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Linguistic Representation Of Violence In Judicial Opinions In Malaysia

ABSTRACT

Violent behaviour is understood as being social and unilateral. It is social as it occurs within an interpersonal context and unilateral as it involves action taken against the well-being of another individual. Where legal discourse is concerned, judges use strategic discursive strategies to describe the accounts of the crime in their judicial decisions. This research aims to investigate the language used by judges to describe the accounts of rape in selected appellate judgements of rape cases in Malaysia. Specifically, it aims to investigate the discursive strategies adopted by judges to reformulate description of the crime. The study employed qualitative research design in which 16 judicial opinions were analysed, using van Leeuwen's (1996) framework. The findings revealed four linguistic strategies which are violent, morally/ethically disapproving, sexual and ambiguous terms in the selected rape cases. It was also revealed that rape is found often characterized as a non-coerced and mutually-consented behavior rather than a criminal act. This results to minimize the level of violence, mitigates offender responsibility and backgrounds victim's experience. A significant finding is that the judges' use of the morally/ethically disapproving terms is laden with religious values. Further findings revealed that judges' use of 'interpretative repertoires' in describing cases of sexual violence. Coates et. al (1994) opined that with limited interpretative repertoire, judges would not be able to give the precise description of rape. Recommendations include conducting a similar analysis with a much bigger sample as well as to study whether different rape categories namely acquaintance rape, incestuous rape and stranger rape would yield any distinct terms used for the respective rape types.

Keywords: *judicial decisions, sexual violence, language and violence, legal discourse, discursive strategies*

INTRODUCTION

In the legal institution, language plays an important function in the institution, as most events take place in the form of spoken (lawyer-client interviews, hearing, trials etc) and written (eg. creation of legal texts and written laws) discourse. Language constructs the law (Gibbons, 1994) and it functions as the '…medium, process and product in the various arenas where legal texts, spoken or written, are generated in the service of regulating behavior' (Maley, 1994, p.11). Legal discourse

is viewed as discourse of power, as it is understood that those who are members of the legal institution has more access to the language of the law, and has more right to speak and control the discursive activity in the courtroom.

One avenue to understand the interplay between language and the law is to conduct analysis of legal discourse. There has been a growing number of studies in the research of legal discourse that include the analysis of courtroom interaction (Matoesian, 1993; Maley, 1994; Bogoch, 1999), courtroom interpretation (Moeketsi, 1999), police interviews (Heydon, 2005), child witness interview (La Rooy, Heydon, Korkman, & Myklebust, 2016), lawyer-client interaction (Bogoch & Danet, 1984; Gnisci & Bakeman, 2007) and lawyer opening and closing submissions (Haynes, 2017).

Another type of study within legal discourse that is gaining significance is the study of written judicial decisions (Coates, Bavelas & Gibson, 1994; Figeureido, 1998; Bavelas, J. & Coates, 2001; MacMartin, & Wood, 2005; Charalambous, K. 2015). The reason is because it represents the current legal practice as well as functions to shape the future law and society (Coates, Bavelas & Gibson, 1994), as well as allowing for the investigation of the link that exists between language, power and ideology to be conducted. Despite the claim and opinion put forward by members of the legal profession that the adversarial system materializes abstract ideas such as justice and impartiality, it is however not the case as they are also influenced by ideologies that result in promoting injustice and oppression in the courtrooms (Philips, 1998). Although judges are the authoritative figures in producing sound judgments according to the law, they are also human beings with varying opinions and personal social prejudices and stereotypes (Figueiredo, 1998) that have an influence when constructing legal reasonings.

Based on this contention, this study aims to discover the views of the Malaysian judges regarding rape and victims of rape through linguistic analysis of rape appeal judgments. This came from a 2017 parliamentary debate of the Sexual Offences Against Children Bill 2017 when Datuk Shabudin Yahaya, the then Tasik Gelugor member of parliament who also happened to be a former sharia judge, suggested that there was nothing wrong for rape victims to marry their rapists (See, 2018). He even suggested that that even nine-year olds were "physically and spiritually" ready for marriage (Star on-line, 4/4/2017). He added that there was nothing wrong with a rape victim to marry their rapist as this could be seen as a "remedy" to the increasing number of social problems The victim's future should not necessarily be seen as bleak for they would *at least* have a husband and this would serve as a solution to the growing social problems. This view, coming from an individual who had previously served as a judge, is alarming. How do judges actually view rape victims? How do they represent these victims in their written opinions? This is thus, the aim of this study.

Legal discourse research particularly the study of judicial opinions is slowly taking place in the Asian region. One such study by Noraini Ibrahim and Abdul Hadi Awang (2011) investigated judicial disagreements or dissenting opinions of selected Malaysian judicial opinions in civil trials. The findings noted that judges used linguistic markers to show stance and attitude in addition to the use of modal verbs. Another similar study which investigated the discursive behaviors of judicial opinions was by Han (2011) which adopted genre and critical discourse analysis methodology. The study examined the discursive construction particularly the use of metadiscourse in Chinese civil judgments. The main drive for the research rooted from the objective to discover whether the judges in China will adopt a more transparent nature when producing written judgments. In the area of judicial discourse research, Figuiredo (2002) suggests that one method of investigating the use and misuse of language regarding power over the body is

through the research of judicial discourse on sexual crimes. The reason why judicial discourse is relevant in researching language use is because judges have varying opinions as Figueiredo (1998) argues despite the claim that the judiciary is regarded as an institution which is impartial and non-ideological. To reiterate, it is a fact that judges have varying opinions and beliefs which are influenced by their personal or social prejudices and stereotypes (Charalambous, 2015)

There have been a number of studies conducted in the areas of language and the representation of social actors especially in cases of gendered crimes in the media (Adampa, 1999; Tranchese & Zollo, 2013; Tehseem, 2016). The general outcomes of these research were almost similar, i.e female victims were passivated and placed at the receiving end of the action of the offender (Adampa, 1999; Tehseem, 2016) and as a result of that, the offenders' responsibility of the crime was minimized (Transhese & Collo, 2013). The present study, however, aims to investigate the language used by the text producer (the judges) in the representation of sexual violence in appellate judgements in Malaysia.

