

A Comparative Study and Development of Rape Law

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Abstract

This study examines the rape laws of Thailand and other nations by comparing similarities, differences, and their advantages and disadvantages. The research also aims to identify outcomes that may contribute to the development of Thai rape law. This survey was conducted through document analysis and in-depth interviews. Documentary research was conducted by analyzing the rape laws of Thailand and other nations, including the United States and the United Kingdom. The in-depth interview was conducted with 50 critical informants with at least three years of work experience in the justice system. Documentary investigation revealed that Thailand's rape law was comparable to the United Kingdom's. The in-depth interview revealed that they all concurred that Thailand's rape law was similar to that of the United Kingdom and that the development of rape law entailed amending provisions to include definitional issues and child sexual abuse.

Keywords: Rape Law; Comparative Study; Penalty, Legal Development; Criminology

Introduction

Rape is a sex crime problem that exists on both the domestic and international levels and is constantly in the news. Violators can be of any gender, age, occupation, or level of education. Frequently, rape or sex crimes are reported in the press. On November 29, 2019, rape was reported in India. The incident occurred in Hyderabad, Andhra Pradesh, and a 27-year-old female veterinarian was murdered by gang rape. These criminals then burned her corpse at the roadside ([The Momentum, 2019](#)). India was the most hazardous nation for women in 2018 ([VOA Thai, 2019](#)).

Furthermore, according to the report of the Ad-Hoc Committee on the study of guidelines for preventing and solving the problem of rape and sexual assault, the House of Representatives on guidelines for preventing and solving the problem of rape and sexual assault, from the review of news about sexual violence in the past 13 years, a total of more than 17,000 news, it is found that approximately 68% were news about rape, with victims ranging in age from eight to one hundred and five years old, in different cri Committee on Children, Youth, Women, Elderly, Disabled, and Gender Diversity, 2020). Since a woman's attire is irrelevant, any attempt to link attire with rape is a fallacy that must be dispelled, especially when victims' attire is questioned (Committee on Children, Youth, Women, Elderly, Disabled, and Gender Diversity, 2020). Committee on Children, Youth, Women, Elderly, People with Disabilities, Ethnic Groups, and Gender Diversity, 2020). Women who are victims should not be subjected to such a fallacy, nor should any other gender in society. Therefore, successfully resolving the rape problem requires specific legislation and law enforcement.

Previously, Thai law defined rape as "an act committed to satisfy the perpetrator's desire by causing his penis to penetrate the victim's vagina, anus, or mouth." In the past, there were a variety of rape offenses, ranging from the perpetrator's penis penetrating the victim's vagina to the use of any object penetrating the victim's vagina, etc. The Supreme Court of Thailand defined "rape" as "invasion" or "penetration" (Supreme Court Decision No. 4164/2555). Therefore, the method by which a perpetrator causes his penis to contact the victim's penis without penetrating was not considered successful rape. This could be regarded as a rape attempt or an indecent act with lesser penalties (Srisanit, 2019). The former law's definition of rape is consistent with the definitions of rape in the laws of various nations and with the general principle of respect for human dignity.

Even though Thailand has a criminal code that punishes sex offenders, the number of sex offenses has increased over the years (Committee on Children, Youth, Women, Elderly, Disabled, Ethnic Groups, and Gender Diversity, 2020). In addition, despite numerous amendments to the penal code's section on sex crimes. For instance, the 19th amendment to the penal code in 2007 changed the phrase "having sexual

relations with a woman who is not your wife" to "having sexual relations with another person," indicating that raping a wife is prohibited. In 2015, the 23rd amendment to the penal code adapted the fine for child sexual abuse offenses to the economic climate, and it became illegal to use ignorance of the age of a child under 13 to escape liability. Then, in 2017, as part of the 26th amendment to the penal code, the fines for rape and indecent acts were adjusted to reflect the economic climate, and provisions were amended to increase penalties for raping individuals with specific characteristics, such as parents, descendants, etc. In 2019, as part of the 27th amendment to the penal code, the definition of rape was revised to distinguish between natural and unnatural sexual contact.

