

A SOCIO-LEGAL STUDY ON THE PROTECTION OF
WORKING MOTHERS IN MALAYSIA

BY

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ABSTRACT

The number of working mothers has been increasing over the years. The issues concerning the rights of working mothers are crucial as researches show that high volume of women who stop working is due to problem related to childcare. The challenges worsen when the children get sick. Even though the issue is serious, there has been significantly few recognitions of the laws that protect the rights of working mothers and so they are not adequately protected under Malaysian laws. In pursuant thereto, this research examines the policies and laws governing working mothers in Malaysia, analyses the strengths and weaknesses of the policies and laws, benchmarks the legal frameworks of other jurisdictions in order to search for best practices practising the legal rights of working mothers and recommends for legal reform of related policies and laws affecting working women in Malaysia. This research is done based on doctrinal, quantitative and qualitative examination of governing statutes, reported cases, interviews, surveys and data obtained from the respective ministries and agencies. The issues are also examined from the Islamic perspective based on Qur'an, Sunnah, Islamic history and views of Muslim jurists. For the benchmarking analysis, the research also provides references to the laws and policies in Singapore, the United Kingdom, Australia and Maldives. The research finds that Malaysia has extensive policies on women empowerment that encourages women's participation in the labour force and the laws governing working mothers in Malaysia are improving over the years. The research also discovers the best practices on the issues through the benchmarked jurisdictions that can be referred for legal reform in Malaysia. Hence, reforming the existing policies and laws governing working mothers in Malaysia is highly necessary in order to curb the current concerns related to working mothers and to prevent future problems.

خلاصة البحث

تتزايد أعداد الأمهات العاملات على مر السنين. والقضايا المتعلقة بالحقوق من الأمهات العاملات أمر بالغ الأهمية حيث تظهر الأبحاث أن عددًا كبيرًا من النساء اللاتي توقفن عن العمل بسبب مشكلة في رعاية الأطفال. وتصبح التحديات أسوأ عندما يكون الأطفال مصابين بالمرض. وعلى الرغم من خطورة المشكلة، إلا أنه كان هناك اعترافات قليلة بشكل ملحوظ من القوانين التي تحمي حقوق الأمهات العاملات. ولا تكون الأمهات العاملات محمية بموجب القوانين الماليزية بشكل كافٍ. وبناء على ذلك، يبحث هذا البحث في السياسات والقوانين التي تحكم الأمهات العاملات في ماليزيا، ويحلل نقاط القوة والضعف في السياسات والقوانين، ويقيس الإطار القانوني للولايات القضائية الأخرى من أجل البحث عن أفضل الممارسات المتعلقة بممارسة الحقوق القانونية للأمهات العاملات، كما يوصي بالإصلاح القانوني من السياسات والقوانين ذات الصلة التي تؤثر على العمل في ماليزيا. ويتم إجراء هذا البحث على الأساس العقائدي والمنهج الكمي والنوعي من خلال اللوائح المنظمة، وحالاتها، والمقابلات، والدراسات الاستقصائية، والبيانات التي تم الحصول عليها من الوزارات والهيئات المعنية. ويتم فحص القضية أيضًا من منظور إسلامي قائم على القرآن والسنة والتاريخ الإسلامي وآراء فقهاء المسلمين. بالنسبة لتحليل المقارنة المعيارية، يوفر البحث أيضًا مرجع القوانين والسياسات في سنغافورة والمملكة المتحدة وأستراليا وجزر المالديف. يكتشف البحث أن ماليزيا لديها سياسات واسعة بشأن تمكين المرأة التي تشجع على مشاركة المرأة في القوى العاملة والقوانين التي تحكم الأمهات العاملات في ماليزيا وهي تتحسن على مر السنين. ويكتشف البحث أيضًا أفضل الممارسات على القضايا من خلال الولايات القضائية المعيارية التي يمكن الرجوع إليها للإصلاح القانوني في ماليزيا. ولذلك، فإن إصلاح السياسات والقوانين الحالية التي تحكم الأمهات العاملات في ماليزيا ضرورية للغاية من أجل الحد من القضايا الحالية المتعلقة بالأمهات العاملات ومنع المشاكل المستقبلية.

APPROVAL PAGE

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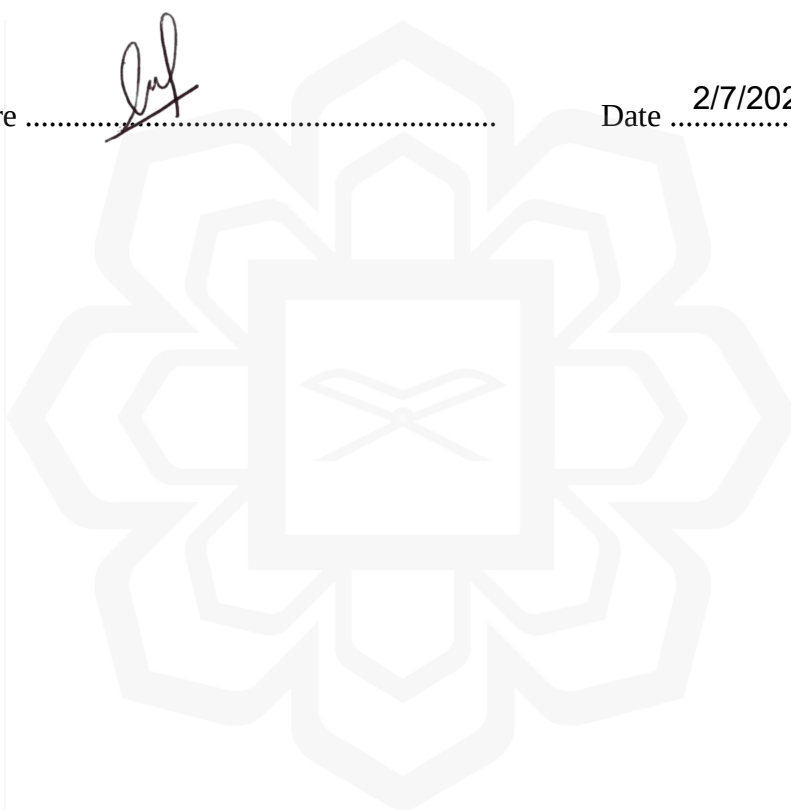
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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Ira Rozana Binti Mohd Asri

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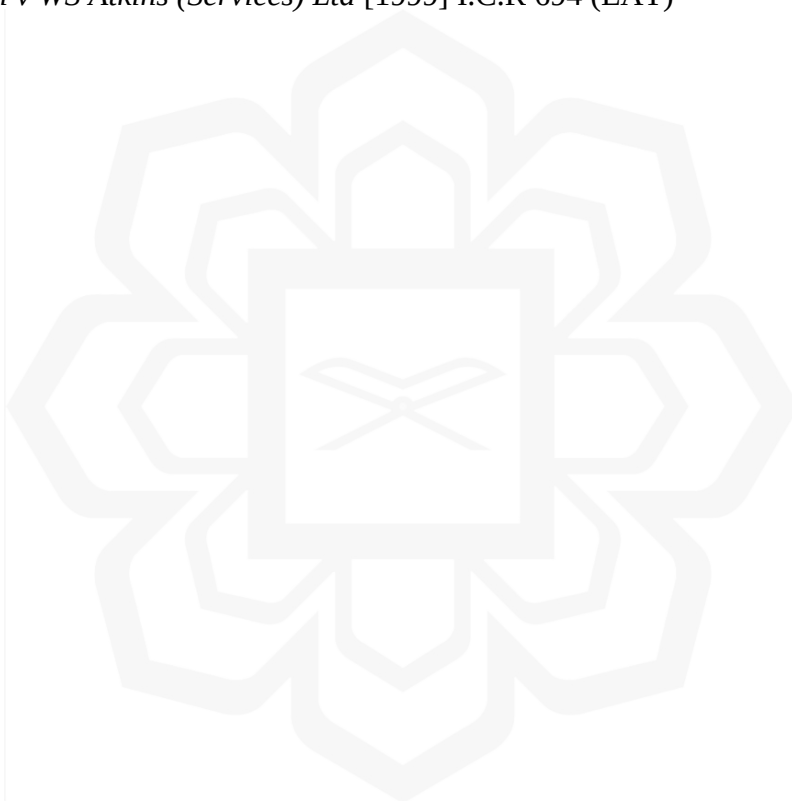
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Brooks v Canada Safeway Ltd [1989] 1 SCR1219
Elisabeth de Blok et al. v the Netherlands Communication No. 36/ 2012, UN Doc CEDAW/ C/ 57/ D/ 36/ 2012
Ida Hidayati binti Taufik v Ahmad Shukri bin Kassim (2004/1425) 18 JH (2) p. 259
McFarlane and another v easyJet Airline Company Ltd Case No: 1401496/2015, 3401933/2015
Norfadilla Ahmad Saikin v Chayed bin Basirun & 5 Ors [2012] 1 MLJ 832
Squillaci v WS Atkins (Services) Ltd [1999] I.C.R 694 (EAT)



LIST OF STATUTES

Administration of Muslim Law Act 1966 (Singapore)
Child Act 2001 (Act 611) (Reprint 2002)
Child Care Centre Act 1984 (Act 308) (Reprint 2001)
Child Development Co Savings Act 2001 (Cap. 38A) (Singapore)
Constitution of the Republic of Maldives 2008
Constitution of The Republic of Singapore 1965 (Cap. Const.)
Early Childhood Development Centres (ECDC) Act 2017 (No. 19 of 2017) (Singapore)
Education and Care Services National Law Act 2010 (No. 69 of 2010) (Australia)
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Federal Constitution
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Industrial Relations Act 1967 (Act 177) (Revised 1976) (Reprint 2010)
Islamic Family Law (Federal Territories Act) 1984 (Act 303) (Reprint 2005)
Labour Ordinance (Sabah Cap. 67) (Act A1238/2005)
Labour Ordinance (Sarawak Cap. 76) (Act A1237)
Law Reform (Marriage and Divorce) Act 1976 (Act 164) (Reprint 2001)
Maldives Civil Service Regulation 2014 (No. 2014/R-311)
Management of Health and Safety at Work Regulations 1999 (United Kingdom)
Married Women and Children (Maintenance) Act 1950 (Act 263) (Revised 1981) (Reprint 2001)
Maternity Protection Act (Mutterschutzgesetz, MSchG) 1979
New South Wales Anti-Discrimination Act 1977 (No. 48)
Price Control Act 1946 (Act 121) (Revised 1973) (Reprint 2000)
Sex Discrimination Act 1975 (c. 65) (United Kingdom)
Sex Discrimination Act 1984 (No. 4, 1984) (Australia)
The Statutory Maternity Pay (General) Regulations 1986 (United Kingdom)
Trade Description Act 1972 (Act 87) (Reprint 1999)
Women's Charter 1961 (No. 126 of 1961) (Singapore)
Workplace (Health, Safety and Welfare) Regulations 1992 (United Kingdom)

LIST OF ABBREVIATIONS

ABA	Australian Breastfeeding Association
AMLA	Administration of Muslim Law Act
Anor	Another
ARCPM	Association of Registered Childcare Providers Malaysia
AS	Peace be upon him
AWARE	Association of Women for Action and Research
BFHI	Baby-Friendly Hospital Initiative
BFW	Breastfeeding Friendly Workplace
CCCA	Child Care Centre Act
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
COVID-19	Coronavirus disease of 2019
CRC	Convention on the Rights of the Child
CRM	Clinical Research Malaysia
CYPA	Children and Young Persons Act
DOSM	Department of Statistics Malaysia
ECCD	Early Childhood Care and Development
ECDA	Early Childhood Development Agency
ECDC	Early Childhood Development Centres
ECEC	Early Childhood Education and Care
ECL	Extended Child Care Leave
EDD	Estimated delivery date
FFP	Family friendly policy
FJC	Family Justice Courts
FWA	Flexible working arrangements
GFPs	Gender Focal Points
GLCs	Government-linked companies
GPCL	Government-Paid Child Care Leave
GPML	Government- Paid Maternity Leave
HAWA	Secretariat for Women's Affairs
HPB	Health Promotion Board
HPH	Health Promoting Hospital
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
ICIFI	International Council of Infant Food Industries
i.e.	exempli gratia, for example
IFLA	Islamic Family Law (Federal Territories Act)
IUM	Islamic University of Malaysia
ILO	International Labour Organization
ISM	Social Institute of Malaysia
JKM	Social Welfare Department
JPW	Department for Women's Development

KAP	Permata Basic Child Care Course
KEMAS	Department of Community Development
KiFAS	Kindergarten Fee Assistance Scheme
KPWKM	Ministry of Women, Family and Community Development
LFPR	Labour Force Participation Rate
LPPKN	National Population and Family Development Board Malaysia
LRA	Law Reform (Marriage and Divorce) Act
MACL	Maldives Airports Company Limited
MARA	Majlis Amanah Rakyat
MAS	Malaysian Airlines System
MASEU	Malaysian Airlines System Employees Union
MCO	Movement Control Order
MOH	Ministry of Health
MOHR	Ministry of Human Resources
MOM	Ministry of Manpower
MP	Malaysian Plan
MRD	Ministry of Rural Development
MTUC	Malaysian Trades Union Congress
NACIWID	National Advisory Council on Women in Development
NFP	National Family Policy
NFPB	National Family Policy Board
NGOs	Non-governmental organisations
NICHD	National Institute of Child Health and Human Development
NOSS	National Occupational Skill Standard
NPW	National Policy for Women
NQF	National Quality Framework
NTUC	National Trades Union Congress
Ors	Others
PCI	Per capita income
RTD	Roundtable discussion
SAW/PBUH	Peace be upon him
SDGs	Sustainable Development Goals
SNEF	Singapore National Employers Federation
SOCISO	Social Security Organisation
SOP	Standard Operating Procedure
SUHAKAM	Human Rights Commission of Malaysia
SWD	Social Welfare Department
SWT	The most glorified, the most high
SYABAS	Syarikat Bekalan Air Selangor Sdn Bhd
TASKA	Taman Asuhan Kanak-Kanak
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCHR	United Nations High Commissioner for Refugees
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
US	United States
WBTi	World Breastfeeding Trends Initiative
WEF	World Economic Forum

WEPs	Women's Empowerment Principles
WFH	Work from home
WHA	World Health Assembly
WHO	World Health Organisation
WLB	Work-Life Balance
WLPs	Work-Life Practices
WRC	Women Rights Committee
WSG	Workforce Singapore



CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

In this era of high-cost living, the number of working women keeps on increasing. The reason for being employed is to help their parents or spouses financially. It is a modern phenomenon where women earn money by working, especially in urban areas. Some of them are forced to work to survive. This is a pressuring factor for them. In addition, another factor is because women nowadays are given wider opportunities to join the workforce. This is due to more chances available for women in pursuing higher education and developing their career.

Working mothers can be defined as women who have a child or children and at the same time, are working for an income, either outside the home or from the home in addition to their responsibility in raising their offspring. From the definition, it can be derived that there are two natures of work done by mothers. The first nature is working outside the house and the second nature is working from home.¹

In Malaysia, many researchs have been conducted on working women. Women's labour force participation rate (LFPR) has increased over the years. However, it is still significantly lower than that of men. In 1999, women's labour force participation rate was 44.2% compared to men's which was 83.4%. Nevertheless, in the year 2004, women's participation rate in labour force had

¹ Jayita Poduval and Murali Poduval, "Working Mothers: How Much Working, How Much Mothers, and Where is the Womanhood?", *Mens Sana Monogr*, 7(1) (2009): 63-79.

increased to 47.3%. Prior to 2010, the LFPR remained at around 46% for at least five years in which it was 45.8% in 2005, 45.9% in 2006 and 46.8% in 2010.²

One research was completed by the National Population and Family Development Board Malaysia (LPPKN) in 2014 in which it shows that 46.5% of the women are working, 42.4% have stopped from working, while only 11.1% have never worked. According to the research, the main reason why women stopped from working is due to the problem in child care which encompasses 32.4%. Therefore, it can be concluded that the most affected women are working mothers.³

Another research found that most working mothers face constraints when their children fell sick. 37.1% and 38.6% working mothers respectively agreed and strongly agreed that they face challenges when their children get sick compared to a small number of non-working mothers who face such challenges. To be exact, the percentages are only 12.9% and 3.4% respectively for non-working mothers who agreed and strongly agreed on that matter.⁴

In a research done by the Department of Statistics Malaysia, according to the Labor Force Survey Report, Malaysia (2016), female LFPR rose 0.2 percentage points to 54.3% in 2016 compared to 54.1% in 2015. Female LFPR was higher among women in prime age groups of 25- to 34-years old, 35- to 44-years old and 45- to 54-years old in which the percentages were higher than 55% compared to groups of 15- to 24-years old and 55- to 64-years old.⁵

² Nor'Aznin Abu Bakar and Norehan Abdullah, "Labor Force Participation of Women in Malaysia," in International Economic Conference on Trade & Industry, The City Bayview, Penang, Malaysia 3-5 December 2007.

³ Adzmel Mahmud and et al, *Laporan Penemuan Utama Kajian Penduduk dan Keluarga Malaysia Kelima (KPKM-5)*, (Kuala Lumpur: Population and Family Research Sector, 2014), 40.

⁴ M. Sultana Alam, "Constraints Faced by Working and Non-Working Women in their Families," *Australian Journal of Basic and Applied Sciences*, vol. 6, no. 7 (2013): 721.

⁵ Department of Statistics Malaysia, "Labor Force Survey Report, Malaysia, 2016", < https://v1.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=126&bul_id=SGZCNnMrWW9ZTEdpYys4YW0yRlhoQT09&menu_id=Tm8zcnRjdVRNWWlpWjRlbmtlaDk1UT09#:~:text=Labour%2

As of June 2020, Malaysian women's labor force participation rate was at 55.1% compared to men's labor force participation at 80.3% while in 2021, Malaysian women's labour force participation rate was at 55.5% compared to 80.9% for men.⁶

The law regulating women's participation in the labour force is not provided in Malaysia and consequently, the issue of discrimination is not critically done as there is no specific legislation on this. However, it is provided in international treaties and conventions. Thus, even though Malaysia is not party to some of ILO (International Labour Organization) Conventions, especially conventions which relate to women employment like Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Workers with Family Responsibilities Convention, 1981 (No. 156) and Maternity Protection Convention, 2000 (No. 183), these conventions have been used to measure compliance with international standards. Among the ILO standards are promoting non-discrimination, equal wage for work of equal value, social safeguard, maternity protection and support to workers with family duties as well as providing a road map for efforts to address inequalities in the labour market and in the household. In particular, work-family policies are aimed at increasing the quality of their work and supporting their unpaid household and care responsibilities.⁷

These standards can also be found in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In Article 11 of the convention, it is stated clearly that discrimination against women in the field of employment must

[0force%20participation%20rate%20\(LFPR,points%20to%203.4%20per%20cent.>](#) (accessed 29 November, 2018).

⁶ Department of Statistics Malaysia, "Labor Force Survey Report, Malaysia, 2022", https://v1.dosm.gov.my/v1/index.php?r=column/ctwoByCat&parent_id=436&menu_id=Tm8zcnRjdVRNWwlpWjRlbmtlaDk1UT09 (accessed 22 February, 2024).

⁷ International Labour Organization, *Women at Work: Trends 2016*, (Geneva: PRODOC, 2016), 78.

be eliminated in order to ensure gender equality. This includes discrimination on the grounds of maternity, pregnancy and marital status.⁸

Article 8 (1) of the Malaysian Federal Constitution provides that all persons are equal before the law and entitled to its equal protection. Further, in Article 8 (2), it states that there shall be no discrimination of gender in any law. The word 'gender' in Article 8(2) was inserted in 2001 in order to comply with Malaysia's obligation under CEDAW.⁹

Legislation that governs employment across Peninsular Malaysia is Employment Act 1955. Malaysian law adopts ILO standards with some verification in its content which is presented in the Employment Act. Part IX of the Employment Act provides for maternity protection. It covers maternity leave, maternity allowance and protection against dismissal. Nevertheless, Employment Act 1955 does not include prohibition of any term and condition of employment which expressly requires an employee to tender her resignation due to pregnancy, prohibition of employers from dismissing a woman during pregnancy and prohibition of employers from refusing to hire a woman because of her pregnancy. The Act also does not provide specific penalty for termination of employment of a worker on maternity leave and have any specific law which bans discriminatory interview questions regarding pregnancy which is a hidden form of discrimination. In addition, the Act also excludes maternity protection for domestic workers.¹⁰

Previously, Employment Act 1955 chiefly governs workers under a contract of service whose wage is not more than RM2,000 or those specified in the first schedule for example, manual labourers such as artisan and apprentice, domestic servants and

⁸ Convention on the Elimination of All Forms of Discrimination against Women, Article 11.

⁹ Federal Constitution, Article 8.

¹⁰ Employment Act 1955 (Act 265) (Revised 1981) (Reprint 2006).

supervisors of manual labourers.¹¹ There are amendments to the Act which are embedded in Employment (Amendment) Act 2022. One of the amendments is regarding employees who are governed by the Act. Amendment to the First Schedule of the Act means that all employees are covered no matter how much they are paid. Other amendments include the increase in the number of days for maternity leave, introduction of paternity leave and flexible working arrangement.¹² Industrial Relations Act 1967 aims at regulating the relations between employers and workmen and their trade union as well as preventing and settling any difference or dispute arising from their relationship. Under the Act, collective agreement means an agreement in writing concluded between an employer or a trade union of employers on the one hand and a trade union of workmen on the other relating to the terms and conditions of employment and work of workmen or concerning relations between such parties. A collective agreement must be deposited with the Industrial Court for cognisance and it becomes an award of the court.¹³

In Sabah, employment law is governed by Labour Ordinance Chapter 67. Chapter XIB of the ordinance provides for maternity protection.¹⁴ Meanwhile, in Sarawak, employment law is governed by Labour Ordinance Chapter 76.¹⁵ Likewise, Chapter XIB of the ordinance provides for maternity protection. The laws regarding maternity protection in Sabah and Sarawak are similar with the laws in Peninsular Malaysia under Employment Act 1955 where they cover maternity leave, maternity allowance and protection against dismissal.

¹¹ Ibid., Schedule 1.

¹² Employment (Amendment) Act 2022 (Act A1651).

¹³ Industrial Relations Act 1967 (Act 177) (Revised 1976) (Reprint 2010), s 2.

¹⁴ Labour Ordinance (Sabah Cap. 67) (Act A1238/2005)

¹⁵ Labour Ordinance (Sarawak Cap. 76) (Act A1237).

The law that governs child care safety and development in Malaysia is Child Care Centre Act 1984. The Act provides for the registration and management of child centres in Malaysia. Nonetheless, there is no law that mandates an employer to establish a day care at workplaces to facilitate working parents although there have been initiatives to do so for some years now. In the 2021 Budget, *Geran Penubuhan Taska di Tempat Kerja* was announced by the finance minister in which RM10 million had been provided for 50 new child care centres near Federal and State government buildings. To date, child care centres set up near the workplace is still not common in Malaysia, especially in private sector companies. This leads to difficulty in childcare arrangements for working mothers.¹⁶

Generally, in Malaysia, financial protection of working mothers during marriage and after divorce for Muslims is provided under the Islamic Family Law. The maintenance of wives and children is imposed upon the husband. For example, the Act that governs this is the Islamic Family Law (Federal Territories Act) 1984 for Federal Territories.¹⁷ Under the Act, the general principle is that a husband has the duty to pay maintenance to his wife regardless of the fact that the wife is working or not. As for non-Muslims, financial protection is governed by Married Women and Children (Maintenance) Act 1950 and Law Reform (Marriage and Divorce) Act 1976. A provision under Married Women and Children (Maintenance) Act 1950 empowers the court to order a man who has neglected or refused to maintain his wife or legitimate child to maintain them, in accordance with his means.¹⁸ Meanwhile, a provision under Law Reform (Marriage and Divorce) Act (LRA) 1976 provides three

¹⁶ Astro Awani, "Challenges Remain Despite Support for Childcare and Working Women Policies", 15 July 2022, <https://www.astroawani.com/berita-malaysia/challenges-remain-despite-support-childcare-and-working-women-policies-371163>

¹⁷ Islamic Family Law (Federal Territories Act) 1984 (Act 303) (Reprint 2005).

¹⁸ Married Women and Children (Maintenance) Act 1950 (Act 263) (Revised 1981) (Reprint 2001), s 3 (1).

situations where the court may order a man to pay maintenance to his wife or former wife which are during the course of any matrimonial proceedings, when granting or subsequent to the grant of a decree of divorce or judicial separation; or after a decree declaring her presumed dead, she is found to be alive.¹⁹ The difference between these two legislations is that, in order for a wife to apply for maintenance under the LRA, generally there needs to be a matrimonial proceeding, either ongoing or towards the end or after the granting of a decree of divorce or judicial separation. On the other hand, under the provision of the 1950 Act to be applicable, there need not be any matrimonial proceeding.

Despite the incomprehensiveness of statutory law, the rights of working mothers are subject to legal arguments in courts. In the case of *Beatrice A/P Fernandez v Sistem Penerbangan Malaysia & Ors*,²⁰ Beatrice (the appellant) was an employee of Malaysian Airlines System (the respondent) as a flight stewardess. A collective agreement that governed her terms and conditions of service requires all stewardesses to resign upon becoming pregnant. The respondent has the right to have her services terminated in the event she refuses to resign. The appellant refused to resign when she became pregnant and was thus terminated by the respondent. The appellant then applied to the court on the ground of wrongful dismissal submitting that the provisions of the collective agreement were gender discriminatory in nature and therefore contravened Article 8 of the Federal Constitution, rendering the collective agreement void. However, she lost her case. The court held that constitutional law, as a branch of public law, only addressed the contravention of an individual rights by a public authority. As Malaysian Airline System (MAS) is a private company, thus, the law does not take cognisance of it.

¹⁹ Law Reform (Marriage and Divorce) Act 1976 (Act 164) (Reprint 2001), s 77(1).

²⁰ *Beatrice A/P Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 2 CLJ 713.

It was differently decided in the case of *Norfadilla Ahmad Saikin v Chayed bin Basirun & 5 Ors.*²¹ Noorfadilla was pregnant and in search of a job. She applied at the local education office in Malaysia to be an untrained relief teacher and was delighted to receive an offer. After accepting the offer, she duly attended a preliminary briefing and was assigned a position at a local school. Before leaving, she was asked whether she was pregnant, to which she answered yes. To her consternation, her employment was revoked on the spot. Apparently, the education office does not hire pregnant women as relief teachers. The court in this case decided that discrimination on the basis of pregnancy is a form of gender discrimination and thus she won her case and was entitled to an amount of damages.

The two cases above point out different treatments given by the courts in cases of gender discrimination. The consequence differs because of two different situations where the one in the private sector was not protected and resulted in termination of service due to pregnancy while for the one in the public sector, the result was the opposite. Thus, the law concerning discrimination must be consistent regardless it involves public or private sector as being pregnant is natural for women and to penalise them for being pregnant is unnatural and inhuman.

In the Tenth Malaysian Plan (10th MP), the government has encouraged more women to work and has enhanced the environment of their employment to improve the quality of their work. The government has also increased child care centres under Social Welfare Department (JKM). A total of 436 registered child care centres were established at workplaces. Equality between men and women is also emphasized

²¹ *Norfadilla Ahmad Saikin v Chayed bin Basirun & 5 Ors* [2012] 1 MLJ 832.

in the plan. Those are among the initiatives that the government has taken for working mothers.²²

This is further highlighted in a more recent Malaysian Plan which is the 12th Malaysian Plan where women's participation in the workforce is targeted to increase to 59% in 2025. Access to and quality of early childhood care and education services as well as the care of the elderly with an affordable fee will be enhanced.²³ This will encourage more women to stay or go back to work. In addition, the Ministry of Women, Family and Community Development always supports efforts which increase women's participation in the work market inclusively. The inclusive concept used is leave no one behind which provides enabling environment for women to involve in the workforce.²⁴

Despite all that, the policies and laws governing the rights of working mothers in Malaysia are insufficient, especially in issues of maternity protection, child care safety and development, financial protection, protection against discrimination of gender and protection for single working mothers.

In other countries, significant changes have taken place in this area. The countries include Singapore, Australia, the United Kingdom and Maldives. For example, in Singapore, Section 87A of Employment Act Chapter 91 provides for child care leave for a parent. An employee who has served an employer for more than three months and has a child below the age of 7-years at any time during any relevant period is entitled to child care leave of two days for that relevant period.²⁵ In August

²² Malaysia, *Rancangan Malaysia Kesepuluh 2011-2015*, (Putrajaya: Unit Perancang Ekonomi, 2010), 50.

²³ Dato' Seri Ismail Sabri, "Rancangan Malaysia Kedua Belas 2021-2025", (paper presentation, Pembentangan Usul Rancangan Malaysia Kedua Belas, Kuala Lumpur, October 12, 2021).

²⁴ Dato' Hajah Siti Zailah binti Mohd Yusoff, "Rancangan Malaysia Kedua Belas 2021-2025", (paper presentation, Penggulangan Usul Rancangan Malaysia Kedua Belas, Kuala Lumpur, October 6, 2021).

²⁵ Employment Act Chapter 91, s 87A.

2014, the National Trades Union Congress U Family, the Health Promotion Board and the Singapore National Employers Federation produced “Employer’s Guide to Breastfeeding at the Workplace”. It provides employers with information on what they can do to support working mothers to continue breastfeeding after they return to work. This was done in reply to a survey done by NTUC in April 2013 where in the survey, mothers who had returned to work were interviewed and 50% of those interviewed had stopped breastfeeding as a result of returning to work.²⁶

All states in Australia have a legislation that protects the right to combine breastfeeding and paid work which is the Federal Sex Discrimination Act 1984. The Act was amended on 24 May 2011 to further strengthen the laws protecting the rights of breastfeeding women. Anyone who discriminates against breastfeeding mothers is now deemed to have broken the law. It could be in contradiction of the law if an employer refuses to make arrangements to support an employee to breastfeed at the workplace or provide an employee’s breastfeeding needs including necessities in expressing the breast milk. The relevant section is Section 7AA of the Act which provides for discrimination on the ground of breastfeeding.²⁷ The Fair Work Act 2009 provides employees in the national workplace relations system with the legal right to request for flexible working arrangements. The employees can do so for the purpose of child care. This legal right is laid down in Section 65 of the said Act.²⁸

In the United Kingdom, Section 18 of the Equality Act 2010 provides for discrimination against pregnancy and maternity during work. A person is considered discriminating against a woman if in the protected period in relation to a pregnancy of

²⁶ NTUC U Family, Health Promotion Board (HPB) and Singapore National Employers Federation (SNEF), *Employer’s Guide to Breastfeeding at the Workplace*, (Singapore: National Trades Union Congress, 2018).

²⁷ Sex Discrimination Act 1984 (No. 4, 1984), s 7AA.

²⁸ Fair Work Act 2009 (No. 28, 2009), s 65.

hers, he treats her unfavourably or he treats her unfavourably because she is on compulsory maternity leave.²⁹ In Section 57A of the Employment Rights Act 1996, time off for dependants is provided. An employee is entitled to be permitted by his or her employer to take a reasonable amount of time off during the employee's working hours to attend to his or her dependants' illness or death. Under Section 57A (3) (b), "dependants" include a child.³⁰ In the same Act, under Section 80F, an employee has a statutory right for contract variation. A qualifying employee may apply to his or her employer for a change in his or her terms and conditions of employment if the change is regarding the time, hours or place of work.³¹ In the United Kingdom, there is a scheme called job sharing scheme where it is found mostly in public sectors and particularly among white-collar workers such as administrative, clerical, a range of professional works including nursing, computing, teaching and librarianship. It is also found in private sectors such as manufacturing work and retail trade. Job sharing happens when two or more workers combine to do one full-time permanent post and its benefits are being shared. It can be initiated either by the employer or the employee himself or herself. This scheme gives advantages to female workers including working mothers with domestic responsibilities which is likely to prevent them from working full-time.

In Maldives, the law that governs employment is the Employment Act 2008. Section 45 of the Act states that mothers who return to work after the completion of maternity leave is entitled to two daily breaks of 30 minutes each to attend to the needs of their child. There shall be no deductions from pay for such breaks. The mother is entitled to such breaks until the child is of one year of age. These breaks

²⁹ Equality Act 2010, s 18.

³⁰ Employment Rights Act 1996, s 57A.

³¹ Ibid., s 80F.

may be used to breastfeed the child or expressing breastmilk for the child.³² In addition, in Section 47 of the same Act, each employee is entitled to a ten-day paid leave in a year to attend to important obligations such as tending to family members during illness. Family members here include the employee's child.³³ Section 49 is specific for the circumcision of the child. All employees are entitled to five days of paid leave on the occasion of the circumcision of a child.³⁴ These are among the best supports provided by Maldivian laws for the care and development of children. The country also has World Breastfeeding Trends Initiative (WBTi) to further support breastfeeding.

In short, Malaysia does have several initiatives regulated in aiding the needs of working mothers. Nevertheless, Malaysia still has loopholes that can be improved when compared to other countries.

1.2 RESEARCH OBJECTIVES

The objectives of this research are:

1. To examine policies and laws affecting working mothers in Malaysia.
2. To analyse the strengths and the weaknesses of the policies and laws.
3. To benchmark the legal framework of other jurisdictions in order to search for best practices in practising legal rights of working mothers.
4. To recommend for legal reform of related policies and laws affecting working mothers in Malaysia

³² Employment Act 2008 (Act No. 2/2008), s 45.

³³ Ibid., s 47.

³⁴ Ibid., s 49.

1.3 STATEMENT OF PROBLEM

The research is undertaken based on the premise that working mothers are not adequately protected under the law because mothers are always associated with work balance, breastfeeding and child care which cover public sectors as well as private sectors. There has been significantly less recognition of the laws that protect their rights such as the conditions under which they work, the elimination of discrimination and providing of child care support. This means that they are not adequately protected under domestic laws in working under safe environments and other material supports including equality of treatment between genders.

1.4 RESEARCH QUESTIONS

Based on the research objectives, the following questions have been formulated:

1. What are the policies and laws affecting working mothers in Malaysia?
2. Why are the legal protections important for working mothers?
3. What are the best practices of other jurisdictions for the legal framework?
4. What is the best legal reform of related policies and laws?

1.5 HYPOTHESIS

The following hypotheses are also in place to better understand the concern in this study:

1. Due to increasing number of mothers who are working, the laws governing working mothers in Malaysia need to be comprehensive to protect their rights. The laws should cover all kinds of working mothers and all aspects of protections.

2. The laws in Malaysia should provide sufficient facilities and supports for working women who have children.

1.6 RESEARCH METHODOLOGY

This study is based on doctrinal and non-doctrinal research design. This study used quantitative and qualitative legal research as well as comparative legal approaches. This research is developed mainly through library-based research methodology. This method is conducted through gathering relevant data which is required for the research. The information is collected from statutes, textbooks, reports, legal journals, articles and decided cases. The researcher utilised the internet especially online databases and libraries to gather the information.

This research took the comparative legal approach where it benchmarks other jurisdictions with regard to their legal protection of working mothers to find the best practices. There are four countries chosen by the researcher which are Singapore, Australia, the United Kingdom and Maldives. As for these four jurisdictions, references are mainly made through their original website.

The main reason Singapore is selected is because Singapore has family-friendly policies in which their government provides various policies designed to assist working parents, including flexible working arrangements, childcare subsidies, and tax incentives for working mothers.³⁵ These family-friendly policies are viable initiatives by their government as the key challenges of working mothers are to

³⁵ PK Wong & Nair, "International Women's Day – Legal Rights and Policies Aimed at Promoting Gender Equality in Singapore", <<https://pkwongnair.com/2023/02/28/international-womens-day-legal-rights-and-policies-aimed-at-promoting-gender-equality-in-singapore/#:~:text=4.,tax%20incentives%20for%20working%20mothers>> (accessed 24 February, 2024).

harmonise between family and work as well as poor childcare arrangements.³⁶ Malaysia and Singapore have similar source of law which is the common law. Both countries also consist of Muslims and non-Muslims. According to the data, approximately 33.2% of the population including citizens and permanent residents are Buddhists, 18.8% are Christians (including 6.7% Catholics), 14% are Muslims (predominantly Sunni), 10% are Taoists, 5% are Hindus and 18.5% identify as having no religion.³⁷ To add, the Labour Force Participation Rate (LFPR) for both countries are also almost the same. In February 2023, the LFPR in Malaysia is 69.9%³⁸ while the LFPR rate in Singapore in 2023 is 68.6%.³⁹ The LFPR rate for female workers in Singapore is also increasing from year to year like Malaysia. The average value for Singapore between 2018 to 2022 is 62.02% with a minimum of 60.2% in 2018 and a maximum of 64.2% in 2021.⁴⁰

The primary reason Australia is chosen is because the government of Australia offers a wide range of initiatives to reconcile work and family life. The initiatives include leave and return-to-work policies, child care benefits and flexible working arrangements. They also run work-family, work-life and gender campaigns to support and promote work-family initiatives.⁴¹ Australia is also committed in ensuring gender

³⁶ *National Trades Union Congress*, “Initiatives for working women at work, live and play”, <<https://www.ntuc.org.sg/uportal/news/Initiatives-for-working-women-at-work-live-and-play/>> (accessed 24 February, 2024).

³⁷ Office of International Religious Freedom, “2020 Report on International Religious Freedom: Singapore,” U.S. Department of State, <<https://www.state.gov/reports/2020-report-on-international-religious-freedom/singapore/>> (accessed 16 October, 2022).

³⁸ “DOSM Official Portal,” Ministry of Economy Department of Statistics Malaysia Official Portal, <<https://v1.dosm.gov.my/>> (accessed on 24 February, 2024).

³⁹ *Manpower Research and Statistics Department, Ministry of Manpower, Republic of Singapore*, “Labour Force in Singapore Advance Release 2023”, <https://stats.mom.gov.sg/iMAS_PdfLibrary/mrsd-labour-force-in-singapore-advance-release-2023.pdf> (accessed 24 February, 2024).

⁴⁰ Statista, “Labor Force Participation Rate of Women in Singapore from 2014 to 2023”, <<https://www.statista.com/statistics/951113/singapore-female-labor-force-participation-rate/>> (accessed 24 February, 2024).

⁴¹ Jennifer Baxter and Jennifer Renda, *Review of Government Initiatives for Reconciling Work and Family Life*, (Melbourne: Australian Institute of Family Studies, 2015), 7.

equality. Minister for Foreign Affairs of Australia has launched a new Gender Equality Fund. In order to increase women's labor participation, Australia is providing new financial literacy projects for women, improved assistance for child care and small business reforms that will deliver new opportunities for women in the employment.⁴² Malaysia and Australia have multi-faith societies. Australia has a Christian majority sitting alongside a non-religious minority as well as smaller numbers of Buddhists, Muslims, Hindus and others while Malaysia has a Muslim majority that share the country with Buddhists, Christians, Hindus and others. Consequently, both societies are highly pluralistic in terms of both faith and ethnicity. Other than that, the source of law of the two countries is the same which is the common law. The source of law in Australia is the common law while in Malaysia, the law that governs non-Muslims on family matters is the common law while for Muslims, the law is governed by Sharia law. Moreover, the LFPRs of both countries are almost similar. In February 2023, the LFPR in Malaysia is 69.9%⁴³ while in Australia, the LFPR is 66.8%, in January 2024.⁴⁴ The LFPR for female workers in Australia are increasing every year like Malaysia in which the LFPR rose from 60.3% in 2018 to 61.5% in 2021.⁴⁵

⁴² UN Women, "Australia Makes New Commitments Internationally and at Home to Empower Women and Girls (Updated)", <<https://www.unwomen.org/en/get-involved/step-it-up/commitments/australia>> (accessed 24 February, 2024).

⁴³ Department of Statistics Malaysia, Official Portal, "Key Statistics of Labour Force in Malaysia, 2023", <https://v1.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=124&bul_id=Z05rK25YRVF5SVFTcUU5dElaZ2ttQT09&menu_id=Tm8zcnRjdVRNWlplWjRlbmtlaDk1UT09> (accessed 24 February, 2024).

⁴⁴ Australian Bureau of Statistics, "Labour Force, Australia", <<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>> (accessed 24 February, 2024).

⁴⁵ Statista, "Labor Force Participation Rate of Women in Australia from 2000 to 2021", <<https://www.statista.com/statistics/1178624/australia-female-labor-force-participation-rate/>> (accessed 24, February 2024).

United Kingdom is selected for benchmarking due to the fact that the country is among those that provide the longest maternity leave in the world which is 52 weeks.⁴⁶ They also have a specific law on equality which is Equality Act 2010.⁴⁷ As for development of children, the United Kingdom provides UNICEF UK Baby Friendly Initiative which leads infant feeding care in a hospital. According to World Health Organisation (WHO), the Baby Friendly Hospital Initiative (BFHI) has demonstrated significant effectiveness in boosting the initiation of breastfeeding, promoting exclusive breastfeeding, and extending the duration of breastfeeding in numerous countries. Additionally, it enhances mothers' healthcare experiences and decreases rates of infant abandonment.⁴⁸

Regarding Maldives, it is chosen to be benchmarked in this research on the basis of the legal protection of working mothers because in recent years, Maldives has achieved notable advancements in promoting gender equality and empowering women. During this period, there has been a substantial enhancement in legislation and policy aimed at tackling gender inequality and safeguarding the rights of vulnerable groups. This includes the enactment of the Gender Equality Act, 2016, and the implementation of the National Gender Equality Action Plan (GEAP), 2022-2026.⁴⁹ In addition, women's political participation has witnessed a noticeable rise.⁵⁰

⁴⁶ Employment Rights Act 1996, s 71-73.

⁴⁷ Equality Act 2010, s 18.

⁴⁸ World Health Organization, "Implementation of the Baby-friendly Hospital Initiative", <[https://www.who.int/tools/elena/bbc/implementation-bfhi#:~:text=BFHI%20has%20been%20shown%20to,of%20infant%20abandonment%20\(12\).](https://www.who.int/tools/elena/bbc/implementation-bfhi#:~:text=BFHI%20has%20been%20shown%20to,of%20infant%20abandonment%20(12).>)> (accessed 24 February, 2024).

⁴⁹ Asian Development Bank, "Sector Assessment (Summary): Water and Other Urban Infrastructure and Services" <<https://www.adb.org/sites/default/files/linked-documents/54373-001-ssa.pdf>> (accessed 24 February, 2024).

⁵⁰ UNDP, First of Its Kind Women in Local Governance Forum Held in the Maldives, 12 December, 2023, <https://www.undp.org/maldives/press-releases/first-its-kind-women-local-governance-forum-held-maldives>.

The source of law in Maldives is Sharia law. Sharia laws are applicable to Muslims in Malaysia, covering personal matters specifically family laws.

Hence, all four countries are the best countries to be benchmarked as Malaysia can emulate their good policies and laws. Above all, the benchmark carried out was only on certain laws that address working mothers' rights.

A critical analysis approach is considered for this research. Relatively, the method is appropriate for this study since it aims to analyse whether the laws in Malaysia regarding the rights of working mothers are adequate or not.

The study adopted a quantitative method in which the researcher made a survey on 100 working mothers from the public sector and 100 working mothers from the private sector. The reason of choosing this number is because the data is only supporting or secondary data to have some idea on the satisfaction of the working mothers towards their protection. For that purpose, the number is sufficient to measure on the satisfaction and due to unavailability of data on the number of working mothers in the country from the relevant Ministry, the number is sufficient for the purpose of qualitative study. The survey was limited to areas in Selangor, Kuala Lumpur and Putrajaya. The survey questionnaires were distributed to the respondents by hand and through online using *Facebook* and *WhatsApp Messenger*. The online mediums were needed due to the condition during the distribution of the questionnaire where the Covid-19 pandemic outbreak had occurred and thus limited the movement of the researcher to distribute the questionnaire by hand. The questionnaire was drafted to measure the satisfaction of working mothers on the support they get at the workplace. The purpose is to measure whether their needs are satisfied by the laws and their employers.

In addition, the researcher also interviewed selected respondents among working mothers to strengthen the research findings. The researcher also conducted interviews with the related ministries and one agency in Malaysia, public companies and private companies in order to inquire the policies and laws that they have with regards to the working mothers under their employment. Two ministries were chosen for this purpose which are the Ministry of Human Resource (MOHR) and the Ministry of Women, Family and Community Development (KPWKM). The MOHR is interviewed as they are the ministry that is responsible to update and implement labour policies and laws in Malaysia⁵¹ while for KPWKM, they are interviewed because they are the ministry that review existing laws and suggest new legislations with regards to development of women in Malaysia.⁵² The agency chosen was the Human Rights Commission of Malaysia (SUHAKAM) as they are the agency that is responsible to assist and advise the government in preparing laws with regards to human rights in Malaysia.⁵³ As for public sector, there were three companies chosen which are the International Islamic University of Malaysia (IIUM), the Clinical Research Malaysia and Syarikat Bekalan Air Selangor Sdn. Bhd. (SYABAS). These three companies were chosen because they are big companies that have many employees including working mothers. As for private sector, there were also three companies chosen which are Tan Chong Education Services Sdn. Bhd., Mara Incorporated Sdn. Bhd. and Tetuan Azmi Ramlan, Ain Ali & Co. legal firm. Tan Chong Education Services Sdn. Bhd. and Mara Incorporated Sdn. Bhd. are big-scale companies while Tetuan Azmi Ramlan, Ain Ali & Co. is a small-scale company. They were chosen for the purpose of data comparison.

⁵¹ *Kementerian Sumber Manusia*, <<https://www.mohr.gov.my/>> (accessed 24 February, 2024).

⁵² *Kementerian Pembangunan Wanita, Keluarga dan Masyarakat*, <<https://www.kpwkm.gov.my/>> (accessed 24 February, 2024).

⁵³ *SUHAKAM*, <<https://suhakam.org.my/>> (accessed 24 February, 2024).

