

## Towards Safer Workplaces: Malaysian Sexual Harassment Law in Comparative Perspective

*(Menuju ke Tempat Kerja yang Lebih Selamat: Undang-Undang Gangguan Seksual di Malaysia dalam Perspektif Perbandingan)*

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### ABSTRAK

Gangguan seksual di tempat kerja menimbulkan halangan besar terhadap keberkesanan organisasi dan kesejahteraan pekerja. Artikel ini menawarkan tinjauan mendalam mengenai undang-undang dan amalan semasa di Malaysia berkenaan gangguan seksual di tempat kerja, yang merangkumi Perlembagaan Persekutuan, Kanun Keseksaan, Akta Perhubungan Perusahaan 1967, dan Akta Kerja 1955. Skop Akta Anti-Gangguan Seksual 2022 yang bersifat progresif tetapi terhad serta pengaruhnya terhadap perlindungan di tempat kerja turut dibincangkan. Selain itu, artikel ini meneliti piawaian undang-undang antarabangsa seperti Konvensyen ILO No. 190 dan CEDAW bagi menekankan kaedah paling berkesan dalam menangani isu gangguan. Kajian kes dari Malaysia turut diketengahkan bagi menunjukkan ketidaksepadanan dalam pelaksanaan serta preseden undang-undang yang sedia ada. Artikel ini diakhiri dengan cadangan untuk memperkukuh perlindungan, termasuk pelaksanaan inisiatif kesedaran awam secara meluas, kebertanggungjawaban majikan, dan penetapan definisi undang-undang yang lebih jelas demi mewujudkan persekitaran kerja yang lebih selamat.

**Kata kunci:** Gangguan Seksual, Akta Anti-Gangguan Seksual 2022, Akta Kerja 1955.

### ABSTRACT

*Workplace sexual harassment presents substantial obstacles to organisational efficacy and employee well-being. This article offers an in-depth look of Malaysia's current laws and practices concerning workplace sexual harassment, which encompass the Federal Constitution, Penal Code, Industrial Relations Act 1967, and Employment Act 1955. The Anti-Sexual Harassment Act 2022's progressive yet constrained scope and its influence on workplace protections are also underscored in the discussion. Furthermore, the article delves into international legal standards such as ILO Convention No. 190 and CEDAW to underscore the most effective methods for addressing harassment. Case studies from Malaysia are examined to demonstrate the disparities in implementation and legal precedents. The article concludes with suggestions for enhancing protections, such as the implementation of expanded public awareness initiatives, employer accountability, and clearer legal definitions, in order to promote safer workplace environments.*

*Keywords:* Sexual Harassment, Anti-Sexual Harassment Act 2022, Employment Act 1955

### INTRODUCTION

Workplace sexual harassment contaminates the atmosphere and may seriously harm the performance, confidence, health, and morale of people who experience it. It

causes tension and worry, which may cause sufferers to take time off, work less effectively, or quit their jobs completely. Such harassment often has negative effects on witnesses or other people who are aware of the behaviour in addition to the individuals who are directly targeted. While

companies suffer from lower productivity, greater absenteeism, and more staff turnover, employees may suffer from short-term and long-term harm to their career prospects, such as lost promotions or job changes.

In the modern world, both men and women make substantial contributions to the public and commercial sectors, playing crucial roles in the growth of the family and the country. Nevertheless, greater involvement has also put people at danger for sexual harassment at work. Although women are often stressed as the main victims, data from the Royal Malaysian Police show that males are also affected by these incidents, with 135 male victims out of 3,361 instances reported in 2023.<sup>1</sup> This emphasises how important it is to treat sexual harassment as a problem that affects people of all genders.

Any kind of sexual harassment, whether it be by actions, words, or behaviour, is undesirable and unethical and goes against both the law and public decency. For everyone to work in a respectful and safe atmosphere, such behaviour must be eliminated from the workplace. The purpose of the article is to increase public awareness of sexual harassment and provide analysis of the laws that are now implemented to combat this critical issue.

## RESEARCH METHODOLOGY

The study adopts a qualitative legal research method, which allows for close examination of the interpretive and normative features of sexual harassment law in Malaysia and selected foreign jurisdictions. Such a method is particularly appropriate for the study of law since it addresses non-numerical data, court documents, and case law, with an emphasis on the evaluation of legal concepts, statutory interpretation, judicial reasoning, and development of the law of rules.

Doctrinal research method is adopted as the primary methodology. This involves systematic and critical analysis of primary legal sources, including the Federal Constitution, Employment Act 1955, Penal Code, Industrial Relations Act 1967, and the Anti-Sexual Harassment Act 2022. Moreover, the research also examines relevant judicial decisions like *Mohd Ridzwan Abdul Razak v Asmah Hj Mohd Nor*, *Abdul Halim Mohd Salleh v Cagamas Berhad*, and others, which have enriched workplace harassment jurisprudence.