LITERATURE REVIEW

An area of which is regarded as open to unfairness and even stereotyping is the treatment of rape victims. According to Ehrlich (2001; 2007), the 'cultural sense-making framework' that judges adopt in interpreting behaviors of rape victims influences the decision regarding the issue of consent. In analyzing three different judicial decisions from a single rape case, Ehrlich found that the trial judge and the Alberta Court of Appeal acquitted the defendant from the rape charge as they believed the victim implicitly consented to sex when she did not show any physical resistance to the offender. The cultural assumption of 'submission and compliance' on the part of the victim was understood as an appropriate behavior of femininity which is categorized and understood as 'normative heterosexual sex' (Ehrlich, 2007: 472). This notion of sexual passivity and implied consent was not shared by the Supreme Court of Canada as it acknowledges the victim's necessity to withhold resistance out of fear and did not imply consent – in which the language used to describe victim's behavior to the defendant as the language of compliance and submission. The result of this is the finding of acquittal was overturned and the defendant was charged and sentenced for rape.

A number of studies on judicial opinions on crimes involving sexual violence on women and children have been recorded (Bavelas and Coates (2001; MacMartin & Wood, 2005; Wood & MacMartin, 2007; Charalambous , 2015). An example is a study on 74 Canadian judicial sentencing decisions of child sexual abuse cases between 1993-1997 (MacMartin & Wood, 2005). This study focused on judge's formulation of motives for the offender commmiting the crime and it was found that judges most frequently employed sex-based explanations which discursively functioned as normalizing the criminalistic behaviour of the offenders on trial. Wood and MacMartin (2007) also conducted another study to investigate judges' formulation and reformulation of offender-remorse through the use of selected discursive devices and fact construction method. Bavelas and Coates (2001) argued that the language used in legal judgments concerning sexual offense can connote mutuality, consent and designate remorse – thereby reducing the aggravating aspects to the crime.

Estrich (1987) argues that the law prosecutes offenders and protects victims' rights differently. In her book, *Real Rape* she informs that the legal system shows more empathy to victims of stranger rape cases, where the offender who is a stranger to the victim, wearing a mask

and bearing a weapon, "jumping from the bushes" and attacking the unsuspecting woman. If the offender happens to be an acquaintance, no weapon is involved and no physical injuries found, the legal system will not be as sympathetic and will less likely to prosecute and convict the offender. An example of this is based on a study by Charalambous (2015) who investigated the language use to reflect the judges' attitudes on the seriousness or non-seriousness of sex crimes in Cyprus. It was found that judges characterizations of victims' identities and reformulations of the rape changes the role of a rape victim into a consenting individual. In an example where a victim of rape was labelled as a 'cabaret artiste from the Philippines', actually indirectly painted a negative image on the victim. While it was stated clearly that she was crying and begging the two rapists not to harm her, the court reformulated her narrative from rape to "they made love to her" (Charalambous, 2015: p.146.) How judges interpret these actions are manifested in the use of language to describe the crime. This is similar to what Coates et al (1994) found in their study, in which their research was on judges' use of language to describe sexual assault in their decisions. They reported that when describing stranger rape, judges employ language that shows violence and aggression; however, when cases involved people who were familiar to each other, the language use was similar to describing that of consensual sex. They suggested that judges may have very limited "interpretative repertoires" when it comes to describing sexual assault.

When it comes to the discussion concerning discourse and gender representation, the view on power and ideology are very much relevant and cannot be separated (Coates, 2004). Critical discourse analysis is very helpful to the studies of language and gender as is concerns power (Jule, 2008), and power can be manifested through language choice that can propagate meaning and values (Simpson, 1993). Language is a reflection of ideology (Bustam, 2013) and that through studying language, ideology can be identified though how one is marginalized in a discourse. Therefore, to understand how linguistic choices made can affect the ideological positions on social actors is to adopt a critical method in analyzing discourse. The model proposed by van Leeuwen (1995, 2008) that aims to analyze the representation of social actors has been adopted by a number of studies (Sunderland, 2000; Rasti & Sahragard, 2012). Sunderland (2000) for example investigates discoursal asymmetry in parentcraft texts. The findings of the analysis showed the recurring and non/recurring discursive presence of the *father/mother*. Rasti and Sahragard (2012) conducted a study to investigate how the main social actors involved in the issue of Iran's nuclear program were represented by *The Economist* – a typical Western newspaper, and the result of the study proved to delegitimate the country's program.

Thus, this study is important in a few ways. First, it will give valuable insights on the linguistic choice of judges in cases of rape appeals in Malaysia. As Malaysia is a multiethnic, multilingual and a Muslim-majority country, this study can assist in understanding how a society's view on sex and sexuality issues which are considered as a taboo topic (Makol-Abdul, Nurullah, Imam & Rahman, 2009; Chan & Jaafar, 2009) are discussed in the legal context. Second, this study will investigate whether judges have appropriate interpretative repertoire in discussing cases involving rape.

