

LACK OF GENDER SENSITIZATION IN MALAYSIAN LAWS AND REGULATIONS: NEED FOR A RIGHTS-BASED APPROACH

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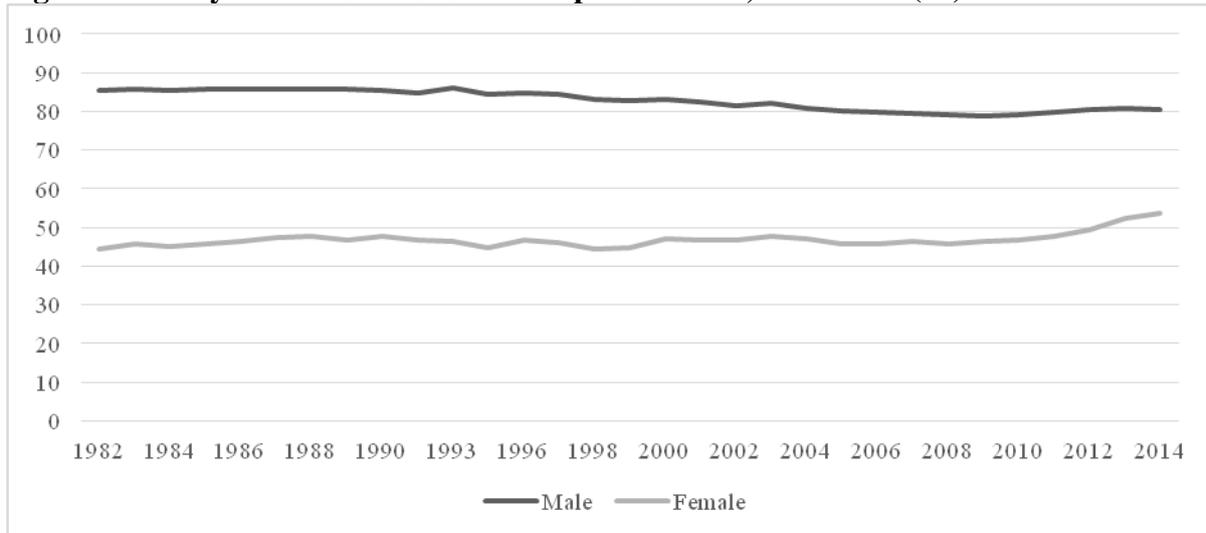
Abstract

Malaysia continues to have a mixed record on human rights issues, partly explained by some idiosyncrasies in the laws and regulations pertaining to women. Clearly, there has been some neglect on the women folk in nation building. To put into perspective the treatment towards women workers and their rights, one has to first understand the role of women in the Malaysian labour market, and second, the Malaysian laws and regulations pertaining to the employment of women. The paper therefore appraises historically the changing role of women in the labour force from the colonial days to the present, and the evolving gender dimensions embedded in the related laws and regulations. The paper contends that the early economic and political landscape in Malaysia, which viewed women as having complementary roles instead of equal roles with their male counterparts, has given rise to a lack of or limited gender sensitization in the labour laws and regulations. The current move from gender insensitivity to gender mainstreaming, through various policies/mechanisms and programmes in the developmental framework, remains grossly inadequate. It merely reflects lack of operationalizability and social reality of some of the existing labour laws and regulations. This calls for gender equality legislation that emphasizes the centrality of human rights in matters related to equality and non-discrimination.

Introduction

In the early 2000s, it was admitted by the then Prime Minister, Abdullah Ahmad Badawi that women were marginalized in Malaysia. In 2006, Ahmad Badawi assured the women folk that the government would continue to facilitate higher participation of women into the nation's labour force, and review existing laws and regulations that discriminate against women". In 2011, the current Prime Minister, Najib Tun Razak, upheld the agenda of women under the 10th Malaysian Plan. The Prime Minister said that "measures will be undertaken to increase the female labour force participation rate from 46 percent in 2010 to 59 percent in 2020.¹ The current female labour force participation at 54 percent, though close to the proposed target, is much lower than that of the male labour force participation rate at 80 percent (see Figure 1). The looming problem is that it is perceived that a large number of highly educated women are absent from the labor force, given that the gross enrollment ratios of women in tertiary education far outweigh that of their male counterparts. The World Bank survey findings revealed that 17 percent women leaving the labour force cited reasons related to lack of career progression opportunities whereas 11% pinpointed inequality in the workforce. Many respondents perceived the Malaysian workplace to be patriarchal and male-dominated.²

Figure 1: Malaysia: Labour Force Participation Rates, 1982-2015 (%)



Source: Labour Force Surveys, Department of Statistics Malaysia.

Further, despite the growing female labour force participation rates, Malaysia records the lowest senior roles occupied by women in the Association of Southeast Asian Nations (ASEAN), at 26 percent, and the third lowest globally to have women on board-level positions (Chairman, Chief Executive Officer, Chief Financial Officer, Executive Director and Non-Executive Director).³ The number of women on the board of listed companies in Malaysia was a mere 8 percent in 2013⁴, relative to 33 percent in the top positions of the government sector.⁵ Given these statistics, it is of no surprise that the gender agenda resurfaced in the Prime Minister’s 2012 Budget speech, with the commitment to encourage at least 30 percent women in top-management and decision-making positions in the private sector by 2016. Some further argue that the allocation of 30 percent decision making powers to women should not just be confined to the private sector, but should also include the political arena to influence policy making decisions.