In comparative analysis, the study also considers international legal standards such as ILO Convention No. 190 and CEDAW and references their implication on Malaysia's legal obligations alongside areas of potential reform. The comparative element mentions legal approaches in jurisdictions such as the United Kingdom and Singapore.

To collect data, this research employs primary as well as secondary sources. Primary sources include judgments, rules, and legislation of Malaysian as well as selected foreign jurisdictions. Secondary sources include legal commentaries, scholarly journal articles, policy reports, and reports of international organizations such as ILO and UN Women. Legal databases such as CLJ Law, Lexis Advance Malaysia, HeinOnline, and EBSCOhost are employed to obtain authoritative and updated material.

Analysis is conducted through doctrinal and normative interpretation, looking at the manner in which legislation has been interpreted and implemented in practice, identifying gaps in current legal context, and measuring conformity of local law to international standards. By studying legislative intent, judicial reasoning, and international obligation, the study aims to offer critical analysis and recommendations for legal reforming with an aim to enhance

protection against sexual harassment in the workplace in Malaysia.

### STATISTICAL OVERVIEW

The prevalence of sexual harassment in Malaysia has shown a troubling increasing trend over recent years. According to reports lodged with the police, the cases numbered 506 in 2021, increasing to 519 in 2022 and 522 in 2023.<sup>2</sup> Even though the surge might be partially due to heightened awareness and willingness to report, the fact that the trend is rising also indicates that the problem is well-rooted in Malaysian workplaces and society generally.

Women continue to be the main victims of such abuses. More than 85% of the reported cases yearly have women as their victims, showing persistent gendered vulnerabilities. Nevertheless, sexual harassment does not exclusively apply to women alone. In 2023 alone, the Royal Malaysian Police reported 135 male victims, which shows increasingly recognized male vulnerability despite masculinity stigma and victimhood. The workplace remains a significant setting for harassment. 95 instances of sexual harassment at work were officially recorded in 2023, and of those, roughly 88% targeted women.

### DEFINING SEXUAL HARASSMENT

The term "sexual harassment" describes unwanted sexual behaviour that is threatening, degrading, or insulting. It may happen in person or online and take many different forms, such as written, spoken, or physical acts. Such behaviour often consists of acts or statements that make a person or group feel uncomfortable or unsafe by demeaning, threatening, or humiliating them.

According to Ashgar Ali Ali Mohamed (2011), sexual harassment is any unwelcomed sexual behaviour, whether it

be physical, psychological, visual, verbal, or nonverbal, that might be seen as endangering the recipient's health, imposing a sexual condition, or causing offence or shame.<sup>3</sup> This definition emphasises the subjective aspect of harassment by concentrating on the recipient's perception of the behaviour rather than the offender's intention.

The Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace 1999 defines sexual harassment as any unwanted conduct of a sexual nature, including verbal, non-verbal, visual, psychological, or physical harassment. It applies to behavior that, on reasonable grounds, may be perceived as attaching a sexual condition to employment or causing offense, humiliation, or threats to well-being, even without a direct link to employment.

A practical example is the case of *Freescale Semiconductor Malaysia Sdn Bhd v. Edwin Michael Jalleh & Anor*.<sup>4</sup> The harasser in this instance touched a coworker's buttocks, which the Industrial Court and High Court both deemed to be sexual harassment and misconduct. However, given the particular circumstances, it was decided that the harasser's firing was excessive. The victim and the harasser were both wearing complete smocks and masks when the event occurred at a workplace. It just lasted a few seconds and happened in front of coworkers; no other injuries were sustained. In response, the victim yelled and scolded the harasser, thereby putting a stop to the situation. The Court of Appeal emphasised that the conduct was intentional rather than unintentional in spite of these considerations. In order to preserve unity, people must behave in ways that are acceptable to others rather than depending on their own personal standards or views, according to Justice Abdul Wahab Patail, JCA, who underlined the need for sensitivity in a multicultural workplace.

This instance shows how crucial it is to take the recipient's perspective into account when dealing with sexual harassment. In light of this, it reflects the definition of sexual harassment found in Section 2 of the Employment Act of 1955,<sup>5</sup> which states that any unwanted sexual behavior—verbal, nonverbal, visual, gestural, or physical—directed at an individual that is offensive, degrading, or poses a risk to his wellbeing and results from or during the course of his employment is considered sexual harassment.

## LEGAL FRAMEWORK IN MALAYSIA

The issue of sexual harassment in the workplace is being addressed by a number of laws in Malaysia. These consist of Employment Act 1955 (Act 265), Penal Code (Act 574), Industrial Relations Act 1967 (Act 177), Federal Constitution, and Anti-Sexual Harassment Act 2022 (Act 840). The victim of sexual harassment at work may lawfully bring a claim for sexual harassment at work using these several legal tools.