THEORY

This study will adopt the framework suggested by van Leeuwen (1996) to understand the language judges used in representing the crime of rape and how the social actors are represented. There are six elements proposed by van Leeuwen. The elements are: (1) *Inclusion / Exclusion* where social actors can be either included or excluded in the discourse, (2) *Activation/passivation*

where social actors can be represented as dynamic forces in an activity (activated) or undergoing an activity (passivated), (3) *Functionalization/Identification* where an actor can be referred to in terms of what they do (functionalization) or defined in terms of what they are (identification), (4) Relational identification where they are represented according to their personal, kinship or work relations to each other, (5) *Impersonalization* in which two sub-categories under *impersonalization* are *abstraction* (representation of quality assigned to actors)
(6) *Personalization* in which they are representational choices which personalize social actors through *categorization* and *nomination. Categorization* focuses to represent actors through their characteristics or group membership rather than their unique identity. It is further divided into *functionalization* (reference to what someone does) and *identifications*; 'when social actors are defined… in terms of what they, more or less permanently, or unavoidably, are' (van Leeuwen, 2008: 55). *Identification* is sub-divided into *classification* (references to major categories which are used to differentiate classes of people, for ex. age, gender, race and etc.), *relational identification* (reference to personal and kinship relations) and *physical identification* (physical characteristics). *Nominations* where these are references to an actor's unique identity and it is further divided into three categories: *formal* (surname or with honorifics), *semiformal* (given name and surname) and *informal* (the given name only). However, in the present study, the emphasis will be on two specific items of the framework, namely inclusion/exclusion and activation/passivation of social actors. This is attributed to the data used in the analysis.

METHODOLOGY

As mentioned, the main purpose of this study is to identify the different terms how rape is represented by the judiciary. Since the sample of the opinions is not big, it is best that the analysis is done manually. The judgements are retrieved through the use of LexisNexis, a legal database available and accessible online. After the search is conducted and judgements are identified, they are then printed so the next process of careful reading and identification of terms is conducted. Through the analysis, it was found that there are three categories of rape. The categories are acquaintance rape, incestuous rape and stranger rape. Acquaintance rape is defined as a type of rape that happen between offenders and victims who know each other. Incestuous rape is defined as rape that happens between individuals with familial bond that is not permitted to marry. Examples of offender relations in the incestuous cases are father, stepfather and uncle to the victims. The final rape category is stranger rape. This type of rape occurs when victim is sexually assaulted by those who are not known to them. It is worth mentioning that the aim of this analysis is to identify the terms regardless of the rape category.

There were 16 judicial opinions used in this study. Out of 15, 8 cases were acquaintance rape, 5 were incestuous and 2 were stranger rape cases. The overall age range of the offender is between 18 to 27, while for the victim, it is from 10 to 19 years old (table 1). It is important to mention that there are cases where the age of offender and victim did not appear anywhere in the decisions. Only ages which appeared in the decisions will be recorded.

TABLE 1: Summary of cases used for the analysis

No.	Case	Category of rape	Offender	Victim
1.	Kee Lik Tian v PP [1984] 1 MLJ 306	Acquaintance rape:	Age unknown (Family friend)	12 year old (mentally challenged)
2.	Syed Abu Tahid a/l Mohamed Esmail v PP [1988] 3 MLJ 485	Acquaintance rape	Age unknown (Family friend)	13 year old
3.	PP v Mohd Ali bin Abang Ros [1994] 2 MLJ 12	Acquaintance rape	Age unknown (Acquaintance)	Age unknown
4.	Mahendran a/k Manikam v PP [1997] 4 MLJ 273	Acquaintance rape	Age unknown (Sports teacher)	15 year old
5.	PP v Mohd Ridzwan bin Md Borhan [2004] 5 MLJ 300	Acquaintance rape	Age unknown (Acquaintance)	18 year old
6.	Ahmad Faizal Ali bin Aulad Ali & Ors v PP [2010] 2 MLJ 547	Acquaintance rape	18 yr, 21 yr and 20 year old (Acquaintance)	19 year old
7.	PP v Goh Kim Keat [2011] 7 MLJ 274	Carnal intercourse (s377c) by a known offender	Age unknown (Monk)	16 year old
8.	PP v Mohd Musa bin Ahmad [2013] 8 MLJ 466	Acquaintance rape	Age unknown (Acquaintance)	14 year old
9.	PP v Abdul Malik bin Abdullah [2013] 8 MLJ 466	Acquaintance rape	Age unknown (Yoga instructor)	15 year old
10.	Yusaini bin Mat Adam v PP [1999] 3 MLJ 582	Incestuous rape	Age unknown (Stepfather)	10 year old
11.	PP v Shari bin Mohd. Shariff [2005] 4 MLJ 763	Incestuous rape	Age unknown (Father)	12 year old
12.	Azahan bin Mohd. Aminallah v PP [2005] 5 MLJ 334	Incestuous rape	Age unknown (Father)	15 year old
13.	PP v William Ayau [2005] 4 MLJ 328	Incestuous rape	19 year old (Uncle)	13 year old

14.	Mohd. Zandere bin Arifin v PP [2006] 5 MLJ	Incestuous rape	Age unknown (Father)	13 year old
15.	Bacik Abdul Rahman v PP [2004] 5 MLJ 89	Stranger rape	Age unknown (Stranger)	11 year old
16.	Jamalludin Khadiron v PP [2004] 7 MLJ 280	Stranger rape	27 year old (Stranger)	10 year old

The data was analysed in detail to identify the word employed by the judges to describe the rape cases, which lead to four main categories of language terms, as shown in table 2 - violent, disapproving, sexual and ambiguous terms.