The criminalization of rape has altered from the past because numerous satisfaction-seeking behavior patterns result in social problems. Because of this, the concept of criminalizing rape has evolved. Consequently, this research aims to examine Thai rape law and compare it to foreign rape laws. The findings of this comparison can serve as a guide for amending, developing, and effectively enforcing Thailand's rape law.

Literature Review

Rape Law in Thailand

Definition of Rape under the Thai Penal Code

The definition of rape is in Section 1 (18) of the criminal code. The Thai Penal Code defines rape and indecency as acts that satiate the perpetrator's desire by causing his penis to penetrate the victim's vagina, anus, or mouth. Section 1(18) defines rape as any act that causes a penis to penetrate the vagina of another. In addition, this includes causing a penis to the anus or pharynx. To be deemed a successful rape under this section, a penis must penetrate the vagina, anus, or mouth of the victim (Meenakanit, 2016).

In addition, a related term, "indecency," describes an act comparable to rape and child sexual abuse. The Penal Code defines the term indecency. However, the Supreme Court's decision defines "indecency" as an inappropriate sexual act

committed against a person's body, including sexual intercourse or sexual desire but also sexual humiliation (Supreme Court's decision, 4836/2547). It is necessary to study rape, child sexual abuse, and indecency to fully comprehend the offense provided to the offender, as each term encompasses similar acts.

According to Thailand's Penal Code, rape offenses include rape and juvenile sexual abuse. The explanation is as follows:

Rape Offence

Any person who engages in sexual activity with another by threatening and abusing them to the point where they are unable to resist or by causing another person to mistake the offender for the other person is subject to four to twenty years in prison and a fine of eight thousand to forty thousand Baht. Suppose the offense described in paragraph one is committed by causing the victim to believe that the offender is carrying a firearm or explosive device. In that case, the offender is subject to seven to twenty years in prison and a fine ranging from one hundred forty thousand to four hundred thousand Baht. Suppose the offense described in paragraph one is committed through the use of a firearm, explosive, or weapon or through the participation of others in having sexual intercourse against a woman or man's will. In that case, the offender is subject to imprisonment of fifteen to twenty years, a fine of thirty thousand to forty thousand Baht, or life imprisonment. Suppose the offense described in paragraph one is committed by a spouse who still wishes to live together as husband and wife. In that case, the court may impose a lesser penalty than prescribed by law or impose any condition to control the behavior instead of a penalty. If the court's judgment imposes imprisonment and one of the parties does not wish to live together as husband and wife and desires a divorce, that party must notify the court, and the court will inform the public prosecutor to petition for divorce (Section 276 of the Thai Penal Code).

Rape Offence and Sexual Abuse of Child

Whoever engages in sexual activity with a child under the age of fifteen who is not their wife or spouse is subject to five to twenty years in prison and a fine of 100,000 baht to 400,000 baht, regardless of the child's consent. Suppose the offense described

in paragraph one is committed against a minor under thirteen. In that case, the perpetrator is subject to seven to twenty years in prison, a fine of one hundred forty thousand to four hundred thousand Baht, or life in prison. Suppose the offense described in paragraphs one or two is committed by causing the victim to mistake the offender for being in possession of a firearm or explosive. In that case, the offender faces ten to twenty years in prison, a fine of two hundred thousand to four hundred thousand Baht, or life in prison. If the offense, according to paragraphs one or two, is committed by carrying a firearm or explosive or using a weapon or by the participation of persons in the manner of having sexual intercourse against the will of a girl or boy, the offender is subject to life in prison (Section 277, Thai Penal Code).

Suppose the offense described in paragraph one is committed by a person under eighteen against a child over the age of thirteen but under the age of fifteen with the child's consent. In that case, the court may have the authority to consider the juvenile and family case and provide protection to the victim or the offender following the law of child protection instead of punishment, taking into account age, background, behavior, intelligence, education, and education. If protection has been provided to the victim or perpetrator under child protection law, the offender is not liable for punishment. However, if such protection is unsuccessful, the court shall impose a lesser sentence than the law prescribes. The court shall also consider the reason in paragraph five of section 277 of the Thai Penal Code.