### EMPLOYMENT ACT 1955

In Malaysia, the relationship between employers and their employees is governed by the Employment Act 1955 (EA 1955) (Hassan et al., 2023). Over time, the EA 1955 has been amended to take into account the workforce's ongoing development. On June 1st, 1957, EA 1955 was initially launched. It regulates the interactions between employers and workers. Regarding their terms and conditions of employment, workers are protected under the EA 1955. Over the years, the Act has undergone a number of revisions. The most recent of these, the Employment (Amendment) Act 2022, went into force on January 1, 2023. There were no explicit provisions addressing sexual harassment in the workplace in the original EA 1955. "Any unwanted conduct of a sexual nature,

whether verbal, non-verbal, visual, gestural, or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment"<sup>6</sup> is the new definition of "sexual harassment" that was added to Section 2 of the EA 1955 in 2010. Sexual harassment at work is included under the most recent changes to the Employment Act of 1955. Under this amendment, employers have been obliged to provide sexual harassment notice in order to increase employee knowledge. The purpose of this amendment is to provide workers more protection against sexual harassment at work and to make sure that employers take the necessary actions to stop and address the problem.

Any sexual harassment complaint filed by an employee against another employee, by an employee against any employer, or by an employer against an employee is referred to as a sexual harassment complaint.<sup>7</sup> When a sexual harassment complaint is filed, the employer is required to look into it, according to EA 1955, which outlines the complaint processes in full. Within 30 days after the complaint, a written explanation must be provided with each disapproval. The complainant will still have the option to file a complaint with the Director General of Labour (Director), who may either advise the employer to conduct an inquiry or concur with the employer's decision.<sup>8</sup> Employers may take disciplinary action, such as firing the employee without cause, demoting them, or imposing any other less severe penalty, if the inquiry is completed and it is shown that sexual harassment did occur.<sup>9</sup> This is consistent with Section 14 of the EA 1955, which stipulates the same disciplinary measures for employee misbehaviour.

In the event that an employer is the target of a complaint, there are other procedures. Direct complaints may be sent to the Director, who will look into the

matter personally. However, if the Director has already investigated the complaint and no sexual harassment has been proved, or if he believes the sexual harassment allegation is baseless, vexatious, or not submitted in good faith, he may decline to investigate it further. The complaint must get written notice of the rejection within 30 days.<sup>10</sup>

In 1999, the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace (the Code) was established by the Ministry of Human Resources. Its objective is to provide employers with guidelines for establishing internal processes within their companies that would enable them to successfully handle and eradicate workplace sexual harassment. Workplaces are encouraged under the Code to establish a grievance or complaint mechanism in order to address sexual harassment claims. Given the diversity of sexual harassment, companies are urged to set up a distinct complaint process to address each one individually. According to the Code, sexual harassment complaints are not appropriate for the standard complaint process (Ministry of Human Resources, 1999).

When a sexual harassment complaint is received, the employer is required to look into the situation.<sup>11</sup> They may, however, decline to look into some situations, but they must provide written justification for their decision. A complaint may be rejected on the grounds that it is frivolous, vexatious, or not made in good faith. Any written justification for not looking into the matter must be provided, such as the employer's belief that the sexual harassment is pointless, vexatious, or not committed in good faith. Transparency and accountability are ensured while handling such sensitive subjects by requiring documented reasons.

If the employer refuses to look into the situation and gives written justification,

the complaint may still take the issue to the Director. After assessing the case, the Director may decide that the complaint deserves further investigation and give the employer instructions to go on with an inquiry. This extra degree of supervision helps in preventing the unfair rejection of legitimate complaints. On the other hand, the Director will inform the complainant that no further action would be taken if they agree with the employer's choice to not look into the matter. This procedural framework seeks to strike a balance between the rights of the accused and the complainant, guaranteeing that situations of sexual harassment that are legitimately addressed are handled effectively and provide a way to contest unjustified denials of investigation. In the end, it promotes a just and equal work environment. According to the most recent Employment (Amendment) Act 2022, an employer must always post a notice in the workplace to increase awareness of sexual harassment.

Employers are legally required to comply with certain obligations regarding workplace sexual harassment accusations under the terms mentioned. Employers who violate these requirements may be subject to severe penalties, including fines of up to RM50,000.<sup>12</sup> First of all, if an employer receives a complaint of sexual harassment, they are required to investigate it thoroughly. This is necessary to preserve a harassment-free workplace and to provide a fair and reasonable resolution to such serious accusations. Furthermore, if an employer chooses not to carry out an investigation, they must provide the complainant a good rationale for their choice. This standard improves transparency and accountability in the complaint process. Additionally, the employer is required to follow the Director's instructions if the Director directs that an investigation be carried out. This illustrates how the higher authority monitors and assists in resolving these kinds of concerns. Finally, a report of the investigation must be submitted by an

employer upon the Director's request. By doing this, the relevant authorities are kept updated and are able to take the required steps to resolve the issue.

### PENAL CODE

In Malaysia, the Penal Code is usually used to address workplace sexual harassment, with investigations concentrating on a few important provisions. These include Section 509, which deals with words or gestures intended to offend a woman's modesty; Section 375, read with Section 376, which deals with rape; and Section 354, which deals with assault or illegal force with purpose of insulting modesty.