1.7 LITERATURE REVIEW

There are past literatures available to support this study. However, the numbers are limited. Thus, related literatures are presented for review.

Employment Act 1955 is the primary source on pregnancy and maternity rights in Malaysia. However, according to Jashpal Kaur Bhatt⁵⁴, the limitations in the Employment Act need urgent attention to solve workplace matters arising from pregnancy and maternity which women often face. The primary limitation concerned is that the Act provides for employer linked paid maternity leave which leads to concerns over the cost of paid maternity leave, the short length of paid maternity leave and the perception that employers, not the state, bear the cost of social reproduction. Other than that, the Employment Act also lacks the provision of time off for health check-ups and sick leave for medical conditions related to pregnancy and birth. The Act also provides insufficient levels of employment or job security resulting in the hostile treatment of female workers. Overall, the Employment Act lacks comprehensiveness in terms of scope of coverage of workers and is limited in its range of substantive entitlements, requiring procedural qualifications to be met for paid maternity leave. The gender specific nature of the entitlements is another concern as the Act overlooks the role of working fathers. In addition, there are the concerns over female workers' access to remedial mechanisms under the Act in respect of the jurisdiction, powers and the enforcement of the provisions of the Act by the Director General of Labour and the administrative officers of the Department of Labour.

⁵⁴ Jashpal Kaur Bhatt, "Pregnancy and Maternity Entitlements under the Employment Act 1955: Are Women Workers in Malaysia Being Short-changed?", *Malayan Law Journal*, vol. 5, no. lxxxiii (2015): 13.

Further, Alexandra Bernasek and Julie Hasen Gallaway⁵⁵ confirm that introducing policies is not enough to ensure that they will be effective. Challenges to their implementation may render them ineffective and some women may benefit while others do not. Malaysia's maternity leave policy appears to have worsened class differences among women in the process of attempting to reduce gender differences.

In an article, Hassan Kamal Halili and Norsuhaida Che Musa⁵⁶ found that maternity protection is important for women to stabilise between their productive and reproductive lives. It is the health needs of female workers and their children which allows them to remain employed during motherhood. Social support from employers contributes to the initiation or duration of breastfeeding by employees at work. The support can increase the efficiency of combining employment and breastfeeding. Schedule adjustments and lactation rooms can encourage breastfeeding. Nevertheless, employment law in Malaysia does not have a specific law on breastfeeding as a legal right for breastfeeding for working mothers and shorter maternity leave is likely to create a difficulty for working mothers to continue breastfeeding after returning to work. Therefore, they suggest that legislating an employment policy to protect working mothers is necessary so that it will correspond with other main elements of maternity protection.

Remarking on the similar issue, Asma Saleem and Hawwa Shiuna Musthafa⁵⁷ suggested that Employment Act 2008 of the Maldives requires amendments to

⁵⁵ Alexandra Bernasek and Julie Hasen Gallaway, "Who Gets Maternity Leave?: The Case of Malaysia," *Western Economic Association International*, vol. XV, (1997): 101-102.

⁵⁶ Hassan Kamal Halili and Norsuhaida Che Musa, "Women's Right to Breastfeed in the Workplace," *Asian Women*, vol. 30, no. 2 (2014): 85-108.

⁵⁷ Asma Saleem and Hawwa Shiuna Musthafa, "The Role of Length of Parental Leave in Strengthening Mother-Child Bond and the Husband-Wife Relationship in the Maldives", *The Maldives National Journal of Research*, vol. 9, no. 1 (2022): 86. Research Gate, <[researchgate.net/publication/353655459_The_role_of_length_of_parental_leave_in_strengthening_mother-child_bond_and_the_husband-wife_relationship_in_the_Maldives](https://www.researchgate.net/publication/353655459_The_role_of_length_of_parental_leave_in_strengthening_mother-child_bond_and_the_husband-wife_relationship_in_the_Maldives)>.

incorporate the current extended leave policy, ensuring equitable access to parental leave for all working individuals. Additionally, there is a pressing need for greater flexibility in the workplace to accommodate breastfeeding breaks for working mothers, thereby enhancing the potential for consistent and high-quality infant care. Furthermore, the writers advocate for an extension of paternal leave to a period of 180 days, aligning it with maternal leave, as both parents play integral roles in parenting, and the responsibilities of parenthood extend to both the mother and the father upon the birth of a child.

Moreover, Najibah Mohd Zin⁵⁸ is of the opinion that a strong policy is needed where all employees are mandated to provide childcare for working mothers as childcare facilities are also vital for child development.

On the basis of financial protection, it is non-arguable that maintenance for wives and children is the responsibility of the husband as the head of the family. Thus, Najibah Mohd Zin⁵⁹ reaffirms that working mothers should not be deprived of their right to maintenance if they fulfil their primary responsibility as a wife and mother to their children. She also proposes that the states in Malaysia should verify enforcement mechanisms depending on their own creativity within the existing legal framework of each state with regards to financial support of working mothers after divorce. The way the law and procedures are being interpreted and applied has significantly influenced the effectiveness of the proceedings.

⁵⁸ Najibah Mohd Zin, "Protecting the Rights of Working Mothers; Are the Laws Adequate?" in *Women and Development in the 21st Century: The Way Forward*, edited by Abdul Monir Yaacob & Nurul 'Uyun Haji Zainal, (Selangor: Universiti Islam Antarabangsa Malaysia, 2017), 94.

⁵⁹ Ibid., 96-99.

In her writing, Hana Maher⁶⁰ states that Malaysian employers have to take step and give more support to working mothers in order for them to balance between family and work. Employers need to set up flexible working hours and places for working mothers. This will then be a win-win situation for both employers and working mothers as the productivity of the workforce will increase and at the same time, the mothers are able to fulfil their responsibilities to their children.

Muzaffar Syah Mallow⁶¹ has the same view with Hana Maher in which he discusses the many benefits of flexible working hours to employees as well as employers in his article. Introducing flexible working hours could increase employees' determination and job satisfaction. It is reported that flexible working hours have improved recruitment and reduced number of absenteeism which led to productivity and production of the company or organisation. It has also reduced the number of unfocused employees and those with high levels of stress and fatigue. Workplaces which offer this kind of arrangements would attract more skilful employees as they are more relevant these days. These benefits will then lead to customer or client satisfaction as the employees can serve them wisely. As for the long-term effect, this would increase the good reputation of the company or organisation. Employees would also have a good balance of life and work.

Louise Thawley⁶² also discusses flexible working practices which include working from home, part-time working, flexible time of working, job sharing, term-time working and working reduced or compressed hours. Flexible working requests

⁶⁰ Hana Maher, "Malaysians Agree Mothers should be Allowed Flexibility in the Workplace," *Malaysian Digest*, <<http://www.malaysiandigest.com/frontpage/282-main-tile/645572-malaysians-agree-mothers-should-be-allowed-flexibility-in-the-workplace.html>> (accessed 30 November, 2016).

⁶¹ Muzaffar Syah Mallow, "Formulating Regulative Framework on Flexible Working Hours in Malaysia," *Malayan Law Journal*, vol. 1, no. lxx (2018): lxxiv- lxxv.

⁶² Louise Thawley, "Time to Limber Up? The Extended Right to Request Flexible Working", *Tolley's Employment Law Newsletter*, issue 7, (2014): 51.

can relate to place, hours or time of work. The aim of the right to request flexible working is to make the workplace practical and to help employees achieve a better work and life balance while helping employers to improve employee retention and increase productivity.

With regards to the issue of gender discrimination, Priscilla Shasha Devi, C. J. Jacobs et al.⁶³ recommend that Malaysia needs to move forward without delay and come up with an idea to improve the rights of women at the workplace. Agreed that women are significant contributors, the government should give recognition to working women. Legislation protecting their rights must be passed. The government should follow the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) on this matter.

Covid-19 crisis has given big impacts on Malaysian workers. As per Calvin Cheng⁶⁴ in his writing, women experienced a far greater fall in employment compared to men. Younger women, in particular, have experienced significantly larger decreases in employment compared to older men. His estimation indicates that in the second quarter of 2020, the number of employed women decreased approximately five times more than that of employed men, with a decline of -2.5 percent compared to -0.5 percent for men, relative to the pre-crisis average of 2019. To put it differently, although women constitute only 39% of all employed workers in Malaysia, they accounted for nearly two-thirds of the total employment declines in the second quarter of 2020. Even as movement restrictions were gradually lifted and labor market conditions saw slight improvements in the third quarter of 2020, the number of

⁶³ Priscilla Shasha Devi and et al, "Discrimination against Women in Workforce: The Need to Move Forward," *Malayan Law Journal*, vol. 3, no. xlvii (2017): 6.

⁶⁴ Calvin Cheng, "Pushed to the margins: The unequal impacts of the COVID-19 crisis on marginalised Malaysian workers", *Institute of Strategic and International Studies (ISIS) Malaysia*, (2020): 2-4. Jstor <<https://www.jstor.org/stable/resrep29703>>.

employed women continued to decrease, albeit at a slower pace, while men's employment had already begun to recover.

He then adds that the impacts of the COVID-19 crisis on women extend beyond merely decreased employment. Recent data indicates a concerning trend of more and more women completely leaving the labor force. Over the past two quarters, Malaysia has witnessed a sharp decline in the female labor force participation rate. However, a closer examination of labor force statistics by age and gender reveals a notable level of diversity. Data suggests that younger women, and to a lesser extent, younger men, were disproportionately more likely to exit the labor force compared to their older counterparts, with a notable 3.0 percent decrease in labor force numbers.

Nurulbahiah Awang, Salma Yusof and Nassar Nordin⁶⁵ confirm that working women faced challenges during the covid-19 pandemic. The challenges confronted by working women during this pandemic have profound effects on all aspects of their lives. These impacts stem from the unforeseeable events of 2020, triggered by the nature of the COVID-19 disease. Furthermore, pre-existing gender imbalances in social, economic, and political spheres have exacerbated the difficulties faced by women workers during the pandemic. Given that women often serve as primary caregivers, either formally or informally, addressing this situation requires urgent attention and support through the implementation of effective ideas and policies aimed at fostering sustainable development for women. A comprehensive social support system must encompass the family institution, the organization, and the neighborhood or community.

⁶⁵ Nurulbahiah Awang, Salma Yusof and Nassar Nordin, "The Challenges of COVID-19 Pandemic on Working Women: The Need for Comprehensive Sosial Support System", *Global Business and Management Research: An International Journal*, vol. 13, no. 4s (2021): 550. Research Gate, <<http://www.gbmrjournal.com/pdf/v13n4s/V13N4s-48.pdf>>.

According to Mohamad Nawawy Jusoh and Fatmawati Latada⁶⁶, the movement control order (MCO) due to Covid-19 crisis inflicted significant distress on the entire nation, particularly single mothers. Under the 11th Malaysia Plan, specifically, Single Mothers' Empowerment, both government and non-governmental organisations (NGOs) have implemented numerous economic, social, and training programs aimed at alleviating poverty among women, particularly single mothers. These initiatives aim to empower single mothers by developing their natural skills, such as cooking and dressing, into forms of entrepreneurship through provided training. However, since the onset of the MCO, there have been constraints on the availability of financial assistance for single mothers. A survey conducted by the Ministry of Women, Family, and Community Development (KPWKM) highlights the heightened vulnerability of single mothers, with one out of four living below the poverty line index and nearly half reporting income loss attributable to the MCO.

Furthermore, numerous programs are being developed to provide training for single mothers to acquire entrepreneurial skills. Despite the implementation of various forms of assistance and programs by the government to aid single mothers, a considerable number of them still struggle with poverty. This is partly attributed to low levels of education, lack of job experience, and a lack of awareness regarding avenues for financial aid and support. Moreover, an excessive reliance on financial assistance from government agencies such as the Social Welfare Department (JKM) and the Ministry of Women, Family, and Community Development (KPWKM) could potentially diminish single mothers' motivation to enhance their own potential.

⁶⁶ Mohamad Nawawy Jusoh and Fatmawati Latada, "The Challenges Faced by Single Mothers in Malaysia During the COVID-19 Pandemic", *Jurnal al-Sirat*, vol. 19 (2020): 83-84. EJournal Unipsas, <<https://ejournal.kuipsas.edu.my>>

Toyin Ajibade Adisa, Opeoluwa Aiyenitaju and Olatunji David Adekoya⁶⁷

state that the onset of the COVID-19 pandemic has led to significant adjustments in women's work and family lives. The adjustments comprise of an increased domestic workload, proliferation of role conflict, rediscovery of family values and closeness and reduced juvenile delinquency. The pandemic has reshaped women's work-family balance at least for the time being, and potentially for the foreseeable future.

The COVID-19 disease has impacted the entire world, and the United Kingdom is no exception. In ensuring economy stability of the country, Tonia Novitz⁶⁸ summarises the measures taken on employment relations and working conditions by their government. These include statutory sick pay and access to unemployment benefit, Coronavirus Job Retention Scheme, Self-employed Income Support Scheme (SISS).

Nevertheless, gender-related issues remain unaddressed. With the closure of schools and the shift to remote work for those able, many parents, particularly women, found themselves shouldering a double burden of homeschooling and professional responsibilities. Single parents and individuals living in smaller accommodations encountered even greater challenges. Pregnant women also faced difficulties as they were advised to stay home. Moreover, evidence suggests that performing lower-income jobs from home is more challenging, resulting in reduced entitlements to maternity benefits for the most economically disadvantaged individuals.

⁶⁷ Toyin Ajibade Adisa, Opeoluwa Aiyenitaju and Olatunji David Adekoya, "The Work-Family Balance of British Working Women During the COVID-19 Pandemic", *Journal of Work-Applied Management*, vol. 13, no.2 (2021): 253. Emerald insight, <<https://www.emerald.com/insight/content/doi/10.1108/JWAM-07-2020-0036/full/html>>.

⁶⁸ Tonia Novitz, "COVID-19 and Labour Law: United Kingdom", *Italian Labour Law e-Journal*, vol. 13, no. 1 (2020): 3-4. Sage Journals, <<https://journals.sagepub.com/doi/full/10.1177/2031952520934583>>.

The Trades Union Congress (TUC) is advocating for improved access to sick pay and support for parents needing time off work to care for their children, as well as additional assistance for families. However, there is no indication that the government will implement such measures.

Based on the above discussions, existing literatures mention the problems that are faced by working mothers in Malaysia. The literatures also give some opinions on solutions to settle the problems. However, they lack the comprehensiveness in identifying the rights of working mothers and analysing whether the laws protecting their rights in Malaysia are adequate or not by comparing with other jurisdictions. They also do not seem to fully understand the satisfaction of working mothers about the laws. Hence, this research is undertaken to fill the gap.

1.8 SCOPE OF THE RESEARCH

The research is to examine the current Malaysian policies and laws which govern working mothers. They include Muslim and non-Muslim mothers as well as single working mothers. The research covers working mothers in both public and private sectors. The research, however, excludes working women in general although overlapping is possible in some cases when issues of women rights are discussed. The issue of sexual harassment at the workplace is also excluded from this research.

1.9 STRUCTURE OF THE RESEARCH

This study seeks to examine the policies and laws that protect working mothers in Malaysia and eventually it compares the policies and laws with other jurisdictions which are Singapore, Australia, the United Kingdom and Maldives. The research is structured into six chapters with a skeletal plan in Chapter One. Part one consists of

the introductory part which indicates how the research is essentially framed and how the background of the thesis is created; in other words, it provides an overview of the study as a whole. The chapter thus includes the background of the study, the hypotheses and clear statement of the problems necessitating the study. The objectives and research questions of the research are laid down and the research methodology is explained. The summary of existing literatures on the subjects are analysed in relation to the scope and limitations of the research.

Chapter Two starts with the international conventions and treaties on women employment. The conventions and treaties are stated and explained clearly one after another. Whether or not they are ratified by Malaysia, all conventions and treaties related to the topic are scrutinised well in the chapter. This part is essential to examine and analyse the international standards on the topic. The chapter then ends with investigating the Shariah law on women employment. This part is vital to identify the Islamic perspective on the topic.

Chapter Three explores the policies and laws of Malaysia which govern working mothers. All the relevant policies and laws are analysed including policies and laws in Peninsular Malaysia as well as Sabah and Sarawak. The related policies are examined first followed by the related laws. The policies and laws are scrutinised in detail. The chapter is essential as to fulfil the first and second objectives of the study which are to examine the policies and laws as well as analyse their strengths and weaknesses.

Chapter Four focuses on the data collection needed for the research. The chapter discusses the issues related to the topic and the case studies in Malaysia. The issues include rights on leaves, working flexibility, rights pertaining to children and

financial rights. The importance of the data collection is to identify the satisfaction of working mothers in Malaysia towards the policies and laws.

Chapter Five lays down the policies and laws governing working mothers in other jurisdictions. As mentioned earlier, there are four jurisdictions chosen which are Singapore, Australia, the United Kingdom and Maldives. The policies and laws of Singapore which are relevant to the research are stated and analysed first followed by the policies and laws of Australia, the United Kingdom and Maldives. The chapter is vital to satisfy the third objectives of the research which is to compare the legal framework with other jurisdictions in order to find the best practices.

Finally, the research is concluded with the final chapter on the conclusion and recommendations. The chapter contains an overall summary, evaluation and analysis of the findings gathered throughout the research. The chapter also provides particular recommendations for legal reform on related policies and laws. This is to achieve the last objective of the research which is to recommend a legal reform. Areas of further studies are also suggested in order to have the best legal framework governing working mothers in Malaysia.

CHAPTER TWO

INTERNATIONAL CONVENTIONS, INTERNATIONAL TREATIES AND SHARIAH LAW ON WOMEN EMPLOYMENT

2.1 INTRODUCTION

This chapter discusses the international conventions, treaties and Shariah law on women employment. There are several related international conventions and treaties which include the Charter of United Nations as well as human right treaties related to women employment which are the Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights (ICCPR) 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1996, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, Convention on the Rights of the Child (CRC) 1989 and International Labour Organization (ILO) Conventions and Recommendations. As for Shariah law on women employment, this chapter analyses the status of women employment in Islamic law, relying on the primary and secondary sources. The primary sources include the Qur'an and Sunnah while the secondary source is the consensus (*ijma'*).

Malaysia does not ratify all the international conventions and treaties. Out of the nine core international human rights instruments, Malaysia has only ratified three conventions which include CEDAW and CRC. Malaysia ratified CEDAW on 5th July 1995 and CRC on 17th February 1995. By signing on CEDAW, Malaysia is committed to implementing measures to end discrimination against women in all forms.¹ In

¹ S. Indramalar, "More Commitment Needed to End Discrimination against Women," The Star Online, <<https://www.thestar.com.my/lifestyle/people/2015/01/02/more-commitment-needed-to-end-discrimination-against-women/>> (accessed 28 March, 2019).

addition, the ratification of CRC is to uphold Malaysia's commitment to the protection and welfare of all children in the country.

Malaysia does not ratify the remaining six conventions which include ICCPR and ICESCR. Ratification of the ICCPR and ICESCR will indicate a significant step towards the protection and promotion of human rights within the country. The ratification will result in the cessation of unjust and inequitable laws, regulations, and policies, along with preventing the creation of new laws that violate international human rights norms and standards.² However, the true impact depends on the extent to which Malaysia implements the provisions of these covenants in practice and addresses any gaps or shortcomings in its human rights framework. Meanwhile, non-ratification of the ICCPR and ICESCR by Malaysia has implications for the protection and promotion of human rights within the country, affecting legal obligations, accountability mechanisms, and international reputation. Nevertheless, it is important to note that Malaysia still address these concerns through other means and has the potential to ratify these covenants in the future.

In addition, there has been a suggestion which urges the government to ratify the remaining six human rights treaties as not all human rights are covered if all these treaties are not ratified.³ From this, it can be surmised that there is legal pressure for ratification but due to some reasons like religious and cultural sensitivity, the government still reserves on doing so to the remaining human right treaties.

² Aishah Bidin and Shereen Khan, *Compatibility Analysis of Malaysian Civil and Syariah Laws to the International Covenant on Civil and Political Rights (ICCPR)*, (Kuala Lumpur: Human Rights Commission of Malaysia (SUHAKAM), 2022), 20.

³ Soo Wern Jun, "Lawyer: Ratify 6 Human Rights Treaties Now to Protect Nation", FMTnews, <www.freemalaysiatoday.com> (accessed 29, November 2018).

2.2 INTERNATIONAL CONVENTIONS AND TREATIES ON WOMEN EMPLOYMENT

2.2.1 Charter of United Nations

Charter of United Nations or also known as UN Charter is a foundational treaty of the United Nations. It was signed on 26th June 1945 in San Francisco at the conclusion of the United Nations Conference on International Organisation and came into force on 24th October 1945.⁴ The charter lists out the purposes and principles of the United Nations. The charter also provides for the membership and organs of the United Nations.

The charter states a broad purpose of the United Nations in Article 1(3) which includes “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁵ In addition, all members have pledged to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55.⁶ Article 55 provides for the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.⁷

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to

⁴ United Nations, <www.un.org> (accessed 24 November, 2018).

⁵ Charter of United Nations (adopted 26 June 1945, entered into force 24 October 1945), Article 1 (3).

⁶ Ibid., Article 56.

⁷ Ibid., Article 55 (c).

encourage recognition of the interdependence of the peoples of the world.⁸

Article 76 (c) of the Charter of United Nations encourages respect for human rights and fundamental freedom for everyone without distinction of race, sex, language or religion. Equality between men and women is one of the main components of the charter. United Nations' statistics show that women are the majority of the world's poor and illiterate and they always earn less income than men and sometimes go unpaid. Another topic that is of concern is the health of women which is linked to the health of their infants.⁹

In July 2010, the United Nations General Assembly created UN Women which is the United Nations Entity for Gender Equality and the Empowerment of Women. UN Women is the UN entity specified for gender equality and the empowerment of women. Gender inequality is pervasive, with women lacking access to decent employment and facing gender wage gaps. Women and girls have always been denied access to education and healthcare. They are also under-represented in economic and political decision-making and suffer from violence and discrimination all around the world. Therefore, UN Women was established to accelerate progress on meeting the needs of women and girls worldwide.

Among the main roles of UN Women are to support inter-governmental bodies in their formulation of policies, global standards and norms, to help member states to implement these standards and to hold the UN system accountable for its own commitments on gender equality, including regular monitoring of system-wide progress.

⁸ Ibid., Article 76 (c).

⁹ Rhona K.M. Smith, *Textbook on International Human Rights*, (United Kingdom: Oxford University Press, 2016), 194.

After decades, the UN has made substantial development in advancing gender equality including through landmark agreements such as the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). For many years, the UN has faced serious challenges in its efforts to promote gender equality globally which includes inadequate funding and the absence of a single recognised mechanism to direct UN activities on gender equality issues. UN Women was formed to address such challenges. It will be a powerful victory for women and girls, providing them with a forceful voice at the international, regional and local levels. Bound in the vision of equality protected in the UN Charter, UN Women, among other issues, works for the elimination of discrimination against women and girls; empowerment of women; and achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and, peace and security.¹⁰

Other than that, to empower women at the workplace, marketplace and community, the UN Global Compact cooperated with the UN Women in approving the Women's Empowerment Principles: Equality Means Business which are adapted from the Calvert Women's Principles. The Calvert Women's Principles are a set of guidelines developed by Calvert Investments, an investment management firm, to promote gender equality and women's empowerment within the workplace. These principles provide a framework for companies to evaluate and enhance their policies and practices regarding gender diversity, equality, and inclusion. The Calvert Women's Principles serve as a tool for investors, companies, and other stakeholders to assess and promote gender diversity and inclusion in business operations and

¹⁰ UN Women, "UN Women: The United Nations Entity for Gender Equality and the Empowerment of Women," United Nations, <<https://www.un.org/youthenvoy/2013/07/un-women-the-united-nations-entity-for-gender-equality-and-the-empowerment-of-women/>> (accessed 20 July, 2022).

decision-making. By adopting and implementing these principles, organisations can contribute to creating more equitable and inclusive workplaces, markets, and communities.

The seven principles are established high-level corporate leadership for gender equality; treat all women and men fairly at work; ensure the health, safety and well-being of all female and male workers; promote education, training and professional development for women; implement enterprise development; supply chain and marketing practices that empower women; promote equality through community initiatives and advocacy; and measure and publicly report the progress to achieve gender equality.¹¹

It is reported that women represent more than 50% of the population worldwide, but only 45.3% of women had a job in 2018.¹² Women accounted for less than 4% of board chairs across nearly 7,000 companies in 44 countries in 2017.¹³ Therefore, the International Labour Organization and UN Women have published the report on Empowering Women at Work: Company Policies and Practices for Gender Equality in 2020 which provides “Guiding Frameworks for Company Policies to Promote Gender Equality in the Workplace.” This document emphasises on five key areas where companies can contribute by implementing policies that promote a future of work that is decent by design and is anchored in genuine and substantive gender equality at the workplace. The five key areas are:

- i. Achievement of equal pay for work of equal value;
- ii. Prevention and elimination of violence and harassment;

¹¹ UN Women, “Endorse the Women's Empowerment Principles,” United Nations, <<https://www.unglobalcompact.org/take-action/action/womens-principles>> (accessed 20 July, 2022).

¹² International Labour Organization, *A Quantum Leap for Gender Equality: For a Better Future of Work for All*, (Switzerland: ISBN,2019), 12.

¹³ José Luis Viveros Añorve and Linda Wirth, *Women in Business and Management: The Business Case for Change*, (Italy: ISBN, 2019), 53.

- iii. Creation of a harmonious work-life balance for both women and men;
- iv. Equal representation of women in business and management roles;
- v. Investment in a future of work that works for women.¹⁴

Malaysia became the 82nd member of the United Nations on 17th September 1957.¹⁵ Malaysia stands by the Beijing Declaration and Platform for Action with aims to achieve high-income status by 2020, but cannot do this without women being equal partners and drivers of growth and prosperity for all citizens. Its most recent budget made upholds the role of women as a core strategy and it aims to boost female labour participation rate from 54% as of 2019 to 59% by 2020. By 2016, all Malaysian public companies will be required to disclose their level of gender diversity in their annual reports. Since single mothers and female-headed households are often socially and economically disadvantaged, particularly in rural areas, Malaysia has developed a national action plan to empower them.¹⁶

Women only make up 24% of managers sitting at top positions. Therefore, the Women's Empowerment Principles or WEPs was launched to provide a unique roadmap for businesses to fulfil women's rights.¹⁷ The data was then updated later in 2020 whereby women performed on average 4.6 hours of unpaid care work per day compared to 1.4 hours per day for men. On the other hand, only 51% of women participated in the labour force in contrast to 78% of men, while less than 25% of women were in management positions. Women still earn less than men as it is

¹⁴ International Labour Organization and UN Women, *Empowering Women at Work: Company Policies and Practices for Gender Equality*, 2020.

¹⁵ "Malaysia and the United Nations," Wikipedia, <https://en.wikipedia.org/wiki/Malaysia_and_the_United_Nations> (accessed 18 June, 2022).

¹⁶ UN Women, "Malaysia aims for more women in the workforce and greater support for single mothers", <<https://www.unwomen.org/en/get-involved/step-it-up/commitments/malaysia>> (accessed 18 June, 2022).

¹⁷ Karima El Korri, "Women's Empowerment Principles (WEPs) Activator Malaysia launch event," United Nations, <<https://malaysia.un.org/en/107990-womens-empowerment-principles-weeps-activator-malaysia-launch-event>> (accessed 22 June, 2022).

reported that Malaysia ranked 104th out of 149 countries in the WEF Global Gender Gap report in 2020, four places lower than its 2018 standing. It is reported that Malaysia registered another drop to the 112th position among 156 countries in 2021. In terms of economic participation and opportunity, Malaysia now ranks 104th, the lowest among ASEAN member states.¹⁸

Hence, as the status of women is a barometer of a country's prosperity, Malaysia must do better to realize women's full potential and need to remove the structural barriers to gender equality and women's empowerment. Malaysia needs to empower partnerships, make bold commitments, and have a common vision and practical solutions to achieve the 2030 Agenda. As a result, it is submitted that the WEP is a powerful framework for businesses of all sizes and sectors to achieve inclusive, sustainable development while also boosting their productivity, growth and innovation. After all, the framework is designed to provide businesses with a roadmap to achieving women's empowerment across their entire value chain.¹⁹

2.2.2 Human Rights Treaties Related to Women Employment

There are several international human rights treaties that contain provisions related to women employment. They are the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1996, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 and the Convention on the Rights of the Child (CRC) 1989.

¹⁸ Ibid.

¹⁹ Ibid.

2.2.2.1 Universal Declaration of Human Rights (UDHR) 1948

Since the proclamation of UDHR in 1948, it has become a well-known and most influential document. The declaration has a big influence on the entire world. The declaration has become a justification for actions done by the United Nations and many other international organisations. It has also become an inspiration for the preparation of international human rights instruments, both within and outside the United Nations system. It has also been incorporated or cited in national constitutions, municipal legislations and court decisions. Some of it has also become a yardstick to measuring the degree of respect for compliance with international human rights standards.²⁰

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.²¹

Article 2 of the UDHR states that all persons are entitled to all the rights and freedom provided in this declaration without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²²

The above quotation imposes that all states have a primary obligation to protect, promote and implement all human rights and fundamental freedom by adopting the required steps to create all requirements needed in the social, economic,

²⁰ Kurt Waldheim, *The United Nations and Human Rights* (New York: United Nations Publication, 1978), 24.

²¹ Universal Declaration of Human Rights 1948 (adopted 10 December 1948, UNGA Res 217 A (III) (UDHR)), Article 2.

²² Ibid.

political and other fields including the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedom in practice. All states should adopt legislative, administrative and other steps as may be necessary to make sure that the rights and freedom referred to in the present declaration are efficiently practised.²³

This article proclaims equal rights between men and women based on the phrase “without distinction of any kind, such as ... sex, ...” There was an extensive discussion on the use of the term “all men” during the drafting of the declaration. However, finally the terms “all human beings” and “everyone” were adopted in the declaration so as to ensure that the Universal Declaration was intended for everyone whether men or women.²⁴ In order to reflect the universality of the convention, it is dedicated to all human beings.

This means that all the rights given to men in this declaration are also meant to be given to women. Women have the same rights as men in all matters. This includes the right to employment. The right to employment is further conferred in Article 23 of the declaration:

- 1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

²³ UN Special Rapporteur on the situation of human rights defenders, “Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” 2011.

²⁴ United Nations Human Rights Office of the High Commissioner, *Women Rights are Human Rights*, (United Nations Publication, 2014).

(4) Everyone has the right to form and to join trade unions for the protection of his interests.²⁵

Article 23 of the declaration further states that all persons have the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.²⁶

Recognition of the right to work indicates equal access to employment, equal opportunities for promotion and equality in terms and conditions of work. Nowadays, women are given access to many jobs previously meant for men only. This can be obviously seen in the military. However, there are still limitations in many states on women serving on the front line, serving at sea and serving in submarines. Other than that, women also suffer from indirect discrimination.²⁷

Article 25 (2) is specifically for mothers and children where it states that motherhood and childhood are entitled to special care and assistance. The provision states:

2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.²⁸

The UDHR has indirectly assisted states to draft their constitutions as well as provide their own human rights policies. Nevertheless, the non-binding feature of the UDHR has its own weakness as it cannot compel states to domesticate those rights under the declaration. Thus, it lacks on the enforcement of those rights.

It has been suggested that one of the solutions for this is human rights culture in society. Human rights culture can be understood as contradiction to the theory of

²⁵ Universal Declaration of Human Rights 1948, Article 23.

²⁶ Ibid.

²⁷ Smith, 322.

²⁸ Universal Declaration of Human Rights 1948, Article 25 (2).

human rights associated with the traditions of natural law and natural rights.²⁹ It requires efforts from all parties rather than just relying on the declaration alone. Sufficient protection of human rights can only be achieved if states comply with their human rights responsibilities. The human rights culture can be imposed if judiciary, administration, the parliament and the media cooperate in promoting human rights issues and spread awareness to the people about their rights. Moreover, legislative checks can be done to make sure that human rights are considered during legislative processes. UDHR also should be given adequate legal power and enforcement mechanisms.

Malaysia did not sign the Universal Declaration of Human Rights when most Muslim nations did so in 1948. But as a member of the United Nations, it still has an obligation to uphold the principles of this declaration. The Malaysian parliament formally accepted the UDHR when the Human Rights Commission of Malaysia Act 1999 was passed. The Act calls for regard to be had to the UDHR to the extent that it is not inconsistent with the Federal Constitution.³⁰ The Federal Constitution protects fundamental liberties such as the right to life, equality, freedom of expression, association and assembly, and freedom of religion. The protected fundamental liberties echo some of the provisions found in the UDHR.

2.2.2.2 International Covenant on Civil and Political Rights (ICCPR) 1966

The covenant was adopted by the General Assembly of the United Nations on 19th December 1966 and came into force on 23rd March 1976.³¹ The covenant makes it

²⁹ Michael Allen, "Global Human Rights Culture", *Encyclopedia of Global Justice*, (2011), 417- 419.

³⁰ Prof Datuk Dr Denison Jayasooria, "Our constitution and human rights," New Straits Times, <<https://www.nst.com.my/opinion/columnists/2019/01/450208/our-constitution-and-human-rights>> (accessed 22 July 2022).

³¹ Waldheim, 28.

compulsory for all state members to protect and preserve all the rights laid down towards everyone living in their political authority without discrimination. The main rights are basic human rights including the right to life and human dignity, equality before the law and freedom of speech.

- 1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.³²

Article 2 prohibits discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³³

- 1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.³⁴

Article 23 mentions that the family is the natural and important element of society and is entitled to protection by society and the state.³⁵ Other provisions of the covenant also protect the family and its members. For instance, Article 17 of the covenant prohibits arbitrary or unlawful interference with the family.³⁶ To add, Article 24 of the covenant specifically states the protection of the rights of the child as a

³² International Covenant on Civil and Political Rights 1966 (adopted 16 December 1966, entered into force 23 March 1976 999 UNTS 171 (ICCPR)), Article 2.

³³ Ibid.

³⁴ Ibid., Article 23.

³⁵ Ibid.

³⁶ Ibid., Article 17.

member of a family.³⁷ However, in their reports, state parties often fail to give enough information on how the state and society are committing their responsibility to provide protection to the family.

The concept and the definition of “family” may differ from one state to another thus it is impossible to give a clear definition of “family.” Nevertheless, once a group is considered as a family, their rights should be protected by the society and the state.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³⁸

Article 26 further mentions that everyone is equal before the law and is entitled without any discrimination to the equal protection of the law. By that, the law should prohibit any discrimination and guarantee to everyone equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³⁹

Although there are many proposals made to the government to ratify ICCPR, the government still has not done so. The Human Rights Commission of Malaysia (SUHAKAM), for instance, wants Malaysia to accede to ICCPR. The media can be a medium in raising awareness on human rights. Thus, the media should be given the right of freedom of expression and opinion with some restrictions. The media must

³⁷ Ibid., Article 24.

³⁸ Ibid., Article 26.

³⁹ Ibid.

exercise the right with responsibility, courage and sense of purpose.⁴⁰ However, earlier it was made clear that Malaysia will only sign to ICCPR if it is beneficial to the nation as there are some items in the ICCPR, especially on religion that can lead to discomfort among races.⁴¹

This is due to the fact that several articles of the ICCPR are in conflict and not in line with the Shariah principles particularly concerning rights and freedom of religion and equality principles. Article 18 of the ICCPR allows for limitations on the freedom to manifest religion or belief only when such restrictions are legally prescribed and deemed essential for safeguarding public safety, order, health, morals, or the fundamental rights and freedoms of others. Nonetheless, restrictions cannot be enforced with discriminatory intent or applied in a discriminatory manner.

The Islamic human rights instruments include the Universal Islamic Declaration of Human Rights 1981 (UIDHR) and the Cairo Declaration Human Rights in Islam 2000 (CDHRI). The CDHRI assures rights akin to those outlined in the Universal Declaration of Human Rights. Malaysia, along with 44 other Muslim-majority OIC members such as Brunei, Bangladesh, Indonesia, and Pakistan, signed the CDHRI in 1990. The rights and freedoms articulated in the CDHRI are subject to Shariah principles.⁴²

Another reason for the impediment is because Civil and political rights are typically enshrined within the Federal Constitution of Malaysia, particularly in Part II, which pertains to Fundamental Liberties. This mirrors the characterisation by the Office of the UN High Commissioner for Human Rights (High Commissioner for

⁴⁰ Tan Sri Razali Ismail, "Malaysia should accede to ICCPR without further delay", *Malaysia Kini*, 3 May, 2017, <https://www.malaysiakini.com/letters/381059>.

⁴¹ Martin Carvalho, "Deputy Minister: Malaysia will sign ICCPR only if beneficial to nation", *The Star*, 3 December, 2013, <https://www.thestar.com.my/news/nation/2013/12/03/malaysia-iccpr-signatory/>.

⁴² Aishah Bidin and Shereen Khan, 32.

Human Rights) of the ICCPR as an elaboration of the civil and political rights delineated in the Universal Declaration of Human Rights (UDHR), incorporating essential civil and political rights and freedoms.⁴³

2.2.2.3 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1996

The covenant is a multi-lateral treaty adopted by the United Nations General Assembly on 16th December 1966 and came into force on 3rd January 1976.⁴⁴ ICESCR forms a part of the International Bill of Human Rights other than UDHR and ICCPR. ICESCR protects rights that are important to make sure everyone lives with dignity. The covenant covers crucial parts of public policy which include the right to work, the right to health and the right to education.

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.⁴⁵

Article 3 of the covenant provides that all state parties should ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights laid down in the present covenant.⁴⁶

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed

⁴³ Ibid., 58.

⁴⁴ Waldheim, 28.

⁴⁵ International Covenant on Economic, Social and Cultural Rights 1996 (adopted 16 December 1966, entered into force 3 January 1976 UNTS (ICESR)), Article 3.

⁴⁶ Ibid.

conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.⁴⁷

Article 7 of the covenant lays down that state parties to the present covenant recognise the right of every person to the enjoyment of just and favourable conditions of work. These are in turn explained as fair wages with equal pay for equal work, safe working conditions, equal opportunity in the workplace and sufficient rest and leisure.⁴⁸

It is a vital part among labour rights conferred in the covenant. Likewise, trade union rights, freedom of association and the right to strike are important means to introduce, maintain and defend just and favourable work conditions. Consequently, social security benefits to compensate for the lack of work-related payment are also an important element of labour rights. The enjoyment of the right to just and favourable conditions of work is also a pre-requirement for, and consequence of, the enjoyment of other covenant rights, for example, in ensuring the right to the maximum possible standard of physical and mental health by avoiding occupational accidents and illness and in allowing a sufficient standard of living through a reasonable wage.

The right to just and favourable conditions of work is a right of everyone, without distinction of any kind. The use of the term “everyone” means that the right applies to all workers including female and male, young and older workers, workers

⁴⁷ International Covenant on Economic, Social and Cultural Rights 1996, Article 7.

⁴⁸ Ibid.

with disabilities, workers in the informal sector, migrant workers, domestic workers, self-employed workers, and unpaid workers as well as all workers in all states, including free trade and export processing zones. The term “everyone” re-emphasises the general prohibition on discrimination in Article 2(2) and the equality provision in Article 3 of the covenant and is supported by the various references to equality and freedom from distinctions of any kind in Sub-articles 7(a) (i) and 7(c). In addition, Article 7 lists non-exhaustive elements to guarantee just and favourable conditions of work. The term “in particular” shows that other elements are also relevant.⁴⁹

The State Parties to the present Covenant recognize that -

2) Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.⁵⁰

Article 10 (2) specifies conditions of work for mothers. Special protection should be given to mothers during a reasonable period before and after childbirth. During such period, working mothers should be given paid leave or leave with adequate social security benefits.⁵¹

However, as mentioned earlier, the government still has not ratified the ICESCR. At the end of December 2015, there was a proposal made to the government to sign to ICESCR. The suggestion is made because of three reasons. Firstly, Malaysia can make improvements in areas that are lacking such as regulatory and legislative reforms, better enforcement as well as get international assistance and cooperation.

⁴⁹ “General discussion on the draft general comment on Article 7 of the ICESCR: Right to just and favourable conditions of work”, United Nations Human Rights, <<https://www.ohchr.org/EN/HRBodies/CESCR/Pages/Discussion2015.aspx>> (accessed 14 September, 2018).

⁵⁰ International Covenant on Economic, Social and Cultural Rights 1996, Article 10 (2).

⁵¹ Ibid.

Secondly, The ICESCR does not require immediate and full achievement of these rights as state parties have the discretion to allocate their resources as they seem fit, but this allocation should be in harmony with the spirit of the ICESCR and its underlying principles. Thirdly, enhancing governmental assurances to the people regarding the protection and advancement of our socio-economic rights would be highly beneficial. The rapid advancement of economic development coupled with the influence of free market dynamics has exacerbated income inequality and perpetuated poverty in numerous nations, intensifying social stratification and contributing to political unrest.⁵²

Despite the significant progress Malaysia has achieved in advancing gender rights and gender equality, there exist partial incompatibilities between the provisions of certain articles in the ICESCR and the current state of Malaysian law.

Paragraphs (a)(i) and (c) of Article 7 of the ICESCR ensure fair wages, equal remuneration, and equal opportunity in employment. Despite this, Malaysian statute law lacks explicit prohibitions against gender discrimination, except for Article 8 of the Federal Constitution. However, as discussed earlier, Malaysia's Federal Court has interpreted Article 8 to apply solely to government entities, excluding coverage of gender discrimination within the private sector.⁵³

The provision in Article 10(1) of the Covenant, which mandates protection and assistance to the family, is partially compatible with Malaysian law, as Malaysian law predominantly recognises traditional family structures. However, this compatibility is mitigated by Malaysia's ratification of the Convention on the Rights of the Child

⁵² Edmund Bon Tai Soon, "A modest proposal: A call for Malaysia to sign on to the ICESCR," *Malay Mail*, 16 December, 2015, <https://www.malaymail.com/news/malaysia/2015/12/16/a-modest-proposal-a-call-for-malaysia-to-sign-on-to-the-icescr/1023813>

⁵³ Shanmuga Kanesalingam and et al, *Research on the Compability of the International Covenant on Economic, Social and Cultural Rights* (Kuala Lumpur: Human Rights Commission of Malaysia (SUHAKAM), 2022), 10.

(CRC), which includes similar provisions for safeguarding children within the family unit. Therefore, this Article does not present an impediment to Malaysia's accession to the ICESCR.⁵⁴

State legislations in certain regions of Malaysia exhibit some level of inconsistency with the protection for all individuals to participate in cultural life, as outlined in Article 15(1)(a). Malaysia encompasses a blend of diverse cultures, religions and nationalities. However, there has been increasing pressure to embrace a restrictive interpretation of the Muslim faith and identity, which disregards the nation's rich cross-cultural heritage, marginalises religious minority groups, and overlooks the diverse spectrum within the Malay Muslim community.⁵⁵

2.2.2.4 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979

The adoption of CEDAW by United Nations in 1979 amounted to a landmark in the history of women's rights. The adoption was made during the Proclamation of the United Nations Decade for Women which was between 1975 to 1985.⁵⁶ Before that, there was no convention that comprehensively covers the rights of women in terms of politics, economy, culture, social and family life.⁵⁷

Article 1 of the convention gives the definition of “discrimination against women.” Discrimination against women, denying or limiting it as it does their equality of rights with men is totally unfair and amounts to an offence against human dignity.⁵⁸

⁵⁴ Shanmuga Kanesalingam and et al, 12.

⁵⁵ Ibid., 22.

⁵⁶ UN Women, “Short History of CEDAW Convention”, <<https://www.un.org/womenwatch/daw/cedaw/history.htm>> (accessed 13 November, 2022).

⁵⁷ Nelly P. Stromquist, *Women in the Third World: An Encyclopedia of Contemporary Issues*, (New York & London: Garland Publishing, Inc., 1998), 52.

⁵⁸ Smith, 195.

This concept of discrimination comes from the idea that women should not face developmental obstacles and therefore, be exposed to the full enjoyment of human rights as women.⁵⁹

This article implicitly states that there is a real and present difference between women and men in legal or moral status of citizens that obviously breaks down along gender lines although most of the times, women are considered as human beings. This situation which can be seen in domestic law, cultural and societal norms as well as international law should be taken into account in a serious manner.⁶⁰ Article 2 of CEDAW states:

State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

⁵⁹ Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection*, (New York: Oxford University Press, 2009), 360.

⁶⁰ Diana Zoelle, *Globalizing Concern for Women's Human Rights: The Failure of the American Model*, (New York: St. Martin's Press, 2000), 44.

(g) To repeal all national penal provisions which constitute discrimination against women.⁶¹

The above quotations impose that all state parties ban all types of discrimination against women and list down their main obligations. Among the responsibilities are they agree to incorporate the principle of equality in their constitution or alike, adopt legislation prohibiting discrimination against women, create a legal system which protects equal rights and abolish existing discriminatory legislation.⁶² With regards to regulation, Article 11 of CEDAW outlines matters of concern. The provision states:

1. State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

⁶¹ Convention on the Elimination of All Forms of Discrimination against Women 1979 (adopted 19 December 1979, entered into force 3 September 1981 UNTS (CEDAW)), Article 2.

⁶² Smith, 197.

- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.⁶³

The above quotations mention the protection against discrimination against women in employment which includes protection of health and safety at work, prohibition of dismissal during pregnancy and maternity leave, protection of maternity leave with pay, encouragement of social services which enable women to balance family responsibilities and work like child-care facilities and special protection against dangerous work during pregnancy.⁶⁴

Women's right to work authorises them to freely choose their work as well as safe and healthy environment, not depreciating to human dignity. Female workers must be assured a fair wage that leads to a decent life for them and their families. There should be no discrimination of any kind in employment including gender discrimination. Equal work should be compensated with equal pay and employers should provide their workers with periodic and paid holidays.⁶⁵ By including the term "marriage and maternity", working women in this article include working mothers. Working mothers must be provided with additional protection like paid maternity leave as well as protection against dangerous work during pregnancy.