Clearly, the statements made by the leaders and the rebranding of women in the national agenda of the 21st century is that of an admission and recognition that there has been some neglect on the women folk in nation building. With this admission, various measures have been taken to mainstream gender into the development process to attain gender equality. The narrow discourse and focus on gender inclusion in development is however grossly insufficient to address the broader approach towards gender equality through the empowerment of women’s rights. Following from this, Malaysia continues to have a mixed record on human rights issues, partly explained by some idiosyncrasies in the laws and regulations pertaining to women.⁶ If the lack of women’s rights more specifically is found to be true, that is local women in Malaysia are not given protection of rights in the administration and laws, it will be no surprise that foreign women are also treated unfairly in the industrial workplace. In the domestic services sector, which is dominated by female migrants, the lack of gender sensitive policies⁷ to ensure a safe working environment is also deemed to have increased the vulnerability of this group towards abuses.⁸

Though several studies have documented the specific and changing roles of women underlying the development process of Malaysia, little is known about the regulatory framework that supports this change. The paper seeks to fill this gap in the literature. The paper therefore traces the treatment of women from colonial days to the present to give a broader understanding of the role of women in the Malaysian labour market. It then moves on to appraise the extent to which gender dimensions have been accounted for in the existing labour laws and regulations. The key questions the paper seeks to address are: Are women

given prominence and their contribution adequately recognized in the Malaysian labour market? Are the labour laws and regulations sensitive towards the rights of women? Have the existing labour laws and regulations related to women evolved in tandem with the changing role of women in the labour force?

Role of Women through Scholarly Works: Serious Neglect

It has been noted that the labour literature in Malaysian history is largely centered on the role of the males among specific ethnic groups, the Indians, Chinese and the Javanese. This is evidenced from works on the Indian labourers, which can be placed under three broad categories; (i) historical accounts of the community's settlement in Malaya; (ii) Indian labour in the plantation sector; and (iii) and recent works on Indians. The works in the first category mainly deals with immigration and settlement – causes of migration, types of migrants and methods of recruitment; role of Indians in the modern Malayan economy – in agriculture and industry, communication and commerce. These include studies by Sandhu (1969), Netto (1961), Mahajani (1960), Arasaratnam (1979) and Jain (1970).⁹ The second category focuses on plantation, with two notable works by Selvakumaran (1994) and Ramasamy (1994).¹⁰ The third category (Nagarajan, 2001; Anbalakan, 2003; Tate, 2008; Sivachandralingam, 2012) deals with events that affected the livelihood of the Indians in the late 1990s.¹¹ All the above-mentioned studies deal with Indian male labourers, and nothing on the predicament faced by the women folk.

Similarly, the work on Chinese and Javanese labourers remains silent on the role of women. Works by scholars such as Blythe (1947), Purcell (1967), Khoo (1982), Parmer (1964) and Lee and Tan (2000) emphasize methods on labour recruitment, labour unrest, involvement in secret society and formation of labour organization.¹² Works on Javanese labourers, though limited, focused on male employment. Studies in this regard comprise that of Rajendran (1982), Khazin (1992), Shamsul (1965) and Amarjit (2004).¹³ The only study which has given some account on female workers is that by Amarjit (1990).¹⁴ In her work entitled “Working on the Railway: Indian Workers in Malaya, 1880-1957”, she addresses female recruits (and the differences in the wages between males and females) in the estates and railways for the period 1921-1947. Nevertheless, this still did not suffice to explain the overall socio-economic position or contribution of female workers.

It was only in the 1970s that academics and interest groups began writing and researching about the disadvantaged or marginalized position of women. In general, the work on female workers is limited to labour movements and trade unions. Popular works like Gamba (1962), Ramasamy (1994) and Jomo *et al.* (1994)¹⁵ focus on male involvement in unions, with the exception for Rohana (1991). Adopting a historical and sociological approach, Rohana investigates the participation and role of women in trade unions in the Peninsular Malaysia, based on case studies of the Malayan Trade Union Congress (MTUC) and the Congress of Unions of Employees in the Public and Civil Services (CUEPACS).¹⁶ The findings indicate that the primary reason for the low participation of women in trade unions is that most unions are still very much a male domain - dominated by male leaders, subscribing to male norms and programs. In addition, unions exhibit little serious commitment to promoting women's interests, to sensitizing male members to women's issues and to develop more effective women's participation and leadership.

The later literature that featured gender and structural change through export-oriented industrialization in Malaysia, indicate strong feminization of the workforce, followed by defeminization of the manufacturing sector. The Malay women more specifically benefited from the feminized policies under the New Economic Policy (NEP) of 1971, which had an ethnic focus. The increasing shares in female employment in the 1970s and 1980s as pointed out in many studies seem to reverse thereafter. A recent study by Kucera and Tejani (2014)

indicate that the female share of manufacturing employment declined from 51 percent to 39 percent between the early 1990s and 2007, and these declines were cited to be in labour intensive industries.¹⁷ The effects of defeminization were also found to be consistent with preference for male workers in the context of industrial upgrading.

The limited literature on women and their role in the Malaysian labour market prior to the 1970s suggests the lack of recognition, or rather neglect, of their contribution to the domestic economy. Studies pertaining to structural change in the economy from the 1970s through the 1990s, which deliberated policies based on ethnicity, and the “trope of productive femininity” that was supplanted by the “trope of unproductive femininity”, hindered the full expression of gender-based issues beyond ethnic categorizations.¹⁸ Most of these works consensually addressed gender norms, designating men as breadwinners and women as secondary workers.¹⁹

Laws and Regulations Relating to Women through Pages of History: Gender Insensitive

During the British rule, women were discriminated as there were male bias among British administrators, which was reflected in their administration. According to Roger, “*In the third world, planners see problems as entirely as those of men; the solutions must therefore also be geared to the men. Without any individual intention or even thought about women, the overall effect is to exclude them absolutely from development planning*”.²⁰ The discrimination was the direct result of colonial intervention when a western model of the roles and responsibilities of men was superimposed on traditional societies. With the introduction of a market economy, cash crop cultivation was directed at men, even though both the wife and the family were engaged in the work. This was true even with employment in plantations and domestic work in colonial establishments and homes. In the field of education, colonial policies further reinforced local gender segregation. In schools, girls took needlework and boys had scouting. In fact it was the boys who were singled out for formal education even in areas where Quaranic schools had taught girls and boys.