The Penal Code has other laws that are relevant to workplace harassment in addition to these often cited sections. These are Sections 355 and 377C, which deal with assault and the use of criminal force with the intent to dishonor a person (with the exception of cases involving grave provocation); 377D and 377D, which deal with decency outrages; 499 and 511, respectively; and 511, which deal with attempts to commit offenses.

According to criminal justice principles, a person may only be held guilty of a crime if they directly carry out the act while having the necessary mental condition, or *mens rea*. There are several methods in which employers might be held accountable for illegal activity. If they conduct the crime directly, they may face individual charges; if directors, employees, or agents commit the crime while working for the corporation, they may face corporate charges; and if an employer encourages, permits, or knowingly permits an employee to commit the crime, they may face charges. However, if a crime requires evidence of *mens rea*, an employer cannot be held vicariously liable. They may only be held vicariously liable for offenses for which *mens rea* is not required or in cases where specific laws require it. In instances like this, the employer is held liable for the

worker's conduct or mental condition, so long as the employee acted in the course of their job.

Even though the Penal Code has laws to handle workplace sexual harassment, there are still many obstacles to overcome. Without sufficient institutional assistance, victims are often left to handle the judicial system alone. Since trials are held in public and the victim must testify as a witness, pursuing a lawsuit exposes one to public curiosity and disgrace. Furthermore, as stated in the case of *Mohamed Radhi Bin Yaakob v. PP*,<sup>13</sup> "the burden of proof lies throughout the trial on the prosecution to prove beyond reasonable doubt the guilt of the accused." This highlights the extraordinarily high evidentiary standard in criminal trials, which calls for proof beyond reasonable doubt.

Sexual harassment charges are particularly difficult because of their delicate nature. The criminal justice system does not provide victims with enough resources to cope with the trauma they have experienced, such as therapy. Additionally, the backlog in courts causes cases to be delayed for years as a consequence of the judicial system's poor speed. The victim's suffering is prolonged by this delay as they can still be harassed while they wait for a decisions, which would cause them to continue to have emotional, psychological, and professional difficulties.<sup>14</sup> Therefore, there are still a lot of loopholes in the Penal Code's ability to ensure victims get prompt justice and sufficient assistance, even while it offers a legal framework to handle workplace harassment.

### INDUSTRIAL RELATIONS ACT 1967

Sexual harassment in the workplace is indirectly addressed by the Industrial Relations Act of 1967, which offers ways for workers to seek compensation under its provisions on constructive and unfair dismissal. Employees may utilise the Act's framework to contest terminations or

unacceptably harsh working circumstances brought on by sexual harassment, even if it does not specifically address it.

Within 60 days of being fired, workers who were fired without reason or explanation may submit a written representation to the Director General of Industrial Relations under Section 20(1). When an employee is fired for reporting or refusing to comply with sexual harassment, this clause is especially relevant. In the case of *Jennico Associates Sdn. Bhd. v. Lilian Therera De Costa*,<sup>15</sup> for instance, the Industrial Court decided in favour of a worker who quit because she was subjected to ongoing harassment and humiliation, concluding that the termination amounted to constructive dismissal. But the High Court eventually reversed the ruling because there was insufficient evidence to support it, underscoring the difficulties victims face.

Although the Act does not specifically mention it, case law has recognised the idea of constructive dismissal, which is used under Section 20(1). Constructive dismissal happens when an employer violates the terms of the employment contract to the point that the worker feels forced to leave, such as when they tolerate sexual harassment or ignore complaints.<sup>16</sup> The court stressed that constructive dismissal covers circumstances in which the employer betrays the confidence that is fundamental to the working relationship in *Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd.*<sup>17</sup> The Industrial Court also granted compensation for constructive dismissal in *Fuchs Petrolube (Malaysia) Sdn. Bhd. v. Chan Puck Lin*,<sup>18</sup> where the employee quit because of harassment-related complaints.

Sexual harassment is also addressed through collective agreements between employers and unions.<sup>19</sup> In order to avoid harassment, provide complaint procedures, and shield victims from reprisals, these

agreements may include certain clauses. The majority of agreements, however, do not now specifically address sexual harassment, which may be improved. Unions may negotiate procedures that, for instance, mandate quick investigations, guarantee anonymity, and specify that harassers—not victims—are moved in the event that separation is necessary.

Despite offering indirect protections, the Act could be improved to specifically address sexual harassment in the workplace. Detailed complaint processes, required workplace practices, and precise definitions of sexual harassment should all be included in the amendments. Additionally, employers could be compelled to regularly educate staff members and visibly post anti-harassment policies.

#### FEDERAL CONSTITUTION

Sexual harassment in the workplace is protected under the Federal Constitution. The court has interpreted Article 5(1), which provides the right to life and personal liberty in Malaysia, to include a variety of rights that are necessary for personal liberty. In clause one of Article 5, "No person shall be deprived of his life or personal liberty save in accordance with law."