Imposing of Heavier Penalties for Rape Offences

The penalty for a rape offense is increased if the offender (1) causes severe injury to the victim; the offender is subject to fifteen to twenty years in prison, a fine of thirty thousand to forty thousand Baht, or life in prison. And (2) causing the victim's death, the perpetrator is subject to the death penalty or life in prison (Section 277 bis, Thai Penal Code). In addition, if a rape is committed against one's parents, descendants, siblings with the same parents, or half-blood siblings, same-blood relatives, pupil under one's care, a person under one's official authority, a person under control or guardianship, or a person under any power, the offender is subject to a one-third increase in the punishment imposed by this section (Section 285, Thai Penal Code).

Rape Law in The United States of America

Rape Definition

Model Penal Code of 1962 defines rape in the United States. The Model Penal Code of 1962 may be adopted as the law in each state, contingent on its suitability. In addition, the United States Code (U.S.C.) contains a federal provision defining rape. In addition, Section 213.0 of the Model Penal Code of 1962 defines sexual contact as genital or anal sexual contact. Eventually, rape also encompasses contact between mouth and anus, mouth and penis, mouth and vagina, penis and vagina, penis and anus, penis and anus, anus or vagina, and other objects.

In addition, Section 213.2 of the Model Penal Code of 1962 defines "deviant sexual intercourse" as sexual activity between a man and a woman who are not husband and wife that involves the use of the mouth or anus. This also includes carnal relations with animals. Deviant sexual intercourse through force or deception refers to how a person is sexually deviant with another individual or causes another individual to be sexually deviant. Such a person shall be guilty of a felony of the second degree. A person may commit such an act by using force on others, threatening to hurt or cause harm to another person's life, causing serious injury to others, causing another person to be unable to avoid or resist by using drugs or intoxicants, or using other means to prevent being sexually assaulted, or causing such a person to lose consciousness, or committing an act against a person under the age of fourteen.

In addition, Section 2246(2) of the United States Code (U.S.C.) defines rape as an act of sexual relationship or a sexual act that includes the intentional touching of the genitalia of a person under the age of 16 with the intent to assault, humiliate and defame, or satisfy any person's sexual desire.

Rape Offence and Sexual Abuse of Child

According to Section 261.5 of the California Penal Code, it is unlawful to engage in sexual relations with a minor with a person who is not the perpetrator's spouse.

- (a) "Minor" refers to a person under 18, while "Adult" refers to a person at least 18 years old.

- (b) A person is guilty of a misdemeanor if they engage in an unlawful sexual act with a minor no more than three years older or younger than the perpetrator.
- (c) A person who engages in illicit sexual conduct with a minor who is more than three years younger than the perpetrator is guilty of a misdemeanor or felony and is subject to imprisonment of up to one year or imprisonment under subdivision (h) of Section 1170.
- (d) Any adult over the age of 21 who engages in unlawful sexual activity with a minor under the age of 16 shall be guilty of a misdemeanor or felony and subject to imprisonment for up to one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years..."

These provisions are intended to protect the victim, a minor under eighteen. They are implemented for both "adult" and "minor" offenders. In addition, if the perpetrator is no older or younger than "minor" by more than three years, the perpetrator shall only be guilty of a misdemeanor.

Section 269 states, "Anyone who commits the following acts against children under 14 years of age who are 7 or more years younger than the perpetrator shall be guilty of serious child sexual abuse: (1) Sexual assault in violation of paragraphs (2) or (6) of subdivision (a) of Section 261; (2) Sexual assault or sexual penetration in concert in violation of subdivision (a) of Section 264.1; (3) Sexual assault or sexual penetration in concert in violation of subdivision (a) of Section 264.1; (4) Sexual assault or sexual penetration in violation of (3) Unnatural sexual conduct in violation of Subsections (2) or (3) of Subsections (c) or (d) of Section 286. (4) Oral copulation in violation of paragraphs (2) or (3) of subsections (c) or (d) of section 287. (5) Sexual penetration in violation of Section 289(a); (b) any person who violates this section is guilty of a felony and subject to 15 years in prison..."