Table 2: Variations of language to represent rape

Category of terms	Examples	Case	Category of rape
Violent	"raped" (verb)	PP v Mohd Musa bin Ahmad	Acquaintance rape
		PP v Mohd Ali bin Abang Ros	Acquaintance rape
		Yusaini bin Mat Adam v PP	Incestuous rape
	"rape" (noun)	Jamalludin Khadiron v PP [2004]	Stranger rape
	"forcibly raped"	Bacik Abdul Rahman v PP	Stranger rape
	"preyed upon"	Ahmad Faizal Ali bin Aulad Ali & Ors v PP	Acquaintance rape
	"abused body"	Ahmad Faizal Ali bin Aulad Ali & Ors v PP	Acquaintance rape

Morally/Ethically disapproving	"the despicable and shameful crime"	Jamalludin Khadiron v PP	Stranger rape
	"a heinous crime"		
	"contemptible act"	PP v Goh Kim Keat	Acquaintance rape
	"condemned act"		
Sexual	"had sex"	Kee Lik Tian v PP	Acquaintance rape
	"sexual intercourse"	Kee Lik Tian v PP	Acquaintance rape
		Syed Abu Tahid a/l Mohamed Esmail v PP	Acquaintance rape
		Mahendran a/l Manikam v PP	Acquaintance rape
		Mohd. Zandere bin Arifin v PP	Incestuous rape
	"acts of intercourse"	Azahan bin Mohd. Aminallah v PP	Incestuous rape
	"kissed and fondled"	PP v Mohd Ridzwan bin Md Borhan	Acquaintance rape
	"embraced and kissed"	PP v Mohd Ridzwan bin Md Borhan	Acquaintance rape
	"grope and fondle"	PP v William Ayau	Incestuous rape
Ambiguous	"having the connection"	Mahendran a/l Manikam v PP	Acquaintance rape
	"sexual connection"	Mahendran a/l Manikam v PP	Acquaintance rape

	"sexual liaisons"	PP v Abdul Malik bin Abdullah	Acquaintance rape
	"the episode"	PP v Shari bin Mohd. Shariff	Incestuous rape

FINDINGS

Detailed analysis and examples of excerpts taken from the analysed cases are presented and described based on the four main categories.

VIOLENT TERMS

The first category of language to describe the crime is the term 'rape'. In several examples, the offender is activated and placed as the agent of the action 'rape' and also the subject in the nominalized 'rape'. The positioning of the offender functions in addition to the use of the term 'rape' foregrounds the coercive behavior of the offender. Violent terms are expected to be used in cases of rape, as found in these excerpts:

*The respondent had **raped** a 14 year old girl who later gave birth to a baby*

PP v Mohd Musa bin Ahmad [2013] 8 MLJ 466
(Acquaintance rape: nil/14 years old)

*The first respondent took her to a house where he **raped** her.*

PP v Mohd Ali bin Abang Ros [1994] 2 MLJ 12
(Acquaintance rape: nil/nil)

*As the girl was about to leave the flat the accused prevented her from doing so and then he **raped** her.*

Yusaini bin Mat Adam v PP [1999] 3 MLJ 582
(Incestuous rape: stepfather nil/10 year old)

*Briefly stated, the appellant had **forcibly raped** a primary 6 schoolgirl whom the appellant with his car from the read had first knocked off her bicycle and then forcibly abducted her to the scene of the crime."*

Bacik Abdul Rahman v PP [2004] 5 MLJ 89
(Stranger rape: nil/11 years old)

*Here, the appellant seemed to be a persistent offender in committing attempted **rape** on children.*

Jamalludin Khadiron v PP [2004] 7 MLJ 280
(Stranger rape: 27 year old/ 10 year old)

*He was also charged with an offence of **raping** the said female minor.*

Syed Abu Tahid a/l Mohamed Esmail v PP [1988] 3 MLJ 485
(Acquaintance rape: family friends nil year/13 years old)

Other use of terms that reflect the nature of rape that is understood to be a coerced action, also appears to be the choice of words by the judges in the written decisions. The use of terms such as 'preyed upon' and 'abused' are words to show aggression against the victim. Since the position of the offender is activated in the sentence, this position functions to highlight the offender's action against the victim. The active position of the offender foregrounds the aggression even more.

> *The three appellants **preyed upon** a young innocent girl, who followed the second appellant to the house based on trust and friendship, and **abused her body** for their own selfish gratification, without regard to morality or conscience, or the fear of God.*
>
> Ahmad Faizal Ali bin Aulad Ali & Ors v PP [2010] 2 MLJ 547
> *(Acquaintance rape: 18 yr, 21 yr and 20 year old / 19 years old)*

MORALLY/ETHICALLY DISSAPPROVING TERMS

The second type of language term used by judges is the morally/ethically disapproving terms. Terms such as '*despicable and shameful crime*, *'heinous crime'*, '*contemptible act'*,*'a condemned act' and 'immoral conduct'* as shown below are examples of how judges see the actions of the perpetrator as morally and ethically disapproving.