The neglect or insensitivity of the British towards females is also reflected in the laws enacted in the Malay states during their rule. From the hundreds of laws enacted for the period 1880- 1957, very few dealt with women. A majority of the laws enacted were related to economy, religion, nature and prevention of crimes. The few laws concerning women were mainly related to widow and orphan funds and laws to protect women and girls (for example, Women and Girl’s Protection, 1893; Widows and Orphans Fund, 1896; Widows and Orphans Pension Fund Enactment, 1897; and Widows and Orphans Pension, 1905). The abovementioned laws clearly indicate that the women were not given an important role in British Malaya.

In the same vein, women were not treated fairly in terms of their appointment in public services under the British rule. According to Bhupalan²¹, the number of female workers in the public sector was limited and there was only one female contract worker in the Malayan Civil Service (MCS, known as Administrative and Diplomatic Service since 1964) then. Married female officers in the public services were requested to resign and thereafter re-employed as temporary officers. This invariably reflects the minimal support of the State towards women’s socially reproductive work. Further, a number of female officers in the teaching and nursing profession with the same academic qualifications and job functions as their male counterparts, were accorded lower pay.²²

Tunku was seen as being responsible for the early erosion of the colonial policy of discrimination towards women. Tunku, a believer in human rights, sought to accord women their rightful position in all areas, including public services. He believed in equality of men and women in national development, that is equal recognition and equal treatment, based on Article 8 (2) of the Federal Constitution.²³ On this principle, Tunku appointed Aishah Ghani

(Tan Sri) as the first woman Senator on 14 September 1962. Further, the recommendations of (Tun) Fatimah Hashim²⁴ the founder and President of the NCWO²⁵ helped change the attitude of leaders towards the role of women in the economy. Beginning with the presence of women in governance, the government under Tunku's leadership implemented the 'Equal Pay for Equal Work' policy, which came into effect in 1970.²⁶

Following the commitment of the government under Tunku's leadership, the *Suruhanjaya Perkhidmatan Awam* (SPA) was formed under Article 144(1) of the Federal Constitution.²⁷ The SPA is given the mandate to appoint, confirm and place qualified and officers of caliber in public services without any form of gender discrimination.²⁸ This saw an increase in women officers holding key positions in the public and private sectors²⁹ Gender as a development focus was first mentioned in the Third Malaysia Plan (1976–80), which encouraged the active participation of women in development and their contribution to the economy.³⁰ The formulation of the first National Policy on Women in 1989 was a positive step to acknowledge the significant role of women in national development. Later five-year development plans gave greater prominence to gender issues and since the Sixth Malaysia Plan (1991–1995) a full chapter has been devoted to policies and programmes that promote women in development.³¹ Under the Tenth Malaysia Plan (2011-2015), a committee was established to implement gender sensitization³² programmes in the public sector.³³

At present, Malaysia follows a two-pronged strategy in terms of gender. One is to integrate gender and family perspectives in the process of policy formulation and provide opportunities for women to improve their socio-economic well-being, and the other is long term developmental strategies including capacity building and motivational and entrepreneurship programmes.³⁴ Table 1 lists the various ministries and government agencies established to create gender awareness in human rights and administrative policies, and to empower women, since the 1970s. It is obvious that significant progress has been made in terms of development programmes for women. Other major organizations that implement programmes for the development of women include the Community Development Department (KEMAS), National Population and Family Development Board (NPFDB), Department of Agriculture (DOA), and the Federal Land Development Authority (FELDA).

Table 1: Malaysia: Major Legislations, Programmes and Policies Related to Women

Year	Legislations/Programmes/Policies
1971	Amendment of the 1967 Income Tax Act to allow women wage earners to elect for separate tax assessments.
1973	Establishment of the Women and Girls Protection Act (amended in 1987).
1975	Guardianship of Infants Act 1961 amended to allow both parents to be the legal guardian.
1976	Establishment of the Marriage and Divorce Act.
1976	Formulation of the National Advisory Council on the Integration of Women in Development (NACIWID).
1978	Amendment of the 1967 Income Tax Act.
1983	Establishment of the Women's Affairs Secretariat (HAWA).
1987	Establishment of Amanah Ikhtiar Malaysia (AIM) to provide micro-credit for poor women.
1988	Amendment to the 1955 Employment Act to encourage greater labour force participation among women.
1989	Formulation of the First National Policy on Women (NPW) to influence gender equality and women empowerment, covering health, education and training, law,

