

Breaking The Silence: The Need to Reform the Law on the Child's Sexual Extortion in Malaysia

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ABSTRACT

This article explores the rise in sexual extortion against minors in Malaysia, primarily due to their increased reliance on online platforms for socialisation. The rise from 30 incidents in 2022 to 191 incidents in 2023, has made children vulnerable to online predators, indicating the current legal framework lacks specific provisions addressing this issue. The primary issue is Malaysia's legal framework's inadequacies in dealing with the specific crime of sexual extortion against children. The Sexual Offences Against Children Act (SOACA) 2017 and the Penal Code, while existing laws, do not specifically address this issue. The method of this research contrasts Malaysia's legal framework to South Carolina's Law. The article compares SOACA and the Penal Code of Malaysia to South Carolina's Gavin's Law, which focuses on pursuing sexual extortion of children. The study involves a literature review, investigation of legal terminology, systematic research strategy, surveys of parents and practitioners, and study of gaps in Malaysian legislation. The study also draws on empirical data from child rights organisations like ECPAT that shows the prevalence of sexual extortion. The finding shows the current legal framework in Malaysia is insufficient to combat the increase in sexual extortion against children. Such as Section 383 of the Penal Code, make it difficult to prosecute violators successfully. The paper suggest, Malaysia should model its legal framework after South Carolina's Gavin's Law, which provides stronger juvenile protection. The recommendations emphasise the need for legislative reforms, better law enforcement, and international cooperation to improve child protection in the digital age.

Keyword: Findings: Sexual Extortion, Child, Law, Malaysia, Gavin's Law, Reform.

INTRODUCTION

Children's dependency on technological advancements for socialisation has increased the occurrence of "sexual extortion" against those in their age group. In addition, there has been a considerable increase in sexual extortion reports from 30 in 2022 to 191 in 2023 based on the data by the Internet Watch Foundation (IWF). There has been a significant increase of 257% compared to the previous year, which has become a challenge. An analysis of 801 reports spanning from October 2013 to June 2015 revealed that 41% of them indicated that the act of sexual extortion was predominantly carried out via internet platforms. Moreover, the possession of explicit children's photographs by the perpetrators has facilitated their anonymity in strengthening extortion threats. In addition, children have a propensity to bottle up their distress regarding the "sexual extortion" experience, even though it is well known that in Malaysia, two out of every four children have been involved with "sexual extortion". Therefore, it is imperative to establish comprehensive law enforcement measures to effectively address the growing participation of victims in these cases.

The term "sexual" encompasses the notion of topics about sexuality, wherein the primary purpose may involve exploiting a targeted individual to attain social benefits. The definition of the individual who is considered a "child" in this instance is outlined in Section 2 of the Age of Majority Act 1971, given that the intended victim falls under this category. According to the clause, a "child" is defined as an individual, regardless of gender,

who is under the age of 18. In certain cases, children have been compelled into supplying video content depicting their sexually explicit actions, which can be considered extortion. Thus, this article focuses mostly on the contextual features of “Sexual Extortion” involving children in Malaysia, while additionally addressing the need for amendments and making comparisons to South Carolina’s pre-existing legislative framework.

The definition of “sexual extortion” has similarities from various authors where the practice of blackmailing a person with their image to extort the victim for sexually associated things or various other advantages from the victim is known as “sexual extortion”, which may also be referred to as “sextortion”. On top of that, Patchin and Hinduja shared the same view that the term “sextortion” also can be defined as a threat to disseminate images that contain sexual acts that are explicit, intimate as well as humiliating without one’s consent, and this is usually done to secure monetary advantages, sexual acts, additional images or for other motives. There has been significant legal and media scrutiny directed towards those who have employed technology to engage in sexual activities with minors, employing tactics such as sexual grooming, solicitation, or extortion.

The focus of this article is to analyse the necessity for Malaysian sexual extortion against children to be amended, with a comparative analysis of the legal framework in South Carolina, namely Gavin’s Law, and to propose sufficient amendments to the existing Sexual Offences Against Children Act 2017. South Carolina’s Gavin’s Law has been selected as the primary legal reference for this article due to the state’s proactive measures in combating child sexual extortion. To address this issue, South Carolina has established a collaborative approach involving local school districts, the State Department of Education, the South Carolina Law Enforcement Division, and the Attorney General’s office. Together, these entities are working to implement policies aimed at educating and informing students about the dangers of sexual extortion, a crime that has increasingly targeted children, and other reasons which will be addressed in the comparison.