According to Justice Gopal Sri Ram's interpretation of "life" under Article 5(1), it encompasses more than just existence in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan*.<sup>20</sup> It encompasses the right to live in a safe and healthy environment, the right to pursue legal work, and dignity. He said that one must be able to work in a decent manner, get an education, and support themselves. Therefore, sexual harassment at work directly violates these basic rights by denying people their dignity and their ability to choose their career. Since Tan was denied these fundamental rights, it was

decided that his termination without a fair trial was unlawful.

The significance of interpreting constitutional rights broadly was recognized by the *Federal Court in R. Rama Chandran v. Industrial Court of Malaysia*,<sup>21</sup> which cited this interpretation. But the Federal Court decided in *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan*<sup>22</sup> that it was wrong to read "personal liberty" too broadly under Article 5(1). The court's position changed in *Lee Kwan Woh v. Public Prosecutor*,<sup>23</sup> emphasizing the need to read constitutional provisions "generously" and "liberally." Due to its sui generis nature, the Federal Constitution necessitates a prismatic approach in order to reveal rights enshrined in its provisions, particularly under Part II, which includes basic rights guarantees. By providing a more expansive definition for abstract terms like "life" and "personal liberty," this interpretation guarantees that these rights are not limited to specific meanings.

According to Article 8(1), which supplements Article 5(1), "All persons are equal before the law and entitled to the equal protection of the law." This clause guarantees equal rights for men and women and emphasizes the value of human dignity. In August 2001, Article 8(2) was changed to specifically prohibit discrimination on the basis of religion, ethnicity, ancestry, gender, or place of birth, furthering this idea. Laws, public employment, and the management of property rights, companies, or professions are all covered by the amendment. It works to advance equality and shield people from prejudice in a variety of contexts, including the workplace. By means of these constitutional safeguards, the right to be shielded from sexual harassment is firmly grounded in the more general values of equality, liberty, and dignity.

## ANTI-SEXUAL HARASSMENT ACT 2022

One significant step in Malaysia's fight against sexual harassment is the Anti-Sexual Harassment Act 2022. It offers a long-overdue legal framework for dealing with harassment in social settings, including the workplace. The Act marks a substantial shift from earlier legislation that was either ineffectual or narrowly focused by emphasizing victim-centric procedures like the Tribunal for Anti-Sexual Harassment. Nevertheless, the Act has a number of issues that restrict its ability to effectively handle the complexity of sexual harassment, even while it is progressive.

The Anti-Sexual Harassment Act of 2022 was enacted to overcome the shortcomings of previous legislation, such as the Employment Act of 1955, which only addressed harassment that occurred in the workplace.<sup>24</sup> By defining sexual harassment in Section 2 as any unwelcome behavior that is unpleasant, degrading, or threatening—whether verbal, nonverbal, physical, or visual—the Act expands safeguards. This broad term guarantees victims access to justice for a variety of actions.

The establishment of the Tribunal for Anti-Sexual Harassment, as described in Section 4, is one of the main components of the Act. The Tribunal offers victims a quick and inexpensive way to file complaints without having to deal with the drawn-out formalities of conventional judicial systems. While Section 19(1) requires that judgments be made within 60 days of the first hearing, Section 14 guarantees that all hearings be held in secret to preserve the anonymity of the victims. Furthermore, Section 21 strengthens responsibility by imposing penalties for disregarding Tribunal rulings.

In contrast to its predecessors, the Act permits victims to appeal the Tribunal's



rulings to the High Court under Section 23 and has gender-neutral measures (Section 7). Additionally, the Administrator is tasked under Sections 24 and 25 with supporting policies and awareness campaigns to combat sexual harassment. These actions demonstrate the Act's dedication to combating harassment via both legal and educational channels.

Although the Anti-Sexual Harassment Act 2022 is a step in the right direction, a number of restrictions make it difficult for it to fully combat sexual harassment. The definition of sexual harassment in Section 2 is one significant exception; while it is wide, it does not specifically include actions that foster a hostile work environment. Although they are often subtle, behaviors like showing sexually explicit content, cracking offensive jokes, or using derogatory language may have a big psychological effect on victims. There is a vacuum in safeguards against hostile environments since the existing framework exclusively handles harassment that is aimed at people.

The absence of obligatory employer obligations is another drawback. Employers are not required to set up special anti-harassment policies under Sections 24 and 25, which assign the Administrator the responsibility of raising awareness. Organizations are not required by law to establish reporting procedures, put workplace rules into place, or provide training courses. A significant hole in workplace accountability and preventive initiatives is left by this absence.

Furthermore, retaliation against whistleblowers or complainants is not covered by the Act. Section 13, which restricts legal assistance to instances involving complicated legal concerns, deters victims from coming forward even more, particularly if they are afraid of negative outcomes like losing their jobs or being shunned by their profession.