In the case Jamalludin Khadiron vPP, the 10 year old victim is placed as the recipient of the action which is described as *'despicable and shameful'* and also *'heinous'*. The selection of these disapproving terms might be driven by the fact that this was a stranger rape and the offender committed the crime while the victim was on her way home from school.

> *While the appellant is concerned for his mother whom he has to take care of, this court cannot disregard the physiological trauma, embarrassment and **the despicable and shameful crime** he has committed on an innocent child who was only 10 years old at the time of the commission of the offence.*
>
> *She was brought to the bushes by the appellant and he committed **a heinous crime** on a child*
>
> Jamalludin Khadiron v PP [2004] 7 MLJ 280
> *(Stranger rape: 27 year old/ 10 year old)*

In the case of PP v Goh Kim Keat, the offender who was a monk at the temple where the victim and her family visited to perform their prayers, was convicted of carnal intercourse. Here, the offender was described as someone who was *'…entrusted with great faith and hope'* and *'….being 'medium between men and God…'* clearly breached the trust of the worshippers. In the first example, the offender is excluded but his action performed on the victim was characterized as *'a contemptible act'.* In the following examples, attention was given to the offender's action as in the phrase '*the condemned act of the accused'* and *'immoral conduct'.*

> *Such a **contemptible act** has caused the victim to endure much shame and humiliation."*

> *The **condemned act** of the accused can never be accepted by any religion, customs or belief.*

> *Furthermore, it was committed by a person entrusted with great faith and hope like the accused being 'medium between men and God' (according to the victim and her family's belief) who was in charge at the religious institution.*
>
> *The big hope and trust confided in the accused by the victim and her family to lead them in prayer had been abused by the accused in a place they considered sacred. This place should have been safe from such* ***immoral conduct*** *that would definitely cause embarrassment and disgrace to the integrity of the victim's one whole family.*
>
> PP v Goh Kim Keat [2011] 7 MLJ 274
> *(Acquaintance rape: nil year monk/ 16 year old)*

SEXUAL TERMS

The next set of language use to represent rape is the use of sexual terms. However, the vocabulary used to describe rape in some of the cases were more suitable to describe consensual act rather than a forced act. Rape was represented as sexual events as the terms '*sex*' and '*sexual intercourse'* are used frequently even though the dictionary definition of the terms emphasize mutuality. The age of the victims in the rape cases range from 12 to 18 years old and all of the offenders are either acquaintances or a family members to the victim.

> *Upon these facts the learned President found PW3 (the victim) to be a reliable and credible witness……. and PW3's complaint to her that it was the accused who* ***had sex*** *with her.*
>
> *It is sufficient to say that according to the prosecution the Appellant went to the playground of the girl's school, on the date and at the time alleged in the charge, found her playing there and persuaded her to follow him to an oil palm plantation nearby where he* ***had sexual intercourse*** *with her."*
>
> Kee Lik Tian v PP [1984] 1 MLJ 306
> *(Acquaintance rape: 49 year old family friend/ 12 year old mentally challenged)*
>
> *According to the girl's evidence, there were at least two occasions when she and the appellant* ***had sexual intercourse****.*
>
> Syed Abu Tahid a/l Mohamed Esmail v PP [1988] 3 MLJ 485
> *(Acquaintance rape: family friends nil year/13 years old)*
>
> *The learned judge made a finding that SP3 (the victim) had* ***had sexual intercourse*** *with the appellant thrice.*
>
> *The learned judge made a finding that SP3 (the victim) had* ***had sexual intercourse*** *with the appellant thrice.*
>
> Mahendran a/l Manikam v PP [1997] 4 MLJ 273
> *(Acquaintance rape: sports teacher nil year/ 15 year old)*

> *The victim told the complainant that the baby boy was born as a result of* ***sexual intercourse*** *between her and her father (the appellant).*
>
> Mohd. Zandere bin Arifin v PP [2006] 5 MLJ
> *(Incestuous rape: Father nil year/ 13 years old)*

> *So, here too*, PW2's (the victim's) evidence as *to the appellant's previous acts of intercourse with her was relevant, that is to say, admissible.*
>
> Azahan bin Mohd. Aminallah v PP [2005] 5 MLJ 334
> *(Incestuous rape: Father nil year/ 15 years old)*

Descriptions of particular details of the rape can be seen as 'sexualized' and to a certain extent is similar to erotic literature (Coates et. al , 1994). The offender is placed in the subject position and an active agent of the process '*fondled', 'kissed', 'embraced' and 'kissed*' which connote affectionate behavior rather than a forced act. It is worth pointing out that although there was some kind of resistance from the victim and was mentioned in the judgement in the case of PP v Mohd Ridzwan bin Md Borhan "*… although the complainant alleged that she resisted and threatened to report to the police."*, because of the terms *'embraced and kissed'* were used, it suggested that there was consent from the victim's part and no form of violence was involved.