Such provisions justify an increase in the penalty. If the perpetrator commits the acts outlined in Section 269, he will be punished more severely.

Rape Law in the United Kingdom

In the United Kingdom, the Sexual Offences Act 2003 was enacted in response to a feminist group's demand for legal reform, which significantly impacted the legal

amendment. There are three factors: Firstly, rape is considered a violent crime; secondly, rape-related criminal proceedings should focus on finding the truth about the accused's act rather than considering the victim's act and background; and thirdly, the sexual offense should be clearly defined to prevent the offender from exploiting a legal loophole to their advantage (Tadros, 2006). According to Section 1 of the Sexual Offences Act 2003, the essence of the rape offense is as follows:

Rape Definition and Rape Offences

"...A person is guilty of a crime if: (a) he intentionally causes his penis to penetrate the vagina, anus, or mouth of another person (B); (b) B is not satisfied with such penetration; and (c) A has no reasonable belief that B consents to such an act...Sections 75 and 76 apply to this section...

Life in prison is the maximum penalty imposed for violating this section. Section 75 of the Sexual Offences Act of 2003 defines presumptions of evidence regarding consent as follows:

"(1) If the proceedings of an offense under this section establish that: (a) the defendant commits such an offense; (b) the circumstances specified in subsection (2) appear, and (c) the defendant is aware of such circumstances, the defendant is guilty of the offense.

Unless sufficient evidence is presented regarding the victim's permission or lack thereof, the victim's consent is presumed to be lacking. The defendant is presumed to lack reasonable belief in the victim's consent if insufficient evidence is presented regarding the victim's reasonable belief.

(2) Circumstances include: (a) At the time or immediately before the commission of an act, a person uses violence against the victim or causes the victim to fear that immediate violence will be used against oneself; (b) At the time or immediately before the commission of an act, a person causes the victim to fear that immediate violence will be used against others.

(c) The victim is unlawfully detained at the time such an act is committed, while the defendant is not detained; (d) The victim is asleep or unconscious at the time such an act is committed; (e) Due to the victim's physical disability, at the time such an act

is achieved, the victim is unable to communicate whether the victim consents or not;
(f) Without the victim's consent, any person gives or provides any substance to cause the victim's vicarious sex experience;

(3) In subsections (2) (a) and (b), "immediately before such an act begins" means "immediately before the first sexual activity begins" The Sexual Offences Act of 2003 defines conclusive presumptions regarding consent as follows: (Section 76, The Sexual Offences Act of 2003).

"(1) It is conclusively presumed that: (a) the victim does not consent to such an act, and (b) the defendant does not believe that the victim consents to such an act if the defendant is proven to have committed such an act and any of the circumstances enumerated in subsection (2) appear in the proceedings for the offense under this section.

(2) Circumstances include: (a) the defendant intentionally misleads the victim about the nature or intent of the act, and (b) the defendant intentionally induces the victim's assent to the act by impersonating a person the victim knows personally."

Even if the victim initially consents to be sexually assaulted, if that consent is subsequently revoked and the offender does not stop the assault within a reasonable amount of time, the offender shall be guilty of rape. As stated in the court's decision in the case of *Kaitamaki v. R* [1985] AC 147, the defendant in New Zealand appealed the rape sentence. This is the case in which the defendant was accused of breaking into the complainant's home and perpetrating two rapes against her. The defendant argued that the complainant had already consented, and he believed in good faith that consent had been granted. During the second sexual encounter, however, after the defendant's penis had penetrated the complainant's vagina, he realized that the complainant had not consented to the sexual encounter, but he did not cease raping her. In this instance, the court determined that penetration constituted time. Therefore, how the defendant continued his act despite the complainant's lack of consent included sexual contact. Therefore, this defendant was responsible for the crime of rape.