⁶³ Convention on the Elimination of All Forms of Discrimination against Women 1979, Article 11.

⁶⁴ Ibid.

⁶⁵ IWRAW Asia Pacific and ESCR Net, "Claiming Women's Economic, Social and Cultural Rights," (n.p: Human Rights Council, n.d), 13- 14.

States must not discriminate against women or groups of women, in law as well as in practice. In addition, states have the responsibility to ensure women and men get the equal right to enjoy employment. However, prohibition against discrimination in law alone is not enough for states to satisfy this responsibility. States are obligatory to adopt proper legislative measures and amend or abolish current laws, customs and practices to prohibit discrimination against women, in both the public and private sectors.⁶⁶

CEDAW is considered as a needed addition to the rights and protections provided by ICCPR and ICESR. This is because both covenants fail to penetrate the public and private boundaries that operate to exclude women from the creation and development of the instruments and institutions that affect their daily lives. CEDAW offers a good enhancement of the covenants in which it provides women a remedy to the reductive tendencies inherent in Western liberal legal, social and economic theories as well as tendencies that have been re-established by the fundamental mainstream international human rights treaties.

CEDAW is the first international document offered for state ratification that deals with the status of women globally as a whole. Due to its specificity, CEDAW has suffered more substantive reservations than other international conventions including human rights conventions. CEDAW is different from other women's rights conventions in which it is comprehensive and focuses on the violation of women's rights without amending words that have been stated in previous international treaties.⁶⁷

⁶⁶ Ibid., 13.

⁶⁷ Zoelle, 35- 40.

One example of legal dispute related to CEDAW is *Elisabeth de Blok et al. v. the Netherlands Communication*.⁶⁸ The case involves six self-employed women from the Netherlands who gave birth between June 2005 and March 2006. Before 1st August 2004, the Netherlands had a scheme of mandatory public incapacity insurance for self-employed workers. Among the terms in the scheme was the right to maternity allowance without extra cost for at least 16 weeks around the date of the delivery. However, on 1st August 2004, the Netherlands passed a law which denied access of self-employed worker to that scheme. In 2008, this scheme was restored by the Act on Benefits in respect of Pregnancies and Delivery for Self-Employed Persons. Only the private sector provided insurance for loss of income during maternity leave for women who gave birth between 1st August 2004 and 4th June 2008. Five of the six applicants decided not to take the private insurance and the remaining applicant did take out the insurance but was denied maternity benefits due to the qualifying period. Therefore, the six applicants argued that the repeal of the scheme violated their right under Article 11 (2) (b) of CEDAW. They then sought for compensation from the Netherlands' government.

The Netherlands responded by arguing that the related provisions of CEDAW applied only to women in paid employment and not to self-employed women. "Appropriate measures" in the provision may involve a public scheme or private sector and the fact that private sector conditions are less attractive than a public scheme did not mean that the authorities have failed to provide sufficient provision on maternity leave. It was held by the committee that the provisions of the CEDAW are binding on the Netherlands. Thus, it was suggested that the Netherlands must provide suitable monetary compensation to the six complainants.

⁶⁸ *Elisabeth de Blok et al. v the Netherlands Communication*, No. 36/ 2012, UN Doc CEDAW/ C/ 57/ D/ 36/ 2012 (17 February 2014).

Malaysia had waited 16 years since the CEDAW had been established at the United Nations in 1979 before deciding to sign and ratify this convention. In 1995, Malaysia ratified CEDAW. At the Fourth World Conference on Women in Beijing, the head of the Malaysian delegation expressly mentioned dedication to review the reservations made to the convention. Consequently, steps were taken which resulted in the withdrawal of reservations for Articles 2(f), 9(1), 16(b), (d), (e) and (h) while declarations for Articles 5(a), 7(b), 9(2), 16(1)(a) and 16(2) were made. Other reservations remain due to the fact that they are in contravention with the provisions of Shariah law and the Federal Constitution of Malaysia.⁶⁹

For the purposes of the present Convention, the term "discrimination against women" 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.⁷⁰

It took another six years before Malaysia decided to review the provision in the Federal Constitution on discrimination. In 2001, after submissions from the Ministry of Women, Family and Community Development (KPWKM), SUHAKAM and women NGOs, the government decided to amend Article 8(2) of the constitution by including gender as a basis for non-discrimination. After Malaysia's ratification of CEDAW in 1995, it meant that Malaysia was obligated to ensure that there were no more discriminatory laws or practices against women both in the public and private sectors as well as in society at large.⁷¹ However, in reality, discrepancies still occur

⁶⁹ Ministry of Women, Family and Community Development, *Malaysia: Report to the United Nations Committee on the Elimination of Discrimination against Women*, (Kuala Lumpur: ISBN, 2004), 20.

⁷⁰ Convention on the Elimination of All Forms of Discrimination against Women 1979, Article 1.

⁷¹ SUHAKAM, *SUHAKAM'S Report on the Status of Women's Rights in Malaysia*, (Kuala Lumpur: SUHAKAM, 2010), 3-4.

within the private and even public sectors. In a roundtable discussion in 2008 and a workshop hosted by SUHAKAM in 2009, it was pointed out that there are corporate bodies in the private sector which still do not adhere to the principle of equal pay for equal work. In the public sector, although this principle is in force, some degrees of discrimination still occur in career mobility and job placement. In many public agencies it has been observed that the practice of considering the best MAN rather than the best PERSON for a promotion still exists. According to SUHAKAM, currently, there is a great deal of hype about too many females in certain professions, especially the teaching profession, leading to suggestions and maybe even unstated policy by now for the introduction of a quota system in the intake of women into these professions.⁷²

There are two cases that interfered with CEDAW in Malaysia, namely *Norfadilla Ahmad Saikin v. Chayed bin Basirun & 5 Ors*⁷³ and *Airasia Berhad v. Rafizah Shima bt. Mohamed Aris*.⁷⁴

In the case of *Norfadilla Ahmad Saikin v. Chayed bin Basirun & 5 Ors*, the plaintiff applied to the Education Office of the Hulu Langat District for the position as an untrained teacher. She was called for an interview and after receiving her placement, she was asked to attend a briefing on the terms of her service of employment to collect her placement notice. During the briefing, attendees were asked to come forward if any of them were pregnant. The plaintiff came forward and when she admitted that she was three months pregnant, her placement notice was retracted. She lodged a complaint to the Human Rights Commission of Malaysia (SUHAKAM), which inquired into the case. However, when the case was brought to court, the

⁷² Ibid., 4.

⁷³ *Norfadilla Ahmad Saikin v Chayed bin Basirun & 5 Ors* [2012] 1 MLJ 832.

⁷⁴ *Airasia Berhad v Rafizah Shima bt. Mohamed Aris* [2014] 5 MLJ 318.

commission ceased its investigation, pursuant to Section 12(2) (a) of the Human Rights Commission of Malaysia Act 1999. Section 12(2) (a) states that the commission shall not inquire into any complaint relating to any allegation of the infringement of human rights which is the subject matter of any proceedings pending in any court, including any appeals. Nevertheless, the commission held a watching brief in her case and made representation to the court on the government's obligations under CEDAW, to which Malaysia is party. The High Court held that the plaintiff should have been entitled to be employed even if she was pregnant. The revocation of her placement was therefore discriminatory, violated her constitutional rights against gender discrimination, unconstitutional and breached Malaysia's commitment and obligations as a state party to CEDAW.

In the case of *Airasia Berhad v. Rafizah Shima bt. Mohamed Aris*, the employee signed an agreement with Air Asia which contained Clause 5.1 (4), forbidding her from getting pregnant during the duration of a four-year aircraft maintenance engineering training programme she was chosen to undergo and if she got pregnant, it would be repudiation of the agreement. Air Asia terminated the agreement and her employment when it discovered that the employee became pregnant during the final year of the programme. The employee then applied to the High Court to declare that the clause is void as it is in breach of Articles 8 and 11 of the Federal Constitution as well as CEDAW.

The High Court allowed her application. On appeal, the appellant argued that as the dispute was between private parties and not a breach of an individual rights by a public authority, the provisions of the Federal Constitution had no application and that

principle was upheld by the Federal Court in the case of *Beatrice a/p AT Fernandez*⁷⁵. It was also argued that the court did not have to take into account the provisions of CEDAW when defining or determining gender discrimination just because Malaysia has signed and ratified the convention. The Court of Appeal allowed the appeal and set aside the decision by the High Court on three reasons. The first reason is Clause 5.1(4) of the agreement did not discriminate against the rights of women. All clauses in the agreement especially Clause 5.1(4) did not restrain marriage and/or prohibit pregnancy if the respondent had completed the training programme in the manner stipulated in the agreement. The second reason is CEDAW did not have the force of law in Malaysia because the same was not enacted into any local legislation. For a treaty to be operative and enforceable in Malaysia, it required legislation by parliament. Without express incorporation into domestic law by an Act of parliament following ratification of CEDAW, the provisions of the international obligations in CEDAW did not have any binding effect. Ratification alone did not make the provisions of treaties applicable to municipal law. Furthermore, in Malaysia, the Federal Constitution did not explicitly state whether international law or domestic law (municipal law) held precedence over the other. In cases of conflict between the two, the general principle followed was that domestic statutes would take precedence or prevail. The third reason is the High Court erred in law and facts in not following the Federal Court's decision in Beatrice's case. It was clear the agreement between the appellant and the respondent was a lawful contract between private parties. Beatrice's case essentially stipulated that constitutional law, as a branch of public law, only addressed the contravention of an individual rights by a public authority.

⁷⁵ *Beatrice A/P Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 2 CLJ 713.

From that, it can be concluded that in the cases of *Beatrice A/P Fernandez and Rafizah Shima*, the court noted that Article 8(1) only applies to an individual under the law and the collective agreement was governed by the private law, thus Article 8 could not be applied to these cases. On the other hand, in the case of *Norfadilla*, the party sued was the government. According to Malaysia's obligation under CEDAW, this case comprised of direct discrimination which used pregnancy to stop women from working and indirect discrimination whereby men and women were not treated equally. This decision was supported by SUHAKAM where the commission was of the view that the court's ruling that the act of revoking an offer of employment as a temporary teacher to a woman due to her pregnancy was unconstitutional and breached Malaysia's commitment and obligation as a state party to the CEDAW.⁷⁶

2.2.2.5 Convention on the Rights of the Child (CRC) 1989

CRC is an international treaty on the rights of all children regardless of their race, religion and abilities. The rights include civil, social, economic, political and cultural rights. Consisting of 54 articles, it protects the basic needs and supports the potential of every child of employed parents. The fundamental rights include the right to life, survive and develop, the right to education and protection against violence, abuse or neglect.

1. State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, State Parties shall render appropriate assistance

⁷⁶ SUHAKAM, *A Report to the United Nations Commission on Eliminating of Discrimination against Women on the Implementation of the CEDAW in Malaysia*, (Kuala Lumpur, 2014), 11.

to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. State Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.⁷⁷

Article 18 (1) of the convention states that state parties should recognise the principle that both parents have common responsibilities for the upbringing and development of the child and their basic concern is in the best interests of the child.⁷⁸

Article 18 (2) states that states parties should provide suitable support to parents and legal guardians in the performance of their childcare responsibilities and should ensure the development of institutions, facilities and services for the care of children.⁷⁹

Article 18 (3) further states that states parties should take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are entitled.⁸⁰

Both parents have joint responsibility in raising their children and should always consider the best interests of their children. States must respect the obligation of parents for providing proper guidance to their children. However, the convention does not take accountability for children away from their parents and gives more authority to states. It only puts a responsibility on states to provide support services to parents, especially if both parents work outside the home.

The Covenant further adds the responsibility of the government to offer appropriate assistance and resources to parents and legal guardians to help them

⁷⁷ Convention on the Rights of the Child 1989 (adopted 20 November 1989, entered into force 2 September 1990 UNTS (CRC)), Article 18.

⁷⁸ Ibid., Article 18 (1).

⁷⁹ Ibid., Article 18 (2).

⁸⁰ Ibid., Article 18 (3).

effectively care for their children as well as to establish and enhance institutions, facilities, and services dedicated to the care and well-being of children. Specifically, for working parents, the government should implement measures to guarantee that children of working parents can access suitable childcare services.

Malaysia acceded to the Convention on the Rights of the Child (CRC) in 1995. The government of Malaysia's ratification of the CRC particularly to Articles 2, 7, 14, 28(1)(a) and 37, which relate to the principle of non-discrimination, right to acquire a nationality, freedom of expression, thought, conscience, religion, right to education, and on torture and deprivation of liberty. In 2010, the government of Malaysia withdrew three earlier reservations to the CRC, namely Article 1 (definition of the child), Article 13 (freedom of expression) and Article 15 (freedom of assembly and participation).⁸¹

2.2.2.6 International Labour Organization (ILO) Conventions and Recommendations

The ILO is a United Nations agency that sets international labour standards and promotes social protection and employment opportunities for all people. It was founded in 1919. It has 187 member states. The headquarters of the ILO is Geneva, Switzerland.⁸² Malaysia has not ratified three conventions which are Convention No. 111, Convention No. 156 and Convention No. 183.⁸³

⁸¹ Wikipedia, "Children's rights in Malaysia," <https://en.wikipedia.org/wiki/Children%27s_rights_in_Malaysia> (accessed 16 June 2022).

⁸² International Labour Organization, <www.ilo.org> (accessed 24 November, 2018).

⁸³ Ibid., (accessed 29 November, 2018).

2.2.2.6.1 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

This convention concerns discrimination in respect of employment and occupation. It came into force on 15th June 1960.

The convention proscribes any distinction, exclusion or preference made on the basis of sex which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The convention defines the terms “employment” and “occupation” to include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.⁸⁴

Thailand ratified this convention on 13th June 2017. It is the 17th ILO convention that has been ratified by Thailand which came into force on 13th June 2018, 12 months after the ratification. Convention No. 111 is one of eight ILO fundamental conventions, of which Thailand has now ratified six, on the elimination of discrimination in respect of employment and occupation.

The ratification of Convention No. 111 is also in line with Thailand’s commitment to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The promotion of non-discrimination in employment is also reflective in Goals 5, 8 and 10 of the Sustainable Development Goals (SDGs), which seek to promote gender equality, decent work and economic growth, and reduced inequalities as well as the ILO’s agenda of decent work for all. Thailand has continued to promote non-discrimination in all aspects with the new Constitution B.E.2560 (2017) as the foundation. Other laws, including the Gender Equality Act B.E. 2558 (2015), have also been enacted to enhance and promote non-discrimination.

⁸⁴ Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (adopted 25 Jun 1958, entered into force 15 June 1960 NORMLEX C111).

It should also be highlighted that Thailand has enacted various laws on the protection of specific groups beyond what is required in Convention No. 111 including age, person with disabilities and undocumented migrants.⁸⁵

On the other hand, Malaysia has not ratified the convention. The reason for Malaysia not ratifying Convention No. 111 has never been made clear. However, it can be assuring that the right to equality is pertinent in Malaysia via the Federal Constitution. The report served to the Supervising Body of the ILO in 2010 explained that the principle of non-discrimination has been recognised in policy and practice as all Malaysians have been assured with equality of opportunity in the employment sector. The recognition is based on the right to equality under Article 8 of the constitution.⁸⁶ Further to an amendment in 2001, the constitution prohibits discrimination on the grounds of gender; however, there is no legislative reference to equal remuneration for work of equal value. In its correspondence with the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the government has answered that it has instructed its labour inspectors to address the issue of equal pay for work of equal value, but according to the CEACR, “it remains unclear how the Department of Labour ensures the application of the principle of equal remuneration in practice, particularly in the absence of any explicit legal provision.”⁸⁷ Identified as “unable to ratify or no intention to ratify at present”, the report in the year 2010 nonetheless stated that “much needs to be done before

⁸⁵ Royal Thai Embassy, Doha, “Thailand’s Ratification of ILO Convention No. 111 on Discrimination (Employment and Occupation), 1958,” <[https://doha.thaiembassy.org/en/content/78594-thailand%E2%80%99s-ratification-of-ilo-convention-no-111-on-discrimination-\(employment-and-occupation\),-1958?cate=5d7e40bb15e39c032c005710](https://doha.thaiembassy.org/en/content/78594-thailand%E2%80%99s-ratification-of-ilo-convention-no-111-on-discrimination-(employment-and-occupation),-1958?cate=5d7e40bb15e39c032c005710)> (accessed 7 November, 2022).

⁸⁶ Harlida Abdul Wahab, “The International Labor Standard on the Elimination of Discrimination in Employment: Response and Prospect of Malaysia”, *International Journal of Social, Management, Economics and Business Engineering*, vol. 7, no.6, (2013): 670.

⁸⁷ International Trade Union Confederation (ITUC), “Internationally Recognised Core Labour Standards in Malaysia”, https://www.ituc-csi.org/IMG/pdf/CLS_Malaysia_2010_clean_final_def.pdf (accessed 29 November, 2018).

Malaysia is ready to ratify Convention No. 111” and it prefers to comply with the spirit of the Convention through administrative measures which allow greater flexibility, rather than ratify the convention.⁸⁸

With the implementation of the 1998 Declaration that reaffirms the duty of all member states to promote and respect core fundamental rights, it seems that Malaysia has no way of avoiding the observance to the employment discrimination convention. The report by the ILO in 2012 showed the Malaysian government’s indication of the possibility to ratify the convention by having consultations with their social partners from among the employers and the employees. Accordingly, people may predict that Malaysia will, sooner or later, ratify Convention No. 111. In addition to this, Malaysia has many other policies that can be associated with non-discrimination and equal employment opportunity principles, for example, with the implementation of the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace which provides some guidelines to employers on the prevention and eradication of sexual harassment; one of the types of sex discrimination. The effort to initiate the National Policy on Women under the Department of Women Affairs of the Ministry of Women, Family and Community Development Malaysia is seen as a right instrument accountable to women issues, among others, to eliminate all forms of adverse discrimination on the basis of gender. With these efforts to promote equality, particularly with regards to gender issues, it is therefore anticipated that Malaysia is looking forward to ratifying Convention No. 111.⁸⁹ Therefore, it can be concluded that discrimination in employment is prohibited in Malaysia, even though there is no legislation on equal remuneration and women are under-represented in decision-making positions.

⁸⁸ Harlida Abdul Wahab, 670-674.

⁸⁹ Ibid.

2.2.2.6.2 Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

This recommendation supplements the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). It recommends every member to formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements or in any other manner consistent with national conditions and practice.

The policy should also adhere to the principles which are firstly, the promotion of equality of opportunity and treatment in employment and occupation as a matter of public concern; secondly, all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of access to vocational guidance and placement services, access to training and employment of their own choice on the basis of individual suitability for such training or employment, advancement in accordance with their individual character, experience, ability and diligence, security of tenure of employment, remuneration for work of equal value and conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment; thirdly, government agencies should apply non-discriminating employment policies in all their activities; fourthly, employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle; fifthly, in collective negotiations and industrial relations the

parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment; and finally, employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.⁹⁰

2.2.2.6.3 Workers with Family Responsibilities Convention, 1981 (No. 156)

This convention is about equal opportunities and equal treatment for male and female workers which came into force on 11th August 1983. It applies to male and female workers with responsibilities related to their dependent children where such responsibilities restrict their possibilities of joining economic activity. Article 3 (1) of the convention states:

With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.⁹¹

The above quotation provides that all members should create a national policy to enable persons with family responsibilities who are engaged or wish to engage in

⁹⁰ Discrimination (Employment and Occupation) Recommendation 1958, (No. 111) (adopted 25 June 1958 NORMLEX R111).

⁹¹ Workers with Family Responsibilities Convention 1981 (No. 156) (adopted 23 June 1981, entered into force 11 August 1983 NORMLEX C156), Article 3 (1).

employment to exercise their right to do so without being subjected to discrimination and without conflict between their employment and family responsibilities.⁹²

Human rights do not require women to earn societal recognition and protection through motherhood. As human beings, women are entitled to full protection of their rights, just like men. The objectives of societal and legal protection are to compensate for the biological difference between women and men where women bear children and men do not as well as to provide protection to women. This means that the protection is given due to the societal function of women.⁹³

Women have and continue to shoulder the burden of balancing work and family responsibilities. Conception, birth, child rearing and nurturing are women's concerns, which have not been recognized nor accommodated adequately in the workplace. A working woman having to balance work and family responsibilities is put into the position where she has to either choose one over the other or juggle them like a latter-day superwoman. Thus, being a good parent and a good employee has always been in conflict.⁹⁴ As a result, there has been a greater recognition of the need for family-friendly policies and legislations in other jurisdictions. The Canadian Supreme Court in the case of *Brooks v. Canada Safeway Ltd.*,⁹⁵ noted that as pregnancy and child bearing are fundamental social needs, it was discriminatory to place the burden on only one segment of the population. In this case as only women could be refused employment on the grounds of pregnancy, such a refusal constituted direct discrimination on the grounds of sex. In fact, specific pregnancy rights have been developed such as protection from dismissal or detrimental treatment, maternity

⁹² Ibid.

⁹³ Asbjørn Eide, Catarina Krause and Allan Rosas, *Economic, Social and Cultural Rights*, (London: Martinus Nijhoff Publishers, 1995), 281.

⁹⁴ Grace James, "All That Glitters Is Not Gold: Labour's Latest Family-Friendly Offerings," *Web Journal of Current Legal Issues*, (2003).

⁹⁵ *Brooks v Canada Safeway Ltd* [1989] 1 SCR1219.

leave, benefits and pay, health rights including time off for ante-natal care and protection from safety and health risks in the workplace during pregnancy. This rights approach as opposed to the equality treatment approach removes the need to find a male comparator and can exist independently of the need to establish equality.⁹⁶

2.2.2.6.4 Workers with Family Responsibilities Recommendation, 1981 (No. 165)

The issue of balancing work and family responsibilities was first discussed in Workers with Family Responsibilities Recommendation, 1965 (No. 123). After a few years, this recommendation was revised by Workers with Family Responsibilities Recommendation, 1981 (No. 165).⁹⁷ This is due to the need to have efficient and equal protection between male and female workers with family responsibilities and between them and other workers. The latter recommendation aims at dealing with this issue in a wider view.⁹⁸ This Recommendation No. 165 supplements the ILO Convention No. 156 by outlining more concrete actions that can be taken by countries to enhance the reconciliation of work and family life. It spells out in more detail than the convention, but within the framework of the national policy, the need to avoid discrimination against workers with family responsibilities and to enable them to combine work with family responsibilities. All actions compatible with national conditions and possibilities should be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities. All actions

⁹⁶ Jashpal Kaur Bhatt, "Gender Discrimination in Employment - How far does Article 8 of the Federal Constitution guarantee gender equality?" in 13th Binneal Malaysian Law Conference 2005 organised by Bar Council of Malaysia (Kuala Lumpur: Research Gate, November 2008), 10.

⁹⁷ Workers with Family Responsibilities Recommendation, 1981 (No. 165) (adopted 23 June 1981 NORMLEX R165).

⁹⁸ Prof. N. Valticos and Prof. G. Von Potobsky, *International Labour Law*, (Netherlands: Kluwer Law and Taxation Publishers, 1995), 215.

compatible with national conditions and possibilities and with the reasonable interests of other workers should be taken to make sure that terms and conditions of employment enable workers with family responsibilities to balance their employment and family responsibilities. It further notes measures that relate to training and employment; terms and conditions of employment; childcare, family services and facilities; social security and help in the exercise of family responsibilities. Childcare and family services, and facilities of all types should comply with standards laid down and supervised by proficient authorities.

2.2.2.6.5 Maternity Protection Convention, 2000 (No. 183)

Maternity protection was first discussed in the Maternity Protection Convention, 1919 (No. 3) and ratified by 31 states. This convention then was revised by the Maternity Protection Convention, 1952 (No. 103) and ratified by 31 states also. The former convention applied to industry and commerce while the latter convention applied to industry, non-industrial occupations including domestic work and agriculture jobs.⁹⁹ After eight years, the Maternity Protection Convention, 1952 (No. 103) was revised by the Maternity Protection Convention, 2000 (No. 183). The Maternity Protection Convention, 2000 came into force on 7th February 2002. This convention applies to all working women including those in typical forms of dependent work:

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has

⁹⁹ Valticos and Potobsky, 204.

established a significant risk to the mother's health or that of her child.¹⁰⁰

In Article 3 of the convention, each member should implement proper measures to make sure that pregnant or breastfeeding women are not obliged to carry out jobs which are harmful to the health of the mother or the child or where an assessment has established a significant risk to the mother's or the child's health.¹⁰¹

1) On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.¹⁰²

Article 4 (1) states that a working woman shall be entitled to a period of maternity leave of not less than 14 weeks.¹⁰³

On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.¹⁰⁴

Article 5 further states that leave should be given before or after the maternity leave period due to illness, complications or risk of complications as a result of pregnancy or childbirth.¹⁰⁵

Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to

¹⁰⁰ Maternity Protection Convention 2000 (No. 183) (adopted 15 June 2000, entered into force 7 February 2002 NORMLEX C183), Article 3.

¹⁰¹ Ibid.

¹⁰² Maternity Protection Convention 2000, Article 4 (1).

¹⁰³ Ibid., Article 4.

¹⁰⁴ Ibid., Article 5.

¹⁰⁵ Ibid.

women who are absent from work on leave referred to in Articles 4 or 5.¹⁰⁶

Article 6 provides for cash benefits or allowances to women who are absent from work on leave mentioned in Articles 4 or 5.¹⁰⁷

1) It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

2) A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.¹⁰⁸

Under Article 8, it is unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving should lie on the employer. In addition, a woman is assured the right to return to the same position or an equivalent position paid at the similar rate at the end of her maternity leave.¹⁰⁹

1) A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

2) The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction

¹⁰⁶ Maternity Protection Convention 2000, Article 6.

¹⁰⁷ Ibid.

¹⁰⁸ Maternity Protection Convention 2000, Article 8.

¹⁰⁹ Ibid.

of daily hours of work shall be counted as working time and remunerated accordingly.¹¹⁰

Article 10 specifies on breastfeeding mothers. A woman should be given the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child. These breaks or the reduction of daily hours of work should be calculated as working time and paid accordingly.¹¹¹

Switzerland ratified the convention on 4th June 2014 which made the country the 29th country that ratified the convention. The new commitment to the ILO standards is vital because it indicates Switzerland's determination to act on its obligation to optimise social conditions and to encourage women to join employment. As an impact of the ratification, Switzerland provides law on maternity leave of 14 weeks.¹¹²

Likewise, Germany also ratified the convention on 30th September 2021 and became the 40th country that ratified the convention. Many women around the world are still facing the discrimination of violence and harassment due to pregnancy, maternity and their family responsibilities. By ratifying the convention, Germany is showing its commitment to fight against discrimination of working women worldwide.

The ratification of the convention by Germany encourages balance between work and family life for pregnant and breastfeeding women by emphasising the importance of maternity protection. Ratification enables Germany to participate more

¹¹⁰ Maternity Protection Convention 2000, Article 10.

¹¹¹ Ibid.

¹¹² International Labour Organization, "Ratifications of C183 - Maternity Protection Convention, 2000 (No. 183)," <https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENTID:312328,https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312328> (accessed 8 November, 2022).

effectively in the international debate on maternity protection and helps to advance maternity protection both in Germany and in other countries.

The ratification by Germany of the convention sets standards of utmost importance for the achievement of gender equality in the working world. Strengthening maternity protection in all its scope is more than ever needed, in view of the negative impact that the COVID-19 crisis has left on jobs, livelihoods and national healthcare systems, which have particularly affected women. By promoting the health, safety and well-being of pregnant women, new mothers and newborns, the convention contributes to building a better and brighter future.

There is a specific law that governs maternity in Germany. It is the Maternity Protection Act 1979. According to the Act, pregnant and breastfeeding working women are prohibited from work which creates risks to their safety and health. The risks should be assessed and adjusted by the employers to suit the conditions of the working women who are pregnant and breastfeeding.¹¹³ There are certain works specified in the Act that are prohibited to be done by breastfeeding mothers which include work where pregnant employees are exposed to the effects of harmful agents, piece-work and work similar to piece-work.¹¹⁴ Pregnant women are also prohibited to work during the last eight weeks immediately prior to the presumed date of confinement. Working mothers are also prohibited to be employed during a period of eight weeks following childbirth. In the case of premature births, multiple births or caesarean section births, this period shall be at least 12 weeks.¹¹⁵

Under the same Act, expecting mothers cannot be discriminated against when applying for jobs and they are provided with added protection from being dismissed

¹¹³ Maternity Protection Act (Mutterschutzgesetz, MSchG) 1979, s 2b.

¹¹⁴ Ibid., s 4a.

¹¹⁵ Ibid., s 5.

from work as a result of their pregnancy or arrival of their newborn child.¹¹⁶ For breastfeeding mothers, the law provides breaks to breastfeed upon request. The breaks should be 45 minutes on days when the employee works for more than four and a half hours and if the breastfeeding mothers works for eight or more hours, the time off for breastfeeding should be split into two breaks of 45 minutes each. If there is no breastfeeding facility at the workplace, a period of 90 minutes should be granted for breastfeeding. The breaks for breastfeeding should be granted without loss of pay.¹¹⁷

In Germany, pregnant women who work in the country are legally entitled to 14 weeks of maternity leave which include at least six weeks before and eight weeks after childbirth. Pregnant women are also entitled to 18 weeks of maternity leave in the event of a premature birth, multiple births, or if their child is found to have a disability.¹¹⁸

Meanwhile, in Malaysia, many organizations including Wanita Industrial Malaysia (WIM), representing thousands of female workers in the manufacturing sector in West Malaysia, have urged the government to immediately ratify Convention 183 of the International Labour Organization (ILO) for the protection of women's rights pertaining to maternity leave which requires the government to guarantee 98 days (or 14 weeks) of paid maternity leave. As of May 2016, some 32 countries have ratified the convention but Malaysia is not one of them. In comparison to neighbouring countries, paid maternity leave in the Philippines is 105 days, while that in Thailand is 98 days. Hence, it is time for Malaysia to assume greater responsibility for pregnancy and maternity protection at the workplace, particularly as international

¹¹⁶ Ibid., chapter 4.

¹¹⁷ Ibid., s 9.

¹¹⁸ *International Labour Organization*, "Ratifications of C183 - Maternity Protection Convention, 2000 (No. 183)," <https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312328> (accessed 8 November, 2022).

instruments require such undertakings by the ratifying states.¹¹⁹ The great news is Malaysian women workers will now enjoy 98 days of maternity leave and their husbands will be entitled to one-week paternity leave after the amendments made to the Employment (Amendment) Act 2022. Many parties have welcomed the increased maternity leave and introduction of paternity leave, but the government should also ratify the ILO Convention 183 on maternity protection since domestic law will soon be in compliance with the international standard. The Amendment Act also introduced new provisions on prohibition of forced labour, discrimination in employment, prohibition of termination of pregnant women workers, sexual harassment at the workplace and flexible working arrangements. Apart from that, the weekly hours of work have also been reduced from 48 to 45 hours per week.¹²⁰

2.2.2.6.6 Maternity Protection Recommendation, 2000 (No. 191)

Members should make an effort to extend the period of maternity leave stated in Article 4 of the convention to at least 18 weeks. There should be provision made for an extension to the maternity leave for multiple births. Not only that, the woman should also be entitled to choose freely the time at which she takes any non-obligatory part of her maternity leave, before or after childbirth.

The cash benefits to which a woman is entitled to during leave referred to in Articles 4 and 5 of the convention should be raised to the full amount of the woman's previous remunerations or of those remunerations which are considered for the purpose of calculating benefits.

¹¹⁹ Bhatt, "Pregnancy and Maternity Entitlements under the Employment Act 1955: Are Women Workers in Malaysia Being Short-changed?", 13.

¹²⁰ Employment (Amendment) Act 2022 (Act A1651).

Recommendation No. 191 provides for the adaptation of a pregnant or breastfeeding woman's working conditions in order to reduce particular risks. Members should take measures to ensure valuation of any workplace risks related to the safety and health of the pregnant or nursing woman and her child. The results of the valuation should be made available to the woman concerned. When it is safe for her to do so, the woman should retain the right to return to her job or an equivalent one paid at the same rate. She should also be allowed to leave her workplace, if necessary and after notifying her employer, for medical examinations related to the pregnancy.¹²¹

The frequency and length of nursing breaks should be adapted to particular needs.¹²² Overall, many states have adopted specific legislation promoting equality and prohibiting discrimination in employment and many national constitutions have provided for such equality. Recent focus has shifted towards governments' active responsibility to prevent discrimination and promote equality. Nonetheless, the laws are not applied consistently and thus, the current emphasis is on the enforcement of the laws.¹²³

2.2.3 Beijing Declaration and Platform for Action 1995

The Beijing Declaration and Platform for Action is a worldwide commitment in reaching equality, development and peace for women in the entire world. It was adopted by the United Nations in September 1995 during the Fourth World

¹²¹ Sara Charlesworth and Alison Elder, "Convention No. 156 and Recommendation No. 165: Australia" in *Good practices and challenges on the Maternity Protection Convention, 2000 (No. 183) and the Workers with Family Responsibilities Convention, 1981 (No. 156): A Comparative Study*, edited by Cruz, (Geneva: International Labour Organization, 2012), 79-102.

¹²² Maternity Protection Recommendation 2000 (adopted 15 June 2000 NORMLEX R191), Article 4 & 5.

¹²³ International Labour Organization, *ABC of Women Workers Right and Gender Equality Second Edition*, (Geneva: International Labour Office, 2007), 12.

Conference on Women. It was set up upon agreement and progress made during earlier UN conferences specially the Conference on Women in Nairobi in 1985.

Paragraph 106 (p) of the Beijing Declaration and Platform for Action 1995 states:

Strategic objective C.1. Increase women's access throughout the life cycle to appropriate, affordable and quality health care, information and related services.

Actions to be taken -

106. By Governments, in collaboration with non-governmental organizations and employers' and workers' organizations and with the support of international institutions:

(p) Formulate special policies, design programmes and enact the legislation necessary to alleviate and eliminate environmental and occupational health hazards associated with work in the home, in the workplace and elsewhere with attention to pregnant and lactating women;¹²⁴

The above quotation calls for governments and partners to create special policies, plan programmes and enact the legislation needed to lessen and eradicate environmental and occupational health hazards associated with work in the home, in the workplace and in any places emphasising pregnant and lactating women. The aim of this paragraph is to increase women's access throughout the life cycle to appropriate, affordable and quality healthcare¹²⁵. Meanwhile, Paragraph 179 (c) of the Beijing Declaration and Platform for Action 1995 states:

Strategic objective F.6. Promote harmonization of work and family responsibilities for women and men.

Actions to be taken -

179. By Governments:

(c) Ensure, through legislation, incentives and/or encouragement, opportunities for women and men to take job-protected parental leave and to have parental benefits; promote the equal sharing of

¹²⁴ Beijing Declaration and Platform for Action 1995 (adopted September 1995), paragraph 106 (p).

¹²⁵ Ibid.

responsibilities for the family by men and women, including through appropriate legislation, incentives and/or encouragement, and also promote the facilitation of breast-feeding for working mothers;¹²⁶

The above quotation calls on governments to make sure, through legislations, incentives and/or encouragement, opportunities for women and men to take job-protected parental leave and to have parental benefits. In addition, actions should be taken by governments to promote the equal sharing of responsibilities for the family by men and women including through proper legislations, incentives and/or encouragement and also to promote the assistance of breastfeeding for working mothers. The aim of this paragraph is to promote balance between work and family responsibilities for both women and men.¹²⁷

Among the accomplishments of the declaration is increased participation of women in the labour market and subsequent gain in economic autonomy. Some governments have introduced a variety of measures that address women's economic and social rights, equal access to and control over economic resources and equality in employment. Other than that, some governments have also ratified international labour conventions and enacted legislation to make it compatible with these conventions. The awareness on the need to reconcile employment and family responsibilities has also increased. There is also increased awareness on the positive effect of such measures as maternity and paternity leave and also parental leave, and child and family care services and benefits. Some governments have made provisions to address discriminatory and abusive behaviour in the workplace and to prevent unhealthy working conditions.

¹²⁶ Ibid., paragraph 179 (c).

¹²⁷ Ibid.

Nonetheless, according to the Beijing Declaration and Platform for Action, the current situation in the world is that the importance of a gender perspective in the development of a macro-economic policy is still not widely recognised. Many women still work in rural areas and the informal economy as subsistence producers, and in the service sector with low levels of income and little job and social security. Many women with comparable skills and experience are confronted with a gender wage gap and lag behind men in income and career mobility in the formal sector. Equal pay for women and men for equal work, or work of equal value, has not yet been fully realised. Gender discrimination in hiring and promoting and that related to pregnancy, including through pregnancy testing, and sexual harassment in the workplace persist. Progression in the professions, in most cases, is still more difficult for women, due to the lack of structures and measures that take into account maternity and family responsibilities. In some cases, persistent gender stereotyping has led to a lower status of male workers who are fathers and to insufficient encouragement for men to reconcile professional and family responsibilities. Lack of family-friendly policies regarding the organization of work multiplies these difficulties. Effective implementation of legislation and practical support systems is still inadequate. The combination of remunerated work and caregiving within families, households and communities still leads to a disproportionate burden for women since there is insufficient sharing of tasks and responsibilities by men. It is still also women who perform the larger part of unremunerated work.¹²⁸

The government of Malaysia reaffirmed its commitment to improve the status of women at the Beijing Fourth World Conference on Women. Malaysia prepared its report to the conference which outlines the enabling environment for the advancement

¹²⁸ UN Women, *Beijing Declaration and Platform for Action: Beijing+5 Political Declaration and Outcome*, (New York: UN Women, 2014), 224 – 225.

of Malaysian women, a review of the situation of women in the early 1980s prior to the Nairobi Conference, changes that have taken place since the Nairobi Conference in the context of the seven critical areas of concern; and future strategic goals and objectives.¹²⁹

The seven critical areas of concern serve as a framework for governments and stakeholders to develop policies and initiatives to advance gender equality and women's rights. As outlined in the Beijing Declaration and Platform for Action, they are:

- i. Women and poverty: This area focuses on addressing the disproportionate impact of poverty on women, ensuring access to resources, education, and economic opportunities to uplift women out of poverty.
- ii. Education and training of women: It emphasises on equal access to quality education and training for women and girls, aiming to eliminate gender disparities in education and promote lifelong learning opportunities for women.
- iii. Women and health: This area focuses on promoting women's health and well-being, including access to reproductive health services, family planning, maternal healthcare, and addressing gender-based violence and discrimination in healthcare settings.
- iv. Violence against women: It aims to eliminate all forms of violence against women and girls, including domestic violence, sexual harassment, trafficking, and harmful traditional practices, by

¹²⁹ Aminah Ahmad, "Country Briefing Paper: Women in Malaysia," paper for the Programs Department and Social Development Division (SOCDD) (December 1998), 50.

strengthening legal frameworks, providing support services, and raising awareness.

- v. Women and armed conflict: This area addresses the impact of armed conflict on women and girls, including sexual violence, displacement, and lack of access to humanitarian aid and justice. It emphasises on the importance of women's participation in conflict prevention, peacebuilding, and post-conflict reconstruction.
- vi. Women and the economy: It focuses on promoting women's economic empowerment, including equal pay, access to finance, land rights, and entrepreneurship opportunities, as well as addressing the informal sector and unpaid care work.
- vii. Women in power and decision-making: This area aims to increase women's representation and participation in decision-making processes at all levels of society, including in politics, governance, and leadership roles, by removing barriers and promoting affirmative action measures.¹³⁰

The report notes the progress made by women in the areas of education, health, labour market participation, participation in power sharing and decision-making, enactment of laws and legal policies and strategies to improve women's socio-legal status. The report also notes that all the recommendations envisaged in the action plan for the implementation of the national policy on women are in line with the macro-policies of the national development plans, Vision 2020, and the World Platform for Action endorsed at the Beijing World Conference.¹³¹

¹³⁰ UN Women, "12 Critical Areas", <<https://www.unwomen.org/en/news/in-focus/csw59/feature-stories>> (accessed 8 March, 2024).

¹³¹ Aminah Ahmad, 50.

The report acknowledges that while it appears that women have made significant advances in all aspects of private and public life, as reflected by the overall status of women in the country, detailed analysis of the participation of women in all spheres of development reveals the continuous existence of obstacles and constraints to the fullest utilization of women's potential. Women's position, the report acknowledges, relative to men, remains less than satisfactory. Women still lag behind, particularly in assuming political power, leadership roles, legal standing and employment. These issues have been identified and strategies to address these, included in the action plan. The five main strategies for the action plan are to strengthen the national machinery to address women's issues, to re-orient the institutional process for the planning, implementation and monitoring of government policies and programmes to accommodate women's concerns, to raise public awareness and sensitize government's bureaucracy with regards to women's concerns, to activate NGOs in order to increase the efficiency and effectiveness of socio-economic programmes and to redress problems of discrimination and promote affirmative action for the benefit of women in particular.

The government of Malaysia's acceptance of the plan demonstrates its commitment towards a fundamental shift in development policies that would adequately address the realities of women's lives and actively assist women in gaining equal access to resources, wages, employment, healthcare, education, personal autonomy and decision-making.¹³²

During this conference, Malaysia had also committed to increasing women's participation in decision-making. In 2004, in one of the steps taken to fulfil that commitment, the government adopted a policy that requires women to be in at least

¹³² Ibid., 51.

30% of decision-making positions. Though it comes almost ten years after the Beijing Conference, this policy is a mark of the government's recognition of Malaysian women's significant contribution to the country's development efforts and if effectively implemented, should help reduce the gender imbalance at the decision-making level.¹³³

2.2.4 World Health Assembly (WHA) Resolution: WHA 55.15 Global Strategy for Infant and Young Child Feeding 2002

The World Health Organisation (WHO) is a specialised agency that deals with matters relating to the right to health specially regarding disaster relief and drug abuse control while the World Health Assembly (WHA) is the WHO's policy-making body.¹³⁴ WHA is attended by delegations from all WHO member states. The main functions of the WHA are to list out the policies of WHO, appoint the Director-General, observe financial policies and analyse and approve the proposed programme budget. The WHA is held every year in Geneva, Switzerland.

Numerous WHA resolutions on infant and young child feeding explicitly mention maternity protection at the workplace. These include the resolutions adopted in 1990, 1992, 2001 and 2002; the most recent is the year of the adoption of the Global Strategy on Infant and Young Child Feeding. The WHA Global Strategy contains several paragraphs relevant to maternity protection, especially related to breastfeeding and to the specific roles of the government and other stakeholders in

¹³³ SUHAKAM, Suhakam's Report on the Status of Women's Rights in Malaysia, 38.

¹³⁴ Waldheim, *The United Nations and Human Rights* (New York: United Nations Publication, 1978), 77.

relation to legislations and policies for working mothers and fathers. The WHA Global Strategy was adopted by UNICEF's Executive Board in 2002.¹³⁵

The Global Strategy is based on the respect, protection, facilitation and fulfilment of accepted human rights principles as rooted in the convention on the Rights of the Child (CRC) and in other international documents. It aims to improve, through optimal feeding, the nutritional status, growth, development, health and survival of infants and young children. Its objectives are to raise awareness of the problems affecting infant and young child feeding; to increase the commitment of governments, international agencies and other concerned parties; to create an environment that enables mothers, families and all caregivers to make informed choices about feeding; and to offer a guide for action. It requests for the intensive efforts and collaboration of all concerned, necessitates political will and public investment, calls for the awareness of health workers, as well as for the involvement of families and communities.

The Global Strategy reiterates, as a public health recommendation, that infants should be exclusively breastfed for the first six months of life and receive thereafter nutritionally adequate and safe complementary foods while still breastfeeding until the age of two. To enable this, women have to be supported by their family, their community, at the workplace with accurate information, given skilled practical help, psychological assistance and maternity protection legislation in meeting the standard of ILO Convention 183.

Regarding maternity protection at the workplace, the strategy mentions the issue in several paragraphs which are Paragraphs 4, 12, 28, 34, 45, 46, and 48:

¹³⁵ International Labour Organization, *Maternity Protection Resource Package: From Aspiration to Reality for All*, (Italy: ISBN, 2012), 5- 6.

Paragraph 4 of the Resolution states that maternity protection legislation should include all working women in agricultural, formal and informal sectors.¹³⁶

Paragraph 12 provides for specific measures of protection. Women in paid employment can be assisted to continue breastfeeding by providing them minimum enabling conditions like paid maternity leave, part-time work arrangements, on-site scenes, conveniences for expressing and storing breastmilk and breastfeeding breaks.¹³⁷

Paragraph 28 re-emphasises the role of governments on that. Mothers should also be able to continue breastfeeding and caring for their children after they return to paid employment. This can be accomplished by implementing maternity protection legislation and related measures consistent with the ILO Maternity Protection Convention 2000 No. 183 and Maternity Protection Recommendation 2000 No. 191. Maternity leave, day-care facilities and paid breastfeeding breaks should be available for all women working outside the home.¹³⁸

Paragraph 34 of the resolution states that a complete national policy based on a thorough needs assessment should nurture an environment that protects, promotes and supports appropriate infant and young child feeding practices.¹³⁹

Paragraph 45 provides for the role of employers. Employers should ensure that maternity rights of all women in paid employment are met including breastfeeding breaks or other workplace arrangements like facilities for expressing and storing breastmilk for later feeding by a caregiver in order to facilitate breastfeeding once paid maternity leave is over.

¹³⁶ World Health Assembly Resolution (adopted 2019, entered into force 1 January 2022), paragraph 4.

¹³⁷ Ibid., paragraph 12.

¹³⁸ Ibid., paragraph 28.