Legal Framework on Sexual Extortion in Malaysia

Ensuring justice for children in Malaysia, similar to other countries, involves navigating a complex legal and social landscape. Several circumstances cause obstacles to children’s justice in Malaysia.¹ Malaysia has laws and regulations addressing child rights and protection, including the Sexual Offences Against Children Act 2017 (SOAC), Penal Code (Act 574), Child Act 2001, and adoption of CRC; nevertheless, it is apparent that there are some perceived legal gaps, as there is no legislation specifically on sexual extortion against children.² The minister of the Prime Minister’s Department expressed concern that if a child gets access to a laptop or phone at home and shares sexual photographs online, there is a possibility that they would be the victim of sexual extortion.³ Considering that SOACA is silent on the subject of sexual extortion against children, amendments were required. Sexual assault, child grooming, and child pornography are all covered by the SOACA. According to Datuk Azalina, the Sexual Offences Against Children Act 2017 already criminalises non-physical sexual assault on a child.⁴ Section 15(b) of the existing Act stipulates that the offence carries a maximum 10-year jail sentence, a maximum RM 20,000 fine, or both.⁵ However, Datuk Azalina suggested a new crime of livestream sex in the proposed modifications to the SOAC, which would include acts like taking part, promoting, planning, or accepting payment which the punishment for such offence is RM 50,000 in fines or 20 years in jail.⁶

Although there are no formal cases established, the numerous incidents that have occurred are deeply concerning and highlights the urgent need for legal reforms to address these growing issues. It was reported that conversations with children on social gaming platforms can escalate into high-risk grooming situations

¹ ECPAT, INTERPOL and UNICEF, *Disrupting Harm in Malaysia: Evidence on online sexual exploitation and abuse* (2022) at p 39.

² Note 7 at p 25.

³ Ida lim, “Azalina: new offences of livestream sex, sexual blackmailing of children; jail penalties proposed”, MalayMail (Kuala Lumpur, 23 March 2023) <https://www.malaymail.com/news/malaysia/2023/03/23/azalina-new-offences-of-livestreaming-sex-sexual-blackmailing-of-children-jail-penalties-proposed/61143#google_vignette> accessed on 2 November 2023.

⁴ Ibid.

⁵ Sexual Offences Against Children Act 2017, s 15(b).

⁶ Ida lim, “Azalina: new offences of livestream sex, sexual blackmailing of children; jail penalties proposed”, MalayMail (Kuala Lumpur, 23 March 2023) <https://www.malaymail.com/news/malaysia/2023/03/23/azalina-new-offences-of-livestreaming-sex-sexual-blackmailing-of-children-jail-penalties-proposed/61143#google_vignette> accessed on 2 November 2023.

within 19 seconds, with an average grooming time of just 45 minutes.⁷ It is crucial to require a comprehensive and multidisciplinary approach involving legal reforms to ensure justice is served when their rights are violated.⁸ The growing use of the internet and social media platforms exposes children to sexual extortion.⁹ “Sexual extortion” includes blackmail, for example threatening to publish someone's intimate photos, videos, or other content is one example of it.¹⁰ ECPAT International, INTERPOL, and UNICEF have formed a unique collaboration to assess the context, threat, and perspectives of children about online child sexual exploitation and abuse in 13 countries in Southeast Asia and Eastern and Southern Africa which includes Malaysia.¹¹ According to the data that was gathered in Malaysia, it has been demonstrated that within a year, there were around 100,000 children who used the internet and were between the ages of 12 and 17 who were involved in online sexual exploitation, abuse, and sexual extortion.¹² Therefore, Malaysia needs to improve its law enforcement and update its legal framework on child sexual extortion against children and special attention should be given to utilizing digital forensic tools to address this issue more effectively.

Comparative Approach with South Carolina's Gavin's Law on Tackling Sexual Extortion against Children

Currently in Malaysia, the discussion of sexual extortion against children mainly revolves around the application of Penal Code, as well as the Sexual Offences Against Children Act (SOAC) 2017. There is very limited to no evidence that illustrates that these two sets of laws sufficiently address the incidents of sexual extortion against children in Malaysia. This is one of the gaps within Malaysia's legal framework that is a challenge in addressing distinguished cases of sexual extortion against children. Section 383 under the Penal Code being ambiguous can also be considered as one of the primary challenges in enforcing the legal framework surrounding the sexual extortion of children.