	employment, power sharing, sports, media, religion and culture.
1989	Evidence Act of 1950 amended to protect rape victims in divulging their sexual history in court.
1992	Formulation of the Action Plan for the Advancement of Women (APAW) to operationalize the NPW.
1994	Enactment of the Domestic Violence Act (DVA). The principal act was amended in 2012, Domestic Violence (Amendment) Act 2012.
1995	Acceded to the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW).
1998	Establishment of the Women's Entrepreneur Fund.
1998	Amendment to the 1955 Employment Act (EA) to provide flexible working hours; increase maternity leave up to 60 days for women in the public sector.
1999	Amendment to the Guardianship of Infants Act 1961, which enables mothers to sign all documents involving their under-aged children.
1999	Establishment of the Human Rights Commission.
1999	Formulation of the Code of Ethics for Sexual Harassment Prevention to provide guidelines to employers on the establishment of in-house mechanisms at the enterprise level to prevent and eradicate sexual harassment in the workplace. The Code was extended to the public sector in 2005.
2001	Amendment to the Federal Constitution to prohibit discrimination in any law on the basis of gender.
2001	Establishment of the Ministry of Women, Family Development (renamed Women, Family and Community Development, MWFCD) to ensure effective implementation and coordination of programmes for women and families.
2003	Introduction of the Gender Budget Analysis to ultimately establish a gender-sensitive national budget.
2004	Establishment of the Cabinet Committee on Gender Equality to provide policy direction and monitor the implementation of strategies and programmes on women and development.
2005	Islamic Family Law passed.
2009	Formulation of the Second National Policy on Women (NPW).

Source: Compiled from the literature.

Apart from the legislations and programmes, a pilot project of Gender Budget Analysis (part of the feminization of fiscal policies) has been introduced in five key ministries, namely the Ministry of Health, Ministry of Rural and Regional Development, Ministry of Education, Ministry of Higher Education, and Ministry of Human Resources. The main objective is to cope with the different demands of women and men, so that their respective potentials can be realized. Further, gender-sensitization training and programmes have been provided to government officers since 1990 to ensure that women are mainstreamed into development. Likewise, gender-sensitization courses are incorporated into the training for officers of the law such as police officers and other enforcement officers.

Despite the efforts that date to the Tunku era to accord women the same position as their male counterparts, and to eradicate gender-based discrimination, and the subsequent legislations, programmes and policies to address women, even as recent as 2006, there seems to be inequality (substantive inequality in terms of opportunities and outcomes) issues that confront women employees.³⁵ One major concern here is that a mere inserting of the gender dimension into the existing developmental framework is not the best way to ensure effectiveness of gender mainstreaming, apart from realizing women's rights.³⁶ In fact, a

rights-based³⁷ approach to development may be more relevant for the Malaysian society. In support of this is the report that states: “... *there have been changes in government policy, however there has not been a substantive change in the status of the women’s human rights in the country.*”³⁸

Contextualizing the Issues on Labour Laws and Regulations: The Present

Relevant to the focus on regulatory framework is the Eighth Malaysia Plan (2001-2005), which includes the target of reviewing laws and regulations that inhibit the advancement of women.³⁹ Clearly, the laws and regulations have moved away from “gender blindness⁴⁰ to “gender mainstreaming”⁴¹; yet some existing labour laws (pertaining to employment) continues to be gender biased, while in other cases the laws have not reached social reality.

Though Malaysia signed up to the Convention⁴² on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995, many of the rulings on employment seem to contravene Article 1 of the Convention which defines discrimination against women as: “... *shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*”⁴³ Relevant to the arguments articulated below is Article 11 of the Convention, which stipulate measures to eliminate discrimination against women in the field of employment (ensuring equal rights to employment in terms of opportunities/ choices, job security, remuneration and terms of work conditions, social security and health and safety) and effective right to work (during pregnancy or maternity leave).

While Article 8 of the 2001 amended Federal Constitution of Malaysia (see Laws of Malaysia, 2009) prohibits discrimination on the basis of gender, there have been cases of employers dismissing women who are pregnant or on maternity leave. This has raised questions on how ‘discrimination’ is defined (only applicable to gender discrimination in employment in public services in the Constitution and to what extent the CEDAW is incorporated into national law.⁴⁴ It appears that CEDAW is adopted only in a piecemeal fashion, mainly because its provisions are subject to the compatibility with the Malaysian Constitution and Syariah law. Hereafter are some cases of discriminatory practices that have been brought before the judiciary that explain how the laws are enforced. The early case in 1991 refers to the termination of a female flight attendant by the Malaysian Airline System (MAS), bound by the terms of a non-pregnancy clause in a collective agreement, who became pregnant and refused to resign. Her application that provisions in the collective agreement were discriminatory and were in conflict with the Constitution was dismissed by the High Court and later by the Court of Appeal. Though one may argue that this case was before the issue of discrimination was added into the Constitution, the collective agreement was considered to be in direct conflict with the Employment Act (1955) that mandates paid maternity leave⁴⁵. Having said that, the cases after 2001, still suggest that the remit of the Court is conflicting. In 2011, the Ministry of Education revoked a teaching job offer owing to pregnancy but the court ruled in favour of discrimination.⁴⁶ Conversely, in 2012, the court ruled in favour of Guppy Plastic Industries that practiced differing retirement age policy (50 and 55 years of age for women and men respectively).⁴⁷

The differing rulings by the court in the above mentioned cases suggest lack of clarity or breath (too narrow) in the interpretation of what constitutes discrimination or discriminatory practices, and limited understanding of the obligations of Malaysia under the international treaties that she has signed up to. At times, the courts have based their judgments by implementing the treaties to which Malaysia is a party through domestic legislation, while in other instances the courts created a precedent of direct application of

international treaties in reaching decisions in fundamental rights cases. The inconsistent rulings by the judiciary reflect the prohibition of discrimination on any ground in legislation constituting employment law (ERT 2012).⁴⁸ Consequently, as noted in the cases above, protection from discrimination in this law is only available on the basis of the Constitution and international treaties.

