A Singular Law: The Adoption of Pre-Colonial Statutes in Commonwealth Countries has caused a Multi Layered Legal Order and there is an Imperative to Enact a Civil Code for Uniformity and Certainty in the Constitution

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Section 498, Penal Code (Act 574): An Antiquated Law?

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The Occupational Safety and Health Law in Malaysia: The Way Forward

Siti Zaharah Jamaluddin

Faculty of Law, University of Malaya, 50603, Kuala Lumpur, Malaysia
Section 498, Penal Code (Act 574): An Antiquated Law?

Nor Aini Abdullah

Abstract

The above article is about section 498 of the Malaysian Penal Code. Section 498 reads ... "Whoever takes or entices away any woman who is and whom he knows, or has reason to believe, to be the wife of any other man; from that man; or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals, or detains with that intent any such woman, shall be punished with imprisonment for a term which may extend to two years, or with fine or both ...". It is about an archaic offence which entails in depriving the husband of his proper control over his wife for the purpose of illicit intercourse. Any disposition or consent or willingness on the part of the wife is perfectly immaterial to the guilt of the accused. Thus the literature of this article revolves around this antique provision; and how not or whether not to abolish it or maintain or amend it.

I. Section 498

A. Introduction

Section 498 of the Malaysian Penal Code is in pari materia with Section 498 of the Indian Penal Code. In fact, the Malaysian Penal Code evolved from Indian Penal Code 1860. It was the British who imposed the Straits Settlements Laws on the then Malaya way back in the 19th Century. It must be noted that the Indian Penal Code, which became the model penal law throughout British colonies in Asia and Africa was drafted at a time when women were perceived as the property of their husbands. Women were seen as mere passive agents whose primary duty was to bear children and manage the household. They were perceived not to have any self-agency or rational mind of their own. A married woman was thus subordinated to her husband on the assumption that she was under his ‘protection’ as he was expected to be liable for her civil and criminal wrong doings.

*Faculty of Law, University of Malaya.