> *She stated that towards the end of the [sic] November 1993 school holidays, she worked for the appellant and during one night she spent in the shop, the appellant* ***fondled and kissed*** *her on the sofa*.
>
> *In addition she testified that at various times during the time the appellant was coaching the team, he had* ***kissed and fondled her.***
>
> *During those hours, the accused* ***embraced and kissed*** *the complainant, with whom he later had sexual intercourse, not once but twice, although the complainant alleged that she resisted and threatened to report to the police."*
>
> PP v Mohd Ridzwan bin Md Borhan [2004] 5 MLJ 300
> *(nil year male acquaintance./18year old victim)*

> *He started to* ***grope and fondle*** *her breast and lifted her up and brought (her) to her brother's bedroom.*
>
> PP v William Ayau [2005] 4 MLJ 328
> *(Incestuous rape: Uncle 19 year old/ 13 year old)*

AMBIGUOUS TERMS

The final type of language used by the judges is ambiguous terms. The use of words such as '*connection*' and '*liaison*' in the examples indicates that there was no resistance from the victim and she was a willing participant. In addition, the victim is placed as the one reporting the act and the formulation where the victim is placed as the active participant in the affectionate behavior in addition to the prepositional phrase 'with him' shows that she was not a passive and weak victim but a willing participant in the act.

> *While **having the connection** the appellant told her that he loved her and that he wanted to divorce his wife to marry her and she said that she was willing to marry him.*

> *She also gave evidence of **another sexual connection with him** which she said took place after her 16th birthday.*
>
> Mahendran a/l Manikam v PP [1997] 4 MLJ 273
> *(Acquaintance rape: sports teacher nil year/ 15 year old)*

> *The **sexual liaisons** happened more than once as detailed out in the facts for the purposes of the two charges*
>
> PP v Abdul Malik bin Abdullah [2013] 8 MLJ 466
> *(Acquaintance rape: Yoga instructor nil year/ 15 year old)*

Another example of ambiguous term is the use of **'episode'**. The decision to use an ambiguous term **'episode'** is to put a distance between the offender and the crime, thus reduces offender responsibility in the case.

> *On 3 August 2001, the accused repeated **the episode,** but this time the venue was the hall of the house, after which the complainant had escaped to the house of her mother's adopted sister."*
>
> PP v Shari bin Mohd. Shariff [2005] 4 MLJ 763
> (nil yr father/12 yr daughter)

DISCUSSION

The analysis showed that there is a tendency of these judgments to characterize rape as a non-coerced and a mutually consented action rather than a criminal act. The outcome of this result brings about a few major consequences. The first consequence is the minimization of violence and backgrounds on the severity of the assault. Using sexual language will mislead and misdirect (Bavelas & Coates, 2010). In addition, the use of sexual language to describe sexual violence may even lead to the normalization of the criminal act, which is feared that it would make way into our daily discursive habits. This raises the question - How do we then differentiate between an assault and a consensual behavior?

The next consequence is that the use of non-violent terms will somehow transform an offender's criminal intent on a victim into a mutually-consented behavior between two consenting individuals. This will successfully reduce the offender's responsibility and a lighter penalty will be assigned. With reference to the cases analyzed, sexual terms used in the judgments are **"intercourse"** in Mahendran a/l Manikam v PP and Azahan bin Mohd. Aminallah v PP, **"kissed and fondled"** in PP v Mohd Ridzwan bin Md Borhan and **"embraced and kissed"** in PP v Mohd Ridzwan bin Md Borhan. This resulted in responses which are in favor of the offenders.

The use of terms other than rape as a crime will also affect the victims as it does not represent the suffering of the victims. The trauma suffered by victims of rape are deemed as unimportant and disregarded. By referring to their experience as **"acts of intercourse"** in the case of incestuous rape Azahan bin Mohd. Aminallah v PP, the rape of a 15 year old by her own father linguistically transforms her rape into a case of a forbidden love affair. Characterizing violence using ambiguous term such as **"the episode"** in another incestuous rape case PP v Shari bin Mohd. Shariff, successfully dismissed the victim's experience as unimportant.

Another important observation from the analysis is that there is a case where both violent language and sexual language were used in reporting of the same case. An example of this is in the case of Syed Abu Tahid a/l Mohamed Esmail v PP. This is an appeal case from an offender who was charged with raping (in addition to the kidnapping charge where the offender was sentenced to 4 years in prison) his 13-year-old acquaintance. The offender filed an appeal against the sentence. In the judgment the offender was described as "*He was also charged with an offence of **raping** the said female minor."* Here the offender is activated as an agent of the verb *"charged of committing an offence of raping*". But further in the judgment, the description, "*According to the girl's evidence, there were at least two occasions when she and the appellant had **sexual intercourse**."* was a surprise. In this sentence, the victim is placed as an active agent together with the offender for the verb *'had sexual intercourse'.* In this position, she would be seen as an active participant of the act of having intercourse, and not be regarded as a victim.

There are two considerations with regard to the discussion. Firstly, since all of the cases analyzed here are cases of appeal, it is possible to say that the judge was referring to the original court notes regarding the case. Hence, he may be reporting observations of the presiding judge when the first trial took place. Secondly, the decision to use both violent and sexual language to refer to the same offender and victim might indicate an issue with interpretative repertoire when it comes to reporting sexual crimes. This is in tandem with the findings of Coates et. al (1994). They suggested that the interpretative repertoires available to describe sexual assault is limited to either describing stranger rape and consensual sex (Coates, et. al, 1994).