A violation of Section 1 must consist of an act in which the offender intentionally causes his penis to penetrate another person's vagina, anus, or mouth,

and the victim is not content with such penetration. This indicates that a woman is incapable of committing the crime of rape, as it is doubtful that she could cause her vagina to penetrate the genitalia of another person. Therefore, a woman shall only be guilty of being a rape accomplice. (Prince of Wales's Prosecution Service, 2022). Life in prison is the maximum penalty imposed for violating this section.

Rape of a child

(1) Sexual offenses committed against a minor under 13 years of age are defined as follows in sections 5 through 8 of the Sexual Offences Act of 2003:

(1.1) Section 5 of the Sexual Offences Act 2003 (Rape of a child under 13) defines rape of a child under 13 as the case in which the defendant intentionally causes his penis to penetrate the anus, vagina, or mouth of a child under 13 years of age. Life imprisonment is the maximum penalty for raping a minor younger than 13. The defendant of the offense of rape of a minor under 13 prescribed in Section 5 differs from that of the offense of rape defined in Section 1, who is only guilty if the victim did not consent. In the case of the Section 5 offense, however, the defendant is guilty even if a minor younger than 13 years of age consents to sexual activity. The court's decision in *Rv. Newton*⁷⁷ Cr. App. R. 13 is based on the fact that the crime of rape affects not only the infant but also the public interest. In proceedings involving the rape of a child under 13 years of age, the defendant shall be subject to the penalty prescribed in Section 5 even if the child consents to the sexual assault.

(1.2) The maximum penalty for the offense of assaulting a minor under the age of 13 by penetrating the vagina or anus of another person without using a penis but by using other parts of the body or objects, as specified in Section 6 of the Sexual Offences Act 2003, is life in prison.

(1.3) Section 8 of the Sexual Offences Act of 2003 defines causing or inciting a child under 13 to engage in sexual activity as intentionally causing or inciting a child under 13 to engage in sexual activity. Sexual conduct that violates this section falls into two categories:

(1) Sexual activity involving penetration of the vagina of a minor younger than 13 carries the maximum penalty of life in prison.

2) Sexual activity without vaginal penetration involving a minor younger than 13 years old carries a maximum sentence of 14 years in prison for the offender. For the offense of causing a minor younger than 13 years of age to engage in sexual activity, strict liability is enforced. Following the ruling of *R v G* [2008] UKHL 37, the Offences Act 2003, sections 5 to 8 shall not apply the principle of consent to a child under 13 years of age. This is because the registration of the United Kingdom is intended to protect a child under 13 years of age from the defendant's defense that the child consented to be sexually assaulted during sexual activity.

As previously stated, in the United Kingdom, a defendant cannot use a child's consent as an excuse for perpetrating the offense of raping a child under the age of 13. In addition, according to the legal definition of rape in the United Kingdom, a person is only guilty of rape if they cause another person's penis to enter their vagina. If other body parts or objects are used to penetrate the vagina of another individual, this is not considered rape.

(2) According to Section 9-13 of the Sexual Offenses Act of 2003, any sexual activity involving the consent of a minor younger than 16 constitutes sexual abuse. Sections 9 through 12 address the situation of a mature offender. Additionally, Section 13 pertains to a juvenile offender. In each section, the following violations are specified:

Previous Studies Toward Rape Law

Section 1 (18) defines rape as "an act committed to satisfy the perpetrator's desire by causing his penis to penetrate the victim's vagina, anus, or mouth." This is comparable to the 2003 Sexual Offences Act definition of rape in the United Kingdom. What differs from the formal law is using any object or body part of the offender to pierce the victim's vagina or anus to satiate the offender's desire. This is deemed an unnatural sexual act, which is the basis for increasing the penalty for indecency, known as an "indecent act committed through penetration." Such an amendment intends to be transparent and consistent with the nature of natural sexual interaction. However, the definition of rape is inconsistent with the global society of the twenty-first century, and it should also protect the victim of sexual abuse that is not limited

to common sexual contact. This is considered unjust and contrary to the principle of human dignity and the criminal law guarantee of certainty. For the criminal law to be clear, it is regarded necessary to distinguish between the manners of rape and indecency (Na Nakhon, 2020; Pongkhualao, 2019; Sutthitongtae & Chutinun, 2022; Yusawat, 2022).