Another major flaw is the RM250,000 financial compensation threshold outlined in Section 21. Financial remedies have to be proportionate to the damage inflicted; a set cap ignores the fact that situations vary in severity. Furthermore, in contrast to legislation in other jurisdictions, the Act's deterrent impact is diminished since it does not contain criminal sanctions for serious acts of harassment.

## INTERNATIONAL LEGAL STANDARDS

Sexual harassment at work is a widespread problem that compromises employees' equality, safety, and dignity. It perpetuates prejudice and violence based on gender, disproportionately affecting women and marginalised communities. International frameworks like the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Labour Organization's (ILO) Convention No. 190 (C190) have been established to address this issue. Although the purpose of both tools is to prevent gender-based violence and harassment, they use different strategies to accomplish this.

Adopted in June 2019, the ILO Convention No. 190 is an important treaty that specifically targets workplace harassment and violence. Described as "a range of unacceptable behaviours and practices, or threats thereof, that aim at, result in, or are likely to result in physical, psychological, sexual, or economic harm," it is the first international document to provide a complete definition of violence and harassment.<sup>25</sup> This definition acknowledges the disproportionate effect of sexual harassment on women as a result of intersecting forms of discrimination and considers it as a crucial component.

The scope of C190 is vast and wide-ranging. It is applicable to all workers,

especially those in informal economies where women are often over-represented, irrespective of their industry or employment status. Additionally, the convention expands the scope of its rights beyond the actual workplace to include both public and private areas where work-related activities take place, including internet communications, employer-provided housing, commutes, and travel. This broad covering guarantees that employees are shielded from harassment in all work-related situations.

C190's focus on gender-based violence (GBV) is one of its main characteristics; it recognises that women are often more vulnerable to harassment due to power disparities and cultural norms. In addition to putting preventative measures like workplace training programs and awareness campaigns into place, the convention mandates that member states enact laws and regulations that address these underlying issues. In order to guarantee that victims obtain justice and aid, C190 also requires the creation of easily accessible complaint procedures and victim support services.<sup>26</sup>

On the other hand, the United Nations General Assembly passed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979. Although CEDAW does not expressly address sexual harassment in the workplace, its requirement that state parties eradicate all kinds of discrimination against women provide a solid basis for defending women's rights in the workplace.

The elements of CEDAW that pertain to workplace harassment include creating legislative frameworks that prohibit discrimination and guaranteeing equal employment opportunities for women. It also underscores the importance of education and awareness-raising initiatives to challenge societal norms that

perpetuate gender inequality. CEDAW aims to establish workplaces where women may work with dignity and without fear of harassment by promoting structural change.<sup>27</sup>

Although CEDAW does not exclusively address workplace issues, as C190 does, it complements the latter by addressing the underlying causes of gender-based violence and discrimination. For instance, C190's demand for cultural transformation in workplaces is consistent with CEDAW's focus on dispelling stereotypes about women's position in society. By addressing both the immediate and structural factors that contribute to sexual harassment, these instruments reinforce one another.

#### MALAYSIAN CASE STUDIES

The Federal Court of Malaysia delivered a landmark ruling in *Mohd Ridzwan Abdul Razak v. Asmah Hj Mohd Nor*,<sup>28</sup> establishing the tort of sexual harassment within the Malaysian legal system. During their time working at Lembaga Tabung Haji, Asmah Hj Mohd Nor filed accusations against her boss, Mohd Ridzwan Abdul Razak, which led to this landmark case. Asmah filed an official complaint against Ridzwan in July 2009, claiming that he had harassed her sexually and made improper comments and made undesirable marriage offers. Even after an internal investigation revealed that there was not enough evidence to support disciplinary action, the company still reprimanded Ridzwan and moved Asmah to a different department. In December 2011, Ridzwan filed a defamation action against Asmah in response to the complaint, arguing that her accusations were untrue and damaging to his reputation. After going through many court phases, the matter was decided by the Federal Court on June 2, 2016. The court maintained Asmah's counterclaim for sexual harassment while rejecting Ridzwan's defamation claim. As previously

determined by the High Court, Ridzwan had in fact made offensive and sexually suggestive comments to Asmah, which aggravated her psychological suffering. A significant turning point in the recognition of sexual harassment as a tort in Malaysia was reached when the court awarded Asmah RM100,000 in general damages and RM20,000 in aggravated damages. Because it was the first time Malaysian courts acknowledged sexual harassment as a legitimate cause of action apart from the country's current employment laws, this case is very important. Before this verdict, victims had little options under informal guidance instead of official legal safeguards. Since the Federal Court's ruling, victims of sexual harassment at work now have more options for pursuing legal remedies. In conclusion, this case not only gave the complaint justice but also established a standard for similar instances in Malaysia in the future, highlighting the need of thorough legal frameworks to shield workers from such misconduct.

