

Sexual Harassment in the Workplace: An Examination of Malaysian Law

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ABSTRACT

This paper examines the issue of sexual harassment in Malaysian workplaces, highlighting its prevalence and the inadequacies of current legal protections. Key statutes, including the Employment Act 1955 and Penal Code, are analyzed, alongside the Industrial Relations Act's role in addressing related grievances. Despite amendments, the legal framework remains fragmented and reactive, lacking comprehensive definitions and victim support mechanisms. The study critiques the new Anti-Sexual Harassment Act 2022 for insufficient workplace protections. Recommendations include legislative reforms, enhanced reporting channels, victim support systems, and workplace training to foster awareness and preventive measures. The paper calls for societal change, emphasizing the need for public campaigns and zero-tolerance policies to ensure a safe and respectful work environment.

Keywords: Sexual Harassment, Employment Law, Employment Act 1955

INTRODUCTION

Sexual harassment in the workplace is a prevalent issue that transcends geographical, cultural, and socioeconomic boundaries. It is an abuse of power that not only affects the victims, but also undermines the integrity and productivity of the workplace environment. All types of sexual harassment in workplaces are unwelcome and undesired. Such harassment occurs when an employer exploits their position to sexually harass subordinates. Given that employees spend a significant portion of their lives at their place of work, creating a pleasant and supportive environment for both male and female employees is crucial. Sexual harassment is closely tied to the principles of individual liberty and equality. In the Malaysian context, addressing sexual harassment is particularly crucial given the country's diverse cultural landscape and the need for a safe and respectful working environment.¹ This assignment examines the legal framework governing sexual harassment in Malaysia, evaluates its effectiveness, and proposes recommendations for improvement.²

LEGAL FRAMEWORK ON SEXUAL HARASSMENT IN MALAYSIA

Malaysia has several laws addressing sexual harassment, but the framework is often criticized for being fragmented and inadequate. The primary statutes include the Employment Act 1955 [Act 265], the Penal Code [Act 574], and the Industrial Relations Act 1967 [Act 177]. Each of these laws contributes to the legal landscape in different ways.³

EMPLOYMENT ACT 1955

The Employment Act 1955 is the cornerstone of labour law in Malaysia, providing the foundation for employment contracts and workers' rights. This act covers a broad range of workers rights and employers responsibilities with the aim to protect and safeguard employees rights from being abused by employers and worse, slavery. In 2012, amendments were made to introduce specific provisions addressing sexual harassment as before this amendments, there are no proper or written

law that gives a focus on dealing with sexual harassment in employment law.⁴ Due to these amendments, section 81 was introduced specifically to tackle sexual harassment within the employment law context. Section 81A explains that a member of the organisation, be it an employee or an employer can lodge a complaint of sexual harassment towards an employer or employee of the organisation. Furthermore, section 81B outlines the responsibilities put upon the employer to conduct an inquiry or investigation towards the sexual harassment complaint to find out whether the incident really happened or not. However, the same provision gives powers to employers to evaluate whether to pursue or to refuse an inquiry if the complaint lodge has already been investigated and there were no proof of such sexual harassment really took place. If the employer had decided to refuse to conduct an inquiry then the employer has a responsibility to inform the complainant that the complaint would not be investigated and reasons for such refusal must be informed to the complainant.⁵

Section 81B(4) furthermore explains that if the complainant is dissatisfied with the refusal of inquiry by the employer, the complainant can lodge a complaint straight to the Director General of Labour and section 81B(5) explains that the Director General has the responsibility to evaluate the matter. If the Director General finds an inquiry is necessary on the matter, then he can direct the employer to conduct an inquiry, however if he finds it unnecessary and agree with the employer that there was no sexual misconduct, then the Director General has to inform the complainant that no further action on the complaints will be taken. Aside from that, if sexual harassment was found to be true in the workplace, then section 81C confers the employer to take disciplinary action to the

sexual harassment offender that includes the punishment of dismissing the offender without notice, downgrade the position of the employee, imposing any punishment the employer deem fit and if the punishment is a suspension without wages, then the employer can only suspend the offender wage for not more than two weeks.