Likewise, the EA, which covers the lower-waged earners, unfortunately appears less concerned with discrimination and equality of pay, despite the fact that low-waged earners are more vulnerable to unfair treatment and abuse of human rights. Malaysia has yet to legislate/amend the Employment Act or the Wages Council to address the issue of equal remuneration for equal work. For the employment of women, the Act focuses on working hours and maternity benefits. Critically, the coverage of the rights of women in this Act are considered to be inadequate. The provisions of the Act, which are limited to waged earners of RM1500 and below per month, are no longer realistic considering the fact that more women now earn higher than this cut-off. Further, the Employment Act and the Workmen's Compensation Act (1952) both exclude domestic workers (who constitute mainly female migrants) from key labour protections⁴⁹, such as weekly limits on hours of work and minimum wage.⁵⁰

Statutory provisions from 1955 are also no longer relevant to the changing environment at the workplace. Sections 34 and 35 of the EA prohibit women from working at night and from doing underground work. These provisions impede the principle of equality of opportunity and treatment. Instead of barring women from certain occupations on grounds of protecting women, the focus should be on safety at the workplace, which is the next point made here. In terms of personal security at the workplace, the EA has for long remained silent on the issue of sexual harassment despite the persistent calls from the civil society for a bill on this issue. Though there has been inclusion of some additional clauses related to sexual harassment in Section 2 of the Act (EA 2012),⁵¹ the piecemeal amendments to the Act to deal with sexual harassment remain inadequate in terms of coverage, as working relationships based on contract and sub-contract (which largely involves women workers) are ignored in the definition.⁵² Compounding this problem is the Code of Ethics for Sexual Harassment Prevention, which remains a non-binding guideline for an employer. Thus, it is not surprising that only 1,671 employers had implemented the Code as of 2011.⁵³ Legislation of the Code is therefore necessary⁵⁴ so that the Code can be enforced and taken seriously especially when people are charged in Court with sexual harassment. At present, the Code does not protect anyone; nor is it a deterrent to sexual harassment. It is therefore of no surprise that 3 percent to 4 percent of women based on recent surveys cite sexual harassment as a factor for leaving the workforce.⁵⁵

Apart from sexual harassment, other forms of violence such as domestic violence and rape have also been on the rise in Malaysia (see Table 2). These violent acts indirectly impair the ability of the women to work effectively. Worth mentioning here is that violence against women is recognized in international law as a human rights issue. It is also a result of deeply embedded structural issues of inequality and power. Herein, the Domestic Violence Act (DVA)⁵⁶, a gender-neutral act, needs to be revisited to ensure its effectiveness. Section 3 of the DVA (2012)⁵⁷, provides for the DVA to be read together with the Penal Code (2006)⁵⁸ but not as a separate offence under the latter. This dilutes the seriousness of domestic violence as the charges under the Penal Code are often treated as average offences. The various memorandums submitted by the Joint Action Group for Gender Equality (JAG) to the government to treat 'domestic violence' as a separate offence seems to have gone unheeded by the latter. The implementing authorities should also be gender sensitive to ensure that the current drawn out process between registering the complaint, seeking an interim protection order and finally the court hearing is expedited. A testimony to the importance of realizing

this Act is the three domestic violence deaths reported in the media, of which two had lodged numerous police reports prior to their deaths.⁵⁹ Better flow of information is also required on the conditions of filing a case under the DVA and the time frame required for completing the investigations.

Table 2: Incidence of Violence against Women in Malaysia

Year	Domestic Violence	Rape	Incest	Worker Abuse	Child Abuse	Molestation	Sexual Harassment
2000	3468	1217	213	56	146	1234	112
2001	3107	1386	246	66	150	1393	86
2002	2755	1431	306	39	123	1522	84
2003	2555	1479	254	40	119	1399	82
2004	3101	1760	334	66	148	1661	119
2005	3093	1931	295	37	189	1746	102
2006	3264	2454	332	45	141	1349	101
2007	3756	3098	360	39	196	2243	195
2008	3769	3409	334	n.a.	n.a.	2131	n.a.
2009	3643	3626	385	n.a.	203	2110	n.a.
2010	3173	3595	n.a.	n.a.	257	2054	n.a.
2011	3277	3301	342	78	242	1941	n.a.
2012	3488	2998	302	29	285	1803	n.a.
2013	4123	2767	249	28	295	1730	n.a.
2014	4807	2045	304	28	328	1590	n.a.

Note: The above statistics are based on the report police cases. n.a. – not available.

Source: Royal Malaysia Police and Ministry of Women, Family and Community Development.

The above evidenced-based discussion suggests the lack of gender sensitization in the current labour laws and regulations. Some of these laws need to be revisited urgently to ensure that they adequately address the rights of women.

Concluding Remarks

This paper traced the role ascribed to women in the Malaysian economy through scholarly works and the relevant laws and regulations that pertain to the employment and rights of women. Given the nature of the gendered societal/ patriarchal structure dating from colonial times, there has been limited recognition on the contribution of women to the economy, at least not until the recent past. This plausibly explains the reasons for the lack of emphasis or neglect on gender dimensions in the Malaysian labour laws and regulations more specifically. The labour laws and regulations have at large not been gender sensitive. More importantly, the laws have failed to evolve to embed accordingly the gender dimension in the provisions, despite the growing role of women in the workforce and on the national agenda. Thus, this paper contends the critical need for gender equality legislation, which emphasizes the centrality of human rights in matters related to equality and non-discrimination.⁶⁰

Notably, the current State's obligation towards gender equality focuses largely on gender mainstreaming in the various policies/mechanisms and programmes. However, the move from gender insensitivity to gender mainstreaming in the developmental framework has clearly led to lack of operationalizability⁶¹ and social reality of some of the labour laws and regulations. Since women empowerment is a broader mosaic of human rights, recognizing the

rights of women in these laws are fundamental and more appropriate to reflect gender sensitivity and subsequently ensure effective gender mainstreaming. If the rights of women workers are inadequately covered in these laws, concomitant is the lack of empathy towards abuses faced by foreign female workers. The view of migrants as merely a workforce to meet labour shortages has caused policymakers to further ignore gender-sensitive policies.