¹³⁹ Ibid., paragraph 34.

Paragraph 46 re-emphasises on childcare facilities which permit working mothers to care for their infants and young children and assist them in continued breastfeeding.¹⁴⁰

Paragraph 48 is for international organizations to give specific contributions in facilitating the work of governments including supporting policy development and promotion, advocating ratification of ILO Maternity Protection Conventions, 2000 No. 183 and application of Recommendation 2000 No. 191 including for women in unusual forms of dependent work.¹⁴¹

The World Health Assembly (WHA) comprises 194 member states and is the highest decision-making body governing the World Health Organisation (WHO). Besides Malaysia, the WHO's Western Pacific Region comprises 36 other member countries that include Australia, New Zealand, Singapore, Japan, Brunei, Cambodia, China and the Philippines. Malaysia is also currently serving on the executive board of WHO from 2021 until 2024.¹⁴² Among the steps that have been taken by Malaysia is the Malaysian Breastfeeding Policy that was revised in 2005 in accordance with the 2002 World Health Assembly Resolution 54.2, following the recommendation by the World Health Organization that all infants be exclusively breastfed from birth to six-months of age, followed by the gradual introduction of other forms of nutrition; meanwhile, breastfeeding should continue into the second year.¹⁴³

¹⁴⁰ Ibid., paragraph 45.

¹⁴¹ Ibid., paragraph 48.

¹⁴² Dhesegaan Bala Krishnan, "Malaysia elected vice-president of 75th World Health Assembly," New Straits Times, <<https://www.nst.com.my/news/nation/2021/10/740089/malaysia-elected-vice-president-75th-world-health-assembly>> (accessed 18 March 2022).

¹⁴³ World Health Organization, *Infant and Young Child Nutrition*, (Geneva, 2002).

2.2.5 Innocenti Declarations 1990 and 2005

In August 1990, WHO, UNICEF and other international organisations sat together and signed the Innocenti Declaration. The objective of the declaration is to protect, support and promote breastfeeding.

The declaration endorsed at the 45th World Health Assembly states that by the year 1995, governments should have reached the following four operational targets. Target 1 is to appoint a national breastfeeding coordinator of appropriate authority and establish a multi-sectoral national breastfeeding committee composed of representatives from relevant government departments, non-governmental organisations and health professional associations.¹⁴⁴ Target 2 is to ensure that every facility providing maternity services fully practises all ten of the “Ten Steps to Successful Breastfeeding”.¹⁴⁵ Target 3 is to take action to give effect to the principles and aims of all articles of the International Code of Marketing of Breastmilk Substitutes and subsequent relevant World Health Assembly resolutions in their entirety.¹⁴⁶ Target 4 is to enact imaginative legislation protecting the breastfeeding rights of working women and establish means for its enforcement.¹⁴⁷

In 2005, the Innocenti Declaration on Infant and Young Child Feeding was adopted by UNICEF, WHO and several NGOs. While reinforcing the four original targets, it adopted five new ones. Target 5 is comprehensive policy.¹⁴⁸ Target 6 is optimal breastfeeding, with attention to supporting women in the community.¹⁴⁹ Target 7 is complementary feeding with continued breastfeeding.¹⁵⁰ Target 8 is infant

¹⁴⁴ Innocenti Declaration 1990 and 2005, target 1.

¹⁴⁵ Ibid., target 2.

¹⁴⁶ Ibid., target 3.

¹⁴⁷ Ibid., target 4.

¹⁴⁸ Ibid., target 5.

¹⁴⁹ Ibid., target 6.

¹⁵⁰ Ibid., target 7.

feeding in exceptionally difficult circumstances.¹⁵¹ Target 9 is new legislation and other measures.¹⁵²

Enacting employment law that protects the right to breastfeed among working mothers is the best mechanism to ensure compliance with the Innocenti Declaration 1990, along with guidance on how to support breastfeeding at the workplace. To protect these rights, significant reform towards the existence of supportive workplace environments is required.¹⁵³ Therefore, in Malaysia, the Ministry of Health encourages various sectors to provide baby-friendly infrastructure in hospitals, public places and workplaces. The Baby-Friendly Hospital Initiative programme was implemented in 1992. For example, Penang Adventist Hospital is a member of the Health Promoting Hospital Network (HPH) – the very first hospital in Malaysia, since January 2013. Initiated by the World Health Organization, the mission of HPH network is to improve the quality of healthcare of both hospital patients and staff through evidence-based health promotion services. As an accredited HPH hospital, Penang Adventist Hospital strives to achieve better health gain for patients and staff with an integrated and comprehensive health promotion services. The Baby-Friendly Hospital Initiative (BFHI) was launched by the World Health Organisation (WHO) and United Nations Children’s Fund (UNICEF) in 1991 following the Innocenti Declaration of 1990. The initiative is a global effort implementing practices that protect, promote and support breastfeeding.

¹⁵¹ Ibid., target 8.

¹⁵² Ibid., target 9.

¹⁵³ Alison Linnecar and Virginia Yee, “Maternity Legislation: Protecting women's rights to breastfeed,” World Alliance of Breastfeeding Action (WABA), <<http://www.waba.org.my/resources/activitysheet/acsh6.htm>> (accessed 20 July 2022).

2.2.6 Declaration of Philadelphia 1944

The declaration was adopted at the 26th ILO conference in 1944. It was added as an annex to the ILO's Constitution. The declaration focuses on the main principles to embody the work of the ILO which include seeing labour not as a commodity, promoting freedom of expression and association which are essential to sustain progress, and overcoming poverty anywhere which constitutes a danger to prosperity.¹⁵⁴

At the workplace, it has long been understood that discrimination on any grounds is a problem that creates barriers to employment. While employment is an essential need for human beings to sustain their lives, denying employment will be depriving someone of their lives. Realising this, the International Labour Organization (ILO) has established the principle of non-discrimination through the Declaration of Philadelphia 1944 that affirms: “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”.¹⁵⁵ Founded on the declaration that “poverty anywhere constitutes a danger to prosperity everywhere,”¹⁵⁶ ILO has striven towards the principle of freedom from discrimination that constitutes essential elements to improve conditions of workers. The principle was further approved through the 1998 Declaration on Fundamental Principles and Rights at Work and became the agenda of decent work.¹⁵⁷

¹⁵⁴ Declaration of Philadelphia 1944 (adopted 10 May 1944), Article I.

¹⁵⁵ Declaration of Philadelphia 1944, Article II.

¹⁵⁶ International Labour Organization, *Time for equality at work, a global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference 91st Session*, (Geneva: International Labour Office, 2003).

¹⁵⁷ International Labour Organization, *Decent work. Report of the Director-General to the 87th Session of the International Labour Conference*, (Geneva: International Labour Office, 1999).

2.2.7 Regional Framework

2.2.7.1 Equal Treatment Directive 1976

Equal Treatment Directive 1976 is the foundation of the European Union law and policy in the area of gender equality in employment. It was amended in 2002 which introduces the concept of sexual harassment and states that it is a form of discrimination against the principle of equal treatment for men and women as regards to access to employment, vocational training and promotion, and working conditions.¹⁵⁸

It directs European Union member states on the implementation of the principle of equal treatment for men and women in regard to “access to employment, vocational training and promotion and working conditions and social security.”

Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy. Therefore, member states shall take the measures necessary to ensure that:

- a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;
- b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent

¹⁵⁸ *EUR-Lex*, “Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions,” <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0207>> (accessed 17 June 2022).

occupations and professions shall be, or may be declared, null and void or may be amended;

- c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision.¹⁵⁹

2.3 SHARIAH LAW ON WOMEN EMPLOYMENT

Islam advocates the principle of equality to uphold justice before mankind. In Islam, the equal status of the sexes is not only recognised but insisted upon. Everyone is treated equally based on the divine revelation as prescribed in the Qur'an and Hadith of the Prophet SAW.

Many writers on Islamic law agree that the fundamental moral norm of the Qur'an is equality between the sexes. It is clear that God created men and women from one fundamental substance as the Qur'an says:

He created you from one being, then from that (being) He made its mate.¹⁶⁰

This verse means that Allah SWT has created everyone in different races, types, tongues and colours from a single soul who was Ādam and 'its mate' in the verse that refers to Hawwa'.¹⁶¹

This verse can also be pondered upon more deeply. We should also contemplate humans' solitude in their unity. One's ups and downs are measured by

¹⁵⁹ Ibid.

¹⁶⁰ Az-Zumar: 6.

¹⁶¹ Ibn Kathir, Isma'il ibn 'Umar, *Tafsir Ibn Kathir (Abridged)*, (Egypt: Dar al-Manarah, 2007), 1891.

other humans. It turns out that what happens to others can always be felt by another person. In fact, that is why humans and humanity are one. The feeling as humans is the same between men and women. Indeed, a wife is made from a man who is also a human. In fact, that is why they are one. Then the unity will be more complete as they are united.¹⁶²

The Qur'an mentions personal accountability and reward for good work without distinguishing gender. This is evident from several Qur'anic verses when Allah SWT says:

(Yet) is each individual in pledge for his deeds.¹⁶³

Every man shoulders only what he or she has done. He or she is not responsible for another's sin even though they are his or her parents or one of his or her progenies.¹⁶⁴

By using this verse, Allah SWT explains *ar-Rahim*, an attribute of God and His help. In the previous verse, it is mentioned that children believe they will meet their fathers in heaven on the day of judgement even though the value of their faith is not as much as their fathers'. However, the value of faith can be increased. If there is dirt in someone's heart, he or she should get rid of the dirt. If the dirt is not rid of as soon as possible, it will increase and the heart will be filled with the dirt. When that happens, it can no longer help him or her with the faith and good deeds of his or her parents. That is what is meant by this verse.¹⁶⁵ It is also mentioned in the Qur'an that:

¹⁶² Prof. Dr. H. Abdulmalik Abdulkarim Amrullah (Hamka), *Tafsir Al-Azhar Juzu ke-24*, (Surabaya: Yayasan Latiminjong, 1984), 22.

¹⁶³ Al-Thur: 21.

¹⁶⁴ Ibn Kathir, Isma'il ibn 'Umar, *Tafsir Ibn Kathir (Abridged)*, (Egypt: Dar al-Manarah, 2007), 2162-2163.

¹⁶⁵ Prof. Dr. Haji Abdulmalik Abdulkarim Amrullah (Hamka), *Tafsir Al-Azhar Juzu' ke- 27*, (Surabaya: Yayasan Latiminjong, 1984), 77-78.

Whoever works righteousness, man or woman, and has faith, verily, to him will We give a new Life, and life that is good and pure, and We will bestow on such their reward according to the best of their actions.¹⁶⁶

Islam encourages Muslims to work. As an act of devotion that carries religious duty, work is relevant to both men and women. Islam never prohibits women from working. They can work in any field which is legal. Hence, women should not be discriminated against in terms of the right to work and choice of profession. They should also have their exclusive rights as to what they earn.

The above quoted verse is a promise from Allah SWT to everyone, whether men or women who do righteous deeds in accordance with the Qur'an and Sunnah with a heart that believes in Allah SWT and Rasulullah SAW; Allah SWT promises that He will give them a good life in this world and He will reward them in the Hereafter. The 'good life' mentioned in this verse means feeling of comfort and easiness at all points of life as granted by Allah SWT. Ali ibn Abi Talib RA said that it means contentment. According to Ibn Abbās, it means happiness. In addition, Qatādah said: "No one enjoys the good life stated in this verse but in the Paradise." Ad-Dahāk said: "It is a reference to the one's acting in obedience to Allah and therewith that he feels of joy". What is right is that the good life includes all of these things.¹⁶⁷

On matters of good deeds and faith, the position of men and women is the same. Men and women are willing to increase their faith and do good deeds. Thus, the responsibility of women to upright their faith is no less than men. Consequently, God

¹⁶⁶ Al-Nahl: 97.

¹⁶⁷ Ibn Kathir, Isma'il ibn 'Umar, *Tafsir Ibn Kathir (Abridged)*, (Egypt: Dar al-Manarah, 2007), 1115-1116.

will equally reward men and women for their good deeds and faith with a good life.¹⁶⁸

Furthermore, Allah SWT says in the Qur'an:

To men is allotted what they earn, and to women what they earn.¹⁶⁹

Based on the above quoted verse, everyone gets rewards according to their deeds. If they do good things, their rewards are goodness and if they do bad things, they will be punished. This is the opinion of Ibnu Jarir.¹⁷⁰

This verse also means that Allah SWT has allocated to every man their portion equal to their efforts. So it is with women. Allah SWT has allocated every woman their portion according to their efforts. If they do not make any effort, there is no portion given by Allah SWT. Hopes are not sufficient. Everyone should make the effort to gain their portions.¹⁷¹ Another verse to support the rights of both male and female to work is the following:

Never will I suffer to be lost the work of any of you, be he male or female: ye are members, one of another.¹⁷²

In the above quoted verse, Allah SWT tells us that He will not take for granted all our good deeds but will give rewards to all of us according to our deeds, whether we are men or women.¹⁷³

This verse also shows that working is not a concern to men only. Women also have rights and responsibilities just like men. Big industries require both men and

¹⁶⁸ Prof Dr Hamka, *Tafsir Al-Azhar*, (Jakarta: Penerbit Pustaka Panjimas, 1983), 290.

¹⁶⁹ Al-Nisa': 32.

¹⁷⁰ Dr. 'Abdullah bin Muhammad Alu Syaikh, *Tafsir Ibnu Katsir Jilid 2*, (Jakarta: Pustaka Imam Asy-Syafi'i, 2014), 373.

¹⁷¹ Haji Abdulmalik Abdulkarim Amrullah (Hamka), *Tafsir Al-Azhar Juzu' IV*, (Jakarta: Yayasan Nurul Islam, 1984), 48.

¹⁷² Ali 'Imran: 195.

¹⁷³ Dr. Abdullah bin Muhammad Alu Syaikh, *Tafsir Ibnu Katsir Jilid 2*, (Jakarta: Pustaka Imam Asy-Syafi'i, 2014), 275-276.

women to work together. This is the same like a marriage where the husband goes to work outside the house while the wife stays at home, taking care of the household. Another example is during a war. In a war, men struggle against the enemy while the women tend to the wounded and prepare the food. This is what the verse means. Heavy work is to be done by men. A community is like two lungs. It will collapse when one side of the lungs is sick but it is in the best condition when both lungs function well.¹⁷⁴

Islam does not recognise superiority which gives privilege to one but not the others. All persons are created to get to know each other and the most honoured are those who are the most righteous. This is what is shown by Allah SWT in the Qur'an:

O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other)). Verily the most honoured of you In the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).¹⁷⁵

In this verse, Allah SWT informs human that He has created them from a single person who was Adam and from Adam He created his wife Hawwa'. After that, from their progeny, He made nations which include tribes, which comprise of sub-tribes of different clans, cliques and bands. Therefore, every group of people is equally sharing the honour of being the descendants of Adam and Hawwa'. The only difference between one another is one's obedience to Allah SWT.¹⁷⁶

This verse can also be understood with two interpretations which are clear and strict. The first interpretation is every human is made from a man who is Nabi Adam

¹⁷⁴ Haji Abdulmalik Abdulkarim Amrullah (Hamka), *Tafsir Al-Azhar Juzu' IV*, (Jakarta: Yayasan Nurul Islam, 1984), 226.

¹⁷⁵ Al-Hujurat: 13

¹⁷⁶ Ibn Kathir, Isma'il ibn 'Umar, *Tafsir Ibn Kathir (Abridged)*, (Egypt: Dar al- Manarah, 2007), 2126-2127.

and a woman who is Siti Hawwa'. Both of them are the first humans created in this world. The second interpretation is every human is from a man and a woman, the latter being the mother. Every human is created from the sexual intercourse between a man and a woman. In the beginning, every child is a semen who is colourless then he or she turns into a colour according to his or her surroundings. They then separated according to their lifestyles and needs and accordingly it results in multiple races. After that, from races, they break into tribes and then into big families and to small families. This is not for them to be apart from each other but in fact to take steps to know each other. Allah SWT explains that a true glory for Him is the glory of the heart as well as obedience to Allah SWT. This is to banish some feelings among humans who think they are better than others because of their lineage. The verse is closed with a reminder that different races and lineages are not sources of pride or to be the reason for conflicts but instead for knowing each other.

Thus, according to the Qur'anic verse, man and woman are created equally from a common source. The distinction between people is not because of any preference by Allah SWT. The only measure is piety. It is the ascendancy, nobility and closeness to Allah SWT that differs.¹⁷⁷

The verse can also be understood as Islam giving equal opportunities to men and women in all aspects, including in matters regarding employment. Women should have access to similar jobs as men. Discrimination based on sex is prohibited in Islam. Likewise, in a Hadith:

Ye people, ye have rights over your wives and your wives have rights over you. Treat your wives with kindness and love.

¹⁷⁷ Md. Irshad Khan, *Empowerment of Muslim Women*, (London: Koros Press Limited, 2012), 48.

The Hadith shows that man and woman have rights to be acted upon over each other and interestingly, the Prophet SAW ended this respective Hadith with an advice for man to treat woman with kindness and love. This is interesting where we could infer that Islam acknowledges the differences in nature between man and woman. Thus, man and woman have their rights to be treated equally by acknowledging the differences of their nature. For example, there is the biological inability of man to get pregnant, but Islam ensures that both man and woman obtain equal results by being able to parent their offspring and continue to work.

There is also a Hadith which says the following on equality which is:

All people are equal, as equal as the teeth of a comb. There is no claim of merit of an Arab over a non- Arab or of a white over a black person: Only God-fearing people merit a preference with God. Thus, men and women are equal.¹⁷⁸

There is no verse in the Qur'an which bars women from participating in public and political life inclusive of the right to vote, to hold public office like head of state and judicial office. This is supported by the fact that Aisyah bint Abi Bakr RA, the wife of Prophet Muhammad SAW actively participated in political and public life. She is well-known as a credible narrator of Hadith and had memorised many reported Hadith.

Aisyah was also an eloquent teacher who was knowledgeable about many subjects. With her strong memory and keen intelligence, Aisyah had learned the teachings of Islam from the Prophet SAW and delivered them to her students with great eloquence. Scholars clamoured to listen to Aisyah's lectures, during a time when elsewhere around the world, women were not expected or wanted to contribute

¹⁷⁸ Musnad Ahmad, *al-Kitab Baqi Musnad al-Ansar*, vol. 5, hadith 22391.

outside the household. Aisyah was generous with her knowledge, delivering speeches eloquently, attending to difficult questions and giving out *fatwas*. She dedicated her life to teaching others about Islam. She clarified matters on inheritance that deeply dealt with mathematics. She was also highly knowledgeable in medicine, poetry and history.¹⁷⁹ Musa Ibn Talha as narrated by Imam At-Tirmizi in his Sunan said:

I have not seen anyone more eloquent than Aisyah.¹⁸⁰

In addition, another wife of the Prophet SAW, Khadijah bint Khuwaylid RA was a great businesswoman. She was economically independent as she earned her own living through trade.¹⁸¹ The Prophet's daughter, Fatimah bint Muhammad RA was also a grain grinder. It is reported in Bihar that 'Ali RA said to a man from Bani Sae'ed:

Should I speak to you about Fatima and myself? She was my spouse who was the most beloved to the Prophet. Once, she carried water using a waterskin until it scarred her chest, she ground (grain) using a hand mill until blisters appeared on her hands, she swept the floor until her clothes became dusty and lit the fire under the cooking pot until her clothes became mud coloured from the smoke.

Fatima was inflicted by great pain as a result of this, so I said to her: Why don't you ask your father for a servant to relieve you from these jobs?¹⁸²

Historical records show that in the past, women participated in employment. At the time of the Prophet SAW, Muslim women engaged in any profession that suited them. They worked as nurses, teachers, hair-dressers, cooks and even as

¹⁷⁹ Ustazah Nadia Hanim, "4 Things You Should Know About Aisyah R.A.," muslim.sg, <<https://www.muslim.sg/articles/4-things-you-should-know-about-aisyah-r-a>> (accessed 31 January, 2023).

¹⁸⁰ Jami' at-Tirmidhi, *Book of Virtues*, vol. 6, hadith 3883.

¹⁸¹ Azizah Al-Hibri, *Women and Islam*, (Great Britain: Pergamon Press, 1982), 196.

¹⁸² Allama Muhammad Baqir Majlisi, *Bihar al-Anwar*, vol. 43: 85.

combatants on the battle fields by the side of men when necessary. The example is when Caliph Umar RA appointed a lady, Shifa' bint Abdullah, as an officer in charge of *hisbah* (market inspection) in Medina.¹⁸³

Asma' was a farmer and horse breeder. It was narrated by Asma' bint Abu Bakr:

When Az-Zubair married me, he had no real property or any slave or anything else except a camel which drew water from the well, and his horse. I used to feed his horse with fodder and drew water and sew the bucket for drawing it, and prepare the dough, but I did not know how to bake bread. So, our Ansari neighbours used to bake bread for me, and they were honourable ladies. I used to carry the date stones on my head from Zubair's land given to him by Allah's Messenger SAW and this land was two third *farsakh* (about two miles) from my house.¹⁸⁴

Sheikha Nafissa, Imam Shafei's teacher was a theologian. During the early period of Islam, Al-Khansa' and Khowlah bint Khowailed fought alongside men to defend their religion while Zubaidah built a series of cisterns to provide water for pilgrims enroute from Mesopotamia to Makkah.¹⁸⁵

There were other women during the time of the Prophet SAW who were involved in battles. Um Sulaym bint Malhan tied a dagger around her waist above her pregnant belly and fought in the ranks of the Prophet SAW and his followers. On the other hand, there was another woman who participated in battles against the Prophet SAW called Hind bint Rabi'a. She wore armour and a warrior's mask in the battle of Uhud and brandished her sword before plunging it with a mortal thrust into enemies one by one.¹⁸⁶

¹⁸³ Harlida Abdul Wahab, "Islamic Perspective on Employment Discrimination," *Shariah Law Reports Articles*, vol. 1 (2013): 4-5.

¹⁸⁴ Imam Muhammad al-Bukhari, *The Book of Jihad*, vol. 52, hadith 90.

¹⁸⁵ Md. Irshad Khan, 245.

¹⁸⁶ Azizah Al-Hibri, *Women and Islam*, 197.

It can be learned from the Islamic history or *sirah* that women in that period of time did more than what had been asked by Allah SWT. They were not just taking care of the household and the children, but they also contributed in the economy and safety of their family and country.

Meanwhile, in the Ottoman society, approximately 90% of the population lived in the countryside. Due to that, economic life was mainly in the rural areas. Their economic life was largely based on agriculture and animal husbandry. Women who played an active role with men in the countryside were engaged in various activities that would contribute to the financial needs of the family. In addition to household chores, small scale weaving, dyeing, vineyard and garden works, seed storage and production were developed by women in the countryside.

On the other hand, for women living in the city, midwifery and doing businesses like selling the goods they produced in the markets, shops, bazaars and laundries were among their economic activities. They were also active in trading like Bursa silk industry and textiles, slave trading as well as real estate purchase and sale. Studies on the 17th century showed that one third of the women in the cities owned a house. There were also women who owned workshops in the cities and became commercial partners by giving capital. They were engaged in any economic activity that would bring them income. It can be observed that the Ottoman women had played an active role in the economic life.¹⁸⁷

One of the main roles of mothers is breastfeeding. There is a verse from the Qur'an on breastfeeding:

¹⁸⁷ Nurullah Karta, "The Economic Activities of Women in Ottoman Empire", *Journal of Economics, Finance and Accounting*, vol. 3, issue no. 2, (2016): 150-151.

And the mothers should suckle their children for two whole years for him who desires to make complete the time of suckling ...¹⁸⁸

This is a Qur'anic command for mothers to suckle (breastfeed) their children for a period of two years. The wisdom of breastfeeding their children has been instilled in the Muslims through this Qur'anic revelation. Those who follow this Qur'anic command raise mentally and physically healthy Muslim children. Breastfeeding has many advantages to the children as well as to the mothers. Breastfeeding gives good effects on babies as one of the things that can help babies to stay calm is by hugging them while breastfeeding. Physically, breastmilk suffices for the growth of babies up to six months old and they do not need other food or drink. Moreover, the teeth of babies breastfed with mother's milk are much stronger than those of babies fed with artificial milk; also, they are more resistant to diseases.¹⁸⁹

As for mothers, breast feeders are at lower risk of breast cancer than women who have never breastfed. Breastfeeding mothers are immune to diseases such as osteoporosis, breast cancer, uterine cancer, ovarian cancer and type 2 diabetes.¹⁹⁰ In Islam, all mothers should be given the right to breastfeed their children including working mothers.

Even before any medical knowledge on health values and the benefits of breastfeeding was available, Islam has recommended every mother to breastfeed her children. Breastfeeding is very clearly encouraged in the Qur'an and breastfeeding by

¹⁸⁸ Al Baqarah: 233.

¹⁸⁹ Shahrokh Mehrpisheh and et al, "The Importance of Breastfeeding Based on Islamic Rules and Qur'an", *Hospital Practices and Research*, vol. 5, no. 2, (2020): 39-40.

¹⁹⁰ Ibid.

the mother to her new born infant is greatly beneficial as science has proven and has been made mandatory in the Qur'an.¹⁹¹

The above quoted verse is a guidance for mothers to breastfeed their children completely which is for two years and after that, there will be no more breastfeeding. Most Imams are of opinion that breastfeeding for less than two years causes marriage between the siblings illegal. Therefore, if there is a baby who is more than two years and is still breastfeeding, it does not cause the marriage to be illegal.¹⁹²

Some *mufasssirun* are of the opinion that “mothers” in this verse refers to divorced pregnant women because the verse is linked to the previous verse which talks about divorce. However, other *mufasssirun* are of the view that this verse is general and “mothers” in the verse refers to all mothers, including divorced women. This verse shows that breastfeeding is an obligation and responsibility of every mother. If breastfeeding is taken for granted by a mother, she has committed a sin. According to scientific researches, breastmilk is better than any other milk. In this verse, it is also stated that the best period of breastfeeding is two years.¹⁹³

It has been debated among Muslim jurists the matter of maternal rights in receiving breastfeeding wages. According to the Schools of Hanafi and Zahiri, a breastfeeding mother is not entitled to wages during the marital contract or during an *'iddah talak raj'ie*, which is the period of waiting after divorce. The reason being is that during that period, the husband is duty-bound to arrange for alimony and to pay for any expenses incurred by the mother or during the revocable divorce for all necessities. If the mother insists on being paid, this will incur a double burden for the

¹⁹¹ Saeed Bayyenat and et al, “The Importance of Breastfeeding in Holy Quran”, *International Journal of Pediatrics*, vol. 2, no. 4-1, serial no. 10, (October 2014): 345.

¹⁹² Dr. 'Abdullah bin Muhammad Alu Syaikh, *Tafsir Ibnu Katsir Jilid 1*, (Jakarta: Pustaka Imam Asy-Syafi'i, 2014), 595.

¹⁹³ Haji Abdulmalik Abdulkarim Amrullah (Hamka), *Tafsir Al- Azhar Juzu' 2*, (Singapura: Pustaka Nasional Pte. Ltd., 1982), 558.

husband in providing alimony (*nafaqa*) and wages at the same time. This should not be happening since the husband is obligatory to provide sufficient financial support to his wife and children.

According to the School of Maliki, the above condition is applicable to women who are commoners. However, if breastfeeding is compulsory for high status women, then they are entitled to wages for their effort in breastfeeding.

On the other hand, according to the Shafi‘ School, a mother is entitled to breastfeeding wage during the marital contract or after divorce. The scholars were of the opinion that a mother should nurse her child with colostrum (*al laba’*) and she is entitled to wages similar to wet nurses. If the mother has nursed her child with colostrum and there is no other woman keen to nurse the child, she is eligible to wages due to her effort in breastfeeding the child.

Meanwhile, the Hanbali School’s opinion is similar to the Shafi’i School’s opinion. They confirmed that it is permissible for a husband to give wages to his breastfeeding wife during the marital contract or during *‘iddah*.

Most scholars concluded that mothers are not entitled to breastfeeding wages during the marital contract. This is due to the fact that the mother has the right to receive all the necessities during marriage. If the mother wishes to increase the alimony for herself due to the breastfeeding burden upon her, such as a need for more nutritious meal, it is the mother’s right to seek this from her husband. This view is based on a verse in the Qur’an:

And on the father shall be their maintenance and clothing, in accordance with honourable norms.¹⁹⁴

¹⁹⁴ Al-Baqarah: 233.

The Muslim scholars also agreed that the mother of a nursing child has the right to receive wage once she is not in the marital contract and in the period of waiting after divorce or death. This is based on a verse in the Qur'an:

Then if they give suck to the children for you, give them their due payment.¹⁹⁵

This verse is directed to mothers who have been divorced by their husbands. Alimony or *nafaqa* is not given when a woman is divorced from the marriage contract or after the death of her husband.¹⁹⁶

This reveals a balance between the need to ensure comprehensive financial support for mothers during marriage and recognising their labor through wages post-divorce or the husband's death. The different schools of thought reflect varied interpretations of Islamic principles, emphasising either the husband's overall duty of support or the specific compensation for breastfeeding services. The overarching principle is the equitable treatment and fair compensation of mothers for their contributions to the family, whether through general alimony or specific wages for breastfeeding.

Both husband and wife have their own roles in a marriage. The main role of men is to become a *qawwamun* who are protectors and maintainers of women. This is due to the maintenance responsibility imposed on men by Allah SWT. Men have a greater and more difficult responsibility in supporting their families.¹⁹⁷ This can be seen in a verse in the Qur'an:

¹⁹⁵ Al-Talaq: 6.

¹⁹⁶ Normadiyah Daud and et al, "Breastfeeding Wages According to Al Quran and Al Sunnah", *International Journal of Psychosocial Rehabilitation*, vol. 24, no. 04, (2020): 2524- 2525.

¹⁹⁷ Lawal Mohammed Bani and Hamza A. Pate, "The Role of Spouses under Islamic Family Law", *International Affairs and Global Strategy*, vol. 37, (2015): 104.

Men are in charge of women by (right of) what Allah has given one over the other and what they spend (for maintenance) from their wealth.¹⁹⁸

With regards to maintenance of a working wife, there are two issues. Firstly, whether the wife has fulfilled the conditions for maintenance, and secondly, whether by being a working woman, her right to maintenance ceases to exist. It looks like a working wife might be able to fulfil conditions of maintenance of a wife, like submission to the husband in terms of sexual intercourse, but this submission might not be complete. Moreover, in most situations, a working wife has to leave the matrimonial home. Thus, the next issue arises as to whether this will cease her right to maintenance.¹⁹⁹

Rationally, working will not deprive the wife the right to maintenance if the husband has given her permission to work. However, if the husband does not give her permission to work, she is considered as *nusyuz* as she leaves the matrimonial home without permission.

In principle, this matter has not been discussed thoroughly by Muslim jurists. However, the Hanafi jurists have discussed this matter the most. Most Hanafis generally view that a working wife does not fully submit herself to the husband, thus she is not entitled to maintenance. Nonetheless, there is an opinion in the Hanafi School of Law which states that if the wife leaves the matrimonial home for working purposes and the husband consents to it, she is entitled to maintenance as she is still obeying the husband's wish and is not *nusyuz*. If the husband did not consent, she will lose the right to maintenance as she is considered *nusyuz*. Other than the Hanafis, the

¹⁹⁸ An-Nisa' 4: 34.

¹⁹⁹ Azizah Mohd and Badruddin Hj Ibrahim, "Muslim Wife's Rights to Maintenance: Husband's Duty to Maintain a Working Wife in Islamic Law and the Law in Malaysia," *IIUM Law Journal*, vol. 18, (2010): 112.

Muslim jurists did not clearly discuss the maintenance of a working wife. It can be understood from their discussion that the right of a wife to maintenance depends on her fulfilment of the conditions of maintenance and she is not disqualified due to unfulfillment of the conditions such as being *nusyuz*.²⁰⁰

A contemporary scholar, Abd al Fattāh Amru is of the opinion that a working wife is not entitled to maintenance if the husband did not give her permission to work. If at the time of the marriage, the wife is a working woman, the husband has the right to ask the wife to quit her job and if she refuses and proceeds with her job, she is considered *nusyuz* and disentitled to maintenance. Another contemporary scholar, Zaki al-Din Sha'ban states the same idea. Similarly, if the husband allows the wife to work in the early stages of marriage life and later asks her to stop, she must obey or otherwise, her right to maintenance will cease as she is considered *nusyuz*. However, Muhammad Mustafa Shalabi states that, if the wife is working at home like sewing and writing a book which does not affect her duty as a wife, she is still entitled to maintenance.²⁰¹

Everything has its limits so do limits of a woman to work. In other words, to what extent and in which fields does the Islamic law allow women to work? As mentioned above, the primary task of a woman is to obey her husband. However, that does not mean that she cannot work outside her home. The society needs women to work. For instance, giving medical treatment and teaching other women; in these cases, women are more suitable for these tasks than men.

Nevertheless, when a woman is allowed to work, it should be restricted by some conditions which include firstly, the work undertaken by the woman should be

²⁰⁰ Ibid., 113.

²⁰¹ Ibid., 114.

Islamically lawful which means it should not be Islamically forbidden or lead to forbidden acts or things. For example, working as a maid in the house of a bachelor or as a waiter serving alcohol. Secondly, she should adhere to the morals of a Muslim when working outside of the house in terms of her clothing, her talk as well as her movement. Thirdly, her work should not affect other responsibilities which cannot be neglected like her responsibility towards her husband and children. Fourthly, her surroundings must be supportive towards her. A Muslim community should make sure that every working woman's modesty and commitments towards her religion and family are not disturbed. Working women should also be able to work flexibly and should be given sufficient leave for her marriage, childbirth and nursing. Finally, there should be some arrangements which include setting of schools, colleges and universities where women can practise sports and physical exercises which seclude them from men. There should also be women in ministries, establishments and banks which are suitable for women.²⁰²

In addition, the Cairo Declaration on Human Rights in Islam also provides for the right to work for all persons including women. This declaration is made by member states of the Organisation of Islamic Cooperation (OIC). It was first adopted in Cairo, Egypt on 5th August 1990 but was revised in 2020 and adopted on 28th November 2020. The declaration provides an outline on the Islamic perspective on human rights.

According to Article 13 of the Cairo Declaration, every person who is able to work has the right to work. The article further provides for free choice of work and

²⁰² Md. Irshad Khan, 117.

right to safety and security during work. Discrimination is also prohibited for both males and females in terms of fair wages, allowances and promotions.²⁰³

It is submitted that unemployment rates among women in majority Muslim countries are high.²⁰⁴ When aggregated by region, North Africa, the Middle East and Southeast Asia are the three regions with the most and highest density of Muslims in the world and have the highest rates of female unemployment in the world.²⁰⁵ Most female labourers in Muslim majority countries work in the agriculture sector but many also work in private service jobs. Some women are employed in industrial-oriented labour.

Majority Muslim countries have been criticised for implementing policies which perpetuate gender inequality. Limits on the economic rights of women under the rule of law existed in several Muslim nations.²⁰⁶ For example, under Saudi Arabia's male guardianship system, women are allowed to work but their formal employment cannot interfere with their duties as homemakers. Saudi female workers must also travel with male companions, and they cannot work unless their husbands or guardians approve.²⁰⁷

However, in April 2017, all government agencies in Saudi Arabia were ordered to allow women to access any government service without a male guardian's consent unless required by existing government regulations. Government agencies were also ordered to provide a list, within three months, of procedures that require

²⁰³ Cairo Declaration on Human Rights in Islam, Article 13.

²⁰⁴ Global Employment Trend 2011. Rep. Geneva: International Labour Organization, 2011.

²⁰⁵ Seager and Joni, *The Penguin Atlas of Women in the World: Completely Revised and Updated (Reference)*, (N.p: Amazon.com, n.d).

²⁰⁶ Rizzo and et al, "The Relationship Between Gender Equality and Democracy: A Comparison of Arab vs. Non-Arab Muslim Societies," *Sociology* 41 (2007): 1151-170; Moghadam, Valentine M. "The Reproduction of Gender Inequality in Muslim Societies: A Case Study of Iran in the 1980s," *World Development* 19.10 (1991): 1335-349.

²⁰⁷ Elizabeth M Christopher, *International Management: Explorations Across Cultures*, (United States: Kogan Page Publishers, 2012), 74.

male guardian's approval. In August 2019, reforms marked a major turning point in Saudi women's rights, including women being protected from employment discrimination. Despite the progress that has recently been made, there is still much work to be done before women in Saudi Arabia can achieve true equality.²⁰⁸

Women are victims of clear political, economic and social disparities in many Muslim countries which create gender distinctions within the public and private spheres. This inhibits the ability of women to participate in the government or to advance in the private sector. Low female labour force participation across the board in Muslim states is a sign of gender inequality.²⁰⁹ However, Islam is not the root cause of gender inequality in the Muslim world because it is implemented differently in different countries, the status of women in the Muslim world is varied, and numerous other factors like state ideology, economic development and urbanization affect gender equality. Gender-biased theology are also present in other religions. For example, it is also a common belief among Orthodox Jews.²¹⁰

2.4 CONCLUSION

To conclude, there is adequate recognition of the right of women in employment in civil and shariah laws. Both laws are consistent with regards to the rights governing women in employment. Over protection of the rights also does not contravene the teachings of Islam. International laws on equality for both men and women in employment are sufficient. Moreover, the International Labour Organization (ILO) further enhances on this.

²⁰⁸ Equality Now, "Ending Male Guardianship In Saudi Arabia," <https://www.equalitynow.org/ending_male_guardianship_in_saudi_arabia/> (accessed on 26 March, 2023).

²⁰⁹ Moghadam and Valentine M., "The Reproduction of Gender Inequality in Muslim Societies: A Case Study of Iran in the 1980s," *World Development* 19.10 (1991): 1335-349.

²¹⁰ Ibid.

However, the laws are not inclusive as they do not directly mention working mothers. In addition, not all international provisions are adopted by Malaysia into the domestic law.



CHAPTER THREE

POLICIES AND LEGAL FRAMEWORK GOVERNING WORKING MOTHERS IN MALAYSIA

3.1 INTRODUCTION

This chapter discusses the policies and legal framework governing working mothers in Malaysia. The discussion is categorised into related policies, agencies and laws. In response to United Nations' conventions, treaties and recommendations, Malaysia has responded by initiating several policies which are embedded in the Malaysia Plans as well as the National Policy for Women and the National Family Policy. Policies are included in the discussion as they are the government's commitment even though they are not binding like legislations. Next, the discussion continues with Malaysian agencies related to women employment. These include the Ministry of Women, Family and Community Development and the Association of Registered Childcare Providers Malaysia. Finally, the discussion ends with the laws governing working mothers in Malaysia, in which they are divided into laws in Peninsular Malaysia and laws in Sabah and Sarawak as there are slight differences between the two laws. Among the legislations that are discussed are the Federal Constitution and Employment Act 1955 for Peninsular Malaysia, the Labour Ordinance Chapter 67 and the Labour Ordinance Chapter 76 for Sabah and Sarawak, respectively.

3.2 POLICIES

3.2.1 Malaysia Plan

The Declaration of the Women's Decade (1975-1985) by the United Nations (UN) added impetus to ongoing efforts to integrate and increase the role of women in the development process. The Malaysian government has shown its support by allocating funds and setting up organizations. The National Advisory Council on Women in Development (NACIWID) and the Women's Development Department (HAWA) were instituted and they act as catalysts in this process. The purpose of the council is to advise the government on women-related issues in development. Subsequently, in 1982-1983, the Women's Affairs Secretariat was set up in the Prime Minister's Office to administer matters related to women. The government made allocation of funds in the Third Malaysia Plan (3MP) for the development of women, primarily in their roles and functions as housewives, mothers and supplementary income earners. These funds were channelled through organizations such as the National Family Planning and Development Board or the ministry dealing with social welfare. A national policy for women was prepared in December 1989. Its contents were incorporated in the Sixth Malaysia Plan (6MP) duration. The formulation of a National Action Plan to support the implementation of the National Policy on Women was an integral component of the planning process. Therefore, the Sixth Malaysia Plan (1991-1995) emphasized the formulation of the National Action Plan, which was to integrate women in the institutional process for planning, implementation and monitoring.

The 6MP states, "The government recognizes that specific strategies must necessarily be formulated to effectively incorporate women in the process of development. Towards this end, concerted efforts will be made to progressively

reduce existing constraints and facilitate the assimilation of women into the mainstream of social and economic activities.” In support of this position, the objectives of the National Policy for Women as stated in the 6MP are to ensure equitable sharing in the acquisition of resources and information as well as access to opportunities and benefits of development, for both men and women; and to integrate women in all sectors of national development in line with their abilities and needs in order to improve the quality of life, eradicate poverty, abolish ignorance and illiteracy, and ensure a peaceful and prosperous nation. These objectives provide the basis for integrating women’s contributions in all national development efforts, with the aim of focusing on areas where support facilities have not yet been adequately provided and women’s role not yet fully acknowledged.¹

Under the Seventh Malaysia Plan (7MP) 1996, there were attempts to create programmes appropriate to the needs of female workers, focused on providing women with skills to cope with the twin responsibilities of family and career. Among the strategies being implemented include the provision of more flexible working arrangements and support facilities; providing more educational and training opportunities for women to improve their upward mobility in the labour market; improving further the health status of women; reviewing laws and regulations that inhibit the advancement of women in the economy; encouraging the private sector (as the private sector is the largest employer) to facilitate and set up more conducive working arrangements for women that take into account their multiple roles and responsibilities; the provision of flexible working hours, career breaks and other

¹ Aminah Ahmad, “Country Briefing Paper: Women in Malaysia,” paper for the Programs Department and Social Development Division (SOCD) (December 1998), 49.

flexible work practices which will enable women to integrate work into household duties; and providing assistance such as advisory and counselling services.²

During the Sixth Malaysia Plan, women continued to make further advancements in numerous areas of national development. The Malaysian Policy for Women led the efforts to address women's concerns and encourage their advancement. The provision of increased educational and training opportunities, the enhancement of their health status and promotion of greater female participation in the economy, were important components of the strategic thrusts for women advancement in the Seventh Malaysia Plan.

This is continued in the Eighth and Ninth Malaysia Plans in which it can be seen that the efforts to enhance the role, position and status of women increased with the provision of more education and training opportunities to meet the demands of a knowledge-based economy and to improve their upward mobility in the labour market.³

In the Tenth Malaysia Plan, one of the plans is to increase female labour force from 46% in 2010 to 55% in 2015. In order to make sure that plan succeeds, the Part-Time Work Regulations under the Employment Act 1955 was introduced to tap workforce from amongst housewives, retirees and disabled persons. The regulations can also be benefited by working mothers. Other than that, another plan is to empower women by increasing the numbers in decision-makers, labour force, support for widows, single mothers and low-income women. Eliminating all forms of discrimination against women is also one of the plans in the Tenth Malaysia Plan. As

² John F Doling and Roziah Omar, *Social Welfare East and West: Britain and Malaysia*, (Routledge, 2017).

³ Noraini M. Noor and Nor Diana Mohd Mahudin, "Work, Family and Women's Well-Being in Malaysia," in *Handbook on Well-Being of Working Women, International Handbooks of Quality-of-Life*, edited by M. Connerley and J. Wu, (Springer Science+Business Media Dordrecht, 2015), 40.

for the development and care of children, protection of children is to be enhanced through quality childcare services and enhanced rehabilitation centres and child welfare homes. The plans included community awareness programmes to protect children interest. Adding to that is police screening for child carers to address issues of abuse and alert system similar to the United States of America's Amber Alert bulletin for lost or missing children.

Consequently, one of the major achievements of the Tenth Malaysia Plan is women's participation in the labour force that has increased to 53.6%.⁴ The Employment (Part-Time Employees) Regulations 2010 was also enacted. This regulation provides for flexible working hours and empowers the Minister of Human Resources to make rules on statutory benefits to be paid to part-time employees proportionate to that of full-time employees. This amendment permits women, especially housewives, to be gainfully employed in part-time employment and at the same time, allows them the flexibility to meet their family commitments. Nevertheless, gender equality and women empowerment are not sufficiently integrated in the Eleventh Malaysia Plan. The Mid-term Review of the Eleventh Malaysia Plan (11MP) states that female labour force participation rate (FLFPR) is significantly lower than male's, despite the higher enrolment of females in public universities. In 2017, the male workforce participation in Malaysia was already at 80.1% and female at 54.7%, with a significant difference in participation rate among the gender; moreover, there has been a slow increase for female workforce participation from 54.3% in 2016. Therefore, in the Mid-term Review of the 11MP, a

⁴ Bernama, "Major achievements of the 10th Malaysia Plan," New Straits Times, <<https://www.nst.com.my/news/2015/09/major-achievements-10th-malaysia-plan>> (accessed 14 August, 2018).

revised female LFPR was set at a target of 56.5% for 2020.⁵ Significant measures and various policies and legislations to encourage women to enter the labour market such as parental leave, provision of childcare, tax system reform, flexible work arrangement and part-time work regulations are aimed to further increase female labour force participation as set out in the Eleventh Malaysia Plan (2016–2020).⁶

Women empowerment in the economic sector has been discussed in the Twelfth Malaysia Plan. As mentioned earlier, women participation in employment is targeted to achieve 59% in 2025. The government is self-assured that this target can be achieved through various initiatives that have been launched by the National Employment Council in which they are targeting 500,000 work opportunities. In supporting this effort, the Ministry of Women, Family and Community Development has also launched ‘*Wanita Bangkit*’ initiative to empower women in getting jobs and generating income.⁷

The ministry is aware of the double burden that is faced by working mothers to balance work with family and childcare issues faced by them when returning to work after their career break. Hence, among the initiatives taken to resolve these issues are building childcare centres near workplaces, providing subsidies for childcare centres, providing flexible working hour incentives and organising programmes that can strengthen the family institution through the role of men to support women in balancing career and personal life. The programmes are conducted by the Population Board and National Family Development (LPPKN).