In addition to that, section 81E explains that if the Director General determines that sexual harassment has occurred, the complainant has the right to terminate their contract of service without giving notice. Upon doing so, the complainant is entitled to receive their wages as though they had provided notice of termination, as well as any termination benefits and indemnity specified in the Act or their contract of service. Lastly, under section 81F, an employer is considered to commit an offence and is liable to a fine of up to fifty thousand ringgit if they fail to investigate complaints of sexual harassment as required by subsection 81B(1). Furthermore the employer is bound to inform the complainant of his refusal to investigate the complaint and provide reasons for the refusal as required by subsection 81B(2). Moreover the employer have to conduct an inquiry into complaints of sexual harassment when directed by the Director General as specified in paragraph 81B(5)(a) or subsection 81D(2) and submit a report of the inquiry to the Director General as required by subsection 81D(2).

PENAL CODE (ACT 574)

Workplace sexual harassment in Malaysia is typically addressed under four main sections of the Malaysian Penal Code. These include section 354, which deals with assault or the use of criminal force with the intent to outrage modesty; section 355, which pertains to assault or criminal force intended to dishonor a person without severe provocation; section 375, which covers rape; and section 509, which includes words or gestures meant to insult a

woman's modesty. It is important to note that a woman's modesty is not solely determined by the harassment of a particular body part but also by the offender's intention and actions. Section 354 specifies that anyone who assaults or uses criminal force with the intent or knowledge of outraging a person's modesty can be punished with up to ten years of imprisonment, a fine, whipping, or a combination of these penalties.⁶

Sexual harassment is recognized as a form of physical misconduct and can be treated as a criminal offense under the Penal Code, including acts of physical violence, sexual misconduct, and rape. This principle was clarified in the case of *Hall and others v. A & A Sheiban Pty Ltd and Others* [1989] 85 ALR 503, where Justice French stated that "sexual harassment" encompasses illegal behavior often associated with such misconduct. For instance, in *PP v. Kamarul Azamin Mohamad & Another Appeal* [2021] 2 CLJ 386, the Court highlighted that for an offence under section 354, there must be an assault or use of criminal force with the intent to outrage modesty or with the knowledge that such an act is likely to outrage modesty.

Although the Malaysian Penal Code imposes significant penalties for sexual harassment in the workplace, there are limitations when relying solely on this legal framework. The Code primarily addresses severe sexual abuse and physical aggression but does not adequately cover all forms of workplace sexual harassment. Proving such harassment can be challenging, especially in the absence of witnesses. Workers who wish to pursue claims of sexual harassment must gather substantial evidence to strengthen their case. Ultimately, while criminal liability can deter workplace sexual harassment, it requires robust proof to ensure effective legal remedies and justice for victims.

INDUSTRIAL RELATIONS ACT 1967

The Industrial Relations Act 1967 governs the relationship between employers and employees and provides mechanisms for dispute resolution. Although it does not explicitly mention sexual harassment, the Act allows for grievances related to unfair dismissal, which can include cases where employees are terminated for reporting harassment. The Industrial Court has adjudicated on such cases, setting precedents that contribute to the body of law on workplace harassment.⁷