CONCLUSION

The present study investigated the judicial discursive behavior involving the linguistic strategies adopted by judges to represent rape in written judicial opinions. The findings returned a result of four linguistic strategies which are violent, morally/ethically disapproving, sexual and ambiguous terms. The findings revealed a strong tendency for judges to characterize rape using non-sexual terms. The use of sexual term was found to be used in acquaintance and incestuous rape cases but not stranger rape. It is believed that the decision to select the most appropriate language is dependent on the type of relationship that exists between the offender and the victim and how that relationship is used to insinuate whether coercion exists that will lead to injuries to the victims. A significant contribution of this study is the use of morally/ethically disapproving

terms that include the issue of breach of trust of the two cases analyzed. It can be said that the issue of morality and trust is one of the core views put forth in the decisions, as reflected in the case involving a monk. The use of disapproving terms by the judges to emphasize the heinous acts of the perpetrator is a significant contribution which showed that religion plays a role in the judicial decision in Malaysian legal discourse. Idleman (1993) emphasized that judges not only operate in a legal system that has deep theological roots, but very often they also must rely on the moral tone or values of the society. Therefore, judges "will likely be relying on religious values, since society's moral values often stem from or reflect religious ethical thought" (Idelman, 1993: 474-475).

In addition, this study concludes that the judiciary's effort to represent the version to serve justice especially to victims of rape requires more improvement. It was indicated in Bavelas and Coates (1994) that the main reason why sexual language was employed by the judges in their study was because, for some reason they were seen as familiar, available and convenient (p.38). The other reason cited was that they were euphemistic. Ehrlich (2007) and Coates (2004) too believe that the discursive problem that describes sexual violence as consensual sex is part of the problem to achieving justice. It is undeniable that reading the physical and violent descriptions of the crime in the written decisions can be quite awkward, graphical and is close to becoming pornographic narrative. However, the terms that use sexual, disapproving and ambiguous language will not be able to capture the real experience of the victims. Instead, these terms 'paint' the victims as conceding parties. Moreover, if this practice is continued, victims of sexual violence may never get the justice that they deserve,

This study's limitation is that only a small sample was used to conduct this analysis. It would be interesting to know whether a bigger sample would return similar findings. For future research, we recommend a sample that consist the three categories of rape as identified in this study and to further examine if there are any distinct terms used in each respective rape category.

REFERENCES

Adampa, V. (1999). Reporting of a violent crime in three newspaper articles. The representation of the female victim and the male perpetrator and their actions: A critical news analysis. *Centre for Language in Social Life Working Paper*, (108).

Bavelas, J. & Coates, L. (2001). *Is it sex or assault? Erotic versus violent language in sexual assault trial judgments.* Journal of Social Distress and the Homeless, 10, 29-40.

Bogoch, B., & Danet, B. (1984). Challenge and control in lawyer-client interaction: A case study in an Israeli Legal Aid office. *Text-Interdisciplinary Journal for the Study of Discourse*, *4*(1-3), 249-275.

Bogoch, B. (1999). Courtroom discourse and the gendered construction of professional identity. *Law & Social Inquiry*, *24*(2), 329-375.

Brereton, D. (1997). How different are rape trials? A comparison of the cross-examination of complainants in rape and assault trials. *The British Journal of Criminology*, *37*(2), 242-261.

Bustam, M. R. Heriyanto, & Citraresmana, E. (2013). The Exclusion Strategies of the Representation of Social Actors in the Case of FPI'S Rejection to Lady Gaga's Performance in Indonesia on the Jakarta Post Newspaper Headlines (A CDA Approach). *International Journal of Language Learning and Applied Linguistics World*, *4*(3), 33-50.

Charalambous, K. 2015. The judicial performativity of rape myths: A discourse analysis of rape court decisions. Gender, law and institutions, 135-146.

Coates, L., Bavelas, J.B. & Gibson, J. (1994). *Anomalous language in sexual assault trial judgments.* Discourse and Society, 5, 191-205.

Coates, J. (2004). Women, men and language: A sociolinguistic account of gender differences in language (3rd Ed.). London: Pearson Longman.

Du Mont, J., Miller, K. L., & Myhr, T. L. (2003). The role of "real rape" and "real victim" stereotypes in the police reporting practices of sexually assaulted women. *Violence Against Women*, *9*(4), 466-486.

Edwards, A., & Heenan, M. (1994). Rape trials in Victoria: Gender, socio-cultural factors and justice. *Australian & New Zealand Journal of Criminology*, *27*(3), 213-236.

Estrich, S. (1987). *Real rape.* Cambridge: Harvard University Press.

Ehrlich, S. (2001). Representing rape: Language and sexual consent. London & New York: Routledge.

Ehrlich, S. (2007). Normative discourses and representations of coerced sex. In *The language of sexual crime* (pp. 126-138). Palgrave Macmillan, London.

Figueiredo, D. (1998). *An analysis of transitivity choices in five appellate decisions in rape cases.* Fragmentos, *8(1), 97-113.*

Figueiredo, D. (2002). Discipline and punishment in the discourse of legal decisions on rape trials. In *Language in the legal process* (pp. 260-274). Palgrave Macmillan, London.

Gibbons, J. (2003). *Forensic Linguistics: An introduction to language in the justice system*. Malden, Mass.: Blackwell Publishers.

Gnisci, A., & Bakeman, R. (2007). Sequential accommodation of turn taking and turn length: A study of courtroom interaction. *Journal of Language and Social Psychology*, *26*(3), 234-259.

Haynes, P. (2017). Victims' Lawyers in the Courtroom: Opening and Closing Statements, Questioning Witnesses, Challenging and Presenting Evidence. In *Victim Participation in International Criminal Justice* (pp. 243-281). TMC Asser Press, The Hague.

Heydon, G. (2005). The language of police interviewing. *Hampshire: Palgrave Macmillan*.