⁵ Ministry of Economic Affairs, *Mid-Term Review of the 11th Malaysia Plan 2016-2020*, (Kuala Lumpur: PNMB, 2018), 7-6.

⁶ Beatrice Lim Fui Yee, “Women Left Behind? Closing the Gender Gap in Malaysia,” *Japan Labor Issues*, vol. 3, no. 17, (2019), 22-29.

⁷ Dato’ Hajah Siti Zailah Binti Mohd Yusoff, “Penggulungan Usul Rancangan Malaysia Ke-12 (RMKe-12)”, paper presentation, Parlimen Keempat belas, Kuala Lumpur, October 6, 2021).

Apart from that, the government has also provided incentives to employers and women who want to return to work such as financial allowances and income tax exemptions until 2023. In addition, the Social Security Organisation (SOCSO) has also implemented various employment service programmes that have helped 171,856 women to return to work or to start working since the outbreak of COVID-19. All these are provided to create a supportive environment and ecosystem for working mothers.⁸

3.2.2 National Policy for Women

The National Action Plan for the advancement of women was formulated and prepared to operationalise the National Policy for Women. Under the plan, various strategies and programmes were drawn up to be implemented by government agencies, the private sector and NGOs. As a result of the Beijing Conference, the plan was reformulated to integrate the strategies and programmes contained in the Platform for Action. The Action Plan for the Development of Women outlines 13 critical areas of concern to be addressed including strengthening the machinery for the advancement of women; increasing public awareness and sensitivity of government bureaucracy to women's issues; activating NGOs to improve the efficiency and effectiveness of socioeconomic programmes; and all areas of life like education and training, health, economy and family.

Once the Action Plan is approved by the cabinet, the participation of all parties identified as implementors will be necessitated to fully carry out the plan. The progress of the implementation of the plan will be monitored by the Secretariat for Women's Affairs (HAWA). While the Platform for Action identified 12 critical areas

⁸ Ibid.

of concern to be addressed by respective government agencies, HAWA's report to the cabinet on the participation of the national delegation at the conference identified four priority areas to be addressed by the government of Malaysia which are promoting the economic potential and independence of women; increasing the participation of women in decision-making; strengthening mechanisms at all levels to promote the advancement of women and eradicating violence against women.⁹

HAWA was established because of these critical areas. In 1975, the government set up the National Advisory Council on the Integration of Women in Development (NACIWID) as the machinery to ensure the involvement of women in development. In 1983, the Secretariat for Women's Affairs (HAWA) in the Prime Minister's Department was established to take over the tasks of the NACIWID Secretariat. From 1997, HAWA functioned as a department under the former Ministry of National Unity and Social Development. In 2001, the department was placed under the newly established Ministry of Women, Family and Community Development (KPWKM). The role and function of HAWA was subsequently reviewed and restructured and it is now known as the Department for Women's Development (JPW). By 2002, the JPW had set up branch offices in every state in Malaysia.¹⁰

Since its establishment, HAWA has been entrusted with the objectives to promote the participation of women in the national development process and to ensure that national development plans take into consideration the integration of women through the provision of equal opportunities and access to facilities and resources.

The major responsibilities of HAWA are, among others, to monitor the implementation of policies by the government concerning women, identify the

⁹ Aminah Ahmad, 62-63.

¹⁰ *Women's Development Department, Ministry of Women's Development*, "Department Profile," <<https://www.jpw.gov.my/en/about-jpw/departement-profile>> (accessed 15 November, 2022).

constraints and issues confronting women, and provide feedback to the government for appropriate necessary action; organise courses, seminars and workshops aimed at improving the knowledge and skills of women in various fields in order to facilitate their entry into the labour market, or ensure their sustenance in employment; undertake the review of the existing legislation that affects the rights of women, and address the discriminatory provisions of some of the legislation; serve as the secretariat for NACIWID; and monitor the activities of women organisations to ensure that government policies are adhered to.¹¹

As a result, the National Policy for Women (NPW) was formulated in 1989 to ensure equitable sharing in the acquisition of resources and information, and providing access to opportunities and benefits for the development of both men and women. This policy marked an important milestone for women.¹²

This policy is intended to be a guidance and direction to design and implement all developmental programmes with the awareness that women constitute half of the country's population. Women have been supporters of the politics of the country for a long time. Development is a process that needs the full contribution from men and women. Thus, this policy repeats the stand that stresses on the active and meaningful participation of women in politics. This policy considers interests, efforts and involvement of the government, demands by associations to support some resolutions at international levels, the demands of women organisations in Malaysia including the forming of mover at the central government level, the Secretariat of Women's Affairs (HAWA).

¹¹ Aminah Ahmad, 54.

¹² Geetha Subramaniam, "Flexible Working Arrangements in Malaysia and the Participation of Women in the Labour Force," (Ph.D. thesis, Victoria University of Wellington, 2011), 83.

There are two goals of the National Women's Policy which are to secure the equal sharing of sources, information, opportunities to participate and benefits of development to men and women and to incorporate women in all national development factors in line with the capabilities and necessities of women to raise life quality, eliminate poverty, abolish ignorance and illiteracy and uphold the country's peace, prosperity and harmony.

Malaysia has specifically committed itself to strengthen the implementation of the National Policy on Women in order to involve more women in decision-making; safeguard their rights to health, education, and social well-being; remove legal obstacles and discriminatory practices; and ensure access to and benefits of development particularly in science and technology.¹³

A visible impact of the National Policy on Women was the inclusion of a chapter on Women in Development in the Sixth Malaysian Plan (6MP). The chapter cites past achievements of women, outlines the issues and concerns still outstanding, and identifies those concerns, which restricted the full integration of women in development. These identified concerns include firstly, gender differentiation in schools not only transforms into occupational differentiation later, but also limits the adaptability and participation of women in the labour market. Secondly, social norms and prejudices regarding the role and status of women in society and in the labour market restrict their involvement in economic pursuits. Thirdly, women with children who are financially dependent on husbands are particularly vulnerable in cases of domestic violence. The lack of skills very often limits their options in securing alternative sources of income.

¹³ Aminah Ahmad, 21.

Fourthly, women are often perceived as secondary earners who only supplement family incomes, rather than as co-earners whose economic activities are crucial to the family's well-being. Consequently, income generating programmes targeted at women generally reinforce their home-maker roles, providing few opportunities for the acquisition of new and marketable skills. Next, the lack of appropriate management training, consequent absence of professionalism, inadequate access to credit and a paucity of relevant market information, hinder the full participation of women in the economy. Finally, the working environment not being conducive to the sustained employment of the wife and mother; the separation of home and workplace and the fixed hours of work, constitute additional drawbacks which preclude women's prolonged and sustained participation in the labour market.

Apart from that, all the recommendations envisaged in the Action Plan for the implementation of the National Policy on Women are in line with the broader macro policies of the National Development Plans, Vision 2020 and the Platform for Action endorsed at the Beijing World Conference. In general, women's position relative to men remains less satisfactory. These issues have been identified while strategies and programmes to address these issues have been laid down in the Action Plan to be implemented under the Seventh Malaysian Plan (7MP).¹⁴ The 7MP continued to address women's concerns and provide the appropriate enabling environment for women to participate more effectively as partners in social and economic development, as well as allowing them to continue to play a significant role in the development of their families.¹⁵

¹⁴ Ibid., 52.

¹⁵ Ibid., 21.

3.2.3 National Family Policy (NFP)

The National Family Planning Board (NFPB), established in 1966, under the Ministry of Women, Family and Community Development (KPWKM), focuses on the promotion of family planning ideas and techniques, offering of counselling services for marital and family planning problems, and implementation of handicraft programmes. The other areas of the NFPB activities address cultural, social, economic and demographic factors which affect women's roles in development.¹⁶

The National Family Policy (NFP) and its accompanying plan of action was launched in March 2011 and implemented by the NFPB in partnership with other ministries, departments and related non-government organisations (NGOs). It is a policy for prioritising family perspectives in all socio-economic development efforts to ensure a quality generation. The goal of this policy is to develop prosperous, healthy and resilient families to ensure social stability. Among the principles of the policy are family-friendly legislations, policies and programmes and also employers' commitment to ensure family well-being. Among the action plan is by advocacy. The obligation to prioritise family well-being in development policies and programmes by leaders, policy-makers and decision-makers in the public and private sectors, leaders of civil society and families can be increased through advocacy.

This policy helps in coping with the many challenges faced by family institution nowadays as a result of modern technology and rising cost of living. These problems are mostly encountered by working mothers who need to balance between their family and career. The National Family Policy supports and complements existing policies such as the National Social Policy, the National Policy on Women and the National Child Policy.

¹⁶ Ibid., 57.

There are six implementation strategies of the policy. Firstly, research and development on family well-being by encouraging research and development in the field of family well-being, where the findings can be used as inputs for the formulation of policies and laws. Secondly, advocacy to prioritise family well-being. The commitment to prioritise family well-being in development policies and programmes by leaders, policy-makers and decision-makers in the public and private sectors, leaders of civil society and families can be increased through advocacy. Thirdly, provision of resources and conducive environment for family empowerment. Increase access to various services through sharing of resources and service points or facilities among implementing agencies. Fourthly, monitoring and evaluation. Monitoring and evaluation will provide information on the impact of actions taken and will be the input for future policy formulation and improvement of subsequent programmes. Fifthly, training and lifelong education for human capital development and family well-being. Provide opportunities and facilities for families to participate in training and lifelong education for comprehensive human capital development and family well-being. Lastly, consultation and strategic partnerships with various government agencies, private sector, non-government organisations, institutions of higher learning and the community. Understanding and commitment made by the public and private sectors to implement corporate social responsibility programmes focusing on family well-being.¹⁷

¹⁷ Dato' Dr. Siti Norlasiah Ismail, "National Family Policy in Malaysia", <<https://www.familyperspective.org/HL17/Norlasiah.pdf>> (accessed 8 March, 2024).

3.2.4 National Breastfeeding and Infant Feeding Policy 1993

Malaysia's breastfeeding and infant feeding policy recommends exclusive breastfeeding for the first six months of life and continued breastfeeding along with complementary food up to two years of life. Code of Marketing of Infant Formula Products (Code) and Baby Friendly Hospital Initiative (BFHI) work as two important supports in implementing this policy. The code protects breastfeeding by controlling competitive promotion and advertising of commercial products which may weaken mothers' ability and intent to breastfeed. Meanwhile, BFHI encourages breastfeeding by creating conducive conditions in hospitals which will empower women to make the right choice on infant feeding.¹⁸

The code was first published by the Ministry of Health in 1979. It was published before the International Code of Marketing of Breast Milk Substitutes (1981) as it was based on the 1975 International Council of Infant Food Industries (ICIFI) Code. However, it had several weaknesses and was revised four times. The latest code is the 2008 Code. The aims of the code are to uphold the supremacy of breast milk, to assist in the safe and optimal nutrition of infants by the protection, promotion and support of breastfeeding as well as to ensure appropriate marketing and proper use, when required, of designated products and complementary foods.

In terms of implementation, all manufacturers and distributors of designated products should abide by this code and observe professional and marketing ethics and established rules of conduct in all contacts. Health professionals and health personnel should encourage all mothers to breastfeed exclusively for six months and must not allow marketing of designated products and complementary foods in the healthcare

¹⁸ Subramanian and Vasumathi, "Relevance of national breastfeeding policy (NBP) in Malaysian society," in International Social Development Conference 2014 (ISDC 2014), 12 – 13 August 2014, Bayview Hotel Langkawi, Malaysia.

system to influence them otherwise. Information materials relating to designated products and complementary foods should comply with the Food Act 1983, the Food Regulations 1985, the Trade Description Act 1972 and the Price Control Act 1946.

In 1976, the Malaysian Family Life Survey found that higher educated women in Malaysia were less likely to breastfeed.¹⁹ A study on positive association between maternal education and breastfeeding practice in Malaysia after 1982 was conducted and it suggests that these are linked to the social transformation with time and the impact that they had on women.²⁰ A reduction in family size with limited presence of other female relatives and progressive integration of women into the workplace as well as promotion of artificial lactation led to a decline in breastfeeding rate during the 1960s and 1970s. From the late 1980s onward, the rate of breastfeeding steadily increased, especially among educated women. Factors reported to be associated with the increase were publication of research on the relationship between breastfeeding and health, the public promotion of breastfeeding, and the “return to nature” movement.²¹ The reversal of association between maternal education and breastfeeding practices as the more educated the woman, the more likely that she would take notice of information about the beneficial effects of breastfeeding from media and books and turn it into practice for the best feeding method for her babies.²²

Among the steps that have been taken by Malaysia is the Malaysian Breastfeeding Policy revised in 2005 in accordance with the 2002 World Health Assembly Resolution 54.2, following the recommendation by the World Health

¹⁹ Forman MR, “Review of research on the factors associated with choice and duration of infant feeding in less-developed countries,” *Paediatrics* 74 (1984): 667–694.

²⁰ Julie Da Vanzo and et al, “Reversal of the Decline in Breastfeeding in Peninsular Malaysia? Ethnic and Educational Differentials and Data Quality Issues,” *Soc Biol*, (1994): 4.

²¹ Lucía Colodro-Conde and et al, “Relationship between level of education and breastfeeding duration depends on social context: Breastfeeding trends over a 40-year period in Spain,” *J Hum Lact*, 27 (2011): 272–278.

²² Lin Li and et al, “Factors associated with the initiation and duration of breastfeeding by Chinese mothers in Perth, Western Australia,” *J Hum Lact*, 20 (2004): 188–195.

Organization that all infants be exclusively breastfed from birth to 6 months of age, followed by the gradual introduction of other forms of nutrition; breastfeeding should then continue into the second year.²³ In 2006, the Third National Health and Morbidity Survey conducted in Malaysia reported an overall prevalence of ever being breastfed among children less than 12 months of age is 94.7%. However, the overall prevalence of exclusive breastfeeding below 6 months was very low: 14.5%. Socio-cultural factors seem to influence practices related to breastfeeding.²⁴ These include living environment, socio-economic status, maternal education, the woman's employment situation and commercial pressures, by contributing to the knowledge and availability of breastmilk substitutes.²⁵ Breastfeeding education has been a critical component of public health efforts to encourage breastfeeding.

These suggest that other factors apart from attitude may contribute to the lack of breastfeeding. In a previous study, two-thirds of the respondents were working mothers. A high proportion of those who had stopped breastfeeding had cited returning to work as one of the main reasons for not continuing breastfeeding. Mothers who intend to return to work after the confinement period may feel that formula feeding is the better choice. The lack of support from the workplace may be a reason why these mothers decide to discontinue or not to consider breastfeeding, even though they had a positive attitude towards breastfeeding. A study conducted in 2006 concluded that providing a more conducive environment for breastfeeding would encourage a higher rate of exclusive breastfeeding among working mothers.²⁶ Apart

²³ World Health Organization, *Infant and Young Child Nutrition*, (Geneva, 2002).

²⁴ SJr Fatimah and et al, "Breastfeeding in Malaysia: Results of the Third National Health and Morbidity Survey (NHMS III) 2006," *Malays J Nutr*, 16 (2010): 195–206.

²⁵ Jane Scott, Iolanda Shaker and Margaret Reid, "Parental attitudes toward breastfeeding: Their association with feeding outcome at hospital discharge," *Birth*, 31 (2004): 125–131.

²⁶ Rahmah Mohd Amin and et al, "Work related determinants of breastfeeding discontinuation among employed mothers in Malaysia," *Int Breastfeed J*, 6 (2011): 4.

from that, employers should also have breastfeeding support policies and practices that fit their company's budget and resources.²⁷

Apart from that, BFHI is a global initiative of both WHO and UNICEF aimed at ensuring that every child gets the best start in life through an environment that supports breastfeeding. Malaysia has implemented this initiative since 1993. The objective of this initiative is to protect, promote and support breastfeeding by forming a supportive environment for mothers to breastfeed their children with breastmilk, providing a service that helps mothers to breastfeed and executing a policy that protects breastfeeding practices.

In order to get acknowledgement as a baby-friendly hospital, a hospital must perform 10 Steps to Successful Breastfeeding based on WHO or UNICEF's Baby-Friendly Hospital Initiative Global Criteria. These ten steps which were established in 1989 is the criteria for the implementation of the baby-friendly hospital by the World Health Organization (WHO) and United Nations International Children's Emergency Fund (UNICEF).

The first step is hospital policies in which hospitals support mothers to breastfeed by not promoting infant formula, bottles or teats, making breastfeeding care standard practice; and keeping track of support for breastfeeding. The second step is staff competency whereby hospitals should train staffs on supporting mothers to breastfeed and assess health workers' knowledge and skills. The third step is antenatal care in which hospitals support mothers to breastfeed by discussing the importance of breastfeeding for babies and mothers; and preparing women on how to breastfeed. The fourth step is care right after birth whereby hospitals should encourage skin-to-skin

²⁷ Hasani De Ravindranath and et al, "Exploring the Challenges Faced by Working Mothers and the Perceived Factors to Retain them in the Private Education Sector," *International Journal of Human Resource Studies*, vol. 11, issue no. 2, (2021), 23.

contact between mother and baby soon after birth and help mothers to put their baby to the breast right away. The fifth step is support mothers with breastfeeding by way of checking positioning, attachment and suckling, giving practical breastfeeding support; and helping mothers with common breastfeeding difficulties.

The sixth step is supplementing. Under this step, hospitals support mothers to breastfeed by giving only breastmilk unless there are medical reasons, prioritising donor human milk when a supplement is needed and helping mothers who want to give formula milk to do so safely. The seventh step is rooming in by letting mothers and babies stay together day and night; and ensuring that mothers of sick babies can stay near their babies. The eighth step is responsive feeding whereby hospitals should help mothers to know when their baby is hungry and should not limit breastfeeding time. The ninth step is regarding bottles, teats and pacifiers. Hospitals support mothers to breastfeed by counselling mothers on the use and risks feeding bottles, teats and pacifiers. The final step is during discharge, hospitals should refer mothers to community resources for breastfeeding support and work with communities to improve breastfeeding support services.²⁸

3.2.5 Early Childhood Care and Development (ECCD) Policy 2007

The aim of this ECCD policy is to support comprehensive development and quality care for newborn to 8-year-old children based on the Malaysian context to develop human capital in line with the objectives of Vision 2020. This policy aims to strengthen and complement other existing national policies on early childhood. This policy will be observed through the setting up of law and regulation enforcement

²⁸ World Health Organization, “Ten Steps to Successful Breastfeeding”, <<https://www.who.int/teams/nutrition-and-food-safety/food-and-nutrition-actions-in-health-systems/ten-steps-to-successful-breastfeeding>> (accessed 13 March, 2024).

mechanism and a special accreditation body. The purpose is to ensure a quality standard in training and services of early childhood care and development.

The general objective of the ECCD policy is to prepare quality care facilities and services in a conducive environment to stimulate early development of children so that they can achieve optimum development in line with the national aspiration.

Among action plans to materialise this policy are preparation of minimum standard of childcare services in accordance to the Child Act 2001 and Childcare Centre Act 1984 (amended in 2006) as well as a Code of Ethics for Childcare Centres based on the Convention of the Rights of the Child (CRC). Other plans include the setting up of more childcare centres and community-based rehabilitation centres based on the needs of the local community.

Numerous studies have disclosed the reasons why the participation rate of women in the labour force is low in Malaysia. Many of these reasons are associated with childcare and childcare arrangement. The number of children, age of children, household income and number of childcare services are among the factors that are discussed in relation to the participation of mothers in the labour market. The rising cost of living also affects household income. If a family's financial resources are derived from one source only, normally a father, it is difficult to have a comfortable living standard, especially if the family resides in big cities. Therefore, working mothers must participate in contributing to their household income. However, childcare matters are vital for mothers before deciding to enter the labour market. Unfortunately, childcare fees are too high and many mothers cannot afford to pay for the best services for their children. Accessibility to childcare centres, whether near to the workplace or near to home, and the level of safety and quality offered by the

centres are important aspects that mothers should consider before leaving their children under the care of others as they leave for work.²⁹

Childcare arrangement is an important factor that can determine a mother's decision whether to participate or not in the labour market. Reliable and accessible childcare is of significant importance for working mothers in the pursuit of continuing their professional lives.³⁰ Studies have shown that working mothers experience childcare related challenges.³¹ Working mothers' problems are finding appropriate childcare for their children while they work.³² Working mothers who are involved in the labour market have to be more alert and aware of the type of childcare that provides the best services for their children while they are working. One of the barriers that worries mothers to remain in the labour market is the fact that they have to consider their children.³³ Hence, childcare arrangement is necessary for mothers before entering the labour market to ensure that their children are well cared for.³⁴

The career-driven mothers need to sacrifice their passion towards their work in order to take care of their children due to the lack of childcare arrangement provided. A survey was conducted in 2018, which showed that mothers are 40% more likely than fathers to experience negative impacts of childcare issues on their jobs.³⁵ It shows that mothers have always decided based on, not economic or career ambitions, but childcare consideration and they must let go of their careers if there are no proper childcare options offered.³⁶

²⁹ Zakirah Zaid, Suhaida Mohd Amin and Abd Halim Mohd Noor, "Positioning Childcare Matters Among Working Mothers," *Journal of Contemporary Social Science Research*, vol. 4, issue 1, (June 2020): 108-109.

³⁰ Ravindranath and et al, 23.

³¹ Ibid.

³² Ibid.

³³ Zakirah Zaid, Suhaida Mohd Amin and Abd Halim Mohd Noor, 108-109.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

Most countries experience the same issue with childcare, which is the increased and high prices of childcare services. In the United States, news and articles from the media report that the cost of childcare has grown so much that families have suffered from serious financial difficulties.³⁷ In the state of New York, there are issues of unlicensed childcare centres in Delaware County known as “a rural periphery” country.³⁸

Therefore, employers' childcare support can help mitigate the likelihood of mothers having to stay home to care for their children. The affordability of high-quality childcare is an ongoing issue amongst working mothers in Malaysia. Therefore, organisations enforcing policies in support of childcare may possibly improve the retention rates of women in the workforce. Childcare assistance may be crucial for families struggling with finances, resulting in working mothers relying on informal childcare arrangements, which can be a source of added stress.³⁹ However, in Malaysia, only 7% of the nation's employers have childcare support policies which can explain why 35% of working mothers leave the workforce due to childcare being too expensive.⁴⁰

The Malaysian government has put into place financial incentives to encourage employers to provide on-site childcare facilities for children of employees. For example, in 2018, the government allocated RM10 million for the setting up of 50 childcare centres, while private sector employers can benefit from a double tax deduction for costs of providing and maintaining childcare centres at the workplace. At the same time, a 10% Industrial Building Allowance is made available for buildings used as childcare centres. To help parents pay for childcare services, tax

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ravindranath and et al, 23.

⁴⁰ Ibid.

reduction and subsidies have been introduced. Employees receive a double deduction on childcare allowances and subsidies are also available for low-income families that use public sector workplace childcare centres or private registered childcare centres. In the public sector, monthly childcare fee subsidy of RM180 for each child is provided for households with income below RM5,000.⁴¹

The Department of Community Development (KEMAS), an agency under the Ministry of Rural Development (MRD) has established 10,345 kindergarten classes (for children ages 4 to 6 years old) and 509 nurseries (for children ages 2 to 4 years old) all over Malaysia. Approximately 71% of the kindergartens and nurseries are located in rural areas. The government provides per capita grant of RM100 for each child as well as meal subsidy between RM2 to RM3 per child per day for children attending KEMAS nursery/kindergarten. Parents' contribution is determined by their monthly income, ranging from RM5 to RM25 monthly for nursery and RM50 to RM150 for kindergarten.⁴²

Nevertheless, a SUHAKAM Report submitted that childcare arrangements are not easily available for working mothers. Even if available, many fall short of the desired quality. Quality childcare arrangement is necessary particularly as they need to be able to depend on quality care for their babies once they have to return to work.⁴³

3.2.6 Flexible Working Arrangements Policy

Scholars and researchers have stressed flexibility and flexible work arrangements as one of the solutions to retain working mothers. A research carried out discloses that 46% of the participants agreed that flexible work arrangements would make them

⁴¹ Beijing Declaration and Platform for Action Malaysia Progress Report 2014-2019.

⁴² Ibid.

⁴³ SUHAKAM, *SUHAKAM'S Report on the Status of Women's Rights in Malaysia*, (Kuala Lumpur: SUHAKAM, 2010), 40.

consider continuing in the workforce.⁴⁴ Another survey done states that flexible work arrangements are key to retaining women at the workplace as it allows them to integrate their motherhood and professional responsibilities better.⁴⁵ Flexible working opportunities can also motivate working mothers to take up more career advancement opportunities if they are provided with the necessary support to manage their time effectively. Furthermore, flexibility related policies are also seen as easing the transition of re-entering the workplace after maternity leave. It is significant in enabling women to balance their work and family lives as flexibility, along with autonomy, can benefit individuals and increase their competency levels. Furthermore, since working mothers have domestic responsibilities to uphold, flexibility is crucial for them to maintain adequate work-family balance levels. Previous studies have found work/family conflict associated with poor parental preferences, which leads to lifestyle preferences that contribute to inadequate work-family balance. As a result, social policy-makers are challenged when addressing the complexity of work/family balance while giving equal consideration to economic productivity.⁴⁶

A focus group study of 19 women, who had experienced stress-related disorder, shows that meaningful occupation is desirable for people to achieve balance in everyday life.⁴⁷ Women realize the importance to avoid stress due to its link to health and place a great emphasis on achieving a balance between work and rest, leisure activities and time for self as means for a balanced lifestyle.⁴⁸ There are four approaches to understand lifestyle balance which are time use, life roles, need satisfaction and biological rhythms and their influences on behaviour. Sustained

⁴⁴ Ravindranath and et al, 22.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Geetha Subramaniam and Doris Padmini Selvaratnam, "Family Friendly Policies in Malaysia: Where Are We?," *Journal of International Business Research*, vol. 9, issue no. 1, (2010): 45.

⁴⁸ Ibid.

patterns of occupation that meet biological and psychological needs within the individual's environments can lead to reduced stress, improved health and well-being, and greater life satisfaction.⁴⁹

It was found that the decline in the participation of women in the labour force in the United States was concentrated among highly educated married women with young children. This was also the main reason why Malaysian women left the labour force. Spending time with family was one of the main reasons cited by women who stopped working. The nuclear family with a full-time mother managing the home has been transformed and this requires more childcare facilities which are affordable and reliable. With no extended family to rely upon while trying to juggle both the reproductive and non-reproductive roles, many working women resolve to the compelling demand to have somebody to take over the non-economic roles and this has created a high demand for foreign domestic workers over the last two decades in the country. It cannot be denied that family friendly policy (FFP)s and flexi-time may be contributory factors in determining whether more women may be able to participate in the labour market.⁵⁰

Flexible working arrangements (FWA) or FFP can be elaborated as employees having the opportunity to make changes to the time they work or the places they work. It is also about how careers are organised, how transitions in and out of work are managed, and how flexible work is managed in the workplace so that both employees and employers benefit from it. The main objective of this policy is to provide work-life balance for all employees, especially working parents.⁵¹

⁴⁹ Ibid.

⁵⁰ Subramaniam and Selvaratnam, 53.

⁵¹ Subramaniam, 8.

While countries such as the United Kingdom, the United States, Australia, New Zealand and those in Europe have been incorporating workplace flexibility for a very long time, this working arrangement is new in the Malaysian work environment. Malaysian women are historically subject to a patriarchal society holding the ideology of “good mother and good wife.” This ideology is further reinforced with colonialism which established economic structures which led to a gendered division of labour across all cultures.⁵² In a study done which aimed to research the comparative understanding of the changing role of women’s economic activities in seven countries in Asia, it was noted that socio-cultural and religious background played a vital part for Asian women, including Malaysian women who participated in the labour market.⁵³

As the workforce changes, organisations need to change their workplace policies to have a more holistic view of their employees and also to cater to the demands of the work and non-work responsibilities of their human resource. Evidence suggests that FFPs at the workplaces are beneficial and important for employees.⁵⁴

Among the policies of FFP includes leave entitlements. As part of an action plan to improve the benefits to female employees in the civil service and retain them, a sixty-day paid maternity leave was introduced in 1998 and this was superseded by a ninety-day maternity leave beginning in early 2011. Another policy that allows mothers to take up unpaid leave for up to five years for the first five children was introduced in 2009.

The public sector provided an example to the private sector by implementing flexible work time by staggering the start and end periods into three periods in 2006.

⁵² Subramaniam and Selvaratnam, 45.

⁵³ Ibid., 46.

⁵⁴ Ibid.

Government employees can choose to start work at 7.30 a.m. and finish at 4.30 p.m., or 8 a.m. and finish at 5 p.m., or 8.30 a.m. and finish at 5.30 p.m.⁵⁵

Other examples of quality flexible work include annualised hours or term time working, part-time working, working from home or teleworking, job sharing, selecting or influencing own rosters or shifts, flexible break provisions and flexible leave or time off provisions, both paid and unpaid.⁵⁶

FFPs are beginning to get importance in the corporate sector in the country but flexi working hours are still hard to come by in most Malaysian firms. Government policies and good corporate social responsibility practices include achieving an ideal work-life balance. A previous study shows that there are many workplaces in Malaysia which have implemented FFPs such as various types of leave entitlements but in terms of working hour flexibility, there is still a lack of awareness and urgency among employers. Based on that study, there still exists a gap between employee's practical needs and the availability of family friendly policies. It is submitted that flexibility in the workplace and more FFPs will not only benefit the organizations to access the global economy but also enable better work-life balance and lead to a greater labour force participation among women in Malaysia.⁵⁷

In a previous study, it was clearly stated that flexibility would assist in career advancement opportunities and possibly achieve leadership roles in the education industry for this participant. Flexible working hours could increase working mothers' intention to stay and their career advancement opportunities. Flexible working hours could provide working mothers with the autonomy to control their work schedule. This can be of value for developing better work/family balance routines, which can

⁵⁵ Subramaniam, 82-83.

⁵⁶ Ibid., 9.

⁵⁷ Subramaniam and Selvaratnam, 53.

lower the turnover rates of women in organisations. Furthermore, since three out of six participants stated that organisations have established no current strategies to support working mothers, it would be ideal for organisations, specifically those in the education industry, to consider looking into ways this strategy can be incorporated into working mothers' work schedules as this is a clear necessity which is currently not formally implemented.⁵⁸

Work-Life Practices (WLPs) Advisory Services by TalentCorp is one of the initiatives to promote women to join the labour market. TalentCorp works with organizations to implement WLPs at their workplace by providing advisory services, for example, flexible working arrangements, benefits such as extended maternity leave and paternity leave, and facilities such as nursing rooms and childcare centres at the office. Many of these WLPs cater towards women talents, especially mothers with young children.⁵⁹

3.3 AGENCIES

3.3.1 Ministry of Women, Family and Community Development

Among the functions of the Ministry are to review existing laws and regulations and to suggest new legislations that can afford better protection for the livelihood and development of women. Moreover, the government has set up a high-level committee initially chaired by the Prime Minister to observe matters on women's rights and women in development. One of the results of this committee was the creation of Gender Focal Points (GFP) in every ministry and government agency. The function of

⁵⁸ Ravindranath and et al, 30.

⁵⁹ Ministry of Women, Family and Community Development, *Beijing Declaration and Platform for Action: Malaysia Progress Report 2014 – 2019*, 16.

the GFP is to act as a focal point in the ministry or agency and to make sure that no form of discrimination occurs against female employees and against women in general in that ministry or agency.⁶⁰

The Department for Women's Development (JPW) is a department under the Ministry of Women, Family and Community Development. It is an implementing machinery to carry out programmes and activities for women's development. The main objective of the department is to enhance the potential of women to contribute more substantially to the country's development through the provision of support services and capacity building programmes.

The Ministry of Women, Family and Community Development has embarked on many projects to encourage women's participation in the labour force. For example, the government has encouraged the setting up of childcare centres at the workplace by giving grants and encouraging the setting up of community childcare centres for children below four years, especially for low-income families. The Ministry also provides subsidies for parents with young children who earn a monthly income below RM3,000.⁶¹ Under the 2019 Budget, RM10 million was allocated for setting up 50 childcare centres in government buildings. Meanwhile, under the 2020 Budget, there was an allocation of RM30 million for childcare facilities and access to childcare facilities which enables more women to participate in the workforce. Moreover, under the 2020 Budget, individual tax relief for fees paid for children's early childhood education has been increased from RM1,000 to RM2,000. Public

⁶⁰ SUHAKAM, *A Report to the United Nations Commission on Eliminating of Discrimination against Women on the Implementation of the CEDAW in Malaysia*, (Malaysia: Kuala Lumpur, 2014), 4-5.

⁶¹ Ibid.

funding for childcare is critical because it is largely out of reach for many parents, especially those from low-income groups.⁶²

Apart from that, the Ministry of Women, Family and Community Development (KPWKM) has also launched its 2021-2025 Strategic Plan which contains eight main thrusts. They are strengthening family institution, empowering women, protecting and developing children, strengthening the conducive environment for the elderly, empowering people with disabilities, increasing the independence of special groups, increasing the country's visibility at the international level; and improving the efficiency and effectiveness of service. In order to achieve these thrusts, it has prepared 34 strategic steps, 201 programmes and 275 indicators.⁶³

It has also formulated a Plan of Action for the Advancement of Women which outlines various programmes and projects covering 13 identified sectors and to be implemented by the government, non-governmental organisations (NGOs) and the private sector. The 13 sectors include economy; poverty; legislation; violence against women; health; education and training; science and technology; media; environment; sports; religion, culture, arts and heritage; decision-making level and politics; as well as mechanism, machinery and institution for women's development.

In addition, the Ministry also promoted the adoption of Flexible Work Arrangements or FWA. The Ministry also introduced the Women@Work incentive which aimed at providing 33,000 job opportunities per year for women between 30-50-years-old who have taken a break from their careers. Women returning to the workforce will receive a wage incentive of RM500 per month for two years, while

⁶² YBr. Dr. Jashpal Kaur A/P Kulwant Singh, interview by author, Putrajaya, 3 April, 2020. At the time of the interview, she was the Gender Expert, Women's Policy and Gender Unit, Ministry of Women, Family and Community Development.

⁶³ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, *Pelan Strategik Kementerian Pembangunan Wanita, Keluarga dan Masyarakat 2021-2025*, (Putrajaya: KPWKM, 2021), 12.

their employers will receive a hiring incentive of up to RM300 per month for two years. Moreover, the current income tax exemption for women returning to work has been extended up to 2023.

The Ministry worked together with the Ministry of Human Resources (MOHR) and its agency, Talent Corporation Malaysia (TalentCorp) to introduce the Career Comeback Programme which was created to encourage women to return to work after taking a career break. The programme involves upskilling and/or reskilling female workers after a break. Between 2015-2019, 1,136 women were registered with the programme and 820 were recruited.⁶⁴

The Social Welfare Department (SWD) is one of the agencies under the Ministry of Women, Family and Community Development. The department started with its involvement in managing problems that stemmed from World War II. From there, its roles and functions have expanded to preventive and rehabilitative services in social issues and the development of the community.

The National Population and Family Development Board (LPPKN) was established to focus on the population, family development and reproductive health. The main objective of the board is to contribute towards the development of quality population through strengthening and improving the well-being of families. Under this agency, the Ministry support women's entrepreneurship and business development by introducing the MAMACARE or Confinement Care Programme for low-income households to generate income by offering traditional and holistic post-natal services to mothers.⁶⁵

⁶⁴ Kulwant Singh.

⁶⁵ Ibid.

3.3.2 Ministry of Human Resources

The Ministry of Human Resources (MOHR) is a ministry of the government of Malaysia that is responsible for skills development, labour, occupational safety and health, trade unions, industrial relations, industrial court, labour market information and analysis, and social security. Among the roles and responsibilities of the ministry are to update and implement labour policies and laws to create efficient, productive and discipline workforce with positive values and good work ethics as well as to update and implement occupational safety and health policies and laws to ensure a healthy and safe work environment.

The legislations that are related to MOHR include Employment Act and Labour Ordinance, Industrial Relations Act, Social Security Act and Skills Development Act. Among the policies of this ministry are to appreciate and practise principle of justice and fairness to uphold social justice for the well-being of all, to ensure harmonious industrial relations among employers, employees and trade unions for the development of the nation and well-being of the citizens and to provide social security protection for the well-being of employees, families, societies and the country. The laws are not gender specific like the Employment Act 1955, except for certain sections like maternity protection, prohibition against working underground, prohibition against working at night where they have specific laws for women.⁶⁶

The Human Resources Ministry encourages government-linked companies (GLCs) and private firms in Malaysia to implement menstrual leave policy on their own without waiting for the government to legislate it. This was the statement of the ministry when responding to questions on whether Malaysia could follow in the

⁶⁶ Puan Aishahton Safinaz bte Abd Aziz, interview with author, Putrajaya, 8 July, 2019. At the time of interview, she is a deputy director at the Labour Standard Division, Department of Labour, Ministry of Human Resource.

footsteps of Spain and other countries like Indonesia, Japan and South Korea in introducing a national menstrual leave policy. The ministry further noted that though enacting a law to regulate entitlement of menstrual leave in the private sector could be seen as a progressive move by the government to enhance women's rights at the workplace, authorities have to be wary if this could instead have any adverse effect on the employment opportunities for women. The ministry is also aware of the findings of an online poll (conducted by the NST) recently which shows 87% of 1,177 people polled preferred an adoption of a menstrual leave policy in Malaysia⁶⁷ while only 13% or 150 people voted "no". In a second poll, asked if period pain has ever affected their (women's) ability at work, 86% or 1,036 people of the 1,210 people polled said "yes" and only 14% or 174 people said "no".⁶⁸

3.3.3 Human Rights Commission of Malaysia (SUHAKAM)

The Human Rights Commission of Malaysia (SUHAKAM) was established by parliament under the Human Rights Commission of Malaysia Act 1999. The Act was gazetted on 9th September 1999. One of the boosts for the Malaysian government to finally consider building a national human rights institution was Malaysia's active involvement in the UNCHR. The main functions of SUHAKAM are to encourage awareness on human rights, advise and assist the government in preparing legislations and procedures, and needed solutions, suggest to the government the subscription to or accession of treaties and other international instruments in the field of human rights.

SUHAKAM has made several efforts in ensuring that the rights of working women are protected in Malaysia. Firstly, the government has reserved a few

⁶⁷ Tharanya Arumugam, "HR Ministry encourages GLCs, private firms to introduce menstrual leave policy," New Straits Times, <<https://www.nst.com.my/news/online-special/2022/05/800578/hr-ministry-encourages-glcs-private-firms-introduce-menstrual>> (accessed 30 June 2022)

⁶⁸ Ibid.

provisions in CEDAW, including Article 7 (b). Since 2005, SUHAKAM recommended to the government to ensure that women have the right to participate in the labour force and this is seen in the implementation of a government policy to allow women to hold public office and to perform all functions at all levels of government. In 2012, Malaysia removed the reservation on Article 7 (b). Secondly, in promoting and protecting the rights of women in Malaysia, SUHAKAM recommended to the government to amend Article 8 (2) of the Federal Constitution to include “gender” as a prohibited ground for discrimination. Besides that, SUHAKAM also recommended to the government to incorporate its international commitment to integrate CEDAW into domestic law.⁶⁹

However, although Article 8 of the Federal Constitution was amended early in 2001, in reality, discrepancies still occur within the private and even government sectors. In 2008, SUHAKAM organised a roundtable discussion on the principle of equal pay for equal work, non-discrimination in career mobility and job placement. The issue of gender pay-gap arises as many women earn less than men for the same job or for jobs of equal value. Although certain jobs require similar skills, qualifications or experiences, the pay is less and are undervalued when dominated by women. Evaluation of performance and, hence, pay level and career development, are biased in favour of men. On the issue of segregation in the labour market, it is reported that women and men often predominate in different sectors. The Malaysian labour market shows that women and men tend to work in different kinds of jobs. It is observed that women predominate in the lower-valued and lower-paid occupations within the same sector. Sexual harassment is another major problem for women workers. Harassment can occur at any level, being perpetrated by superiors, peers or

⁶⁹ SUHAKAM, *SUHAKAM'S Report on the Status of Women's Rights in Malaysia*, 15.

subordinates. The employer has a duty to provide a safe working environment and to uphold the employee's dignity and self-respect.

In 1999, the Ministry of Human Resources introduced a Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. As its adoption and implementation is entirely voluntary, many employers have not adopted it. Those who have done so do not appear to have implemented it well or wholly. Apart from that, in order to strengthen SUHAKAM's work on promotion and awareness on women's rights, the Education and Promotion Working Group of SUHAKAM formed a Sub-Committee on Women's Rights in February 2008. The subcommittee comprised of representatives of SUHAKAM, KPWKM, non-governmental organizations (NGOs) working on women's issues and a number of gender and women's rights experts and resource persons.

In 2010, SUHAKAM, through the Women Rights Committee (WRC), organized a roundtable discussion (RTD) on issues pertaining to sexual harassment and discriminatory practices against women at the workplace. The objectives of the RTD were to find better solutions and proper legal avenues for victims of sexual harassment; to discuss specific legislation for curtailing sexual harassment offences; to create awareness that the existing Code of Practice 1999 is insufficient to prevent and eradicate sexual harassment of women at the workplace; and to have collaborative discussion with the Ministry of Human Resources and the Ministry of Women, Family, and Community Development (KPWKM) pertaining to cases on sexual harassment towards women at the workplace and to discuss ways of overcoming these in the short term while waiting for long-term measures.⁷⁰

⁷⁰ Ibid., 21.

Regarding policies of SUHAKAM, SUHAKAM adopts government's circulars with a few amendments. For example, SUHAKAM adopted circulars of guideline in handling sexual harassment in the workplace, childcare leave which allows for leave without pay for 1,825 days per child. SUHAKAM also allows maternity leave for 90 days after birth and is in the process to discuss the possibility to increase paternity leave from seven days to 14 days. In addition to that, SUHAKAM also supports exclusive six-months breastfeeding and provides facilities such as nursery space for working mother.

Though it is not an expressed policy, SUHAKAM ensures that there is balance between genders. For example, the Heads of Division in SUHAKAM consist of four males and four females. Meanwhile, there are one male Deputy Secretary and two female Deputy Secretaries. SUHAKAM's commissioners consist of five male and three female commissioners. This shows that SUHAKAM is championing gender equality in their workplace.

SUHAKAM has been working on three main areas of women rights which are firstly, civil rights and the legal status of women. Secondly, reproductive rights including shared responsibility for child-rearing for both sexes and right to maternity protection and childcare, and right to reproductive choice. Thirdly, cultural factors influencing gender relations including need to modify traditional roles of women and men in the family and society to eliminate gender bias; and the need to remove gender stereotypes from school programmes, textbooks and teaching methods.

SUHAKAM reported that there are more highly educated women than men. Generally, in Malaysia, women do well in education and have the qualification, but some of them drop out of the workforce mainly because of family responsibilities and

some discriminatory practices at the workplace.⁷¹ SUHAKAM believes that working mothers should not be discriminated due to their status and should be afforded certain allowances to ensure that they can balance between being mothers and carrying out their job. These include, among others, providing flexible working hours and nursing rooms at the workplace.

SUHAKAM has continued to take steps in tackling gender equality issues such as promoting awareness and providing education, advice and recommendations to the government in relation to human rights, including working women's right as provided in SUHAKAM's Act. Apart from that, SUHAKAM also inquires if there are any complaints related to it. Among the challenges faced by SUHAKAM in ensuring gender equality are the implementation of gender equality policies and practices among the private sector and how such policies or practices can be monitored.⁷²

Apart from that, the problem of gender pay gap also remains in the private sector, particularly with respect to low-income jobs. Many women in the manufacturing and agricultural sectors are paid less than men for the same work.⁷³ Recently, there is an announcement by the Prime Minister of Malaysia on the amendments to the Minimum Wages Order 2020 whereby the national minimum wage is to be revised to RM1,500 per month. This was gazetted under the Minimum Wages Order 2022 on 27th April 2022. The increase of the minimum wage to RM1,500 comes into effect on 1st May 2022.⁷⁴

In addition, women in the private sector continue to be discriminated with respect to the age of retirement. Some enterprises and companies have set the

⁷¹ SUHAKAM, *SUHAKAM'S Report on the Status of Women's Rights in Malaysia*, 37.

⁷² Puan Sarah Adibah Hamzah, interview with author, Kuala Lumpur, Wilayah Persekutuan, 8 February, 2019. At the time of the interview, she was secretary of SUHAKAM.

⁷³ SUHAKAM, *SUHAKAM'S Report on the Status of Women's Rights in Malaysia*, 41.

⁷⁴ Minimum Wages (Amendment) (No. 2) Order 2022.

retirement age at 50 for women and 55 for men. Taking into consideration women's longer lifespan and increased responsibilities of the modern working women, including the higher number of single mothers, there should not be any difference in the retirement age of women and men. Instead, the retirement age should be increased to 60 years and everyone, regardless of gender, should be entitled to opt for early retirement at 55 years.⁷⁵ However, the Minimum Retirement Age Act 2012 which came into effect on 1st July 2013, states that the minimum retirement age of an employee shall be 60-years-old. The Act applies to all employers and employees in the private sector throughout Malaysia. It is a statutory requirement, making it compulsory to be complied with. Prior to the coming-into-force of the Act, there was no prescribed age of retirement under the law, with it being left to the contract between the employer and employee. With the Act now being in force, an employee could be retired at the age of 60 or above where there had not been any retirement age stipulated in the contract of employment, subject to such legitimate expectation to carry on working for as long as the employee wanted, if at all. In fact, during an economic or financial crisis, women workers tend to be the first to be retrenched.⁷⁶ The justification given by employers to explain their decision to retrench women employees is that women prioritise their family responsibilities over work and take maternity leave often.⁷⁷ Given women's vulnerability to unemployment, the government needs to set up a retrenchment fund to protect these workers. Human rights standards like the International Covenant on Economic, Social and Cultural

⁷⁵ SUHAKAM, *SUHAKAM'S Report on the Status of Women's Rights in Malaysia*, 82.