Women employees who resign due to sexual harassment can lodge a complaint with the Industrial Relations Department under section 20 of the Industrial Relations Act 1967, claiming constructive dismissal. The claimant bears the burden of proving the harassment to the Industrial Court. Recent cases decided by the Industrial Court of Malaysia highlight various instances and outcomes of such claims. In the case of *Tong Yong Industries Sdn Bhd v. Tan Song Poh* (Award No.: 432 of 2011), the claimant, a general manager, was dismissed on multiple grounds including sexual harassment. The Industrial Court found that the domestic inquiry violated natural justice rules and lacked specifics of the allegations, leading to the conclusion that the dismissal was without just cause. Compensation in lieu of reinstatement was ordered due to strained relations. Similarly, in *Mohd Nasir Deraman v. Sistem Televisyen Malaysia Berhad (TV3)* (Award No.: 480 of 2010), the claimant, accused of sexually harassing a trainee, was found guilty based on reliable evidence. The Court dismissed his defence as a blatant lie and upheld the victim's account. In *Ahmad Ibrahim Dato Seri Mohd Ghazau v. Augustland Hotel Sdn Bhd* (Award No.: 1460 of 2010), the claimant's dismissal for alleged sexual harassment lacked substantive evidence. The Court emphasized that sexual harassment allegations must be corroborated by

independent evidence and awarded the claimant compensation.

The case of *Khoo Ee Peng v. Galaxy Automation Sdn Bhd* (Award No.: 656 of 2009) involved a claimant who argued constructive dismissal after rejecting the branch manager's advances. The Industrial Court found her claims credible and ruled in her favour, ordering reinstatement without loss of seniority. In contrast, *Encik Edwin Michael Jalleh v. Freescale Semiconductor Malaysia Sdn Bhd* (Award No.: 210 of 2008), where the claimant was dismissed for sexually harassing a female colleague, the Court deemed the dismissal too harsh despite acknowledging the misconduct. Compensation was awarded but reduced due to the claimant's contributory actions. These cases illustrate that allegations of sexual harassment require solid evidence, and the Industrial Court evaluates each case meticulously. The amendment to the Employment Act 1955 mandates that sexual harassment claims be addressed initially in the workplace, with legal action permissible under section 20 of the Industrial Relations Act 1967 if the employer fails to act appropriately. If the employee is dismissed unfairly or resigned its job due to sexual harassment, section 20 of the Industrial Relations Act 1967 can help the employee to get reinstatement or compensation through the Industrial Relations Department if it is proven unjust.

COMPARATIVE ANALYSIS WITH INTERNATIONAL STANDARDS

Internationally, the International Labour Organization (ILO) conventions provide comprehensive guidelines on preventing and addressing workplace harassment. ILO Convention No. 190, adopted in 2019, specifically addresses violence and harassment in the world of work, including gender-based violence. Malaysia's legal framework lags behind these international

standards, lacking a unified and comprehensive approach to the issue.⁸

At the international level, the issue of sexual harassment in the workplace is taken seriously by the United Nations (UN) and the ILO. Although international conventions have not specifically addressed workplace sexual harassment, fundamental human rights and international law principles have been applied to prohibit such conduct, including the right not to be subjected to sex discrimination, the right to dignity in the workplace, and the right to a healthy and safe work environment. The UN have treated workplace sexual harassment as a form of sex discrimination prohibited under UN conventions and a violation of health and safety rights guaranteed to workers under ILO treaties. The UN Commission on Human Rights has created various special rapporteurs and working groups to address specific human rights violations, including issues like violence against women.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 and described as an international bill of rights for women, has addressed workplace sexual harassment. By ratifying or acceding to CEDAW, states commit to ending discrimination against women in all forms and to incorporating the principle of gender equality into their legal systems. CEDAW monitors the implementation of these commitments which are General Recommendation No. 19, adopted by the Committee in 1992, characterizes gender-based violence, including workplace sexual harassment, as a form of sex discrimination and a breach of the convention. Despite these efforts, there is still no clear international definition of workplace sexual harassment, and many initiatives conceptualize it mainly as sex discrimination and violence against women.⁹

Additionally, there is no protection against complainants or whistleblowers of

sexual harassment in workplace. The ILO Convention of 2019 stipulates that laws on gender-based violence, including sexual harassment, should prevent, prohibit, and protect against such misconduct. This includes supporting complainants and whistleblowers, offering remedies, and establishing support systems for victims or survivors of sexual harassment. Moreover, the lack of provisions in the Anti-Sexual Harassment Act 2022 concerning workplace sexual harassment is concerning and may leave victimised employees vulnerable.¹⁰

IMPLEMENTATION AND ENFORCEMENT

The effectiveness of legal provisions is largely dependent on their implementation and enforcement. In Malaysia, various agencies and institutions are responsible for this task.