Notes

¹Malaysia has considerably low female labour force participation rates compared with her regional neighbours, such as Thailand, Indonesia and Singapore (J. Elias, "The Gender Politics of Economic Competitiveness in Malaysia's Transition to a Knowledge Economy", *The Pacific Review*, Vol: 24, No: 5, 2011, pp. 529-552; See *The New Straits Times*, 29 January. 2017).

²Talent Corporation Malaysia (TalentCorp), *Retaining Women in the Workforce*, Kuala Lumpur: TalentCorp Malaysia, 2013.

³*Grant Thornton International Business Report 2013: Women in Senior Management – Setting the Stage for Growth*, United States: Grant Thornton International Ltd.

⁴Prime Minister's Office (Jabatan Perdana Menteri, JPM), *Economic Transformation Programme Annual Report 2013*, Putrajaya: Department of Prime Minister's Office, 2014.

⁵*The Star*, 10 April. 2014. The proportion of seats held by women in the parliament and who hold ministerial level positions were 10.4 percent and 6.5 percent in 2012 respectively (World Bank online database).

⁶Equal Rights Trust (ERT), "Washing the Tigers – Addressing Discrimination and Inequality in Malaysia", *ERT Country Report Series No. 2*, Equal Rights Trust: London, 2012, <<http://www.equalrightstrust.org/ertdocumentbank/Malaysia%20CR%201.pdf>> (14 October 2015).

⁷J. Elias, "Struggles over the Rights of Foreign Domestic Workers in Malaysia: The Possibilities and Limitations of Rights Talk", *Economy and Society*, Vol: 37, No: 2, 2008, pp. 282–303 and J. Elias, "Transnational Migration, Gender, and Rights: Advocacy and Activism in the Malaysian Context", *International Migration*, Vol: 48, No: 6, 2010, pp. 44–71.

⁸E.S. Devadason and W.M. Chan, "Policies and Laws Regulating Migrant Workers in Malaysia: A Critical Appraisal", *Journal of Contemporary Asia*, Vol: 44, Vol: 1, 2014, pp. 19-35.

⁹First category: Kernial Singh Sandhu, *Indians in Malaya: Some Aspects of their Immigration and Settlement, 1786-1957*, London: Cambridge University Press, 1969; George Netto, *Indians in Malaya: Historical Facts and Figures*, Singapore: Netto, 1961; Usha Mahajani, *The Role of Indian Minorities in Burma and Malaya*, New York: Greenwood Press, 1960; Sinnappah Arasaratnam, *Indians in Malaysia and Singapore*, Kuala Lumpur: Oxford University Press, 1970; and R.K. Jain, *South Indians on Plantation Frontier in Malaya*, New York: Yale University Press, 1970.

¹⁰Second category: R. Selvakumaran, *Indian Plantation Labour in Malaysia*, Kuala Lumpur: S. Abdul Majeed & Co., 1994; and P. Ramasamy, *Plantation Labour, Unions, Capital and the State in Peninsular Malaysia*, Kuala Lumpur: Oxford University Press, 1994.

¹¹Third category: S. Nagarajan, *A Community in Transition: Tamil Displacements in Malaysia*, unpublished PhD thesis, University of Malaya, 2004; K. Anbalakan, "The New Economic Policy and Further Marginalization" *Kajian Malaysia*, Vol.21, No. 1 & 2, 2003, pp. 379-378; D. G. M. Tate, *The Malaysian Indians*, Petaling Jaya: Strategic Information and Research Development Centre, 2008; Sivachandralingam Sundara Raja, "The London Dawn Raid and its Effect on Malaysian Plantation Workers", *Indonesia and the Malay World*, Vol: 40, No:116, 2012, pp. 74-93.

¹²W.L. Blythe, "Historical Sketch of Chinese Labour in Malaya", *Journal of the Malayan Branch of the Royal Asiatic Society*, Vol: 20, No: 1, 1947, pp. 64-114; Victor Purcell, *The Chinese in Malaya*, Kuala Lumpur: Oxford University Press, 1967; Khoo Kay Kim, "A Brief History of Chinese Labour Unrest", *Malaysia in History*, Vol: 25, 1982, pp. 59-64; J.N. Parmer, *Colonial Labour Policy and Administration: A History of Labour in the Rubber Plantation Industry in Malaya, 1910-1941*, New York: Locust Valley, 1960; and K.H. Lee and C.B. Tan (eds), *The Chinese in Malaya*, Kuala Lumpur: Oxford University Press, 2000.

¹³N. Rajendran, "Notes on Haji Labour in Early Singapore", *Malaysia in History*, Vol: 25, 1982, pp. 124-25; M.T. Khazin, *Javanese Labour and the Development of Malaya*, Bangi: Universiti Kebangsaan Malaysia, 1992; B. Shamsul, "Indonesia Labour in Malaya", *Kajian Malaysia*, Vol: 11, No: 1, 1965, pp. 53-70; and Amarjit Kaur, "Mobility, Labour Mobilization and Border Controls: Indonesian Labour Migrations to Malaysia since

1900”, paper presented at the 15th Biennial Conference of the Asian Studies Association of Australia (ASAA), Canberra, Australia, June 29 – July 2.