⁷⁶ Ibid., 42.

⁷⁷ Sim Leoi Leoi, "Women first to be retrenched," *The Star*, 23 February, 2009, <https://www.thestar.com.my/news/nation/2009/02/23/women-first-to-be-retrenched>

Rights, the ILO Convention and CEDAW have emphasized on social security for employees including at the time of unemployment.⁷⁸

Apart from that, these impressive numbers of women are in the middle or lower strata of occupation like teachers, nurses, clerks and typists. The number of females in high-powered decision-making position is still low despite the 30% target of the Beijing Conference of 1995.⁷⁹ Therefore, SUHAKAM proposed to increase gender representation and sensitivity in public policy-making and public service, which would facilitate the application of a gender lens in all policy-making – both related to COVID-19 response and otherwise – and ensure women's issues are addressed as a national concern.⁸⁰

It is also reported by SUHAKAM that COVID-19 and the MCO have increased the burden of unpaid care work for women, especially as schools and childcare centres were also closed. Before COVID-19, a Khazanah Research Institute study in 2019 showed that women spend 3.6 hours (63.6% more time) to do unpaid care work than men (2.2 hours a day), even though women (6.6 hours a day), spend almost the same amount of time as men (6.9 hours a day) carrying out paid work.⁸¹ The increased workload of unpaid care work has affected women's mental health and already created a gender gap in labour force participation rate (LFPR). However, even more women have had to leave their paid jobs since the MCO. Recent figures from the Department of Statistics Malaysia (DOSM) show that women's LFPR dropped from 55.6% to 55.1% compared to 80.8% to 80.5% for men in the period between January

⁷⁸ SUHAKAM, *SUHAKAM'S Report on the Status of Women's Rights in Malaysia*, 43.

⁷⁹ Ibid., 82.

⁸⁰ Natasha Dandavati, "Heed UN and SUHAKAM calls for action to address gendered impacts of COVID-19," Women's Aid Organisation, <<https://wao.org.my/heed-un-and-suhakam-calls-for-action-to-address-gendered-impacts-of-covid-19/>> (accessed 20 June 2022).

⁸¹ Khazanah Research Institute, *Time to Care: Gender Inequality, Unpaid Care Work and Time Use Survey*, (Kuala Lumpur, Malaysia: Khazanah Research Institute, 2019), 29-32.

and April 2020. SUHAKAM noted work-from-home flexibilities during the conditional MCO for civil servants with children under 12 years old or with disabled children. SUHAKAM welcomes KPWKM's efforts to provide tele- counselling services for women during the MCO. Therefore, SUHAKAM hopes that the tele-counselling services and other support services will continue post COVID-19. Other government agencies such as the Ministry of Human Resources and the Department of Labour together with NGOs and the private sector should also work together to encourage employers to implement policies and undertake long-term measures to recognise and value equal sharing of care work for working parents. This is in line with the latest CEDAW Committee recommendation for Malaysia⁸² and Target 5.4 SDG 5 2030 United Nations Agenda for Sustainable Development.⁸³

3.3.4 Association of Registered Childcare Providers Malaysia (ARCPM)

The Association of Registered Childcare Providers Malaysia (ARCPM) is a non-profit organisation registered with the Registrar of Societies and the Ministry of Women, Family and Community Development. The main objective of the organisation is to ensure quality alternative childcare for children up to four-years-old. It aims at safeguarding quality care by professional childcare providers and/or their parents.

There is a requirement under the law specifically under Part II of Child Care Centre Act 1984 (CCCA) for childcare centres to register with the Ministry of Women, Family and Community Development (KPWKM). In 2014, according to the statistics from Social Welfare Department (JKM), there are 3,760 registered childcare

⁸² CEDAW Committee, "Concluding Observations on the Combined Third to Fifth Periodic Reports of Malaysia <<https://bit.ly/2Bya14n>> (accessed 28 June 2022).

⁸³ United Nations, "Transforming Our World: the 2030 Agenda for Sustainable Development" <<https://bit.ly/2BkJUxP>> (accessed 28 June 2022).

centres and 14,234 registered caregivers in Malaysia catering to 68,432 children in 2014. Nevertheless, this statistic does not reflect the exact number of registered childcare centres since it includes four to six-year-old children who attend pre-schools instead of TASKA. Furthermore, according to the Association of Registered Child Care Providers Malaysia (ARCPM), the current number of registered childcare centres is not enough to accommodate almost 3.4 million children below four-years-old. The present number is far behind the target set under the Government Transformation Programme which is 13,200 childcare centres by the year 2020.⁸⁴

There are issues of operation of illegal childcare centres. On June 11th, 2022, it was revealed that 1,028 privately-run childcare centres remained unregistered despite being given warnings.⁸⁵ This comes amid news reports of abuse cases happening at childcare centres, with a recent one being a 15-month-old toddler who was found dead in Seremban.

However, it is reported by the ARCPM that the paperwork process and difficulties in meeting local councils' requirements were the main obstacles to childcare centres obtaining an operating licence. Childcare centres that want to get licensed often have problems with the local councils' many requirements. Each district had different requirements and childcare centres in some areas had to pay assessment at commercial rates. Compounded by a lack of incentives to get childcare centres registered, many operators felt that it would be easier if they did not register. This is dangerous because the Welfare Department will not be able to monitor these unregistered centres, which might not even have certified and trained workers.

⁸⁴ Mashitah Abdul Mutalib, Nik Salida Suhaila Nik Saleh and Arasy bin Masut @ Masod, "Enhancement of Child Care Centres in Malaysia: An Analysis on Laws and Regulations," *Journal of Education and Social Sciences*, vol. 9, issue 1, (2018): 23-28.

⁸⁵ "Have agencies under one roof to oversee childcare centres", *The Star*, 23 June, 2022, <https://www.thestar.com.my/news/nation/2022/06/23/have-agencies-under-one-roof-to-oversee-childcare-centres>

Therefore, ARCPM has proposed that one-stop centre should be set up to speed up the licensing and registration of all illegal childcare centres. To encourage the registration and licensing of childcare centres, this one-stop centre must be established where all the relevant agencies are under one roof. It will help centre owners with the applications because they will not need to run here and there. Besides that, the local councils must also standardise the requirements for each district so that they will be the same in every state. Apart from that, the government must also make it mandatory for home-based childminders to register with the Welfare Department. It is also suggested by the ACRPM that the government should also provide incentives to encourage illegal centre owners to come forward and register themselves. These include offering milk coupons, furniture discounts, staff training sessions, cooking and food preparation lessons, among others.⁸⁶

3.4 LAW IN PENINSULAR MALAYSIA

3.4.1 Federal Constitution

The Federal Constitution is the supreme law in Malaysia. It is applied throughout Malaysia, including Sabah and Sarawak. Since independence in 1957, Malaysian women's rights as citizens to participate in all aspects of life in the nation, including employment, have been recognized and guaranteed by the Federal Constitution, which is stated under Article 8 that provides for equality:

- (1) All persons are equal before the law and entitled to the equal protection of the law.
- (2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race,

⁸⁶ Ibid.

descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.⁸⁷

Article 8 (1) of the Federal Constitution provides that all persons are equal before the law and entitled to its equal protection.⁸⁸ Further, in Article 8 (2), it states that there shall be no discrimination of gender in any law. Any law in this Article includes employment law.⁸⁹ Gender discrimination or gender bias is an inherent form of employment discrimination in which employees, especially female employees, are treated unequally purely because of their gender.⁹⁰

The only initiative taken by Malaysia to incorporate CEDAW provisions into domestic law was the amendment to Article 8 (2) when the word 'gender' was inserted. It can be considered as partial compliance to the provisions of CEDAW. Other than that, Malaysia has not incorporated CEDAW provisions into domestic law even though the government had started some discussions in collecting information for a gender equality law in Malaysia in 2010.⁹¹ Until now, there is no gender equality legislation which lays down equality between men and women either in public or private sector of life. The term “discrimination” in the Federal Constitution has been left out to be interpreted by the courts and the government.⁹²

Consequently, gender equality has been neglected in a number of cases. For example, in the case of *Beatrice A/P Fernandez v. Sistem Penerbangan Malaysia &*

⁸⁷ Federal Constitution, Article 8.

⁸⁸ Ibid., Article 8 (1).

⁸⁹ Ibid., Article 8 (2).

⁹⁰ Priscilla Shasha Devi and et al, “Discrimination against Women in Workforce: The Need to Move Forward”, *Malayan Law Journal Articles*, vol. 3, (2017): 2.

⁹¹ SUHAKAM, *A Report to the United Nations Commission on Eliminating of Discrimination against Women on the Implementation of the CEDAW in Malaysia*, 2.

⁹² Jaganraj Ramachandran and Saravanabaran Mathialagan, “Women Empowerment in Malaysia: Legal Constraints and Positive Developments”, *Malayan Law Journal Articles*, vol. 2, (2018): 2.

Ors,⁹³ the employee, a grade B flight stewardess with the Malaysian Airlines System (MAS) was dismissed when she got pregnant in contrary to the terms in a collective agreement between MAS Employees Union (MASEU) and MAS. Article 2 (3) of the First Schedule of the agreement required her to resign if she became pregnant and in the event she failed to do so, MAS would have the right to terminate her service. She subsequently became pregnant but refused to resign. In accordance with the expressed terms of the collective agreement, MAS terminated her service. This led her to file a legal suit at the High Court submitting that the provisions of the collective agreement were discriminatory in nature and therefore contravened Article 8 of the Federal Constitution rendering the collective agreement void.

The High Court and Court of Appeal dismissed her application. The appellant then applied for leave to appeal to the Federal Court. The issue before the Federal Court is whether Article 8 of the Federal Constitution applied to the terms and conditions of the collective agreement which were itself discriminatory in nature. The learned counsel for the appellant argued that Article 8 of the Federal Constitution is silent on the parties who should not practise discrimination. Thus, it was argued that the provision may apply not only to public authority but also private entity. The Court of Appeal held that, “As a branch of public law, Constitutional law, deals with the contravention of individual rights by a public authority, i.e., the State itself or any of its agencies, as distinguished from another individual. Where both parties affected by the infringement of a right are private individuals, constitutional law would take no cognisance of it by extending its substantive or procedural provision.” This finding has been upheld by the Federal Court.

⁹³ *Beatrice A/P Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 2 CLJ 713.

The subsequent case is *Norfadilla Ahmad Saikin v. Chayed bin Basirun & 5 Ors.* The plaintiff applied for and obtained employment as an untrained relief teacher. After receiving her placement memo informing her of her posting, she was asked to attend a briefing. At this briefing, the plaintiff was questioned as to whether she was pregnant. When the plaintiff admitted that she was three months pregnant, her placement memo was withdrawn. The plaintiff argued that this act of the defendants was tantamount to gender discrimination and thus against Article 8 (2) of the Federal Constitution. The plaintiff thus sought, *inter alia*, a declaration that the defendants' act of withdrawing and/or cancelling her appointment as a teacher was unconstitutional, unlawful and void, and allowed her to claim damages. The learned judge held that refusal to employ a woman on the grounds of pregnancy alone is a form of gender discrimination and thus unconstitutional under Article 8 of the Federal Constitution. Applying Articles 1 and 11 of CEDAW, it was found that pregnancy in this case was a form of gender discrimination. It was a basic biological fact that only women had the capacity to become pregnant and thus discrimination on the basis of pregnancy was a form of gender discrimination. The plaintiff was then awarded RM300,000. Nevertheless, on appeal, her award for damages slashed from RM300,000 to RM30,000.

In the latest case which is *Airasia Berhad v. Rafizah Shima bt. Mohamed Aris*, the respondent was an employee of the appellant. The respondent then was chosen to undergo an Engineering Training Program. The respondent executed an agreement known as "Training Agreement and Bond" (Agreement). A material term in the agreement was that the respondent must not get pregnant during the training period which was four years. The appellant terminated both the agreement and her employment when it was found that the respondent became pregnant during the final

year of the programme. The High Court allowed the respondent's application because the said agreement violated Article 8 of the Federal Constitution, the United Nations Universal Declaration of Human Rights (UNDHR) and CEDAW. However, on appeal, it was decided that the material term in the agreement does not discriminate against the rights of women. All clauses contained in the agreement do not restrain marriage and/or prohibit pregnancy if the respondent had completed the said training programme in the manner as stipulated in the agreement. Applying the principle decided in the case of *Beatrice A/P Fernandez v. Sistem Penerbangan Malaysia & Ors*, constitutional law as a branch of public law only addresses the contravention of an individual's rights by a public authority. However, when the rights of a private individual are infringed by another private individual, constitutional law will take no recognisance of it. It is not in dispute that AirAsia Berhad is a private limited liability company.

The three cases above point out different treatments given by the courts in cases of gender discrimination. The consequence is not the same where the one in the private sector is not protected and resulted in termination of service due to pregnancy while the one in the public sector resulted in something opposite. This shows that the laws concerning gender discrimination in Malaysia are still not efficient.

3.4.2 Employment Act 1955

Employment Act 1955 is a result of legislative effort to uniform all the labour codes that were applicable in West Malaysia prior to 1955. The labour codes include the Labour Ordinance (SS Chapter 69), the Labour Code (FMS Chapter 154) and the Labour Code (Johore Enactment No. 82). The Act was enacted in 1955 as the

Employment Ordinance 1955 (FM Ordinance 38 of 1955) which came into force on 1st June 1957. It was then revised in 1982 as the Employment Act 1955.⁹⁴

To date, Employment Act 1955 is the main statute that governs employment law in Peninsular Malaysia only, while Sabah and Sarawak have their own labour ordinances which are Labour Ordinance Chapter 67 for Sabah and Labour Ordinance Chapter 76 for Sarawak. Employment Act 1955 only govern Peninsular Malaysia because Sabah and Sarawak labour matters are under the state government. Acts of Parliament relating to labour need the approval of the state government before it can be extended to Sabah and Sarawak.⁹⁵ Sabah and Sarawak have almost similar labour ordinances. Both ordinances provide chapter XIB for maternity protection. Under the chapter, both ordinances provide similar provisions that retains 60 days of maternity leave.⁹⁶

Employment Act 1955 is the major legislation which regulates all labour relations and states on minimum legal protections of employees. They include the payment of wages, restrictions in deduction of workers' wages, maternity protection, prescribing the rest day in each week, maximum hours of work a day, prescribing public holidays each year, annual leave, sick leave and overtime rates payable for extra hours of work. The main concern of this Act is monetary protection such as annual leave, sick leave, maternity allowances and overtime. The Act is administered by the Labour Department at the Malaysian Ministry of Human Resources (MOHR).

Previously, the Act has some weaknesses including the limit coverage of the employees in terms of their employment and their wages as it only provides for

⁹⁴ Introduction: Overview of the Employment Act 1955 and Related Legislation.

⁹⁵ *Sarawak Bank Employees Union*, "Special Forum on Sarawak Labour Ordinance 1959 and Employment Act 1955" <<https://sbeu.org.my/news/publication/forum.html>> (accessed 5 May 2024).

⁹⁶ Labour Ordinance (Sabah Cap 67) (Act A1238/2005), Labour Ordinance (Sarawak Cap 76) (Act A1237), chapter XIB.

employees under contract for service and those who receive below RM2,000 as the amount of wages.⁹⁷ Nevertheless, there are amendments to the Act in Employment (Amendment) Act 2022. One of them is the amendment to the First Schedule of the Act. All employees are covered in the Act no matter how much they are paid. This means that employees who were previously not covered by the Act (such as those earning above RM2,000 per month) can now rely on the statutory law.⁹⁸

While Employment Act does not reflect inequalities on the surface and is equally applicable to both genders, there are gender concerns related to provisions of laws that apply exclusively to women which can be discriminatory.⁹⁹

That was the reason behind the deletion of Part VIII of the Employment Act 1955 which provided for employment of women. Formerly, section 34 prohibited working women in Malaysia from working at night. Employers are prohibited to require their working women to work from 10.00 p.m. until 5.00 a.m. However, the provision is deleted in the Employment (Amendment) Act 2022. The deletion was to comply with the requirements of the ILO.¹⁰⁰

Part IX of the Act which includes Section 37 to Section 44A provides for maternity protection including maternity leave, maternity allowance and protection against dismissal after maternity leave. Article 37 of the Act states that:

Length of eligible period and entitlement to maternity allowance -

37. (1) (a) Every female employee shall be entitled -

(i) to maternity leave for an eligible period in respect of each confinement; and

⁹⁷ Dr Muzaffar Syah Mallow, "Work Life Balance Policy in Malaysia: The Current Position and the Way Forward", *Malayan Law Journal Articles*, vol. 3, (2018), 3.

⁹⁸ Employment (Amendment) Act 2022 (Act A1651), First Schedule.

⁹⁹ Aminah Ahmad, 29.

¹⁰⁰ Employment Act 1955 (Act 265) (Revised 1981) (Reprint 2006), s 34.

(ii) subject to this Part, to receive from her employer a maternity allowance to be calculated or prescribed as provided in Subsection (2) in respect of the eligible period.

(d) For the purposes of this Part -

(i) “children” means all natural children, irrespective of age; and

(ii) “eligible period” means a period of maternity leave of not less than sixty consecutive days.¹⁰¹

According to the quoted section above, a female employee is entitled to 60 consecutive days of maternity leave. However, there is an amendment to the number of maternity leave. This is stated in Employment (Amendment) Act 2022. The maternity leave has been extended to 98 days:

(b) in subparagraph (d)(ii), by substituting for the word “sixty” the word “ninety-eight”.¹⁰²

However, before the 2022 amendment, the maternity leave has been extended to 90 days for public sector employees starting on 15th October 2010. This is in line with the spirit of CEDAW. The government has perfected this entitlement to a maximum of 300 days and a working mother is given the flexibility to modify the maternity leave between 60 to 90 days for each birth. As most employers in the private sector still retain the 60-day maternity leave for their female employees, thus, SUHAKAM suggested to the government to reconsider the limit imposed on maximum number of days for maternity leave and to ensure that the 90-day maternity leave is extended to women working in the private sector too.¹⁰³

¹⁰¹ Ibid., s 37.

¹⁰² Employment (Amendment) Act 2022 (Act A1651), s 37 (1).

¹⁰³ SUHAKAM, *A Report to the United Nations Commission on Eliminating of Discrimination against Women on the Implementation of the CEDAW in Malaysia*, 8.

In the meantime, Section 38 lays down that the amount of maternity allowance should be paid in the same manner as if such allowance were wages earned during such wage period. It is stated in the Act as follows:

Payment of maternity allowance -

38. The maternity allowance referred to in Subsection 37(2) and accruing in each wage period under the contract of service of the female employee shall be paid in the same manner as if such allowance were wages earned during such wage period as provided in Section 19.¹⁰⁴

There is also a new provision inserted in the Employment (Amendment) Act 2022 which restricts termination of pregnant female employee. According to Section 41A, it is an offence on the part of an employer who terminates his or her employee who is pregnant or sick due to her pregnancy. The exemptions are also laid down under the same section as stated below:

Restriction on termination of pregnant female employee -

41A. (1) Where a female employee is pregnant or is suffering from an illness arising out of her pregnancy, it shall be an offence for her employer to terminate her services or give her notice of termination of service, except on the grounds of -
(a) wilful breach of a condition of the contract of service under Subsection 13(2);
(b) misconduct under Subsection 14(1); or
(c) closure of the employer's business.¹⁰⁵

Whereas, Section 42 of the Employment Act 1955 restricts dismissal of a female employee after her maternity leave.¹⁰⁶ The word 'dismissal' is substituted with the word 'termination' in the Employment (Amendment) Act 2022.

Restriction on dismissal of female employee after eligible period -

¹⁰⁴ Employment Act 1955 (Act 265) (Revised 1981) (Reprint 2006), s 38.

¹⁰⁵ Employment (Amendment) Act 2022 (Act A1651), s 41A.

¹⁰⁶ Ibid.

42. (1) Where a female employee remains absent from her work after the expiration of the eligible period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement and to render her unfit for her work, it shall be an offence, until her absence exceeds a period of ninety days after the expiration of the eligible period, for her employer to terminate her services or give her notice of termination of service.¹⁰⁷

Amendment of Section 42 -

14. Section 42 of the principal Act is amended in the shoulder note by substituting for the word “dismissal” the word “termination”.¹⁰⁸

Right to paternity leave is a new law which is added to Employment (Amendment) Act 2022. The right is introduced in Section 60FA of the act. According to the section, a married male employee is entitled to a seven-day paid paternity leave at his ordinary rate of pay. The right is up to five confinements regardless of number of spouses. The conditions for this entitlement are also ordained under the same section as laid down below:

Paternity leave -

60 FA. (1) Subject to Subsection (3), a married male employee shall be entitled to a paid paternity leave at his ordinary rate of pay for a period of seven consecutive days in respect of each confinement.

(2) The paternity leave under Subsection (1) shall be restricted to five confinements irrespective of the number of spouses.

(3) A married male employee shall be entitled to paternity leave from his employer if -

(a) he has been employed by the same employer at least twelve months immediately before the commencement of such paternity leave; and

(b) he has notified his employer of the pregnancy of his spouse at least thirty days from the expected confinement or as early as possible after the birth.¹⁰⁹

¹⁰⁷ Employment Act 1955 (Act 265) (Revised 1981) (Reprint 2006), s 42.

¹⁰⁸ Employment (Amendment) Act 2022 (Act A1651), s 42.

¹⁰⁹ Ibid., s 60FA.

It is important from the public viewpoint, that young Malaysian women who are increasingly entering the labour force, should gain full social protection benefits for themselves and their children.¹¹⁰

In early 2017, the Malaysian Trades Union Congress (MTUC) proposed that a one month paid paternity leave should be provided to all employees. The MTUC's secretary general was quoted as saying that it is time for a review of paternity leave provision as most private companies in Malaysia do not provide such benefit. The argument was based on the well-being of all family members. Nevertheless, this proposal was objected by the Malaysian Federation of Employers (MEF) on the basis that mandatory paid paternity leave would affect operational costs and company productivity.

In late 2017, the Ministry of Women, Family and Community Development advocated for an extension of paid paternity leave for civil servants in Malaysia. The ministry proposed to extend the leave from the current seven days to a month. This is to strengthen family bonding among members. Consequently, it helps in the efficiency of employees' work.¹¹¹

Latest, in June 2022, The Ministry of Human Resources announced that the Employment Act (Amendment) 2022 would take effect from September 2022 onwards. Changes include an extension of maternity leave from 60 to 98 days, restrictions on the retrenchment of pregnant workers and the introduction of paternity leave for male employees. The extension of maternity leave is in line with recommendations by the International Labour Organization, which states that governments should guarantee 98 days of paid maternity leave. To add, the Ministry

¹¹⁰ Aminah Ahmad, 30.

¹¹¹ Hanis Zainal, "Paid Paternity Leave Extension Proposed", TheStarOnline, <www.thestar.com.my> (accessed 18 April 2019).

of Human Resources also announced readjustment of maximum weekly hours of work from 48 hours to 45 hours. This is clearly a relief for working parents in Malaysia.¹¹²

Another new law introduced in the Employment (Amendment) Act 2022 is the law on flexible working arrangement. It is added in Part XIIc of the Act. Under Section 60P (1), an employee may apply to an employer for a flexible working arrangement to vary the hours of work, days of work or place of work in relation to his/her employment:

Flexible working arrangement -

60P (1) Subject to Part XII or anything contained in the contract of service, an employee may apply to an employer for a flexible working arrangement to vary the hours of work, days of work or place of work in relation to his employment.¹¹³

The steps of application are laid down under Section 60Q of the Act. The employer should respond to the application within 60 days and in case the employer refused the application, he or she needs to state the reasons for refusal:

Application for flexible working arrangement -

60Q (1) The employee shall make an application for flexible working arrangement under Section 60P in writing and in the form and manner as may be determined by the Director General.

(2) Upon the application made under Subsection (1), an employer shall, within sixty days from the date such application is received, approve or refuse the application.

(3) The employer shall inform the employee in writing of the employer's approval or refusal of the application under Subsection (1) and in the case of a refusal, the employer shall state the ground of such refusal.¹¹⁴

¹¹² Claire Lee, "Malaysia makes amendments to Employment Act," hrmasia, <<https://hrmasia.com/malaysia-makes-amendments-to-employment-act/>> (accessed 17 August 2022).

¹¹³ Employment (Amendment) Act 2022 (Act A1651), s 60P (1).

¹¹⁴ Ibid., s 60Q.

In Malaysia, the Work from Home (WFH) concept became widespread after the implementation of the Movement Control Order (MCO) imposed by the Malaysian government in 2020. During the pandemic, organizations pondered on the cost structure, business strategies, and work procedures¹¹⁵ and expected in the future, WFH would be an option that would be fully embraced by employees in Malaysia. Even though the WFH concept is fascinating and offers some advantages, the WFH concept and situation is unworkable for many employees, especially for working women as they encounter various challenges and this impacts their well-being and work-life balance (WLB).¹¹⁶ Besides, working women felt that supportive family members and employers would be helpful to manage the challenges, otherwise it would be a double task, particularly for those having children below the age of five.¹¹⁷ Working women, especially married women, uphold family responsibilities while concurrently seeking to sustain work productively during WFH. Besides, by WFH, working women might not perceive support from their families or organizations to manage the challenges through remote working. Across the globe, their efforts to manage and balance between profession and life during remote work prove to be challenging for working women, including in Malaysia. According to UNDP,¹¹⁸ in Malaysia teleworkers are worried that there are no official working hours and are required to work all round the clock. Working women sustain to be productive but (40% vs 20%) reflected the high domestic burden on women than men. However,

¹¹⁵ Joyce Goh, "Working from home — the new normal," The Edge Markets, <<https://www.theedgemarkets.com/article/working-home-%E2%80%94-new-normal>> (accessed 29 June 2022).

¹¹⁶ Bernama, "Work-at-home challenges for women," Daily Express, <<http://www.dailyexpress.com.my/news/150574/work-at-home-challenges-for-women/>> (accessed 22 June 2022).

¹¹⁷ Sakini Mohd Said, "Work-at-home challenges for women," The Malaysian Reserve, <<https://themalaysianreserve.com/2020/04/08/work-at-home-challenges-for-women/>> (accessed 22 June 2022).

¹¹⁸ UNDP, *How We Worked from Home; Findings from the WFH experience in response to the COVID-19 global health crisis in Malaysia*, (UNDP: 2020), 1–44.

these challenges could be tackled with organization support, family support and other support to enhance the career development of working women during WFH.¹¹⁹ Nevertheless, data shows women in the labour force sustained productivity while facing challenges during WFH and have different perspectives on the concept of remote working culture. UNDP illustrates that the employees need more technical and material support from their employers. However, working women need more care and support that are more physical, mental and emotional in nature during remote work which prevents them from work-life strain.¹²⁰

Apart from that, an annual study by Monster Malaysia reveals a majority of local employers still have not embraced flexible working policies; in other words, new mothers find returning to work a challenge - with many looking for new jobs that meet their flexible requirements. The report shows that 55% of women said they have an unsupportive boss and working environment, 58% of employees in Malaysia are unable to work from home, 36% do not have any option for flexible working arrangements, while 94% of women surveyed said they will be looking for a new job in the next 12 months. According to findings from an annual study by recruitment giant Monster.com, lack of flexible working arrangements and a generally unsupportive environment for working mothers are driving many women to search for new employment in Malaysia. The main reason given for new mothers quitting their jobs is lack of flexibility (75%), followed by concerns about poor childcare for their children while they are at work (60%). The rest (55%) said they have an unsupportive boss and work environment when it comes to balancing home and work life. The

¹¹⁹ Deloitte, "Understanding the pandemic's impact on working women," <<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-about-deloitte-understanding-the-pandemic-s-impact-on-working-women.pdf>> (accessed 22 June 2022).

¹²⁰ Siva Sankari et al., "An Exploratory Study on Challenges Faced by Working Women and their Perceived Supports towards Remote Work in Malaysia," *Electronic Journal of Business and Management*, vol.7, issue 1, (2022): 73-87.

report also stated that women in Malaysia clearly want to work, but they are not provided with a supportive environment or business infrastructure that allows them to both care for their families and contribute to the workplace. The process of having a child and being with that child 24/7, and then being expected to leave them at home in the care of someone else to return to work is a giant emotional leap for parents all over the world. The more employers can do to support women during this time, the more likely they are to retain key female talent. Moreover, “supporting women in the workforce is something that extends beyond maternity benefits - it is about creating an inclusive culture that sets women up for success with equal opportunities, which all begins with ensuring they feel happy about returning to the workforce.”¹²¹

It is also reported that during the debates to propose amendments to the Employment Act 1955 in the Dewan Rakyat on 21st March 2022, the Ministry of Human Resources was urged to consider the needs of working mothers who are breastfeeding their babies. This is because, based on the National Health and Morbidity Survey in 2006, which highlighted that the percentage of mothers who breastfeed their babies for four months was 19.3%, while those who did so for six months was 14.5%, which was less than the global rate of 38%. The survey report noted that the reduction happened within two months of the mothers going back to work, where many faced difficulties finding time to lactate or getting a lactation room at their workplace and finding a place to store the milk. Therefore, Malaysia should emulate the best practices as in the US, the Netherlands and the Philippines to ensure that workplaces are accommodating to breastfeeding mothers. The US amended its employment laws in 2010 to mandate employers to allocate time for breastfeeding

¹²¹ *HR Asia*, “75% of Malaysian Mothers Quit Their Jobs Due to a Lack of Flexibility,” <https://hr.asia/uncategorized/75-of-malaysian-mothers-quit-their-jobs-due-to-a-lack-of-flexibility/> (accessed 23 June 2022).

mothers to lactate for a year after the birth of their child. The employers there are also required to prepare a lactation room for the mothers. Meanwhile, in the Philippines, not only are employers mandated to prepare lactation rooms, they are also required to give lactation time for mothers outside their break hours. Forty minutes out of eight working hours have to be allocated for lactation and this has been their practice since 2009. Meanwhile, the laws in the Netherlands mandate employers to set up lactation rooms for the first nine months and allow 25% of work hours to be spent for such purpose. It is submitted that these policies were needed if the government wanted to protect the rights of working mothers as well as to increase the percentage of women in the workforce.¹²²

To conclude, before the amendments, this Act was inadequate as it regulated workers and thus it did not specifically consider working mothers. There were also laws governing working mothers that failed to meet international standards. There were many laws concerning working mothers that were not governed in the statute and were also outdated. Among them were laws on maternity leave, paternity leave and law on flexible working arrangements.

Nevertheless, after amendments were made into the Employment (Amendment) 2022, some of the laws concerning working mothers have been upgraded. These include increasing number of maternity leave, introduction of law on paternity leave and law on flexible working arrangement which can lead to more effective work-life balance of working mothers in Malaysia. Not only that, the amendments also emphasise on employment discrimination as well as termination of pregnant female employees.

¹²² Dineskumar Ragu, “Consider needs of breastfeeding working mums, govt urged,” FMT, <<https://www.freemalaysiatoday.com/category/nation/2022/03/21/consider-needs-of-breastfeeding-working-mums-govt-urged/>> (accessed 20 June 2022).

On other issues, there are some aspects of the Employment Act 1955 that can be detrimental to female workers. There is no stipulation in the Act with regards to employers paying lower wages to their female employees compared to male workers, for doing the same amount of work. As established earlier, women in the private sector are subject to wage discrimination as compared to their male counterparts. In the public sector, women are better placed as the norm of equal pay for equal work prevails. Women in the private sector do not at present have any legal redress against wage discrimination.¹²³

3.4.3 Industrial Relations Act 1967

It is an Act that promotes and maintains industrial harmony, and provides the regulation of relations between employers, employees and their trade unions. It also provides the prevention and settlement of any differences or disputes that are caused by their relationship and generally to deal with trade disputes and issues arising from it. In short, its purpose is to administer and clarify the rights of employers, trade unions and individual members of trade unions in ensuring industrial harmony.¹²⁴ The Act is administered by the Industrial Relation Department which intends to note that this Act addresses collective agreements:

Collective agreements -

14 (3) Any term or condition of employment, contained in a collective agreement, which is less favourable than or in contravention of the provisions of any written law applicable to workmen covered by the said collective agreement, shall be void and of no effect to that extent and the provisions of such written law shall be substituted thereof.”¹²⁵

¹²³ Aminah Ahmad, 29-30.

¹²⁴ Maimunah Aminuddin, *Malaysian Employment Law Practices*, (Kelana Jaya: Lexis Nexis, 2006), 43.

¹²⁵ Industrial Relations Act 1967 (Act 177) (Revised 1976) (Reprint 2010), s 14 (3).

The above section illustrates that any term or condition of employment contained in a collective agreement which is contrary to any related written law should be void and has no effect and the provisions of such written law should be substituted.¹²⁶ This means that whenever a collective agreement is contrary to any written law, written law prevails.

The example is in the case of *Beatrice A/P Fernandez v. Sistem Penerbangan Malaysia & Ors*¹²⁷ where the collective agreement in the case governed the terms and conditions of service of the employee. If the collective agreement in this case contravenes Article 8 of Federal Constitution, the collective agreement is void. However, in this case, the court held that constitutional law, as a branch of public law, only addressed the contravention of an individual rights by a public authority.

3.4.4 Child Care Centre Act 1984

The Child Care Centre Act 1984 acts as a guideline whereby the minimal standards and regulations have been set by the Malaysian government. The Act also controls the registration process and inspection of childcare centres. The Social Welfare Department, with the cooperation of the Skill Development Department, Ministry of Human Resources, has drawn up the standard practice and standard content for childcare providers in accordance with the National Occupational Skill Standard (NOSS).

NOSS is a document that outlines the ability required of an employee working in Malaysia at a certain level of employment to achieve specific skills. The skills standards benefit the employers, employees as well as the skills training institute. It assists the employers in determining the level of skills of the workforce, listing the

¹²⁶ Ibid.

¹²⁷ *Beatrice A/P Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 2 CLJ 713.

duties and scope of work, evaluating the employees' performance, saving cost and time to retrain workers and enhancing the quality of productivity, innovation and competitiveness. It also helps the employees in career advancement, providing information on scope of work clearly and providing information on career opportunities in related sector. It is also important for the skills training institute for the development of an appropriate training curriculum which meets industry needs and to have a clearer understanding of the skills required by the industry.

The enactment of the Child Care Centre Act 1984 enables more working women to have more peace while at work and also encourages more women to work in paid labour. It ensures protection and care of the child at the centres while the parents are working.

Interpretation -

2. In this Act, unless the context otherwise requires—
“child care centre” means any premises at which four or more children under the age of four years from more than one household are received to be looked after for reward;¹²⁸

According to Section 2 of the Act, childcare centre refers to any premise that receives four or more children under the age of four years to be cared for a fee. Early childhood care and education (ECCE) in Malaysia is divided into two age groups, which is 0-4 years and 4-6 years-old. The first group (0-4 years), which is covered by the definition comes under the Ministry of Women, Family and Community Development (KPWKM) which coordinates national programmes on the growth and development of children. Through its Department of Social Welfare, KPWKM keeps a register of all childcare centres in the country. Meanwhile, pre-school education for

¹²⁸ Child Care Centre Act 1984 (Act 308) (Reprint 2001), s 2.

the second group (4-6 years) comes under three ministries/agencies which are the Ministry of Education, the Ministry of Rural and Regional Development, and the National Unity Department.

All child care centres to be registered -

4. Subject to the provisions of this Act, every child care centre shall be registered under this Act.

Section 4 of the Act provides that all childcare centres must be registered.¹²⁹

All childcare centres need to be registered with the Department of Social Welfare (DSW) or more popularly known as Jabatan Kebajikan Masyarakat Malaysia (JKM) under the Ministry of Women, Family and Community Development (KPWKM). KPWKM is responsible for the approval and establishment of childcare centres in the country whilst JKM serves as the main regulator and coordinator of early childhood care and education (ECCE) programmes.

Categories of child care centres -

5. There shall be four categories of child care centres as follows:

- (a) home based child care centre which is a child care centre which receives less than ten children into the homes of the person registered under section 7;
- (b) work place based child care centre which is a child care centre at a work place which receives ten or more children.
- (c) community based child care centre which is a child care centre which receives ten or more children in a particular area and which receives aid from the Federal Government or a State Government; and
- (d) institution based child care centre which is a child care centre other than a child care centre under paragraphs (a), (b) and (c) which receives ten or more children.

There are four categories of childcare centres outlined in Section 5 of the Act which are home-based, workplace-based, community-based and institution-based

¹²⁹ Ibid., s 4.

childcare centre.¹³⁰ Home-based childcare accepts four to nine children in care and is conducted at home. Workplace-based child care accepts ten or more children in care and is established on the initiative of employers for the welfare of employees. With increasing number of women joining the workforce, KPWKM has been promoting the setting up of childcare at the workplace. For example, the government provides incentives in the form of a RM80,000 grant for the renovation and furnishing of childcare centres set up within government offices. In addition, in order to encourage working mothers to utilise these centres, a subsidy of RM180 per month is given to government servants with monthly salaries below RM2,000 who send their children to these centres. KPWKM also encourages the private sector to provide childcare facilities at the workplace for their employees. Incentives include 10% tax exemption on the cost of building the childcare centres for a period of ten years.¹³¹

Community-based childcare accepts ten or more children in care, receive assistance from the federal or state government and is established on a community initiative to benefit low-income families in cities and rural areas. KPWKM has been setting up community childcare centres in urban and rural areas with the objective of providing quality childcare services that are more accessible and affordable to the local community. It aims to set up ten new community childcare centres throughout the country every year. The centres use a curriculum set by KPWKM and is based on the active participation of the local community, parents, children, governmental agencies as well as private organisations. KPWKM has also proposed that every parliamentary area set up a community childcare centre. Families who send their children to community childcare centres would receive a monthly subsidy of RM180

¹³⁰ Ibid., s 5.

¹³¹ Aisyah Abdullah, “Child Care”, via SCRIBD, <<https://www.scribd.com/document/209299668/Child-Care#:~:text=The%20government%20has%20agreed%20to,their%20kids%20to%20these%20centers.>>

per child if the family's income is below RM2,000 or RM1,200 in urban and rural areas, respectively. A grant of RM55,000 will also be given to those interested in setting up a community childcare centre.¹³²

One of the examples of community-based child care centre is Permata Negara Early Childhood Education and Care Centre. The Permata Early Childhood Education and Care (ECEC) programme was initiated by YABhg. Datin Paduka Seri Rosmah Mansor and was introduced after it was approved by the cabinet on 21st June 2006 with a grant of RM20 million. Themed 'Every Child a Jewel' (*Setiap Anak Permata*), the Permata Negara pilot project was launched at 14 locations in 2006. The founding principles of Permata ECEC Centres are every child is a jewel for the country, who is precious, a part of the human capital of the country, needs the best education; education must start from young or birth; and the first three years are crucial for the development of the child. The aim of Permata ECEC Centres is to provide integrated quality care and early education services based on the needs of the local community to children below five-years-old.¹³³

Institution-based childcare accepts ten or more children in care and is established on the initiative of the private sector and non-governmental organizations (NGOs).¹³⁴

Prohibition of unregistered child care centres -

6. (1) No person shall operate or take part in the management of a child care centre which is not registered under the provisions of this act.
- (2) Any person who contravenes Subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten

¹³² Ibid.

¹³³ Hong Keng Chiam, "Child Care in Malaysia: Then and Now", *International Journal of Child Care and Education Policy*, vol. 2, no.2, (2008): 37. Springer Open, <<https://ijceep.springeropen.com/articles/10.1007/2288-6729-2-2-31>>.

¹³⁴ My Government, "Registered Child Care Center," <<https://www.malaysia.gov.my/portal/content/31020>> (accessed 22 November, 2022).

thousand ringgit or to imprisonment for a term not exceeding two years or to both and in the case of a second or subsequent offence, to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding five years or to both.¹³⁵

Section 6 further mentions the prohibition of unregistered childcare centres. Under Section 6 (2), any person who operates an unregistered childcare centre shall be guilty of an offence and shall on conviction, be liable to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding two years or to both and in the case of a second or subsequent offence, to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding five years or to both.¹³⁶

SUHAKAM suggested that the Malaysian government should set up affordable and accessible childcare facilities for all working parents including single mothers, especially in the lower income group.¹³⁷ However, in 2016, the Women, Family and Community Development Ministry stated that only 4,240 nurseries and 1,650 childcare centres were registered with the Welfare Department.¹³⁸ In addition, according to the statistics from the Women, Family and Community Ministry in 2018, an estimated 90% of childcare centres in Malaysia are unregistered.¹³⁹ To date, in 2022, the Ministry of Women, Family, and Community Development has identified 1,028 privately-operated childcare centers that remained unregistered despite receiving prior warnings. Out of the 1,028 centers in question, 38 have now completed the registration process, 57 have ceased operations, eight have been closed off, 35

¹³⁵ Child Care Centre Act 1984 (Act 308) (Reprint 2001), s 6.

¹³⁶ Ibid., s 6 (2).

¹³⁷ SUHAKAM, *A Report to the United Nations Commission on Eliminating of Discrimination against Women on the Implementation of the CEDAW in Malaysia*, 15.

¹³⁸ Dr Amar Singh, "Childcare: Keeping our children safe," Malaysia Kini, <<https://www.malaysiakini.com/letters/435380>> (accessed 2 September, 2018).

¹³⁹ "R.AGE Newsflash: Childcare abuse in Malaysia," *The Star*, 28 November, 2018, <https://www.thestar.com.my/news/nation/2018/11/28/rage-newsflash-childcare-abuse-in-malaysia>

have received compound notices, and one has faced legal charges. In the same year, 1910 centres were registered.¹⁴⁰

This shows that there is lack of implementation of the laws regarding the registration of childcare centres in Malaysia. The laws are also rarely preventative in nature as they often act after the fact. As for the comprehensiveness of the laws, they seem to be incomprehensive as they do not cover childcare centres which take care of one to three children as well as childcare by relatives.

Registered childcare centres are expected to have a good curriculum and be monitored by the Welfare Department to check on staff qualifications, safety, quality of care, ratio of staff to children and nutrition provision.¹⁴¹

The availability of day care centres is important so as to provide proper support systems for working parents. The establishment of day care centres would indirectly help in increasing women's participation in the workforce from 54.7% in 2017 to 59% in 2020. The accessibility of day care centres would enable women or mothers to remain in or return to the workforce and consequently, would increase families' earnings and improve the country's economy.¹⁴² However, in Malaysia it is reported that more than 80% of the caregivers for children are not registered with the government. Out of 16,873 caregivers for children from newborn to 4-years-old in the country, only 3,173 (18.81%) are registered. Only 3,173 caregivers possess

¹⁴⁰ Bernama, "More than 1,000 unregistered childcare centres still running", *Free Malaysia Today*, 11 June, 2022, <https://www.freemalaysiatoday.com/category/nation/2022/06/11/more-than-1000-unregistered-childcare-centres-still-running/>

¹⁴¹ Dr Amar Singh, "Unregistered childcare centres a concern," *Twenty Two 13*, <<https://twentytwo13.my/expressions/unregistered-childcare-centres-a-concern/>> (accessed 18 April, 2019).

¹⁴² Hashini Kavishtri Kannan, "More than 80% of caregivers for children not registered with government", *New Straits Time*, <<https://www.nst.com.my/news/nation/2018/08/400568/more-80-caregivers-children-not-registered-government>> (accessed 18 April, 2019).

certificates from Permata Basic Child Care Course (KAP) while the remaining 13,700 caregivers (80.19%) do not have any minimum requirements.¹⁴³

The government is looking into changing the law to get all childminders registered with the Women, Family and Community Development Ministry. All childminders in the country should be registered to ensure that they have no criminal records.¹⁴⁴ Consequently, in strengthening early childhood care and education, the available registered childcare centres increased by 8.1% to 5,302 in 2020 compared to 4,903 childcare centres in 2019 to meet the needs of the population.¹⁴⁵

Because the law is not fully enforced, the number of abuse cases in childcare centres is frightening. A total of 199 cases of abuse, neglect and negligence involving children under the care of childminders, has been reported nationwide from January to May in 2018.¹⁴⁶ Meanwhile, as of October 2019, the respective authorities have received 86 reports of child abuse cases involving care providers.¹⁴⁷ The Ministry of Social and Family Development saw the number of physical abuse cases involving children in childcare centres jumped from 584 in 2018 to 660 in 2019.¹⁴⁸ A total of 217 abuse cases involving children at childcare centres were recorded in the year 2021 alone. During the same period, 51 childcare centres had their licences revoked and

¹⁴³ Ibid.

¹⁴⁴ Loh Foon Fong, "All babysitters may have to register with ministry says Wan Azizah", *The Star Online*, 25 August, 2018, <https://www.thestar.com.my/news/nation/2018/08/25/all-babysitters-may-have-to-register-with-ministry-says-wan-azizah/>.

¹⁴⁵ Fayyadh Jaafar, "Numbers of children in need of care, protection drops", *The Malaysian Reserve*, 3 December 2021, <https://themalaysianreserve.com/2021/12/03/numbers-of-children-in-need-of-care-protection-drops/>.

¹⁴⁶ Firdaus Latif, "Deputy Minister: 199 cases of abuse in childcare centres reported this year", *Malay Mail*, 28 August, 2018, <https://www.malaymail.com/news/malaysia/2018/08/28/deputy-minister-199-cases-of-abuse-in-childcare-centres-reported-this-year/1666886>.

¹⁴⁷ Sheith Khidhir, "Malaysia's deadly babysitters," *The Asean Post*, 4 October, 2019, <https://theaseanpost.com/article/malaysias-deadly-babysitters>.