In addition, the study examines the concept, intent of the law, and definition of sexual abuse of a minor under the age of fifteen. This is a comparative analysis of the criminal laws of Thailand and other nations. A comparison of the provisions and elements of the offense of sexual abuse of a child under fifteen reveals that Thailand's provisions are inappropriate. Since it appears that a minor victim consented to sexual abuse or was sexually abused, the victim is not adequately protected. In addition, the penalty imposed is not as effective as it should be. For effective punishment of an offender in the offense of sexual abuse of a child under the age of fifteen and the ability to impose a more accurate and appropriate penalty on the offender, it is necessary to amend the base of the offense of child sexual abuse to protect victims (iLaw, 2014; Pongruen, 2016; Sintaku & Praithong, 2021; Srisanit, 2019).

Documentary research and in-depth interviews were used to compare and analyze rape laws in Thailand and other countries and develop and modify the law for effective enforcement and tangible solutions to the rape problem. The documentary investigation was conducted by analyzing the law, a legal case study of a supreme court ruling. The in-depth interview is another data collection method. The in-depth interviews included police officers, public prosecutors, judges, the Juvenile Observation and Protection Center, officers from the Ministry of Justice, legal experts, and academicians. There were fifty critical informants in total. Samples were chosen using a purposive sampling method that considered those with knowledge and experience of rape law and responsibilities for preventing, monitoring, and repressing sexual offenses. The research instrument included a semi-structured interview, which was analyzed by three experts using the Index of Item-Objective Congruence (IOC).

Following the project's objectives, the researchers collected data based on the instrument employed in the study. Before data collection, the IRB was conducted to

be relevant to informants. In addition, owing to the COVID-19 pandemic, the data would be collected online, via telephone, mail, etc. To avoid contact, the questionnaire was also administered in QR-CODE format. In the case of collecting field data, the researchers responsible for collecting the data would wear masks and use the Antigen Test Kit: ATK meticulously before and after collecting the data to prevent the spread of infection or disease.

The purpose of the data analysis was to examine the data's content. The interview and focus group information was compiled, compared, separated, and summarized. The data were then collected descriptively following the research's objectives. Following this, intriguing findings and issues that need to be resolved and developed were presented so the research's results could be utilized in practice.

Result

Documentary Research

The documentary research related to rape laws of foreign countries gives the researchers to understand rape laws of foreign countries. The detail of the comparison of laws is as follows;

Definition of Rape

According to the previously mentioned definition of rape in the United States, when compared to the definition of rape in Thailand, it appears that the definition of rape in the United States has a broader scope. In other terms, rape in the United States encompasses contact between mouth and anus, mouth and penis, mouth and vagina, penis and vagina, penis and anus, anus or vagina, and other objects. In addition, deviant sexual intercourse is defined as sexual activity between a man and woman who are not husband and wife, involving the mouth or anus. This also includes carnal relations with animals. Nonetheless, the definition of rape in Thailand is restricted to natural sexual contact, which can constitute the crime of rape. In the case of unnatural sexual intercourse, which is the act of causing any objects or body parts, such as fingers, artificial body parts, or cunnilingus, which are not a penis, to penetrate the

vagina or anus, this is only an indecent act committed by penetration and not a rape. In addition to having a sexual relationship or sexual act, the United States Code (U.S.C.), Section 2246 (2) defines rape as the intentional touching of the genitalia of a person under the age of 16 with the intent to assault, humiliate and defame, or satisfy any person's sexual desire. These actions constitute the crime of rape, whereas in Thailand, handling another person's genitalia is only considered an act of indecency. Compared to the definition of rape in the United Kingdom, the purpose of rape in Thailand is comparable. In other words, for a perpetrator to be guilty of rape, they must have committed an act of natural penetration, namely, causing a penis to penetrate naturally. But if the penetration is performed with the aid of other objects or animals, it is an unnatural penetration, which is not a felony but a misdemeanor.