The vagueness of Section 383, raises the question of whether or not it can be used to comprehensively protect children as vulnerable and sensitive members of society. This just emphasises that distinct laws are required to handle cases of sexual crimes that involve children. On top of that, this provision also provides a broader range of the term extortion, and not only specialised in sexual extortion, and this has the potential for it to become an obstacle in combating Sexual Extortion of children. These aspects are opposed to the existence of Gavin's law in South Carolina that specifies the scope of sexual extortion amongst minors and children, which can ease the procedures in prosecuting offenders who do so. It's evident through the fact that the sexual extortion cases that have been tackled under Section 383 of the Malaysian Penal Code have only concerned adults instead of children, which contributes to its ambiguity, which then leads to its application facing many obstacles. Subsequently, penalties charged will also be impacted as the penalty issued might not be proportionate to the crime that has been committed. Intersection of laws is also one of the challenges faced in Malaysia in combating sexual extortion against children. Prosecutors are not able to turn to a specific or distinguished law, since the crime of sexual extortion may be construed for other offences that seem similar. This becomes a gap as it creates an incomplete legal response.

There is currently no possibility of benchmarking Gavin's Law from South Carolina. This constitutes a gap in enforcing Malaysia's legal framework surrounding sexual extortion of children, as Gavin's Law in South Carolina is specialised in prosecuting those who commit the crime of Sexual Extortion, especially against minors. On top of that, it is also mainly focused on only sexual extortion, rather than a wider scope of the term extortion. One focused scope of the said law serves as one of the strengths of Gavin's Law that can be factored in when benchmarking the law into the Malaysian legal system. As opposed to the existing legal provision under the Malaysian Penal Code, Section 383 where the can range for various types of an act of extortion. The existence of Gavin's law in South Carolina illustrates the extent of how much special protection is provided for

⁷ *Ibid.*

⁸ Note 7 at p 9.

⁹ Zarrah Morden, “Study estimates up to 100,000 kids may be victims of online sexual exploitation, abuse last year” *MalayMail* (Kuala Lumpur, 29 September) <<https://www.malaymail.com/news/malaysia/2022/09/28/study-estimates-up-to-100000-kids-may-be-victims-of-online-sexual-exploitation-abuse-last-year/30581>> accessed on 23 November 2023.

¹⁰ Note 7 at p 19.

¹¹ Note 7 at p 11.

¹² Note 7 at p 54.

victims, especially minors and vulnerable children who fall victim to the said crime, and how differently they are treated because they are vulnerable. The specialised law has allowed for procedures to be conducted more effectively when combatting this crime, it has also allowed for better and specified protections to be provided. The benchmarking of Gavin's Law within the Malaysian Legal Framework would help enhance the existing laws and provide more comprehensive protection for children in terms of sexual extortion.

Issue and Challenges in Malaysia

Parents

The paper incorporated both primary and secondary data through a qualitative and quantitative methodology. An online survey on the issue of sexual extortion were distributed among the parents in Klang Valley, Malaysia on May 2024. A total of 36 respondents answered the survey. From that survey, the majority of the parents who had agreed that there is a need for change within Malaysia's legal framework to combat sexual extortion against children had left some of their suggestions when asked. The majority of their suggestions expressly stated that the punishments for the perpetrators should be more extreme and proportionate to the crime they have committed. This can indicate that even if the Malaysian legal framework may rely on Section 384 of the Penal Code for extortion, the punishment provided might not be proportionate to the crime they committed as mentioned prior, hence why they believe that change is needed. In addition, 55.6% of the respondents voted that they are aware of the legal framework surrounding sexual crimes against children in Malaysia. Their awareness of the legal frameworks has provided them with a superficial view of what the current laws are like. Based on the data obtained, it was also suggested that there should be specific laws to combat sexual extortion against children. A suggestion like this heavily portrays that the current existing laws we have are insufficient. Moreover, this suggestion may come from the concern and awareness of the parents who are aware of Malaysia's legal framework, hence they can see the loopholes in our current laws. This suggestion to specify laws against sexual extortion of children is also in line with the views of the global organisation, END VIOLENCE where they have stated that one of the concrete steps that Malaysia has to take in combating sexual crimes against children is to amend the current laws and make sexual extortion a distinct offence. Moreover, a trivial percentage of the suggestions obtained from the results of the questionnaire was that there should be more restrictions for minors to access social media, for instance, restricting the minimum age limit to access social media to 15 years old. This suggestion is also a parallel with the views of ECPAT where it was emphasised that children are exposed to sexual crimes through the internet. Hence, this type of restriction might reduce the cases of sexual extortion against children, combating the issue even though not entirely. Parental views in providing suggestions show that there are a lot of insufficiencies within our laws, and give a wider perspective to lawmakers and enforcers to continue to better the current existing laws.