In *Abdul Halim Mohd Salleh v. Cagamas Berhad*,<sup>29</sup> the Industrial Court of Malaysia made a landmark ruling validating the termination of an executive officer who had been convicted of grave misconduct in the workplace involving multiple acts of sexual harassment, insubordination, and abuse of authority. Senior Vice President of the Treasury & Capital Markets (TCM) division Abdul Halim was dismissed in October 2017 after an internal Domestic Inquiry found him guilty of 59 of 74 charges. The case was typified by a series of events between 2013 and 2016, such as the fact that Abdul Halim had employed obscene and insulting language against his female juniors, made sexually explicit remarks, and engaged in all forms of physical and psychological harassment. Victims also testified to being handled inappropriately, having been exposed to sexually suggestive contact, or followed or intimidated into unwanted positions, as being harassed into having to

socialize with him or endure his visit in their private hotel rooms during work assignments. Despite the imbalance of power, some of the victims remained silent for years due to fear of retaliation and loss of employment. Abdul Halim defended himself by denying most of the accusations, explaining that the accusations were vague, fabricated, and delays in lodging complaints constituted consent. The Court, however, held that in sexual harassment cases, failure to promptly lodge complaints cannot render the victim's accusations unbelievable. The court adjudicated that Abdul Halim had breached the company's Code of Ethics and Workplace Sexual Harassment Guidelines, and his actions were unbecoming an individual occupying his position. It further held that his actions constituted serious misconduct and justified his termination. Among the offences established were instances in which Abdul Halim placed a female staffer's hand on his private region, forcibly kissed another subordinate, used his fingers to scratch a co-worker's palm in a handshake, and made inappropriate sexual comments persistently. He also obtained a personal loan from a subordinates without informing the company and then interviewed her for a job, in order to create an evident conflict of interest. In awarding the dismissal, the Industrial Court gave specific weight to the fact that the employer could no longer trust or have confidence in Abdul Halim, especially in the light of the trend of predatory actions against subordinates. The Court pronounced that the dismissal was done with just cause and excuse. This case is important as it highlights the court's acknowledgment that verbal, physical, or psychological sexual harassment is a grave offense in the workplace and calls for sacking, particularly where committed by those with positions of authority. It also confirms that harassment cases are associated with fear, silence, and late complaints and ought not to compromise the credibility of the victim. The decision is an effective precedent for

holding senior executives to account and emphasizes the importance of protecting employee dignity and safety in Malaysian workplaces.

High Court of Malaya in Ipoh delivered a milestone judgment in *Madiahlagan A/L Sundaram v. Lotuss Stores (Malaysia) Sdn Bhd*,<sup>30</sup> in confirming the dismissal of a senior manager for sexual harassment at work. Madiahlagan, who was with the company since 2004 and was Store General Manager of the Kampar branch, was questioned by his firm in March 2021 after he was accused of sending indecent WhatsApp messages to junior colleagues, namely Nursufiah Sani and Khairulnizam bin Md Hashim. An internal investigation was carried out, where Madiahlagan admitted that the phone number from which the messages had been sent belonged to him and that he had composed the messages himself. Though he argued that the messages were not of a sexual nature but friendly in nature, the company held that the messages were inappropriate and against its Code of Practice on Sexual Harassment. A show cause notice was issued, and upon an unsatisfactory response from the appellant, he was removed from duty with immediate effect on 26 April 2021. In the Industrial Court, the discharge was held to be with good cause and excuse. When appealed to the High Court, Madiahlagan contended that vital witnesses, including the complainant Nursufiah, were not called to testify, thereby rendering the evidence hearsay and inadmissible. He also objected to procedural delays and authenticity of interview notes. But the High Court rejected such arguments, noting that admissions and documentary evidence of the appellant were sufficient to establish misconduct. The court ruled that failure to cross-examine was not procedural unfairness, particularly given the clear content of the messages and admission of responsibility. The court emphasized that sexual harassment, especially from a

superior officer, undermines workplace integrity and is a serious affront to professional and ethical commitments. Referencing authorities such as *Mohd Ridzwan Abdul Razak v. Asmah Hj Mohd Nor*, the court reminded that settled sexual harassment is a legitimate grounds for termination, even in the absence of a domestic investigation. Lastly, the High Court dismissed the appeal with costs of RM6,000 and affirmed the Industrial Court's decision. This case upholds the legal principle that employers are entitled and indeed obligated to act firmly against workplace harassment so that all employees will be protected from inappropriate conduct regardless of rank or seniority.

### CHALLENGES IN MALAYSIA

The way that sexual harassment is seen in Malaysia is greatly influenced by cultural views on gender roles. Women are often seen as being lesser by traditional norms, which creates a society in which harassment is accepted or ignored. It is common for victims to experience victim-blaming and stigma, which deters them from reporting events. According to surveys, for example, 62% of women said they had been the victim of sexual harassment at work.<sup>31</sup> Furthermore, male victims may be discouraged from seeking assistance because to cultural norms around masculinity. Although women make up the vast majority of victims of more than 98% of instances reported, there has been a noticeable rise in the number of male victims, with 135 recorded in 2023. This change reflects a greater understanding of men's vulnerability to sexual harassment, although reporting continues to be constrained by social humiliation.