ROLE OF THE DEPARTMENT OF LABOUR

The Malaysian Department of Labour is pivotal in combating sexual harassment in the workplace by enforcing the Employment Act and aligning with international agreements. The department actively studies, reviews, and enacts amendments to labour laws, regulations, and orders to ensure they address current issues effectively. Employers are required to establish internal procedures for dealing with sexual harassment complaints, and the Department can intervene if these procedures are deemed inadequate. Additionally, the Department manages and resolves labour complaints, including those related to sexual harassment, by handling disputes between employees and employers through the Labour Court. By focusing specifically on addressing sexual harassment complaints, the Department strives to create a safer and more equitable work environment for all employees.

However, limited resources and a lack of specialised training for officers often hinder effective enforcement.¹¹

ROLE OF THE INDUSTRIAL COURT

The Industrial Court, established under the Industrial Relations Act 1967, is a specialised court for resolving disputes between employers and employees. The Industrial Court is instrumental in adjudicating disputes related to unfair dismissal and other employment grievances. Cases of sexual harassment brought before the court often set important legal precedents. While the Industrial Court primarily addresses factual issues, its decisions can be challenged through a judicial review at the High Court, which focuses on legal questions. Due to this, the process can be lengthy and intimidating for victims, and the court's capacity to handle such cases efficiently is limited.¹²

EFFECTIVENESS OF ENFORCEMENT MECHANISMS

Despite the existence of mechanisms for addressing sexual harassment, their effectiveness is often questioned. Success stories do exist, with some high-profile cases resulting in favourable outcomes for victims. However, barriers such as lack of awareness, cultural stigma, and fear of retaliation continue to impede many from coming forward. Additionally, the legal provisions are often seen as reactive rather than proactive, addressing issues only after they have occurred rather than preventing them.¹³

CHALLENGES AND GAPS IN THE CURRENT LEGAL FRAMEWORK

Several challenges and gaps undermine the effectiveness of the current legal framework in addressing sexual harassment in the workplace.

Inadequate Legal Definitions and Scope

The existing laws suffer from ambiguities and limitations in their definitions of sexual harassment. The long-awaited Anti-Sexual Harassment Act 2022 legislation is deemed inadequate and incomplete due to its failure to clearly define sexual harassment. Harassment itself is a complex and disputed concept, varying in interpretation across different contexts and jurisdictions. Sexual harassment, broadly defined, encompasses any unwelcome sexual behavior—whether verbal, non-verbal, visual, psychological, or physical—that a reasonable person would perceive as creating a sexually hostile environment, causing offense, humiliation, or posing a threat to their well-being. This behavior can manifest in various forms, such as catcalling, suggestive remarks, or offensive jokes within the workplace. Therefore, a critical reassessment is necessary to establish comprehensive and victim-focused laws against sexual harassment in Malaysia, addressing crucial aspects like refining the definition of sexual harassment. The Employment Act, while addressing the issue, does not provide a comprehensive definition that covers all forms of harassment. The narrow scope of the Act also excludes many employees, particularly those in higher-paying or non-manual jobs, from its protections.¹⁴

INSUFFICIENT SUPPORT FOR VICTIMS

Furthermore, victims of sexual harassment often face significant barriers in seeking justice. One issue that arises in tackling sexual harassment is failure of legislations to hold employers accountable for the conduct of their employees or clients while at work. This omission was also present in the Employment Act of 1955. Employers are not mandated to establish reporting channels for sexual harassment, and there are no protections against retaliation towards complainants or whistleblowers.