Legal Practitioner

Based on the professional views gathered from the questionnaire, there is a significant indication that the existing laws on sexual extortion against children in Malaysia may be perceived as insufficient. Although a slight majority of 7 out of 13 professionals, such as lawyers and judges, believe that the current laws are sufficient, the nearly equal split with 6 professionals indicating dissatisfaction suggests considerable doubt about the adequacy of these laws. This division indicates that a significant portion of legal professionals have concerns about the effectiveness of the current legal framework. Additionally, when asked about the major legal problems in prosecuting those involved in sexual extortion against children, 7 professionals agreed that there are significant challenges, compared to 6 who did not, further reflecting a divided opinion with a slight majority acknowledging major legal issues in the prosecution process. The responses regarding the barriers and challenges in providing legal support to children highlight complexities such as fear of retaliation, reluctance to pursue legal action when the perpetrator is a family member, lack of parental support, issues with evidence, delayed reporting, and the need for continuous support for traumatised children. While there is some recognition of the existing laws' efforts to address sexual extortion against children, the professional views indicate a significant minority that sees room for improvement and highlights substantial legal challenges that need to be addressed; reporting processes, comprehensive trauma support services, and stronger collaboration among stakeholders are recommended. Implementing these measures can significantly improve the legal support system for child victims of sexual extortion in Malaysia, ensuring they receive the justice and care they

need.

RECOMMENDATIONS

In Malaysia, Section 383 of the Penal Code concerns extortion. Section 383 of the Penal Code also states that whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, is said to have committed extortion.¹³ From this, it is clear that this section varies the term extortion, and it is not limited to only sexual extortion and Penal Code did provide a punishment for those who are found guilty under the charge of extortion, which is Section 384 of the Act.¹⁴ However, to better safeguard the children, it is recommended for the Malaysian Government to adopt and incorporate Gavin's law into our legal framework.

From the survey we conducted, it is also suggested that Malaysia may adopt government initiatives from South Carolina, where they are required under Gavin's Law to develop policies to educate students about the dangers of Sexual Extortion, local district schools are required to educate students through programs and such. The parents agreed that by educating the children appropriately and directly on the matter, may help prevent the incidents of sexual extortion against children as they are able to sense what kind of danger they are experiencing.

The legal position in Malaysia as of now in combating sexual offences against children is based on the Sexual Offences Against Children Act 2017. It was suggested that the provisions under the Sexual Offences Against Children Act 2017 provide a solid foundation regarding protecting children from sexual violence.¹⁵ Despite this, it was established in literature that to keep up with the development of technology, development and amendments of the laws are crucial. This is because advancements in technology have increased the number of threats to children online.¹⁶ Deriving from the literature, it is crucial that the development of technology is important to be caught up with, especially in combating online sexual crimes against children.

CONCLUSION

In conclusion, Malaysian law in addressing the issue of sexual extortion against children is equivalent to the South Carolina Gavin's Law. However, provided that the new amendment has just come into force, its enforcement and public awareness on the matter are yet to be proven capable of producing the desired result. This article also highlights the need for international legal standards to be harmonised into the legislation together with the increasing collaborative efforts to enhance its protection for the children as to their dependency on technological advancement which opens the gates for sexual extortion to be committed towards the children. Although this study provides insightful information, it has been constrained by the scope of the legal texts reviewed, the lack of empirical data on enforcement results, and the practicality of the newly revised provision in legislation. Future research should delve further into the long-term impact of these legislative frameworks on child safety, as well as the role of technology in preventing online sexual extortion against children. By tackling these obstacles and strengthening international cooperation, we can build a safer online environment for children, particularly in Malaysia.

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¹³ Tasneem Nazari, "Malaysian Laws That Protect You When An Ex Threatens To Leak Your Nudes." *The Rakyat Post* (12 August 2020) <<https://www.therakyatpost.com/news/malaysia/2020/08/12/malaysian-laws-that-protect-you-when-an-ex-threatens-to-share-your-private-pictures/#:~:text=If%20he%20is%20extorting%20you,the%20Penal%20Code%20for%20extortion.>> accessed on 17 January 2024.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

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