¹⁴ Amarjit Kaur, “Working on the Railway: Indian Workers in Malaya, 1880-1957”, in P.J. Rimmer and L.S. Allen (eds), *The Underside of Malaysian History. Pullers, Prostitutes, Plantation Workers*, Singapore: Singapore University, 1990, pp. 99-128.

¹⁵ Charles Gamba, *The Origins of Trade Unionism in Malaya: A Study in Colonial Labour Unrest*, Singapore: Eastern Universities Press, 1962; P. Ramasamy, *Plantation Labour, Unions, Capital and the State in Peninsular Malaysia*, 1994; K.S. Jomo, Maila Stevens, Cecilia Ng. and Jahara Bee, *Malay Peasant Women and The Land*, London: Zed Books, 1994.

¹⁶ A. Rohana, “Women and Trade Unions in Peninsular Malaysia with Special Reference to MTUC and CUEPACS”, unpublished Ph.D. thesis, University of Malaya, 1991.

¹⁷ D. Kucera and S. Tejani, “Feminization, Defeminization, and Structural Change in Manufacturing”, *World Development*, Vol: 64, 2014, pp. 569-582.

¹⁸ D. Kucera and S. Tejani, “Feminization, Defeminization, and Structural Change in Manufacturing”, pp. 569-582.

¹⁹ Amarjit Kaur, “Working on the Gopal Conveyor Belt: Women Workers in Industrialising Malaysia”, *Asian Studies Review*, Vol: 24, No, 2, 2000, pp. 213-230.

²⁰ Cited from Evelyn Hong (eds), *Malaysian Women Problem and Issues*, Penang: Consumers Association of Penang, 1982, p. 34. See also Barbara Rogers, *The Domestication in Developing Societies: Discrimination in Developing Societies*, London: Kogan Page, 1980, p. 8.

²¹ F.R. Bhupalan, “Indefatigable Proponent of Women’s Right and Justice”, in Prabhakaran S. Nair (eds), *Prince Among Men*, Kuala Lumpur: Arkib Negara Malaysia, 2006. Rasammah Naomi Navarednam @ Mrs F.R. Bhupalan was popularly recognized for her fight for women’s rights through the National Council of Women's Organization (NCWO).

²² The persistence of a gender-wage gap was also noted in male-dominated senior managerial positions, where women were paid 37 per cent less than men (L. Gomez, L. and A. Bendahara, “Many Women Shunning Jobs Due to Low Wages”, *New Straits Times*, 12 July; Japan International Cooperation Agency (JICA), *Country Gender Profile – Malaysia*, Petaling Jaya: PE Research, 2012).

²³ *Perlembagaan Persekutuan Berserta Index*, Kuala Lumpur: Penerbitan MDC Sdn. Bhd., 2007, p. 4.

²⁴ Tun Fatimah Hashim was known for her charity work. She began her political career when she joined UMNO in 1947. In 1956, she led the *Pergerakan Kaum Ibu Negeri Perak* and simultaneously headed the Ipoh branch. In the same year, she was appointed as Head, *Pergerakan Kaum Ibu Malaya*. On 25 Ogos 1963, she founded the NCWO. She served as a member of the Parliament for 14 years, 1969-1973.

²⁵ The NCWO is a consolidation of voluntary committees on women in Malaysia that acts as an advisory, consultary and advocacy body on issues pertaining to the progress of women.

²⁶ Malaysia is a party to the International Labour Organization (ILO) Convention No. 100 (equal remuneration for men and women workers for work of equal value).

²⁷ Laws of Malaysia, *Federal Constitution* (incorporating all amendments up to P.U.(A) 164/2009), Kuala Lumpur: Percetakan Nasional Malaysia Berhad, 2006.

²⁸ S.A. Abdullah, M. Norma and K.A. Abdul, *The Malaysian Bureaucracy: Four Decades of Development*, Kuala Lumpur: Pearson Malaysia, 2013.

²⁹ H. Fatimah, “Tunku – The Architect of Our Independence”, in Prabhakaran Nair (eds), *Prince Among Men*, 59, Kuala Lumpur: Arkib Negara Malaysia, 2006.

³⁰ Government of Malaysia, *Third Malaysia Plan, 1976-1980*, Kuala Lumpur: National Printing Department, 1975.

³¹ Government of Malaysia, *Sixth Malaysia Plan, 1991-1995*, Kuala Lumpur: National Printing Department, 1991.

³² Gender sensitization refers to the raising awareness of gender equality concerns.

³³ Government of Malaysia, *Tenth Malaysia Plan, 2011-2015*, Kuala Lumpur: National Printing Department, 2010.

³⁴ L. Chakraborty, “Gender-Sensitive Fiscal Policies: Experience of Ex-Post and Ex-Ante Gender Budgets in Asia-Pacific”, *Asia-Pacific Human Development Report Background Papers Series 2010/06*, United Nations Development Programme, 2010, <http://www.snap-undp.org/elibrary/Publications/APHDR-TBP_2010_06.pdf> (3 November 2013).

³⁵ Though the Malaysia Gender Gap Index (MGGI), has declined from 0.34 in 1980 to 0.24 in 2004, this index is not reflective of the progress made in the legislative and regulatory framework as it does not account for laws and regulations (Ministry of Women, Family and Community Development (MWFC), *Measuring and Monitoring Gender Equality: Malaysia’s Gender Gap Index*, Kuala Lumpur: Ministry of Women, Family and Community Development, 2007).