¹⁴⁸ Rum Tan, "Signs of Abuse in Childcare: What Parents Need to Watch Out For," Smile Tutor, <<https://smiletutor.sg/signs-of-abuse-in-childcare-what-parents-need-to-watch-out-for/>> (accessed 15 June 2022).

another 19 centres were issued with verbal warnings. Also, four other childcare centres were compounded for breaching regulations.¹⁴⁹

Although the number of cases is alarming, they are still parents who choose unregistered childcare centres for their children. The main reason for this is that they cannot afford to send their children to registered child care centres as they are more expensive compared to their elderly neighbour or home babysitter.¹⁵⁰

This above discussion shows that the present laws governing childcare centre are not adequate. The existing legal mechanism needs to be scrutinised for improvement. There is a need to develop basic standards and principles of childcare protection in childcare centres in order to enhance the quality of childcare protection in the country. There is also a need to tackle the issue of registration or licensing of childcare centres by enforcing laws upon illegal or unregistered childcare centres. By registering the centres, the operator and childcare provider need to at least meet the minimum requirements of laws and regulations in order to ensure that the children are in safe hands. The element of ratio, group size, physical environment, health and safety for instance need to be analysed further in producing an enhanced version of laws and regulations of childcare centres in Malaysia. Furthermore, another aspect of this issue is the problem of implementation.¹⁵¹ As far as childcare centres are concerned, the question now is on the issue of implementation. The insufficiency of monitoring and enforcement may contribute to the low quality and increased abusive cases amongst infants and toddlers in childcare centres.¹⁵² The laws providing

¹⁴⁹ Sharifah Mahsinah Abdullah, "217 abuse cases recorded at childcare centres nationwide last year," *New Straits Times*, 30 January, 2022, <https://www.nst.com.my/news/nation/2022/01/767417/217-abuse-cases-recorded-childcare-centres-nationwide-last-year>.

¹⁵⁰ A. Ruban, "Why some parents use unregistered child care", *Malay Mail*, 7 July, 2018, <https://www.malaymail.com/news/malaysia/2018/07/07/why-some-parents-use-unregistered-child-care/1649681>.

¹⁵¹ Mashitah Abdul Mutalib, Nik Salida Suhaila Nik Saleh and Arasy bin Masut @ Masod, 24- 27.

¹⁵² Ibid.

protection of children from abuse in childcare centres too need examination. The background check on the operator, manager, supervisor and most importantly, the childcare providers themselves need to be done accordingly.¹⁵³

3.4.5 Islamic Family Law (Federal Territories Act) 1984

In Malaysia, the administration of Islamic family law is administered by separate jurisdiction of different states where each state has its own enactment governing family law matters for Muslims.¹⁵⁴ Since the Islamic family laws in the country are uniform in all states, this study will only refer to the The Islamic Family Law (Federal Territories Act) 1984 (IFLA). The IFLA is only applied in the Federal Territories of Kuala Lumpur, Putrajaya and Labuan.¹⁵⁵ It was enacted to regulate marriage and divorce in the Federal Territories. It was the result of an attempt made by the federal government to have a model law for the administration of Islamic family for the entire country.

Section 59. Power of Court to order maintenance of wife, and the effect of *nusyuz* -

(1) The Court may, subject to Hukum Syara', order a man to pay maintenance to his wife or former wife.

(2) Subject to Hukum Syara' and confirmation by the Court, a wife shall not be entitled to maintenance when she is *nusyuz*, or unreasonably refuses to obey the lawful wishes or commands of her husband, that is to say, *inter alia* -

(a) when she withholds her association with her husband;

(b) when she leaves her husband's home against his will; or

(c) when she refuses to move with him to another home or place, without any valid reason according to Hukum Syara'.

(3) As soon as the wife repents and obeys the lawful wishes and commands of her husband, she ceases to be *nusyuz*.¹⁵⁶

¹⁵³ Ibid.

¹⁵⁴ Federal Constitution, Ninth Schedule.

¹⁵⁵ Islamic Family Law (Federal Territories) Act 1984 (Act 303) (Reprint 2005), s 1.

¹⁵⁶ Ibid., s 59.

Part VI of the Act provides for maintenance of wife and children. Under Section 59, a wife is entitled to maintenance except if she is *nusyuz*.¹⁵⁷ The section lays down the acts of wife that can constitute as *nusyuz* and when the wife repents and obeys the husband again, she is no longer considered as *nusyuz*.

Section 79. Duration of order for maintenance of a child. Except -

- (a) where an order for maintenance of a child is expressed to be for any shorter period; or
- (b) where any such order has been rescinded; or
- (c) where any such order is made in favour of -
 - (i) a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself;
 - (ii) a son who is, by reason of some mental or physical disability, incapable of maintaining himself, the order for maintenance shall expire on the attainment by the child of the age of eighteen years, but the Court may, on application by the child or any other person, extend the order for maintenance to cover such further period as it thinks reasonable, to enable the child to pursue further or higher education or training.¹⁵⁸

Under Section 79, the order for maintenance of a child should expire when the child turns 18 or a reasonable extension of time may be granted to enable the child to pursue further or higher education or training.¹⁵⁹

Principally, there is no provision on duty to maintain a working wife under the law governing Muslims in Malaysia. However, there are provisions on duty of a husband to maintain a wife in general. The above provision in general lays down a general principle that a husband owes a duty to maintain a wife regardless of whether the wife is a full-time housewife or is working. The mere exception provided applies to the situation where the wife is disqualified from maintenance. Those situations can also be applicable to a working wife, especially the first and second situations which are when she withholds her association with her husband and when she leaves her

¹⁵⁷ Ibid.

¹⁵⁸ Ibid., s 79.

¹⁵⁹ Ibid.

husband's home against his will. Accordingly, if the wife refuses access to the husband or goes to work without the husband's permission, then she can be considered *nusyuz* and is disqualified from maintenance. In these circumstances, this provision will be applicable to the wife who works without her husband's permission.¹⁶⁰

This is supported by Shariah Court cases on claims of maintenance, especially on claim of maintenance during *'iddah*. Most of the time, the court did not highlight the issue that the wife is working but the court highlighted the issue on whether the wife was *nusyuz* or not. The case of *Ida Hidayati binti Taufik v. Ahmad Shukri bin Kassim* is the best illustration. In this case, the plaintiff was married to the defendant, a MAS pilot in 1993 and they divorced in 1998 through a court order. In relation to the divorce, the plaintiff claimed among other things, maintenance during *'iddah* amounting to RM6,317.40 for her food and drink, clothing, medical, house rental and the cost of petrol and toll from her house in Seremban to her work place in Bangsar, Kuala Lumpur. The court then ordered the husband to pay RM4,100 exclusive of the cost of petrol and toll as this was not considered under the scope or principle of maintenance. Nevertheless, before making the order, the court had also taken into consideration whether the wife had ever been declared *nusyuz* by any other court prior to this application. This case seems to highlight the principle that the duty of a husband to maintain a working wife is obligatory as long as the wife does not commit any act which amounts to *nusyuz*.¹⁶¹

¹⁶⁰ Azizah Mohd and Badruddin Hj Ibrahim, "Muslim Wife's Rights to Maintenance: Husband's Duty to Maintain a Working Wife in Islamic Law and the Law in Malaysia", *IIUM Law Journal*, vol. 18, no. 1, (2010): 117-119.

¹⁶¹ *Ida Hidayati binti Taufik v Ahmad Shukri bin Kassim* (2004/1425) 18 JH (2) 259

3.4.6 Married Women and Children (Maintenance) Act 1950

In the beginning, this Act applies to non-Muslims in Peninsular Malaysia only. Later, this Act is extended to Sarawak and Federal Territory of Labuan effective from 24 July 1992. It was introduced to provide for situations when a man refuses to pay maintenance. It provides that the maintenance may be claimed only by a wife and children. According to the Act, a court may order the father who neglects or refuses to maintain his wife or child to pay a monthly allowance in proportion to his means as the court deems just and reasonable.¹⁶²

Court may make order for maintenance of wife and children -

3. (1) If any person neglects or refuses to maintain his wife or a legitimate child of his which is unable to maintain itself, a court, upon due proof thereof, may order such person to make a monthly allowance for the maintenance of his wife or such child, in proportion to the means of such person, as to the court seems reasonable.

(2) If any person neglects or refuses to maintain an illegitimate child of his which is unable to maintain itself, a court, upon due proof thereof, may order such person to make such monthly allowance, as to the court seems reasonable.

(3) Such allowance shall be payable from the date of such neglect or refusal or from such later date as may be specified in the order.¹⁶³

Section 3 of the Act provides for maintenance order for wife and children. The order may be made to ensure that the husband pays the wife a monthly allowance for the support of the wife and each of the children, for such amount which is deemed just and reasonable by the court.¹⁶⁴

¹⁶² Saroja Dhanapal, Heama Latha Nair and Jenita Kanapathy, "A Review of Married Women and Children Maintenance Act 1950 and Married Women and Children (Enforcement of Maintenance) Act 1968", *European Journal of Business and Social Sciences*, vol. 3, no. 4 (2014): 249.

¹⁶³ Married Women and Children (Maintenance) Act 1950 (Act 263) (Revised 1981) (Reprint 2001), s 3.

¹⁶⁴ Ibid.

3.4.7 Law Reform (Marriage and Divorce) Act 1976

There is also the Law Reform (Marriage and Divorce) Act 1976 which governs the non-Muslims in Peninsular Malaysia, Sabah and Sarawak. This Act was amended in 2017. The amendments to Act 164 heralds a new milestone in children and women's rights, notably on issues regarding matrimonial disputes, such as child support and the division of matrimonial assets in divorce proceedings. For example, divorced fathers are now required to pay child support until the completion of further or higher education or training of their children.¹⁶⁵ In relation to division of matrimonial assets, Act 164 now considers, among others, the contribution of mothers to the welfare of the family by looking after the home or caring for the family and the duration of the marriage. Further, the amendments to Act 164 will be applicable to any existing actions or proceedings which commenced immediately before the amendment came into force.¹⁶⁶

Power for court to order maintenance of spouse -

77. (1) The court may order a man to pay maintenance to his wife or former wife -

- (a) during the course of any matrimonial proceedings;
- (b) when granting or subsequent to the grant of a decree of divorce or judicial separation;
- (c) if, after a decree declaring her presumed to be dead she is found to be alive.¹⁶⁷

According to Section 77 (1) of the LRA, in a divorce proceeding or any other matrimonial proceedings such as custody proceeding, the court has the power to order the husband to pay maintenance to his wife.

¹⁶⁵ Law Reform (Marriage and Divorce) Act 1976 (Act 164) (Reprint 2001), s 95.

¹⁶⁶ Ibid., s 76.

¹⁶⁷ Ibid., s 77.

Duty to maintain children –

92. Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.¹⁶⁸

Generally, Section 92 of the LRA places the responsibility of maintaining a child on either parent. The maintenance includes accommodation, clothing, food and education:

Power for court to order maintenance for children -

93. (1) The court may at any time order a man to pay maintenance for the benefit of his child -

- (a) if he has refused or neglected reasonably to provide for the child;
- (b) if he has deserted his wife and the child is in her charge;
- (c) during the pendency of any matrimonial proceedings; or
- (d) when making or subsequent to the making of an order placing the child in the custody of any other person.

(2) The court shall have the corresponding power to order a woman to pay or contribute towards the maintenance of her child where it is satisfied that having regard to her means it is reasonable so to order.

(3) An order under Subsection (1) or (2) may direct payment to the person having custody or care and control of the child or trustees for the child.¹⁶⁹

Section 93 provides that it will become the duty of the father to maintain a child if he refuses or reasonably neglects to provide for the child; if he deserts his wife and child; during the determination of a divorce proceeding; or when making or subsequent to making an order to place the child in the custody of another. Section 93 also empowers the court to order the mother to contribute towards the maintenance of the child if the court is satisfied that the mother is able to do so. The court notes that

¹⁶⁸ Ibid., s 92.

¹⁶⁹ Ibid., s 93.

while it is the father's responsibility to provide maintenance to the child, the mother also has the duty to provide maintenance to the child but such duty is secondary to that of the father's responsibilities.

3.5 LAW IN SABAH AND SARAWAK

3.5.1 Labour Ordinance Chapter 67

This ordinance applies in Sabah. It provides guidelines on minimum employment rule. It also ensures good relationship between employer and employees, nurture growth, progress and industrial harmony.

Chapter XIA of the Ordinance provides for employment of women.

Prohibition of night work

75. (1) Except in accordance with rules made under this Ordinance or any exemption granted under the proviso to this subsection, no employer shall require any female employee to work in any agricultural, forestry or industrial undertaking between the hours of ten o'clock in the evening and five o'clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work: Provided that the Director may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection, subject to any conditions he may impose.¹⁷⁰

Section 75 (1) of the Ordinance prohibits working women in Sabah from working at night. Employers are prohibited to require their working women to work from 10.00 p.m. until 5.00 a.m. or to work without having free for eleven hours of the day in any agricultural, forestry or industrial undertaking.

¹⁷⁰ Labour Ordinance (Sabah Cap. 67) (Act A1238/2005), s 75 (1).

Prohibition of underground work.

78. No female employee shall be employed in any underground work.¹⁷¹

Section 78 of the Ordinance prohibits working women to be employed in any underground work.

Chapter XIB of the ordinance provides for maternity protection. It covers maternity leave, maternity allowance and restriction on dismissal of women after the maternity leave.

Length of eligible period and entitlement to maternity allowance.

83. (1) Every female employee shall be entitled to maternity leave for a period of not less than sixty consecutive days (also referred to in this Chapter as the "eligible period") in respect of each confinement and, subject to this Chapter, she shall be entitled to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period.¹⁷²

Under Section 83 (1), the maternity leave should be no less than 60 days.

(5) Notwithstanding subsection (1), a female employee shall not be entitled to any maternity allowance if at the time of her confinement she has five or more surviving children.

(6) A female employee shall be entitled to receive maternity allowance for the eligible period from her employer if—

(a) she has been employed by the employer at any time in the four months immediately before her confinement; and

(b) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement.¹⁷³

Further, subsections (5) and (6) provides for the rights of female employee in Sabah to maternity allowance, subject to some circumstances.

¹⁷¹ Ibid., s 78.

¹⁷² Ibid., s 83 (1).

¹⁷³ Ibid., s 83 (5)-(6).

Restriction on dismissal of female employee after eligible period.

91A. (1) Where a female employee remains absent from her work after the expiration of the eligible period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement and to render her unfit for her work, it shall be an offence, until her absence exceeds a period of ninety days after the expiration of the eligible period, for her employer to terminate her services or give her notice of termination of service.

(2) Subject to subsection (1), where a female employee is dismissed from her employment with wages in lieu of notice at any time during the period of four months immediately preceding her confinement, she shall, in computing the period of her employment for the purposes of this Chapter, be deemed to have been employed as if she had been given due notice instead of wages in lieu thereof.¹⁷⁴

Section 91A of the Sabah Labour Ordinance addresses the protection of female employees who are absent from work due to pregnancy-related illness after the expiration of their eligible maternity leave period. Subsection (1) states that if a female employee remains absent from work due to illness certified by a registered medical practitioner as arising from her pregnancy and confinement, rendering her unfit for work, it is an offence for her employer to terminate her services or give her notice of termination until her absence exceeds a period of ninety days after the expiration of her eligible maternity leave period.

Subsection (2) provides additional protection for female employees who are dismissed from their employment with wages in lieu of notice during the four months immediately preceding their confinement. In such cases, the period of employment for the purposes of calculating entitlements under the Labour Ordinance is computed as if the female employee had been given due notice instead of wages in lieu thereof.

In essence, Section 91A aims to safeguard the rights of female employees during pregnancy and after childbirth by prohibiting their dismissal in certain

¹⁷⁴ Ibid., s 91A.

circumstances and ensuring that their employment rights are protected during the maternity period. It provides a buffer period during which female employees can recover from pregnancy-related illnesses without the fear of losing their jobs.

3.5.2 Labour Ordinance Chapter 76

This ordinance applies in Sarawak. This ordinance is more or less similar to the Labour Ordinance Chapter 67.

Chapter XIA of the Ordinance provides for employment of women.

Prohibition of night work

76.—(1) Except in accordance with rules made under this Ordinance or any exemption granted under the proviso to this subsection, no employer shall require any female employee to work in any agricultural, forestry or industrial undertaking between the hours of ten o'clock in evening and five o'clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work:

Provided that the Director may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection, subject to any conditions he may impose.¹⁷⁵

This provision is similar with section 75 (1) of Labour Ordinance Chapter 67.

It prohibits working women in Sarawak from working at night. Employers are prohibited to require their working women to work from 10.00 p.m. until 5.00 a.m. or to work without having free for eleven hours of the day in any agricultural, forestry or industrial undertaking.

¹⁷⁵ Labour Ordinance (Sarawak Cap. 76) (Act A1237), s 76 (1).

Restriction on employment of females and young persons underground

79.—

(2) No female shall be employed on underground work in any mine except in the following circumstances—

- (a) a woman holding a position of management who does not perform manual work;
- (b) a woman engaged in health or welfare services;
- (c) a woman who, in the course of her studies, spends a period of training in the underground parts of a mine; or
- (d) a woman who may for any other reason have to enter the underground parts of a mine for the purpose of non- manual occupation.¹⁷⁶

Subsection (2) outlines the circumstances under which females can be employed for underground work in mines. This provision aims to regulate the employment of females in underground work in mines, balancing the need for workplace safety with the recognition of certain circumstances where female employees may be required to work underground for specific purposes.

Chapter XIB of the Ordinance provides for maternity protection. It covers maternity leave, maternity allowance and restriction on dismissal of women after the maternity leave.

Length of eligible period and entitlement to maternity allowance 84.—

(1) Every female employee shall be entitled to maternity leave for a period of not less than sixty consecutive days (also referred to in this Chapter as the “eligible period”) in respect of each confinement and, subject to this Chapter, she shall be entitled to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period.¹⁷⁷

Under Section 84 (1), the maternity leave should not be less than 60 days.

¹⁷⁶ Ibid., s 79 (2).

¹⁷⁷ Ibid., s 84 (1).

- (5) Notwithstanding subsection (1), a female employee shall not be entitled to any maternity allowance if at the time of her confinement she has five or more surviving children
- (6) A female employee shall be entitled to receive maternity allowance for the eligible period from her employer if—
- (a) she has been employed by the employer at any time in the four months immediately before her confinement; and
 - (b) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement.¹⁷⁸

Further, subsections (5) and (6) provides for the rights of female employees in Sarawak to maternity allowance.

Restriction on dismissal of female employee after eligible period 92A.—

(1) Where a female employee remains absent from her work after the expiration of the eligible period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement and to render her unfit for her work, it shall be an offence, until her absence exceeds a period of ninety days after the expiration of the eligible period, for her employer to terminate her services or give her notice of termination of service.

(2) Subject to subsection (1), where a female employee is dismissed from her employment with wages in lieu of notice at any time during the period of four months immediately preceding her confinement, she shall, in computing the period of her employment for the purposes of this Chapter, be deemed to have been employed as if she had been given due notice instead of wages in lieu thereof.¹⁷⁹

This provision is similar with section 91A of the Labour Ordinance Chapter 67.

Section 92A of the Sarawak Labour Ordinance provides safeguards for female employees who are unable to work due to pregnancy-related illness after their eligible maternity leave period has ended.

Subsection (1) stipulates that if a female employee is medically certified as unfit for work due to pregnancy-related illness after her maternity leave period, it is prohibited for her employer to terminate her employment or give her notice of

¹⁷⁸ Ibid., s 84 (5)-(6).

¹⁷⁹ Ibid., s 92A.

termination for up to ninety days following the end of her maternity leave. This provision aims to ensure that female employees are not unfairly dismissed due to pregnancy-related illness during the initial period following their maternity leave.

Subsection (2) further safeguards female employees who are dismissed with wages in lieu of notice during the four months prior to childbirth. In such cases, their length of employment for entitlement calculations is adjusted as if they had been given notice instead of wages in lieu thereof.

In summary, Section 92A aims to protect the employment rights of female employees during and after pregnancy, ensuring they are not unfairly dismissed due to pregnancy-related illness and providing adjustments to their employment period for entitlement purposes.

There have been many proposals and suggestions to amend these two ordinances which are Labour Ordinance Chapter 67 and Labour Ordinance Chapter 76. Among the proposed amendments are introduction of seven days of paternity leave, increase of maternity leave from 60 days to 98 days and reduction of weekly working hours from 48 hours to 45 hours.

As to the Sabah Labour Ordinance, the proposed amendments were initially slated for tabling in Parliament last November, but were rescheduled for March of this year. However, the Bill did not proceed to the tabling stage as planned.¹⁸⁰

Meanwhile, as to the Sarawak Labour Ordinance, the revisions to the Ordinance have been completed and forwarded to the Ministry of Human Resources

¹⁸⁰ Bernama, “Unions: Hurry up with labour amendments in Sabah, Sarawak”, *The Star*, 2 May, 2024, <https://www.thestar.com.my/news/nation/2024/05/02/unions-hurry-up-with-labour-amendments-in-sabah-sarawak>

(KESUMA) for the next steps, including referral to the Attorney General's Chambers.¹⁸¹

In addition, the Prime Minister, Anwar Ibrahim, urges Sabah and Sarawak to increase their maternity and paternity leaves. The states in Borneo have reached an agreement to harmonise their individual labour ordinances with the provisions outlined in the Employment Act of 1955.¹⁸²

3.6 CONCLUSION

To conclude as a whole, it can be said that Malaysia has sufficient policies on women empowerment as Malaysia has Malaysian Plan, National Policy on Women and National Family Policy which support women to join labour market. The laws governing working mothers are still inadequate and incomprehensive. However, the laws are continuously being improved throughout the years. The amendments made to the Employment Act 1955 shows Malaysia's commitment to refine the laws concerning labour in the country including laws governing working parents. The amendments should also be done by Sabah and Sarawak to improve their laws and to better protect their employees especially their working parents.

Nevertheless, Malaysia lacks on the part of the implementation and enforcement of the policies, laws as well as roles of the related agencies. This can obviously be seen on the law regarding registration of childcare centres. Even though

¹⁸¹ Bernama, "Amendments to Sarawak Labour Ordinance finalised, says deputy state minister", *Malay Mail*, 1 May, 2024, <https://www.malaymail.com/news/malaysia/2024/05/01/amendments-to-sarawak-labour-ordinance-finalised-says-deputy-state-minister/131874>

¹⁸² Martin Carvalho and Benjamin Lee, "Sabah, Sarawak to increase maternity and paternity leave, says Anwar", *The Star*, 1 May, 2024 [https://www.thestar.com.my/news/nation/2024/05/01/sabah-sarawak-to-increase-maternity-and-paternity-leave-says-anwar#:~:text=%22Working%20fathers%20there%20will%20also,Employment%20\(Amendment\)%20Act%202022](https://www.thestar.com.my/news/nation/2024/05/01/sabah-sarawak-to-increase-maternity-and-paternity-leave-says-anwar#:~:text=%22Working%20fathers%20there%20will%20also,Employment%20(Amendment)%20Act%202022)

the law on the registration is clear and strict, but the lack on the enforcement leads to many unregistered childcare centres and subsequently, to a more serious problem which is child abuse.



CHAPTER FOUR

ISSUES AND CASE STUDIES IN MALAYSIA

4.1 INTRODUCTION

This chapter presents the analysis of the data collected from selected companies in Malaysia. One of the purposes of the study is to analyse their standard and compliance with Malaysian policies and laws regarding the rights of working women, especially working mothers. Data collected in this chapter is regarded as secondary data.

4.2 DATA COLLECTION

A pilot study was conducted by the researcher prior to the actual case study to investigate whether the data is viable or not. It involved 30 respondents in which 15 (50%) respondents were mothers working in the public sector and another 15 (50%) respondents in the private sector. The selected areas of study were the Federal Territories of Kuala Lumpur and Putrajaya, and Selangor. Using a quantitative research design, survey questionnaires were distributed by hand and online through *Facebook* and *WhatsApp Messenger*.

The nature of the case study required collection of quantitative data from 183 respondents from the Federal Territories of Kuala Lumpur and Putrajaya, and Selangor. The study proposed for 200 respondents where 100 (50%) were mothers working in the public sectors and another 100 (50%) in the private sectors. However, the study only managed to collect 183 respondents out of the 200 distributed surveys. Out of the 183 respondents, only 57 of them were from public sectors while the remaining 126 respondents were from private sectors. Respondents from the public sectors were less responsive compared to

respondents from the private sectors. This subsequently affected the total number of respondents. The researcher had to put a stop to the collection when the number of respondents from the private sectors exceeded half of the number of respondents from the private sectors. The respondents consisted of working mothers from public and private sectors. The selected public sectors included the Ministry of Human Resources, Ministry of Women, Family and Community Development, International Islamic University of Malaysia (IIUM), Clinical Research Malaysia and Syarikat Bekalan Air Selangor Sdn. Bhd. (SYABAS). Meanwhile, the private sectors' respondents included working mothers from Tan Chong Education Services Sdn. Bhd., Tetuan Azmi Ramlan, Ain Ali & Co. Legal Firm and Mara Incorporated Sdn. Bhd. The survey questionnaires were distributed to the respondents by hand and through online *Facebook* and *WhatsApp Messenger* from 28th August 2019 until 28th April 2020.

In the survey, the respondents were asked about the policies and laws provided in their company which protect working mothers.¹ The survey also asked about their satisfaction about the legal protection. The researcher adopted multiple choice answers in most of the questions and logical answers like yes/no in some of the questions. The survey was created by using Google forms in order to facilitate online and manual distribution.

4.3 DEMOGRAPHIC BACKGROUND OF RESPONDENTS

In determining the selection of respondents, there were some characteristics of the respondents which were important, especially their status as working mothers. The

¹ See Appendix A for full survey responses.

demographic characteristics includes age, status, highest completed education, sector of occupation, designation, working experience, number and age of children.

The target group of respondents were mothers who are working, aged above 18-years-old. The demographic background of respondents' age is shown in Table 4.1 and Figure 4.1 below.

Table 4.1: Demographic Background of Respondents (Age)

Age (years old)	18 - 30	31- 40	41- 50	51- 60	Total
	57	70	31	25	183

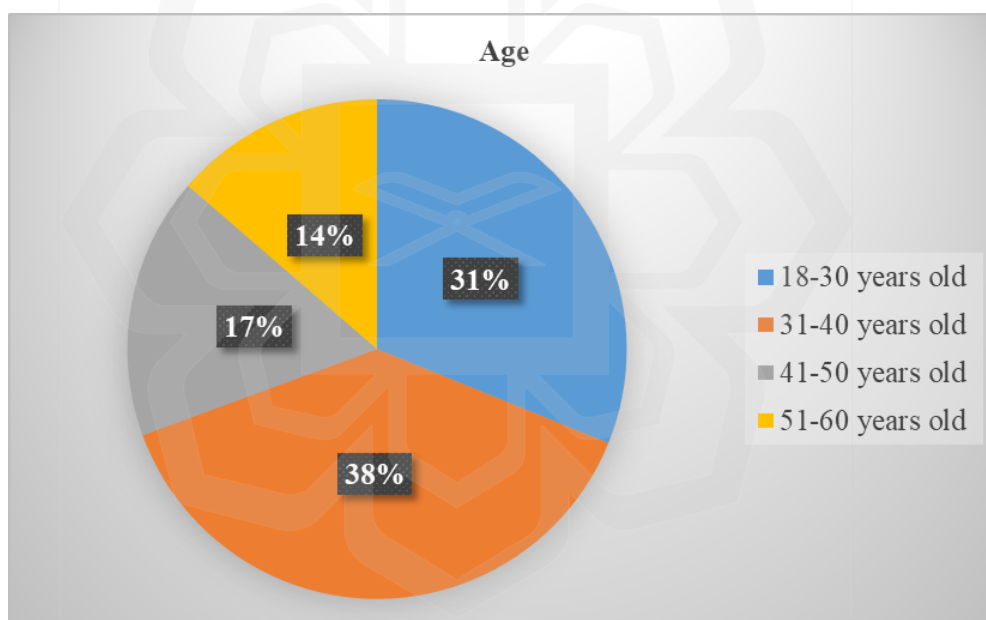


Figure 4.1: Demographic Infograph of Respondents (Age)

The next demographic background of respondents is their marital status which is shown in Table 4.2 and Figure 4.2 below. This demographic background is significant in identifying the adequacy of the support system received by working mothers of different status. For example, married working mothers might have different financial support compared to divorced working mothers.

Table 4.2: Demographic Background of Respondents (Marital Status)

Marital Status	Single	Married	Divorced	Total
	2	170	11	183

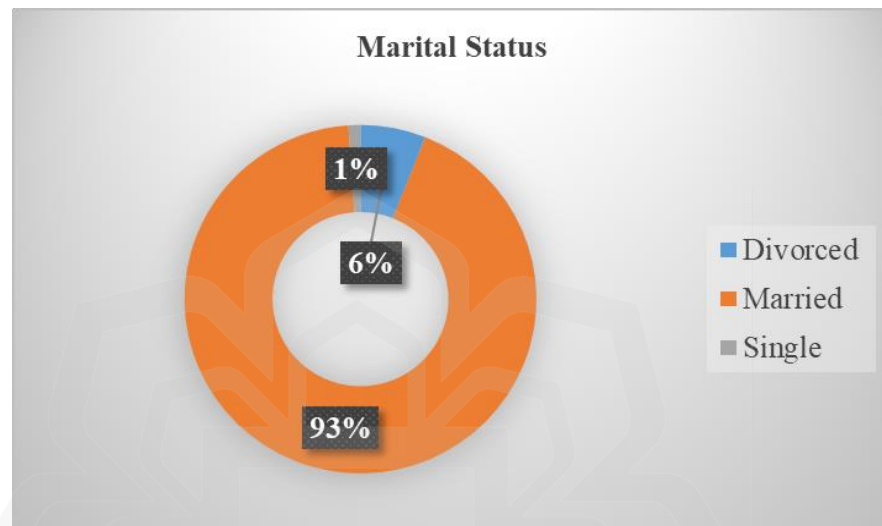


Figure 4.2: Demographic Infograph of Respondents (Marital Status)

The demographic information on the respondents' highest completed education is shown in Table 4.3 and Figure 4.3 below. This information is vital in order to analyse whether different background of education may affect the awareness of the working mothers on their legal rights.

Table 4.3: Demographic Background of Respondents (Highest Completed Education)

Highest Completed Education	SPM	Diploma	Bachelor Degree	Master Degree	PhD	Others	Total
	22	56	75	19	3	8	183

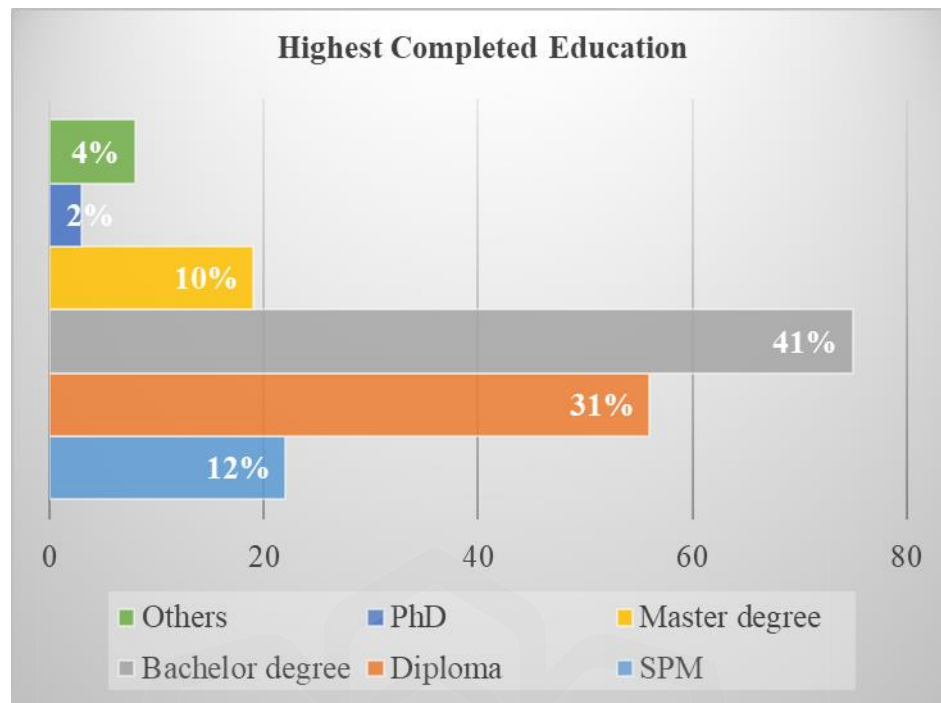


Figure 4.3: Demographic Infograph of Respondents (Highest Completed Education)

The demographic information on respondents' sector of occupation is presented next. This information is important as different sectors have different working time and structure, and the study wants to examine the variety of support system provided for the working mothers.

Table 4.4: Demographic Background of Respondents (Sector of Occupation)

Sector of Occupation	Public	Private	Total
	57	126	183

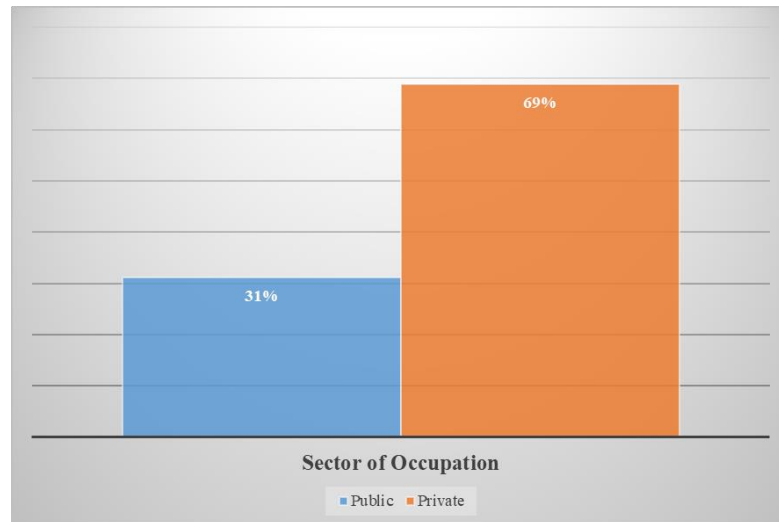


Figure 4.4: Demographic Infograph of Respondents (Sector of Occupation)

The respondents come from various professional backgrounds. Among them are legal, medical, account, education and administrative personnel. It is important to identify this aspect of their life because different designations might receive different types of allowances or benefits from their companies. The designations of the respondents are presented in Table 4.5 below.

Table 4.5: Demographic Background of Respondents (Professional Designation)

Designation	Number of Respondents
Accountant	9
Administrator	40
Nurse	25
Dentist	7
Clerk	12
Educator	28
Legal	7
Human Resource	3
Sales	5
Finance	2
Self-employed	4
Executive	9
Others	32
Total	183

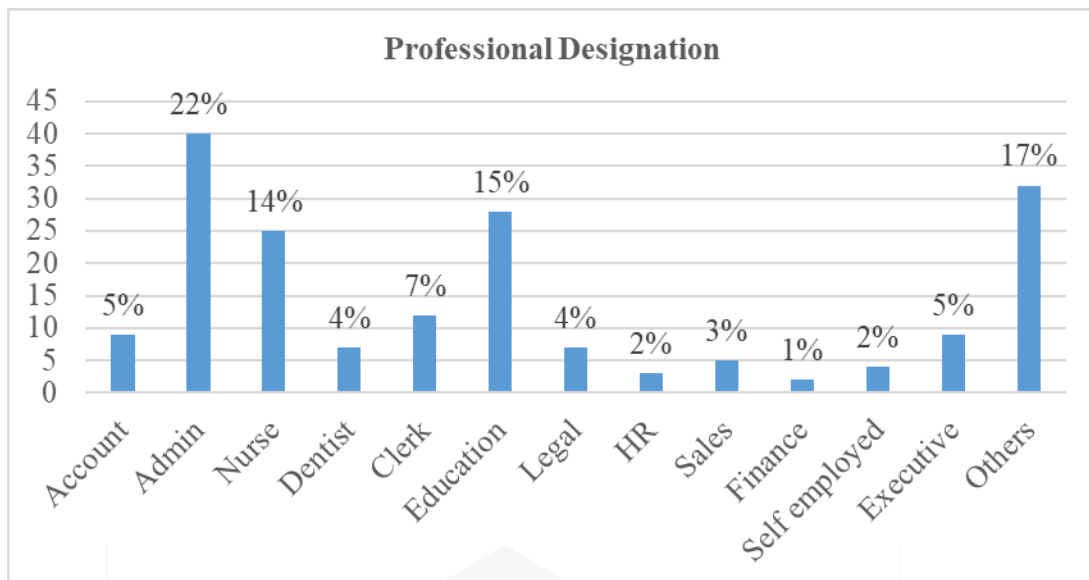
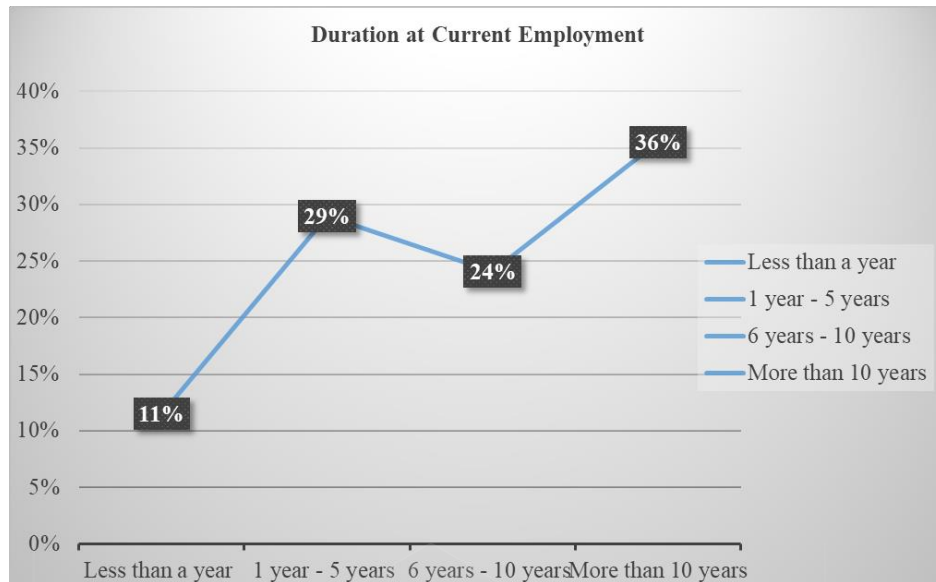


Figure 4.5: Demographic Infograph of Respondents (Professional Designation)

The period of working at their current company also differs across all respondents. This demographic information is significant in order to identify whether the respondents were satisfied with their rights at the company that makes them stay or leave the company. Most of them have worked at their current employment for more than ten years. Only a few of them have worked less than a year at their current workplace. More detailed data is presented in Table 4.6 and Figure 4.6.

Table 4.6: Demographic Background of Respondents
(Duration at Current Employment)

Duration at Current Employment	Number of Respondents
Less than a year	21
1 year to 5 years	53
6 years to 10 years	44
More than 10 years	65
Total	183



**Figure 4.6: Demographic Infograph of Respondents
(Duration at Current Employment)**

Their years of working experience therefore also varied across all respondents. More than half of them have had more than ten years of working experience. This is followed by respondents who have had 6-10 years of working experience, respondents who have had 1-5 years of working experience and respondents who have had less than a year of working experience. This implies that most of the respondents were satisfied with their current employers' policies as they can stay working for a very long period of time with their current employment.

Table 4.7: Demographic Background of Respondents (Working Experience)

Working Experience	Number of Respondents
Less than a year	3
1 year to 5 years	31
6 years to 10 years	53
More than 10 years	96
Total	183

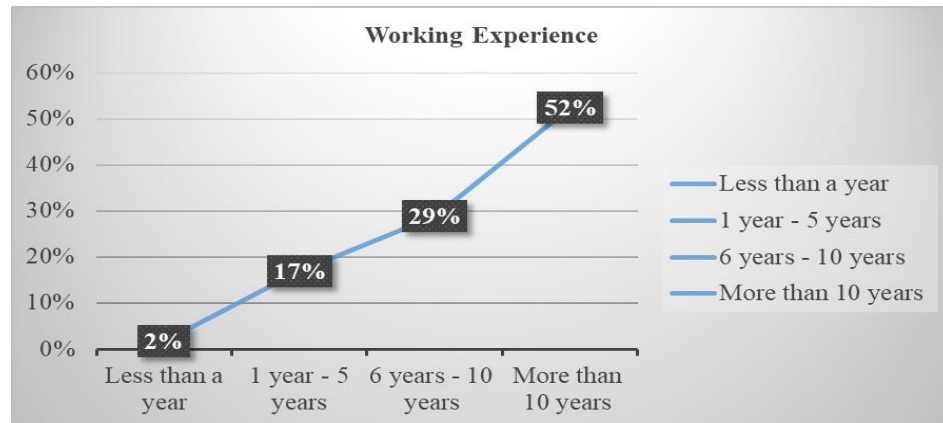


Figure 4.7: Demographic Infograph of Respondents (Working Experience)

All of the respondents in this study have children. Nevertheless, the number of children varied. This data is important for this research to analyse the sufficiency of the allowances or benefits provided by their employers. Some companies might provide allowances or benefits per employee not per children. Another reason is some employers only provide maternity leave or maternity allowance for the first few children. Almost all of them have 1 to 5 children and only a few of them have 6 to 10 children. The number of children indicates that the more children you have, the more care and attention are needed to be given to them.

Table 4.8: Demographic Background of Respondents (Number of Children)

Number of Children	Number of Respondents
1 to 5	180
6 to 10	3
Total	183

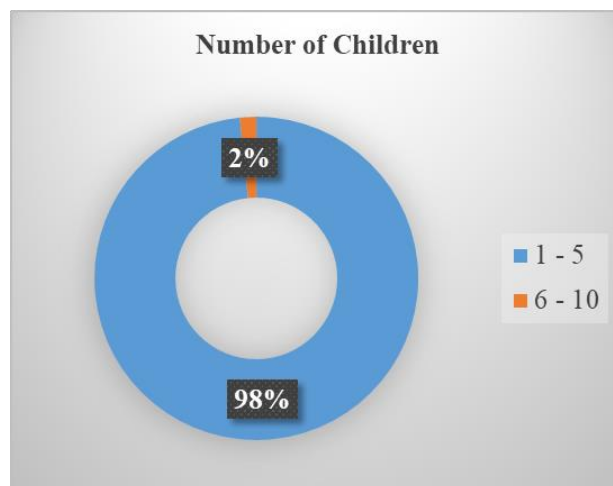


Figure 4.8: Demographic Infograph of Respondents (Number of Children)

The respondents' children age also varies. This data is vital to indicate that younger children need more attention than older children. They need more physical, mental and financial support. Hence, working mothers with younger children might need more support to care for children, financial assistance as well as rights to breastfeed and send them to childcare centres. Most of their children were aged 0 to 5-years-old. The rest of the children were aged more than 10-years-old and followed by respondents who have children aged 6 to 10-years-old.

Table 4.9: Demographic Background of Respondents (Children's Age)

Children's Age	Number of Children
0 to 5 years old	112
6 to 10 years old	57
More than 10 years old	67

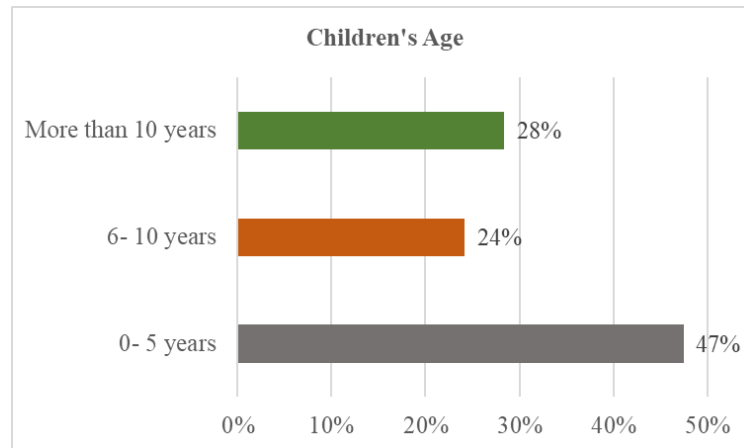


Figure 4.9: Demographic Infograph of Respondents (Children's Age)

The survey that was utilised differentiates the respondents' characteristics as working mothers. The reason is to analyse whether the different characteristics affect the satisfaction of the working mothers towards their legal protection in Malaysia. However, it has been observed that the working women who belonged to the age groups of 21 to 30-years-old and 31 to 40-years-old, with a bachelor degree, working in private companies with more than ten years of working experience and have 0 to 5-year-old children were more willing to respond to the survey questionnaire. It appears that the survey questions were more relatable to them. They were willing to share their opinions as the survey was more relevant to them. Therefore, by sharing their opinions, they thought about contributing for a better outcome and improvement on the subject matter.

4.4 DATA ANALYSIS

In this section, the data from the survey has been analysed in order to summarise the policies and laws pertaining to working mothers in Malaysia and their satisfaction towards the policies and laws. For this purpose, the survey has included a sub-section on the legal protection of working mothers which includes the right to getting leave

from work, right to working flexibility, rights pertaining to children, financial rights and satisfaction towards these rights.

4.4.1 Rights on Utilising Work Leave

This sub-section presents the data from the question on the right to get leave from work for the working mothers including utilisation of leave from last year, reasons for leave including right to maternity leave and unpaid leave as shown in Table 4.10 and Figure 4.10 below.