Han, Z. (2011). *The discursive construction of civil judgments in mainland China*. Discourse & Society, 22(6), 743-765.

Idleman, Scott, C. (1993). The role of religious value in judicial decision making. *The Indiana Law Journal.* Digital Repository@Maurer Law. Vol 68 (2), 433-487.

Jule,, A. (2008). A beginner's guide to language and gender. London: Cromwell Press.

La Rooy, D., Heydon, G., Korkman, J., & Myklebust, T. (2016). Interviewing child witnesses. Communication in investigative and legal contexts: Integrated approaches from forensic psychology, linguistics and law enforcement, 57-78.

MacMartin, C., & Wood, L.A. (2005). Sexual motives and sentencing: Judicial discourse in cases of child sexual abuse. Journal of Language and Social Psychology, 24, 139-159.

Matoesian, G.M. (1993). *Reproducing rape: Domination through talk in the courtroom*. Chicago: University of Chicago Press.

Maley, Y. (1994). The language of the law. In Gibbons, J (ed.). *Language and the law*. Harlow: Longman

Moeketsi, R. H. (1999). Of African languages and forensic linguistics: The South African multilingual and multicultural criminal courtroom.

Noraini Ibrahim & Abdul Hadi Awang. (2011). *With the greatest respect, I cannot agree: An investigation into the discourse of dissenting*. 3L: The Southeast Asian Journal of English Language Studies, 17 (Special issue), 46-60.

Philips, S. U. (1998). *Ideology in the language of judges: How judges practice law, politics, and courtroom control* (Vol. 17). Oxford University Press on Demand.

Rasti, A., & Sahragard, R. (2012). Actor analysis and action delegitimation of the participants involved in Iran's nuclear power contention: A case study of The Economist. *Discourse & Society*, *23*(6), 729-748.

See, W. W. Differences of Rape Myth Acceptance between Genders: A Systematic Review. *ResearchGate*, *2*, 43.

Simpson, P.(1993). *Language, idelogy , and point of view*. London: Routledge.

Sunderland, J. (2000). Baby entertainer, bumbling assistant and line manager: Discourses of fatherhood in parentcraft texts. *Discourse & Society*, *11*(2), 249-274.

Tehseem, T. (2016). Investigating character construal of rape victims in Pakistani news reporting. *International Journal of Language Studies*, *10*(2).

Temkin, J. (2002). *Rape and the legal process* (Vol. 86). Oxford: Oxford university press.

Wood, L.A. & MacMartin, C. (2007). *Constructing remorse: Judges' sentencing decisions in child sexual assault cases.* Journal of Language and Social Psychology, 26 (4), 343-362.

Tranchese, A., & Zollo, S. A. (2013). The Construction of Gender-based Violence in the British Printed and Broadcast Media. *Critical Approaches to Discourse Analysis Across Disciplines*, *7*(1).

Van Leeuwen, T. (1995). Representing social action. *Discourse & society*, *6*(1), 81-106.

Van Leeuwen, T. (2008). *Discourse and practice: New tools for Critical Discourse Analysis*. New York: Oxford University Press.

CASES CITED

1. Kee Lik Tian v PP [1984] 1 MLJ 306 *(Acquaintance rape: 49 year old family friend/ 12 year old mentally challenged)*
2. Syed Abu Tahid a/l Mohamed Esmail v PP [1988] 3 MLJ 485 *(Acquaintance rape: family friends nil year/13 years old)*
3. PP v Mohd Ali bin Abang Ros [1994] 2 MLJ 12 *(Acquaintance rape: nil/nil)*
4. Mahendran a/k Manikam v PP [1997] 4 MLJ 273 *(Acquaintance rape: sports teacher nil year/ 15 year old)*
5. Yusaini bin Mat Adam v PP [1999] 3 MLJ 582 *(Incestuous rape: stepfather nil/10 year old)*
6. PP v Mohd Ridzwan bin Md Borhan [2004] 5 MLJ 300 *(Acquaintance rape: Acquaintance nil year/ 18 years old)*
7. Bacik Abdul Rahman v PP [2004] 5 MLJ 89 *(Stranger rape: nil/11 years old)*
8. Jamalludin Khadiron v PP [2004] 7 MLJ 280 *(Stranger rape: 27 year old/ 10 year old)*
9. PP v Shari bin Mohd. Shariff [2005] 4 MLJ 763*(Incestuous rape: Father nil year/ 12 year old)*
10. Azahan bin Mohd. Aminallah v PP [2005] 5 MLJ 334 *(Incestuous rape: Father nil year/ 15 years old)*
11. PP v William Ayau [2005] 4 MLJ 328 *(Incestuous rape: Uncle 19 year old/ 13 year old)*

12. Mohd. Zandere bin Arifin v PP [2006] 5 MLJ *(Incestuous rape: Father nil year/ 13 years old)*
13. Ahmad Faizal Ali bin Aulad Ali & Ors v PP [2010] 2 MLJ 547 *(Acquaintance rape: 18 yr, 21 yr and 20 year old / 19 years old)*
14. PP v Mohd Musa bin Ahmad [2013] 8 MLJ 466 *(Aquaintance rape: nil/14 years old)*
15. PP v Abdul Malik bin Abdullah [2013] 8 MLJ 466 *(Acquaintance rape: Yoga instructor nil year/ 15 year old)*
16. PP v Goh Kim Keat [2011] 7 MLJ 274 *(Carnal intercourse s377c by acquaintance (monk): nil/16 year old)*