³⁶ J. Elias, "The Gender Politics of Economic Competitiveness in Malaysia's Transition to a Knowledge Economy", pp. 529-552

³⁷ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979 by the United Nations General Assembly is an international bill of rights for women, provides for an agenda for national action. In Malaysia, the MWFCD oversees CEDAW's implementation. Apart from the UN Human Rights Council, Malaysia is also a member to the Association of Southeast Asian Nations (ASEAN) human rights mechanism and the ASEAN Intergovernmental Commission on Human Rights (AICHR).

³⁸ Women's Aid Organisation (WAO), *CEDAW & Malaysia – Malaysian Non-Governmental Organisations' Alternative Report: Assessing the Government's Progress in Implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, Petaling Jaya: Women's Aid Organisation, 2012.

³⁹ Government of Malaysia, *Eighth Malaysia Plan, 2001-2005*, Kuala Lumpur: National Printing Department, 2000)

⁴⁰ Gender-blind policies result when policymakers fail to recognize gender as a key determinant.

⁴¹ Gender mainstreaming refers to a set of strategies and processes aimed at addressing gender issues, for example, in legislation, budgeting, state institutions and programmes.

⁴² Malaysia has a poor record in acceding to the core conventions, having acceded to three of the nine specified core human rights of the United Nation (UN) (V. Brown, "Much to do for Human Rights in Malaysia, Says Suhakam", *The Star*, 9 September 2014, <<http://www.thestar.com.my/news/nation/2014/09/09/suhakam-15-anniversary/>>)

⁴³ *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, United Nations Women, 1976, <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>> (4 January 2014).

⁴⁴ See H.H. Kamal, "The Dismissal of a Pregnant Stewardess: Still Lawful in Malaysia", *Journal of Gender Studies*, Vol: 21, No: 2, 2012, pp. 125-132 and Suruhanjaya Hak Asasi Manusia (Suhakam), *The Status of Women's Rights in Malaysia*, Selangor: Sepantas Kurnia (M) Sdn. Bhd, 2010.

⁴⁵ See Laws of Malaysia (2012b), *Act A1419 – Employment (Amendment) Act 2012*, Kuala Lumpur: Percetakan Nasional Malaysia Berhad. In 2010, the 60-day maternity leave was increased to 90-days, as required by the International Labour Organization (ILO).

⁴⁶ Q. Tariq, "Landmark High Court Ruling Upheld", *The Star*, 28 June 2013, <<http://www.thestar.com.my/news/nation/2013/06/28/landmark-high-court-ruling-upheld-govt-ordered-to-pay-costs-after-withdrawing-appeal-in-pregnant-tea/>> (14 December 2013).

⁴⁷ *The Malaysian Insider*, 13 August. 2012.

⁴⁸ Equal Rights Trust (ERT), "Washing the Tigers – Addressing Discrimination and Inequality in Malaysia", *ERT Country Report Series No. 2*, Equal Rights Trust: London, 2012.

⁴⁹ United Nations (UN), "Human Rights Violations in Malaysia", *Document Report E/CN.4/2005/NGO/309*, Geneva: Economic and Social Council, United Nations, 2005.

⁵⁰ Laws of Malaysia (2006b), *Act 273 – Workmen's Compensation Act 1952* (incorporating all amendments up to 1 January 2006), Kuala Lumpur: Percetakan Nasional Malaysia Berhad. In the case of Indonesian migrant workers, an amended Memorandum of Understanding (MOU) was signed between Malaysia and Indonesia in 2011 to account for the rights and condition of work for the former.

⁵¹ Laws of Malaysia (2012b), *Act A1419 – Employment (Amendment) Act 2012*.

⁵² S. Devadason and W.M. Chan, "Policies and Laws Regulating Migrant Workers in Malaysia: A Critical Appraisal", pp. 19-35.

⁵³ Women's Aid Organisation (WAO), *CEDAW & Malaysia – Malaysian Non-Governmental Organisations' Alternative Report: Assessing the Government's Progress in Implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women*.

⁵⁴ The decision by the Minister for MWFCD to not press ahead with anti-sexual harassment legislation following pressure from the Malaysian Employers' Federation, met with backlash from the women's groups (J. Elias, "The Gender Politics of Economic Competitiveness in Malaysia's Transition to a Knowledge Economy", pp. 529-552).

⁵⁵ M. Sabitha and A.R. Asmak, "Experiences, Effects and Combating Sexual Harassment at Workplace: A Malaysian Case", *International Journal of Innovations in Business*, Vol. 1, No. 1, 2012, pp. 95-112 and Talent Corporation Malaysia (TalentCorp), *Retaining Women in the Workforce*.

⁵⁶ Worth noting here is that the NCWO submitted a memorandum of the draft law on domestic violence in 1987, and it was only passed by Parliament six years later in 1994 and implemented in 1996. However, Malaysia is the first country in the Asia Pacific region to pass a specific law on 'domestic violence.'

⁵⁷ See Laws of Malaysia (2012a), *Penal Code* (incorporating all amendments up to 1 January 2006), Kuala Lumpur: Percetakan Nasional Malaysia Berhad.

⁵⁸ See Laws of Malaysia (2006b), *Act 273 – Workmen’s Compensation Act 1952* (incorporating all amendments up to 1 January 2006), Kuala Lumpur: Percetakan Nasional Malaysia Berhad.

⁵⁹ Women’s Aid Organisation (WAO), “Domestic Violence Act Already Protects Men – Joint Action Group for Gender Equality”, *The Malay Mail*, 6 August 2013, <<http://www.themalaymailonline.com/what-you-think/article/domestic-violence-act-already-protects-men-joint-action-group-for-gender-eq>> (3 January 2014).

⁶⁰ Several non-governmental organizations (NGOs) have already proposed this to the MWFC.

⁶¹ Operationalizability refers to the usefulness and relevancy of the laws.