rape, taking note of the huge age gap and the power differentials between the accused and the child.
3. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prohibits all child marriages and betrothals. As Malaysia has acceded to CEDAW, our government must take action to ensure all Malaysian laws comply with this principle.
4. Immediate protection, counselling, support and assistance be provided to the victim and her family by the relevant authorities. The Child Protector should be using the full powers of the Child Act 2001 to intervene for the best interest of the child.

Laws and practices that are harmful to children's well-being must be challenged and rectified. We cannot allow our children to be sexually assaulted and yet do nothing to stop it. Our children need protection and we have a duty and obligation to protect them at all costs.

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on behalf of Joint Action Group for Gender Equality (JAG)
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