Table 1 shows the comparison of the definition of rape in Thailand and foreign countries

Thailand	United States	United Kingdom
An act is done to satisfy the perpetrator's desire by causing his penis to penetrate another person's vagina, anus, or mouth.	Rape means having genital or anal sexual intercourse. Later on, the offense of rape also includes contact between mouth and anus, between mouth and penis, between mouth and vagina, or between penis and vagina, or between penis and anus, or between anus or vagina and other artifacts.	The offense of rape means the way the perpetrator intentionally causes his penis to penetrate the vagina, anus, or mouth of another person without the victim's consent.

Offenses and provisions imposing heavier penalties

Thailand's criminal laws are comparable to those of the United States and the United Kingdom regarding more severe offenses and penalties. In other words, severe sexual misconduct and sexual abuse of children and dependents will result in harsher punishments. Each country's laws differ only regarding the penalty and age of a minor.

Table 2 Offences and provisions imposing heavier penalties

Thailand	United States	United Kingdom
1) The offense of rape causing serious injury or death	1) Sexual misconduct with a serious cause	1) Rape
2) Child sexual abuse	2) Sexual abuse	2) Rape is done by causing any body parts or objects instead of a penis to penetrate the vagina or anus of another person
	3) Sexual abuse against a child or dependent	3) Child sexual abuse based on the age of the child: (1) A child under 13 years of age (1) A child under 16 years of age
	4) Sexual abuse by force	

Results of in-depth interview

According to the in-depth interview and documentary research on rape in the United States and the United Kingdom, most legal provisions in Thailand are comparable to those in the United States and the United Kingdom. Nonetheless, numerous aspects of foreign law are more extensive than Thai law. This will be discussed in the subsection of the rape problem analysis that follows;

Definition of rape

In the current revised law, Section 1(18) of the Penal Code defines "rape" as the act of causing a penis to penetrate the vagina, anus, or mouth of another person to satisfy the perpetrator's desires. This specifies that there must be penetration for the rape offense to succeed, thereby making the provision that penetration is required for the crime plain. The interpretation is unnecessary, unlike the previous law, which caused a rape conviction possible if the victim's vagina, anus, or mouth were penetrated.

The act of causing a penis to penetrate another person's vagina, anus, or mouth to satiate the perpetrator's desire may not, however, encompass all actions that imply rape if the definition's implication is considered. According to the Royal Institute Dictionary, rape is defined as penetration for the new law's definitional scope. This definition does not specify which portion of the body has been penetrated. Given the state of Thai society, homosexuality is uncommon. However, in today's society, there are many homosexuals and those with other sexual orientations besides genital sexual activity. In other words, when considering a component, an external component that is an act to cause a penis to penetrate the vagina, anus, or mouth of another person is an act of penetration that does not include an act between two women or a woman using an artificial penis to penetrate the vagina, anus, or mouth of another woman.

"Today, more individuals disclose their gender. There are now more diverse sexual interaction patterns than in the past. "Rap may not always follow the same pattern."

Guidelines for the Development of rape law in Thailand

According to the in-depth interview, the development of rape law in Thailand should consist of amending ambiguous legal provisions to provide effective enforcement. Samples accept the following amendments:1) To include (19) in Section 1 of the Penal Code by including a precise definition of "genitalia" to include various types of offenses as a result of medical advancements, as follows: "Section 1 (19) genitalia includes birth genitalia and genitalia that has undergone sex reassignment surgery."2) To include (20) in Section 1 of the Penal Code by providing a precise definition of "indecent" to include the manner of a sexual offense against either the body or the mind, as follows: "Section 1 (20) indecent means abusive sexual offense."3) To amend the provision regarding the age of a child offender to prohibit claiming ignorance for a child under 15 years of age as follows: "Section 285/1, Section 227, Section 279, Section 282 paragraph three, Section 283 paragraph three, and Section 283 bis paragraph three; if it is an offense against a child under 15 years of age, it is prohibited to claim ignorance to exonerate a child of guilt."