The legal process can be daunting, and there is a lack of adequate support systems, including legal aid and psychological counseling. The 2019 ILO Convention stipulates that laws addressing gender-based violence, including sexual harassment, should prevent, prohibit, and offer protection against such conduct. This includes assisting complainants and protecting whistleblowers, providing remedies, and setting up support systems for victims. However, the lack of these provisions in the Anti-Sexual Harassment Act 2022 and the Employment Act 1955 is concerning and may leave employees vulnerable to harassment.¹⁵

WORKPLACE CULTURE AND SOCIETAL ATTITUDES

Cultural norms and societal attitudes play a significant role in shaping responses to sexual harassment. In Malaysia, traditional gender roles and the stigma associated with reporting harassment can discourage victims from coming forward. There is a notable and positive correlation between the level of awareness about workplace sexual harassment and the overall workplace environment. A workplace environment that pays less attention to sexual harassment results in lower awareness levels among employees. Most employees concur that the workplace environment is crucial in preventing sexual harassment, indicating that the issue extends beyond individual behavior to include the organisation's policies, practices, and procedures. Most employees believe that organisations should take responsibility for the incidence of sexual harassment and protect their employees, emphasizing that organisational policies significantly shape workplace culture and ethics regarding sexual harassment. There is a need for greater awareness and education to shift these cultural attitudes and promote a zero-tolerance approach to harassment.¹

RECOMMENDATIONS FOR IMPROVEMENT

To address the challenges and gaps identified, several recommendations can be made to improve the legal framework and enforcement mechanisms.

LEGISLATIVE REFORMS

Legislative reforms are essential to provide a more comprehensive and inclusive legal framework. This includes:

CLEARER DEFINITIONS AND COMPREHENSIVE COVERAGE

The law should provide clear and comprehensive definitions of sexual harassment, covering all forms of behavior that constitute harassment.¹⁷ The scope of sexual harassment in the Employment Act 1955 and Anti-Sexual Harassment Act 2022 should be expanded to include all types and categories of sexual harassment such as verbal harassment, promises of preferential treatment or threats of punishment, and unwelcome sexual actions, words, or images that are offensive or harmful. This is to ensure strong actions can be taken if such horrific incidents happen during the course of working in the workplace. The reason for that is because the current legislation does not specify explicitly the definition of sexual harassment and confers the power to inquire such matter to the employer, hence different employer would have different interpretation and treatment of sexual harassment in the office.¹⁸

STRENGTHENING REPORTING AND INVESTIGATIVE MECHANISMS

It is very crucial for companies and organisations to establish standardised procedures for reporting and investigating complaints for complainants to lodge a complain of sexual harassment. This includes mandatory reporting channels

within organisations that are safe and set out clear guidelines for investigations conducted by the Department of Labour. Furthermore, organisations can create anonymous and confidential reporting channels that can encourage more victims to come forward without fear of retaliation and discrimination.¹⁹ Actions of reporting and whistleblowing is very much considered to be very taboo and sensitive for Malaysians, hence it is vital for an organisation to create a safe environment for complaints to be lodged.²⁰

ENHANCING SUPPORT SYSTEMS FOR VICTIMS

Support systems for victims from the organisation need to be strengthened to ensure they have access to the necessary resources and protections before and after the complainant makes a complaint. Providing free or subsidised legal aid and psychological counselling for victims can help them navigate the legal process and cope with the trauma of harassment that they have endured.²¹ Sexual harassment is a very traumatising experience especially for women, hence it is very important for the organisation to prepare a proper support system for the victim.²²

PROMOTING WORKPLACE POLICIES AND TRAINING

Workplace policies and training programs are critical in preventing sexual harassment and fostering a respectful work environment. This includes:

MANDATORY TRAINING AND AWARENESS PROGRAMS

Findings have revealed that a majority of staff, both female (60%) and male (56%), believe that awareness training is a crucial method for addressing sexual harassment. Regular courses to enhance understanding of sexual harassment are recommended for all university staff and students to directly

expose them to the issue. Among male respondents, 35% felt that regular in-house awareness and motivation programs for university staff and students would be the best approach to handle sexual harassment incidents. This indicates that both female and male staff see individual and organisational initiatives as key to preventing such incidents in the workplace. Therefore, regular awareness training for various staff categories is essential. Additionally, clear institutional policies and grievance procedures on sexual harassment will significantly aid victims in accessing justice in these cases. Hence, employers should be required to conduct regular training sessions on sexual harassment, educating employees about their rights and the procedures for reporting harassment.²³

DEVELOPING ZERO-TOLERANCE POLICIES

Organisations should adopt and enforce zero-tolerance policies towards sexual harassment, with clear consequences for violators. Such as if a victim chooses to file a formal complaint or requests action, the organisation is required to promptly, fairly, and thoroughly investigate the incident to ascertain the facts and must take appropriate measures to resolve the issue. Similarly, if the organisation receives information from other sources such as witnesses, anonymous tips and media reports alleging harassment had happened in the organisation, it should respond with an equally rigorous investigation, provided it is reasonable to do so and the allegations can be verified. Factors considered in this assessment may include the origin and type of information, seriousness of the alleged incident, specificity of details, credibility and impartiality of the source reporting the incident, ability to identify affected parties, and cooperation from those involved in addressing the matter. This is to signify all the individuals in the organisation on how serious sexual harassment are and one

should never get involved with such heinous action.

FOSTERING SOCIETAL CHANGE

Addressing sexual harassment requires a broader societal change, challenging traditional norms and promoting gender equality. This includes:

PUBLIC AWARENESS CAMPAIGNS

National campaigns can raise awareness about the issue of sexual harassment, its impact, and the importance of reporting it. It has been found that a majority of both female and male staffs emphasised the importance of awareness campaigns as a crucial method to combat this issue. It has been suggested that sexual harassment awareness workshop conducted regularly for all employees in the organisation would help tremendously to confront the problem. Additionally, a number of percentage of female respondents highlighted the significance of individual awareness and deep understanding of religious practices in preventing sexual harassment. In the other hand, a number of male respondents believed that regular in-house awareness and motivation programs for everyone in the organisation would be most effective in addressing incidents of sexual harassment. This underscores the consensus among staff, regardless of gender, that individual and organisational initiatives are key to preventing such incidents in a workplace setting. It is crucial to conduct regular awareness training across different staff categories to effectively mitigate sexual harassment.²⁴

Looking ahead, prevention remains a paramount strategy in combating sexual harassment by challenging very few societal sexist attitudes and norms. This can be achieved through education to enhance public awareness among youth in schools, higher education institutions, and working adults in both public and private sectors.

The government, as the country's largest employer with nearly one million workers, could lead by example by implementing clear policies and procedures on sexual harassment. Management should initiate programs like guidance, training, and awareness campaigns to foster knowledge-sharing among employees, promoting understanding of religious, racial, and cultural differences, addressing human psychological diversity, and advocating for gender equality. Lastly, encouraging open dialogue about sexual harassment and promoting positive cultural changes can help to reduce the stigma associated with reporting and support victims.²⁵

CONCLUSION

Sexual harassment in the workplace is a significant issue that requires comprehensive legal and societal responses. In Malaysia, the current legal framework provides some protections but is often inadequate and fragmented. To effectively address sexual harassment, legislative reforms, enhanced support systems, proactive workplace policies, and broader societal changes are necessary. By implementing these recommendations, Malaysia can create a safer and more respectful working environment, benefiting both individuals and society as a whole.

The importance of addressing sexual harassment cannot be overstated. It is essential for the well-being of victims, the integrity of the workplace, and the progress towards gender equality. As stakeholders, including the government, employers, and society, work together to implement these changes, Malaysia can move closer to eradicating sexual harassment and fostering a culture of respect and dignity for all.

NOTES

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