There are a number of important issues facing Malaysia's Anti-Sexual Harassment Act 2022. The Act's inadequate and ambiguous definition of sexual harassment is a significant concern, as it fails to adequately address a variety of

forms, including quid pro quo and behaviours that foster a hostile environment. Additionally, there are no safeguards in the Act against hostile conditions at work, such as offensive jokes or sexually explicit materials, which may not specifically target any one person but nonetheless foster an undesirable atmosphere.<sup>32</sup> The legislation also does not prohibit retribution against whistleblowers or complainants, leaving victims exposed, and employers are not obligated to set up procedures for reporting or dealing with sexual harassment. The legal protection for related offences, such as stalking and cyberstalking, is fragmented since they are covered by different laws. Furthermore, the Tribunal's compensation limit of RM250,000 is criticised for being arbitrary and insufficient to adequately address the damage suffered or prevent future misconduct.<sup>33</sup> Further undermining victim protection is the Malaysian Act's lack of protective provisions like restraining orders or injunctions, which are absent from anti-harassment legislation in nations like the UK and Singapore. Additionally, bullying, cyberbullying, and discrimination on the basis of nationality, age, or race are not addressed by the law.<sup>34</sup> Furthermore, the Tribunal's establishment and operation are not enforced, which further complicates these concerns and restricts the law's practical application. Even though these flaws address a crucial problem, they show that the Act needs major revisions to be thorough and beneficial.

#### RECOMMENDATIONS FOR STRENGTHENING PROTECTIONS

Even though Malaysia's present legal system has made progress, further changes are required to provide full safeguards against sexual harassment. The Anti-Sexual Harassment Act's terminology need to be made clearer in order to remove any confusion. Sexual harassment must be defined in a way that is comprehensive and unambiguous, clearly defining what

behavior is considered unwanted. This should include all types of harassment, including physical, gestural, visual, verbal, and nonverbal, so that victims are aware of their rights. In addition, employers should be required to establish and execute comprehensive anti-harassment policies that adhere to legal standards.<sup>35</sup> Clear reporting guidelines, investigative methods, and sanctions for offenders must all be part of these rules. Additionally, the penalties for employers who neglect to address sexual harassment incidents should be substantially increased. Increasing the penalties from RM10,000 to RM50,000, for example, can effectively discourage negligence in the management of complaints.<sup>36</sup>

The implementation of mandatory training and awareness programs within workplaces is another critical component of strengthening protections. Every employee, including management, should be obliged to attend regular training courses on sexual harassment awareness and prevention. The legal definitions of sexual harassment, employee rights, and incident reporting procedures should all be included in these training courses.<sup>37</sup> Organizations can establish an environment that is free of harassment by cultivating a culture of accountability and awareness. Public awareness campaigns are crucial for teaching the general public about sexual harassment and fostering a respectful society, in addition to workplace training. These initiatives, which have the potential to drastically alter public perceptions of harassment and inspire victims to come forward, may be facilitated by partnerships between governmental and non-governmental organizations (NGOs).

#### CONCLUSION

Sexual harassment at work is an ongoing issue that violates people's basic rights and dignity, resulting in toxic workplaces that hinder wellbeing and productivity. With the

enactment of the Anti-Sexual Harassment Act 2022 and amendments to the Employment Act 1955, Malaysia has made significant progress, however these actions fall far short of addressing the issue's complexity and widespread scope. The absence of safeguards against hostile work conditions, unclear legal definitions, and inadequate employer responsibility are just a few of the significant gaps that still hinder real development.

Social stigmas, victim-blaming, and cultural norms all contribute to underreporting and deter victims, especially men, from pursuing justice. Legal frameworks like the Industrial Relations Act of 1967 and the Penal Code give few options, and the Federal Constitution does not specifically address sexual harassment while addressing equality and dignity. Case studies have brought to light the real-world difficulties victims have, such as inadequate support systems and postponed court proceedings.

A multifaceted strategy is necessary for Malaysia to promote significant transformation. It is essential to have more precise legal definitions, anti-harassment rules that are required, and stronger enforcement tactics. Through required training, reporting procedures, and awareness campaigns, employers should be held responsible for establishing safe workplaces. These initiatives may be strengthened via cooperation between international organisations such as the ILO, non-governmental organisations (NGOs), and the government.

Through tackling systemic and cultural obstacles and conforming to international norms like ILO Convention No. 190 and CEDAW, Malaysia may take the lead in creating an equitable and courteous work environment. In addition to shielding people from harassment, this will encourage a fair and inclusive workplace

that advances both social and economic advancement.

## NOTES

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- <sup>7</sup> Section 81A of Employment Act 1955
- <sup>8</sup> Section 81B of Employment Act 1955
- <sup>9</sup> Section 81C of Employment Act 1955
- <sup>10</sup> Section 81D of Employment Act 1955
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