Discussion

According to the amended definition in Section 1 (18), rape is the act of causing the perpetrator's genitalia to penetrate the victim's vagina, anus, or mouth to satisfy the perpetrator's desire. The legal definition of "rape" is limited to instances in which the "perpetrator's penis" is used to penetrate another person's vagina, anus, or mouth. This definition of rape is modified to be more precise and consistent with the nature of the natural sexual activity (Sutthitongtae & Chutinun, 2022). What differs from the formal law is the perpetrator's ability to use any object or body part to penetrate the victim's vagina or anus to satiate his desire. This is deemed unnatural sexual contact, which is the basis for increasing the penalty for indecency, known as an "indecent act done by penetration" (Supreme Court Decision No. 6336/2557). Therefore, if the perpetrator uses their fingers to penetrate the victim's vagina, they will be guilty of an indecent act committed by penetration, which was formerly the offense of rape.

This amendment disregards the legal protection and human rights of LGBT individuals. In addition, the perpetrator's penis must have penetrated another individual's vagina, anus, or mouth to satisfy his lust. This issue is deemed imprecise and excludes genitalia, whether it refers to genitalia at birth or genitalia undergoing sex reassignment surgery. Therefore, the definition of genitalia should also be specified. The term genitalia should refer to both the genitalia present at birth and those undergoing sex reassignment surgery.

According to the research, the definition of rape is comparable to the Sexual Offences Act of 2003 in the United Kingdom. This amendment's sole purpose is to be consistent with the nature of natural sexual interaction. Unnatural sexual conduct is not considered a felony, but rather an indecent act, which is unjust and contrary to human dignity. Therefore, the definition mentioned above of rape is incongruent with the gender-diverse global society of the present day. In addition, it lacks distinction, which is essential in criminal law. For the criminal law to be clear, it is regarded necessary to distinguish between the manners of rape and indecency (Na Nakhon, 2020; Pongkhualao, 2019; Sutthitongtae & Chutinun, 2022; Yusawat, 2022).

In addition, according to the in-depth interview, the proper development of rape law in Thailand would be to modify vague legal provisions to provide

effective enforcement. Samples support the amendment of the legal provision regarding the age of a juvenile offender under the age of 15 in which it cannot claim ignorance. This is consistent with a comparative analysis of the provisions and elements of the offense of sexual abuse of a child under the age of fifteen, which concludes that Thailand's provisions are inadequate. Since it appears that a minor victim consented to sexual abuse or was sexually abused, the victim is not adequately protected. In addition, the penalty imposed is not as effective as it should be. For the effective punishment of an offender in the offense of sexual abuse of a child under the age of fifteen and the ability to impose a penalty on the offender more accurately and appropriately, it is necessary to amend the base of the offense of child sexual abuse to protect the victim better (iLaw, 2014; Pongruen, 2016; Sintaku & Praithong, 2021; Srisanit, 2019).

Recommendation

According to the proposed policy, the relevant public sector must collaborate to amend rape law with a clear definition and swiftly launch a policy to safeguard victims. It suggests that justice system officers should engage in strict law enforcement and practice against rape offenders. To inspect crime, a police officer must patrol high-risk community areas, for example. To prevent the risk of rape in the family, school, and community, there should also be a meeting with community leaders to discuss problems such as substance abuse, sex abuse, child abuse, and domestic violence in the family and community.

Conclusion

Documentary investigation and in-depth interviews revealed that the rape laws of Thailand and the United Kingdom are comparable. However, the definition of rape in the Thai Penal Code will be expanded to include both aberrant and natural sexual acts. In addition, the Thai Penal Code must contain a definition of indecency. In addition, to enhance the efficacy and development of rape law in Thailand, the provision regarding sexual relations with minors under 15 must be revised.

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