Table 4.10: Number of Respondents Utilising Work Leave

Period of Utilisation	Number of Respondents
None	4
Less than 1 Week	31
More than 1 week	117
More than 1 Month	31
Total	183

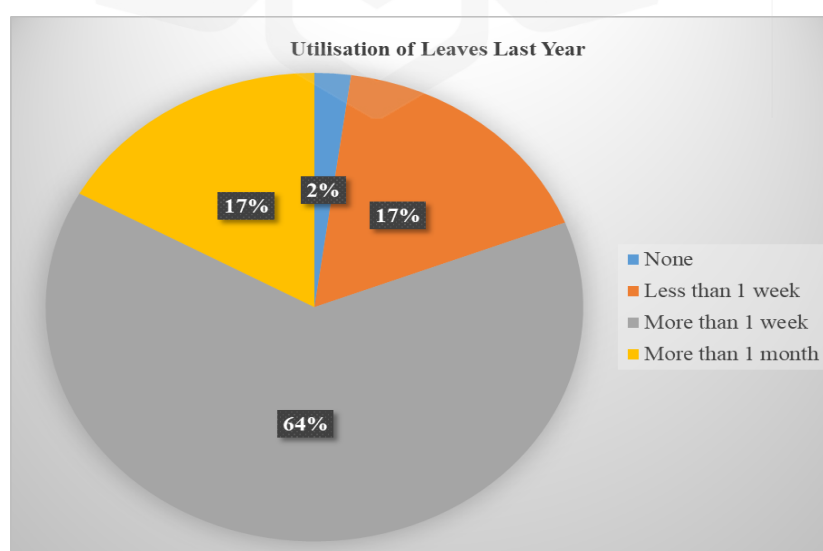


Figure 4. 10: Percentage of Respondents Utilising Work Leave

Based on the conducted survey, more than half of the respondents (n=117 or 64%) have utilized their leave of more than one week between the years 2018 to 2019. Meanwhile, the numbers of respondents who have utilized less than one week of leave and more than one month of leave are both the same which is less than one fifth (17%). The least of them which is 2% are the respondents who did not take any leave during the same period.

It is observed that the working mothers took some leave as most of them took between one week to one month. It can be considered as a normal leave period for employees, including working mothers. The main reason for respondents to take leave was mainly due to situations with their children. Therefore, more than one week is a suitable period of leave to attend to the children like handling sick children and children's school matters. Furthermore, only a few of the working mothers took longer leave lasting more than one month while some of them took more than one month leave due to giving birth.

Table 4. 11: Reasons for Getting Leave

Reasons	Sick (MC)	Emergency Leave	Children Necessity	Maternity Leave	Others
Number of Respondents	80	73	112	28	61

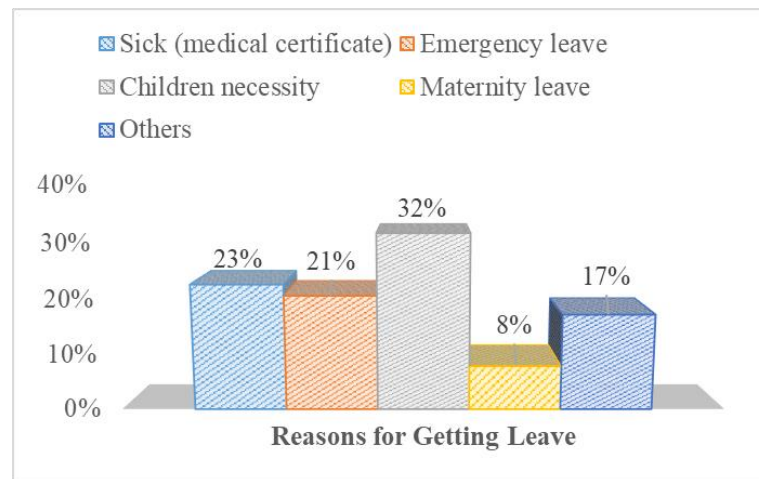


Figure 4.11: Graph Indicating Reasons for Getting Leave

According to the survey done, most of the respondents gave more than one reason. Based on the result acquired, the major reason for 112 respondents getting leave is due to the need to attend to their children. Children necessity here may include illness and settling their school matters, which comes to less than one third of the sample (32%). The second reason which is more than one fifth (23%) of the sample is because they fell sick and had medical certificates. The third reason for utilizing emergency leave may include death of relatives and transportation problem. Less than one fifth of the respondents (21%) gave this reason. The last reason given is maternity leave. Only 8% took leave due to giving birth within the two years this study was conducted. Meanwhile, 61 respondents responded that they utilized their leave because of reasons other than being sick, emergency, children necessity or maternity. The reasons may include going in vacation with family members and friends. The percentage is 17% for this reason.

It is obvious from the survey that most of the working mothers usually took leave because of their children. They were still balancing between their working and personal life. Their priorities were matters concerning their children. According to

previous findings, there is only one legislation that allows for taking leave which is the maternity leave under Section 37 of the Employment Act 1955. For this type of leave, the respondents were eligible for 60 consecutive days. Other kinds of leave absolutely depend on their companies' policies and consideration.

Table 4.12: Length of Unpaid Leave Taken

Length of Unpaid Leave Taken	Number of Respondents
None	141
Less than 1 week	20
More than 1 week	16
More than 1 month	6
Total	183

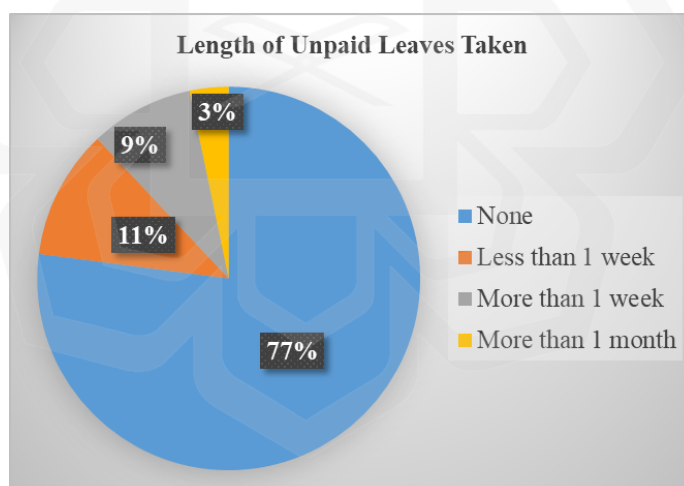


Figure 4.12: Chart Showing Length of Unpaid Leave Taken

Based on the results of the questionnaire, more than three quarters (77%) of the respondents did not take unpaid leave between 2018 to 2019. This is followed by those who took less than one week of unpaid leave with a total of 20 respondents which equals to 11%. The remaining 9% which equals to 16 respondents took more

than one week but less than one month of unpaid leave and only 3% of the respondents took more than one week of unpaid leave between 2018 to 2019. This means only six respondents took more than one month unpaid leave during the same period.

It may be seen that most of the working mothers did not need unpaid leave. The paid leave provided by their employees was sufficient. Only a few of them needed unpaid leave. The survey showed that employers treated all their employees equally the same, including their working mothers. All employees got the same period of leave and no special leave was given to working mothers.

4.4.2 Rights to Working Flexibility

This sub-section presents data from the questionnaire on the rights to working flexibility. Working flexibility here includes flexibility of time and flexibility of place.

Table 4.13: Working Hours

Working Hours	Normal Working Hours	Shift Hours	Flexible Hours	Total
Number of Respondents	132	25	26	183

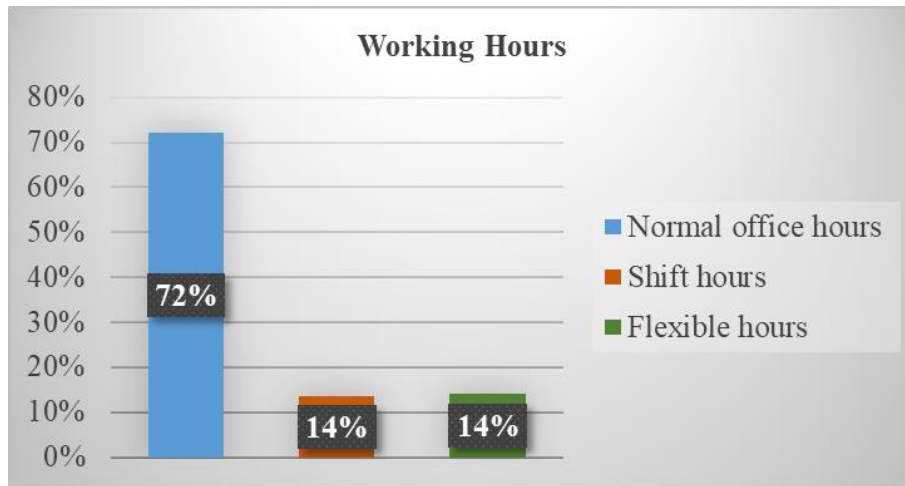


Figure 4.13: Graph Indicating Working Hours

Based on Table 4.13 and Figure 4.13 shown above, nearly three quarters (72%) of the respondents (n=132) work within the normal office hours which are from 8 a.m. until 5 p.m. every Monday to Friday. In the meantime, the respondents who work in the other two types of hours which are shift hours and flexible hours were the same which is less than one fifth (14%) even though the numbers of respondents working in both are very slightly different. In numbers, the respondents who work shift hours are 25 while the respondents who work flexible hours are 26.

The findings indicate that working mothers are treated the same as any other employee. Their working times are the same like others. If the company applies normal office hours for all employees, the same goes for the working mothers in the company and if the company applies shift hours, their working mothers would have to abide by this. Only a few employers allow flexible working hours for their working mothers. Even though flexible working hours is not applied in Malaysia according to the Flexible Working Arrangements Policy, employers in Malaysia have the option to adopt the policy. The non-adoption by most employers may be due to the fact that flexible working hours does not fit their working environment.

Table 4.14: Working on Weekends

Working on Weekends	Yes	No	Total
Number of Respondents	85	98	183

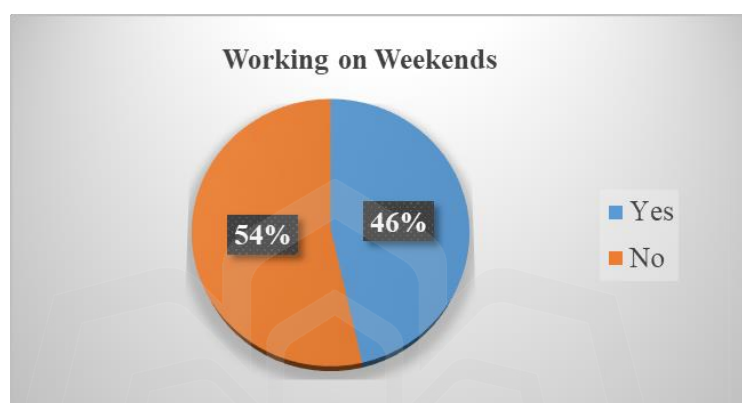


Figure 4.14: Chart Showing Working on Weekends

Based on the conducted survey, more than half (54%) of the respondents were not required to work on weekends while less than half (46%) of them were required to work on weekends.

There was only a slight difference between both groups even though there were more respondents who were not required to work on weekends than the respondents who were required to do so. This happened due to the fact that there is no law which prohibits employers from requiring their employees, including female workers, to work on weekends. There is only a law which prohibits employers from requiring their female employees to work at night under Section 34 of the Employment Act 1955.

There are more negative impacts than positive ones for women working on weekends. The positive impacts are being a role model to the children and earning

extra income. Nonetheless, the negative impacts include fatigue, sleep deprivation, stress, bad effects on health and fitness, and consequently having less energy for parenting. A key impact of working on weekends on the family is the reduction in quality time, especially with the children. This then will cause more serious problems like bad behaviour in the children as they get less love, care and attention from their parents, especially their mothers.

Table 4.15: Working Place

Working Place	In the Office	Flexible Place	Total
Number of Respondents	151	32	183

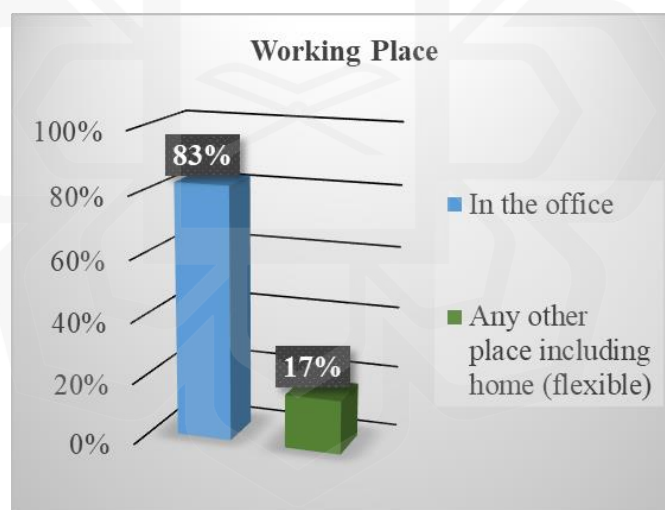


Figure 4.15: Graph Indicating Working Place

Data from Table 4.15 and Figure 4.15 shows that the majority of the respondents (83%) are required to work in the office which is a fixed location. On the other hand, less than one fifth (17% or n=32) of the respondents are allowed to work in any other place other than the office which includes their own home. This means they have flexible working place.

The results clearly indicate that most working mothers are required to work in the office and not elsewhere. Only a few of them are allowed to work at other places such as their own home. This is in line with the previous findings that there is no law which obligates employers to provide flexible workplace for the working mothers in their company. There is only one non-binding policy pertaining to this which is the Flexible Working Arrangements Policy.

4.4.3 Rights Pertaining to Children

This sub-section shows the data relating to rights pertaining to children which include right to childcare centre, right to breastfeed and right to medical benefits for children.

Table 4.16: Provision of Childcare Centres

Provision of Childcare Centres	Number of Respondents
Yes	63
No	119
Total	182

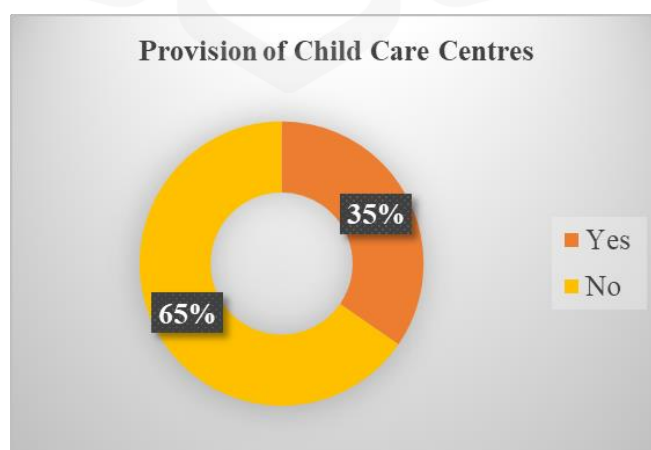


Figure 4.16: Chart Showing Provision of Childcare Centres

Based on Table 4.16 and Figure 4.16 above, more than half (65%) of the respondents' workplaces do not provide childcare centres for their employees' children compared to the workplaces that do provide childcare centres for the children which is more than one fourth (35%).

It can be seen from the results that the employers still do not take their own initiative to provide childcare centre for their employees. This is because there is no law that obligates them to do so. Early Childhood Care and Development (ECCD) Policy 2007 only formulated a good environment in childcare centres for the development of children. Meanwhile, Child Care Centre Act 1984 emphasises on the registration of all types of childcare centre in Malaysia. Based on both policy and legislation, employers do not have binding responsibility to provide childcare centres for their employees' children.

Therefore, the findings indicate that more working mothers send their children to childcare centres which are far from their workplace as their employers do not provide childcare centre at or near their place of work. The impacts of this are time consumption and money constraint which add to the burden on working mothers.

Table 4.17: Provision of Allowance for Childcare Centres

Provision of Allowance for Child Care Centres	Yes	No	Total
Number of Respondents	8	169	177

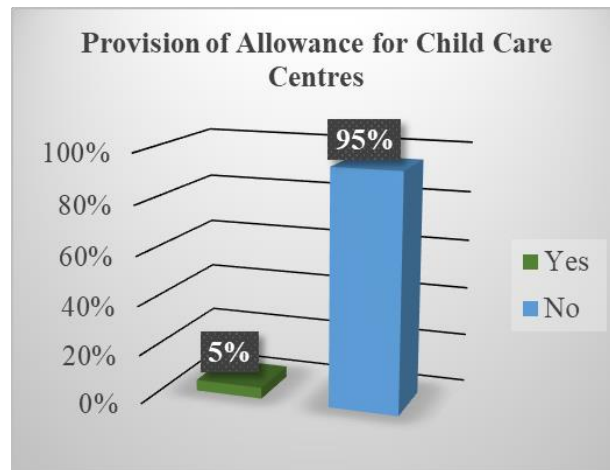


Figure 4.17: Graph Indicating Provision of Allowance for Childcare Centres

From the results obtained, less than one tenth (5%) of the respondents are provided with allowance for their children's care centres which is 8 out of 177 respondents. The majority of the respondents (95%) are without any allowance.

It is obvious that the results of the survey are consistent with previous findings that there is no law that binds employers to give allowance to their employees to pay for childcare centres to take care of their children. Consequently, the working mothers would prefer cheaper and affordable childcare centres for their children whether the childcare centre is registered or not. However, some employers do provide some allowances based on the number of children their employees have, as shown in Table 4.18 and Figure 4.18.

Table 4.18: Amount of Allowance (per Child)

Amount of Allowance (per Child)	Number of Respondents
RM1-RM100	16
RM101-RM200	7
RM201-RM300	9
More than RM300	9
Total	41

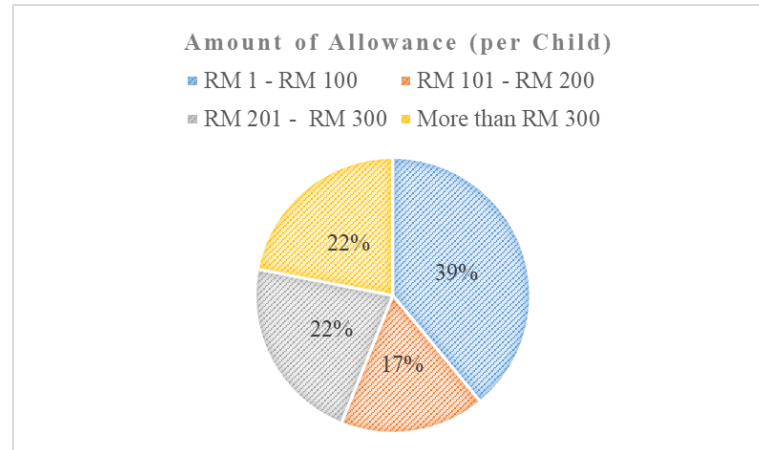


Figure 4.18: Chart Showing Amount of Allowance (per Child)

Referring to Table 4.18 and Figure 4.18, most of the respondents who are provided with allowance to pay for their childcare centre receive RM1 to RM100 per child. This accounts for 16 respondents which is more than one third (39%) of the total respondents who receive allowances. This is followed by two other groups – one receiving RM201-RM300 and the other receiving more than RM300 – totalling more than one fifth (22%). The least number of respondents (n=7 or 17%) is represented by the group that receives RM101 to RM200 per child to spend on childcare centres.

It has been noted from earlier findings that the amount of allowance for childcare centre is not fixed by law. There is no clear guideline on the amount of the allowance. Thus, it solely depends on the companies' policies. This is the reason why the amount received is different for the respondents who get these allowances.

Table 4.19: Sufficiency of Allowance for Childcare Centres

Sufficiency of Allowance for Childcare Centres	Yes	No	Total
Number of Respondents	16	38	54

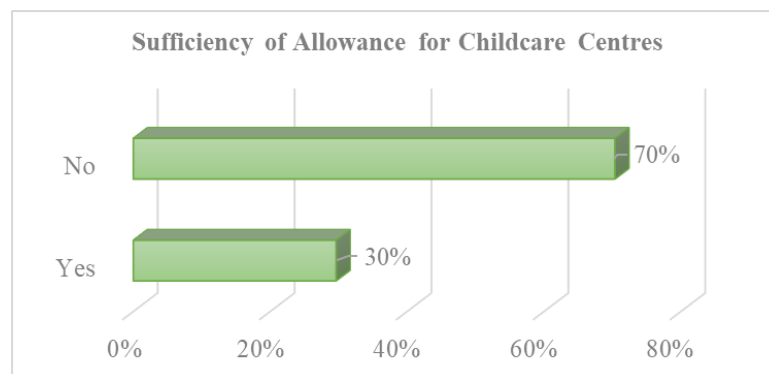


Figure 4.19: Graph Indicating Sufficiency of Allowance for Childcare Centres

Based on the conducted survey, almost three quarters (70%) of the respondents felt that they are not being provided with sufficient amount of allowance for their children's childcare centres. In contrast, more than one third (30%) of the respondents agreed that they are provided with sufficient amount of allowance for their children's childcare centres.

It is reiterated here that there is no binding law to obligate employers to provide allowances for childcare centres. Thus, the employers are not compelled to provide any sufficient amount of allowance.

Table 4.20: Affordability of Fees for Childcare Centres

Affordability of Fees for Childcare Centres	Yes	No	Total
Numbers of Respondents	109	44	153

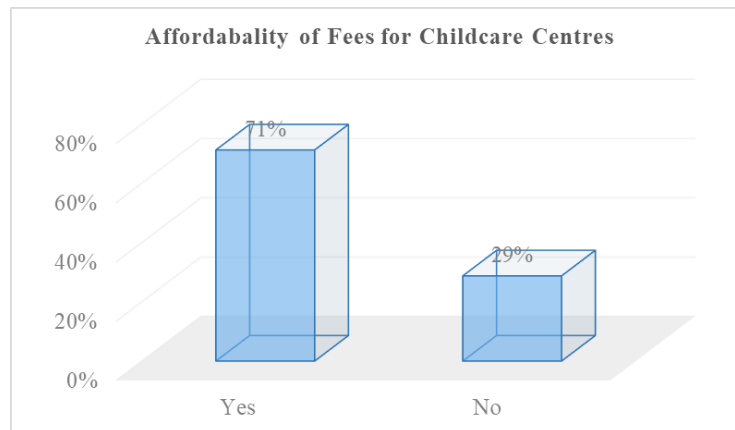


Figure 4.20: Graph Indicating Affordability of Fees for Childcare Centres

According to the data on the questionnaire, almost three quarters (71%) of the respondents responded that they can afford the fee of their children's childcare centre. Meanwhile, less than one third (29%) of the respondents stated that they cannot afford to pay the fee of their kids' childcare centre.

The law regarding childcare centre only emphasises on the registration of the centre. There is no clear guideline in the law on the fee structure of the centre. Hence, the childcare centre can freely impose their own fee on the respondents. It then depends on the respondents to choose the affordable childcare centre. Most of the respondents can afford the fee of their children's childcare centre but a few cannot afford it. The study indicates that the respondents who cannot afford the fee indicated that it is due to meagre earnings or other responsibilities to cater for. This corresponds with the previous finding in which the main reason why there are still parents who choose to send their children to unregistered childcare centre is because the fee is much lower.

Table 4.21: Choice on Breastfeeding Children

Choice on Breastfeeding Children	Yes	No	Total
Numbers of Respondents	108	65	173

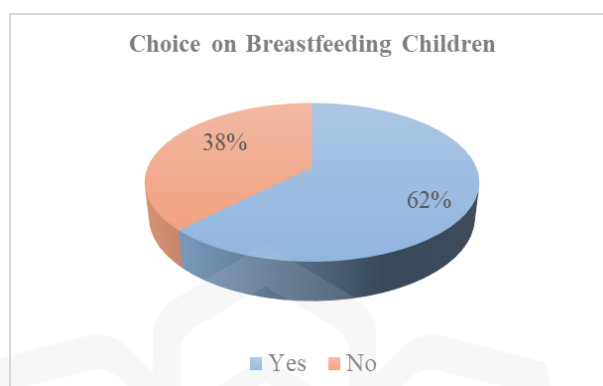


Figure 4.21: Chart Showing Choice on Breastfeeding Children

Another question with regards to the rights pertaining to their children is do they breastfeed their child. More than half (62%) of the respondents answered that they do breastfeed their child. On the other hand, more than one third (38%) of the respondents responded that they do not breastfeed their child.

As observed, awareness on the benefits of breastfeeding among working mothers is encouraging. Most of them preferred to breastfeed their children compared to giving them formula milk. This is consistent with the recommendation of the World Health Organisation (WHO) and the Ministry of Health of Malaysia (MOH) as well as the National Breastfeeding and Infant Feeding Policy 1993 that suggest breastfeeding exclusively for the first six months and continue breastfeeding until the child is two-years-old while giving it complementary food.

Table 4.22: Provision of Convenient Area to Express Breastmilk

Provision of Convenient Area to Express Breastmilk	Numbers of Respondents
Yes	86
No	65
Total	151

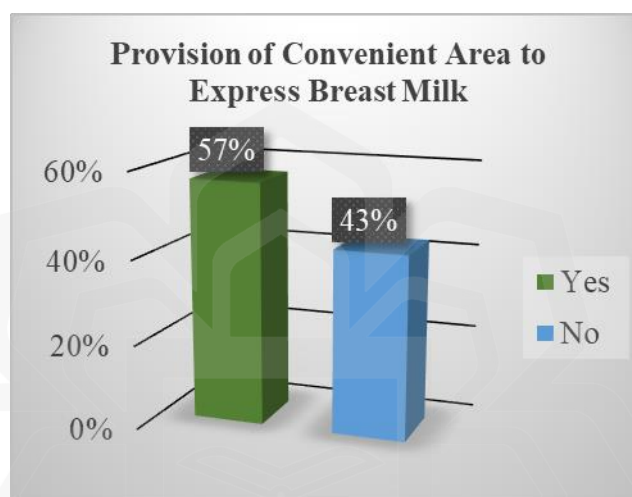


Figure 4.22: Graph Indicating Provision of Convenient Area to Express Breastmilk

Based on the conducted survey, more than half (57%) of the respondents are provided with a convenient area to express their breastmilk for the purpose of making stocks for their breastfeeding children. The convenient area here may include a specific room or space for the respondents to privately express their breastmilk. The rest of them which are more than one third but less than half (43%) of the respondents are not provided with this kind of area.

Although there is no binding law on this, most of the companies are supportive towards their working mothers in terms of breastfeeding matters. They provide a convenient area for breastfeeding mothers to express their breastmilk. This is solely employers' own initiative for the sake of their breastfeeding mothers' competency.

This helps in balancing between personal responsibility towards the children and working responsibility towards the company. This in turn is a win- win situation for the employers and the working mothers.

Table 4.23: Provision of Breaks to Express Breastmilk

Provision of Breaks to Express Breastmilk	Numbers of Respondents
Yes	72
No	82
Total	154

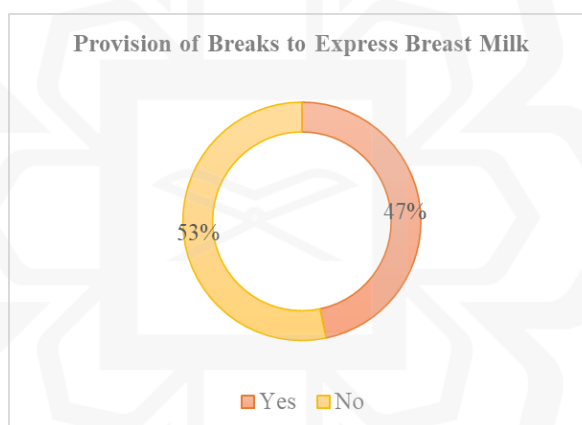


Figure 4.23: Chart Showing Provision of Breaks to Express Breastmilk

According to the survey done, more than half (53%) of the respondents are not provided with breaks to express their breastmilk during office hours, whereas the remaining respondents who are less than half (47%) are provided with breaks to express their breastmilk during office hours.

It is clear from the survey that most of the employers do not provide specific breaks to mothers to express breastmilk. This is consistent with previous findings because there is only one policy concerning breastfeeding in Malaysia. The policy is

called National Breastfeeding and Infant Feeding Policy 1993 which stresses on breastfeeding friendly hospital initiative and code and marketing of infants' formula products only. There is no law that binds employers to provide special breaks for breastfeeding mothers in their companies for the purpose of expressing their breastmilk.

4.4.4 Financial Rights

The fourth sub-section contains questions on financial rights. Under these rights, the questions pertain to maternity allowance, medical benefits for children and financial support from husband and others.

Table 4.24: Provision of Maternity Allowance

Provision of Maternity Allowance	Yes	No	Total
Numbers of Respondents	42	141	183

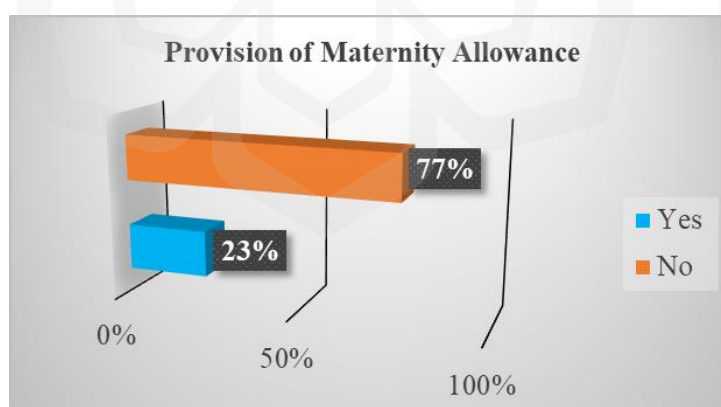


Figure 4.24: Graph Indicating Provision of Maternity Allowance

The results from the data collected show that less than one fourth (23%) of the respondents receive maternity allowance from their employers. In contrast, the majority (77%) of the respondents are not provided with such allowance.

From previous findings, it is clear that Section 37 (2) of the Employment Act 1955 protects the rights to maternity allowance. Nevertheless, this issue is not about this maternity allowance but the extra allowance that is given by employers. It can be seen from the survey that most employers do not provide extra maternity allowance for their employees. Only a few of the respondents are provided with the allowance. This is because most employers have given the statutory maternity allowance and therefore do not feel the need to provide anything extra. Those who provide any extra allowance are merely adhering to their company's policies and considerations.

Table 4.25: Amount of Maternity Allowance Received

Amount of Maternity Allowance Received	Numbers of Respondents
RM1- RM1,000	20
RM1,001- RM2,000	14
RM2,001- RM3,000	9
More than RM3,000	10
Total	53

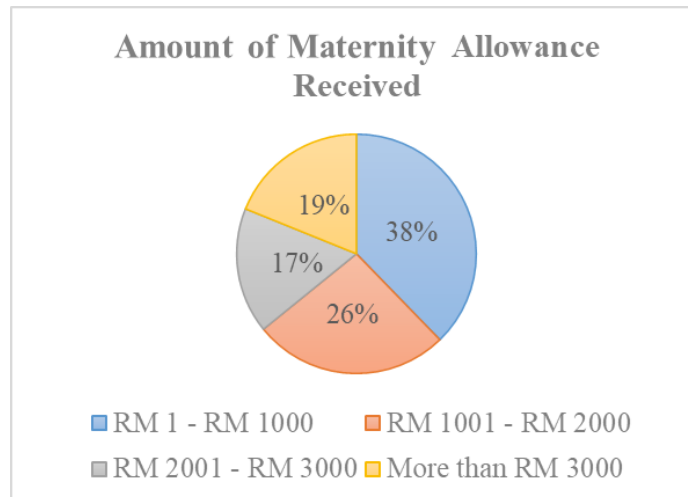


Figure 4.25: Chart Showing Amount of Maternity Allowance Received

Based on the conducted survey, more than one third (38%) of the respondents are only entitled to a small amount of maternity allowance which is between RM1 to RM1,000. This is followed by one fourth (26%) of the respondents who receive between RM1,001 to RM2,000 of maternity allowance. The third group consists of respondents who are entitled to more than RM3,000 of maternity allowance, only 19% of them got this. The last group is also less than one fifth (17% or n=9) of the respondents who receive maternity allowance of RM2,001 to RM3,000.

As discussed earlier, this question is comprehended by the respondents to mean extra maternity allowance. It is not the allowance stated in the Employment Act 1955. As this kind of allowance is not statutory, the payment is not binding on the employers. The amount of the allowance is also not determined by the law. Consequently, the amount of the allowance differs from one company to another based on individual company's policies and considerations.

The extra maternity allowance is important for working mothers because it supports the mothers financially during their maternity leave. Raising newborn babies requires extra expenses, for instance, hospital bills after the delivery, formula milk,

diapers and regular health check-ups. The extra maternity allowance can act as an effective incentive for supporting the working mothers. Most of the time, working mothers will prefer to stay with employers who provide them with extra benefits.

Table 4.26: Provision of Medical Benefits for Children

Provision of Medical Benefits for Children	Yes	No	Total
Numbers of Respondents	108	69	177

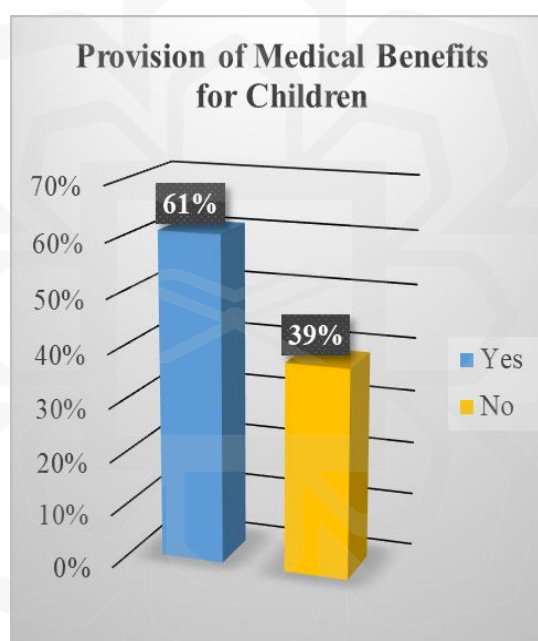


Figure 4.26: Graph Indicating Provision of Medical Benefits for Children

From the survey, more than half (61%) of the respondents were provided with medical benefits for their children. This may include medical insurance or takaful for the children. The remaining of them which is more than one third (39%) of the respondents have not been provided with that kind of benefits.

The results indicate that there were more respondents who were provided with medical benefits for their children than those who were not provided with such

benefits. According to previous findings, there is no law that binds employers to provide medical benefits for their employees' children. Nonetheless, the employers took their own initiatives to provide medical benefits for their employees' children as an appreciation for working with the company. This kind of benefit is a win-win for both sides as the employees who feel appreciated will increase the productivity of their work.

Table 4.27: Respondents with Working Husbands

Respondents with Working Husbands	Yes	No	Not applicable	Total
Numbers of Respondents	156	12	11	179

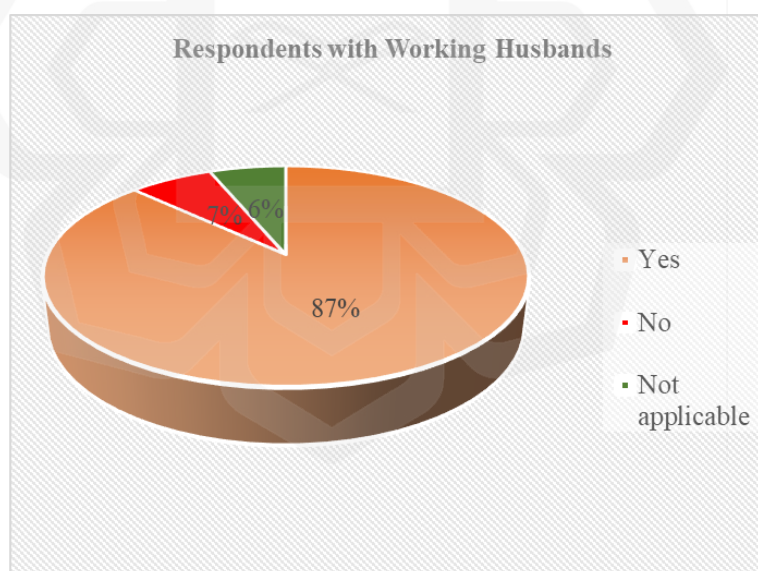


Figure 4.27: Chart Showing Respondents with Working Husbands

The results from the findings show that the majority (87%) of the respondents responded that their husbands are working. Meanwhile, less than one tenth (7%) of the

respondents have husbands who are not working and there was also less than one tenth (6%) of the respondents who stated that the question was not applicable to them.

This question is important to be asked to determine the main financial source of the respondents which is their spouse or former spouse. Sometimes even a working husband does not provide financial support and vice versa. The previous findings have confirmed that in Islam, even if a wife is working, she still has the right to maintenance as long as the husband consents to it. The same goes for non-Muslim wives. They are entitled to maintenance even if they are working. Being a working mother does not cease a wife's financial right.

Table 4.28: Financial Support from Husband or Ex-husband

Financial Support from Husband or Ex Husband	Yes	No	Total
Number of Respondents	158	15	173

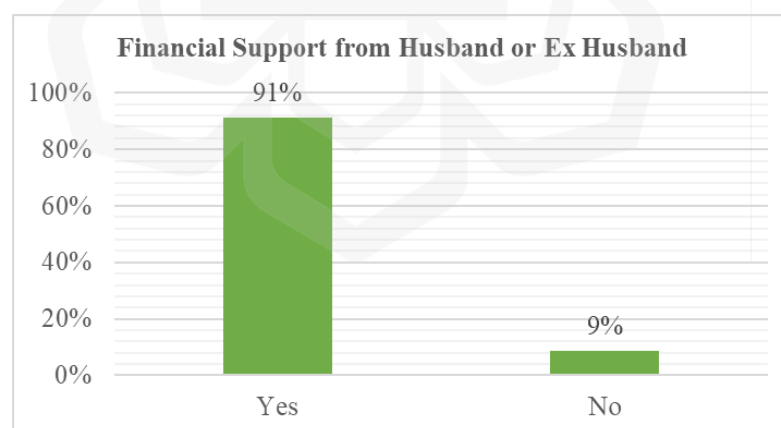


Figure 4.28: Graph Indicating Respondents' Financial Support from Husband or Ex-husband

According to Table 4.28 and Figure 4.28, the majority (91%) of the respondents were supported financially by their husband or ex-husband. In contrast,

less than one tenth (9%) of the respondents were not financially supported by their husband or ex-husband.

It is obvious that the findings are consistent with previous findings in which Section 59 of the Islamic Family Law (Federal Territories) Act 1984 obligates the husband or former husband to pay maintenance to his wife or former wife. This applies to Muslims. As for non-Muslims, Section 3 of the Married Women and Children (Maintenance) Act 1950 obligates the husband to pay maintenance to his wife and children.

Table 4.29: Financial Support from Various Other Sources

Sources of Financial Support	Number of Respondents
None	26
State Aid	9
Family	2
Zakat	5
Social Welfare Department	2
Others	3
Total	47

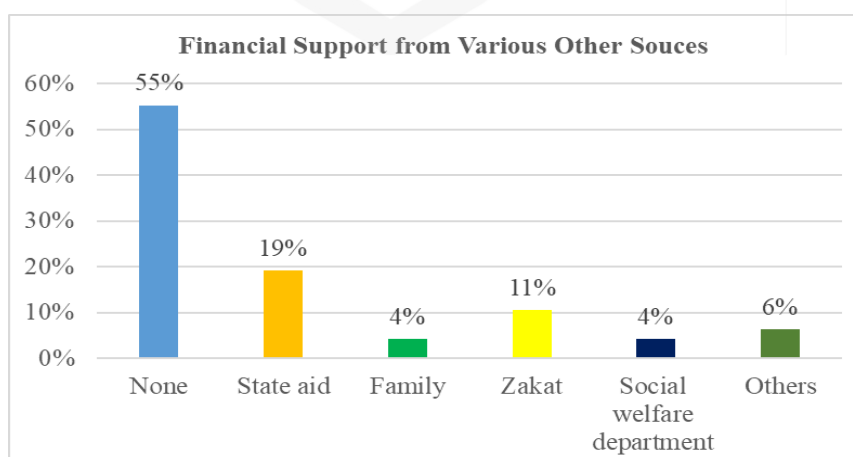


Figure 4.29: Graph Indicating Respondents' Financial Support from Various Other Sources

Based on the conducted survey, while some respondents are getting financial support from their husband or ex-husband, more than half (55%) are not getting any financial support from other sources. Financially, they support themselves and their children on their own. Following them, 19% of the respondents are getting state aid to support them financially. Nearly one tenth (11%) of the respondents are getting *zakat* to support their family. Some respondents (4%) are getting financial support from family members and the social welfare department. The remaining three of them responded that they are getting financial support from others including the Social Security Organisation (PERKESO), Pertubuhan IKRAM Malaysia and pension.

This question is vital in order to see if there is any other source of financial support for the respondents. As working mothers, a good financial support will lead to a good emotional support which subsequently, will contribute to a better development of the children. The financial support given by the financial provider or donor shows that the community does assist the respondents as the financial contribution comes from the public.

4.4.5 Satisfaction towards Companies' Policies

This sub-section analyses the data with regards to the awareness of the respondents on their legal rights as working mothers in Malaysia as well as the respondents' satisfaction towards their companies' policies pertaining to working mothers.

Table 4.30: Awareness of Legal Rights as Working Mothers in Malaysia

Awareness of Legal Rights as Working Mothers in Malaysia	Number of Respondents
Yes	82
No	97
Total	179

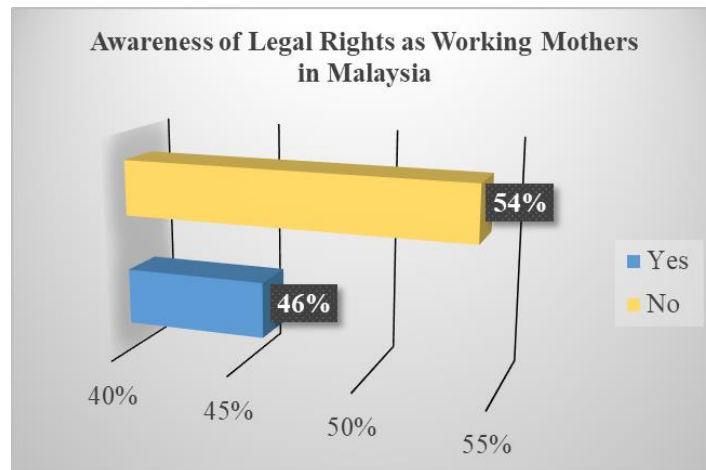


Figure 4.30: Graph Indicating Awareness of Legal Rights as Working Mothers in Malaysia

According to the findings in the questionnaire, there were fewer respondents who were aware of their own legal rights as working mothers in Malaysia than the ones who were aware of them. However, there is only a slight difference between the two groups. The number of respondents who were not aware was more than half (54%) while the number of the respondents who were aware was less than half (46%).

This question is significant for the study to determine the awareness of respondents on their legal rights as lack of awareness is the primary cause of right deprivation. According to the data, there were more respondents who were not aware of their rights as working mothers than the respondents who were aware of the rights. This happens because most working mothers are only concerned about their rights when they feel discriminated. Most of them will only take legal action when there is discrimination of their rights as working women or mothers. Most of them are also satisfied with their employers as their statutory legal rights are provided. If the work environment is comfortable with them and their children, they are more likely to not care much about their rights. This is due to the fact that most of them work because of

the pressure to be employed to survive the high cost of living. Hence, this needs to be improved by all including the working mothers themselves, the employers and also the law enforcement bodies.

Table 4.31: Satisfaction about their Companies' Policies regarding Working Mothers

Satisfaction about their Companies' Policies regarding Working Mothers	Yes	No	Total
Number of Respondents	110	61	171

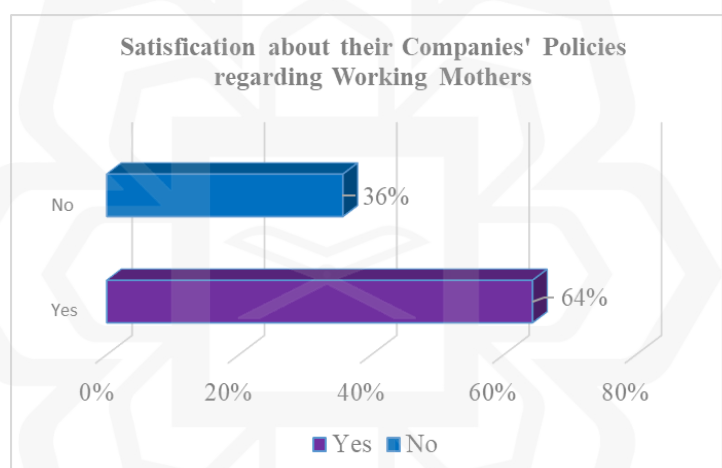


Figure 4.31: Graph Indicating Satisfaction about their Companies' Policies regarding Working Mothers

Based on the survey conducted, the majority of the respondents (n=110 or 64%) were satisfied with their companies' policies with regards to working mothers. The remaining 61 respondents, however, were not satisfied with their companies' policies related to working mothers.

This question is vital for the study because the main purpose of the survey itself is to identify the satisfaction of working mothers towards their companies' policies. Most of them were satisfied with the policies as they are in line with the laws

provided by the country. Their basic legal rights like maternity leave and breastfeeding rights were prioritised by their employers.

These basic legal rights are important to the working mothers because they relate to their children's well-being. For working mothers, the most important thing is to ensure that the welfare of their children is taken care of. Therefore, these basic rights are important for them to ensure their children's development.

Table 4.32: Suggestions from Respondents

Suggestions from Respondents	Number of Respondents
Provide flexible working time and place	17
Provide specific leave for children's necessity	14
Provide childcare centre near workplace	9
Provide medical benefits for children	6
Provide convenient area and breaks for breastfeeding	3
Provide financial support for mothers and children	7
Others	7
Total	63

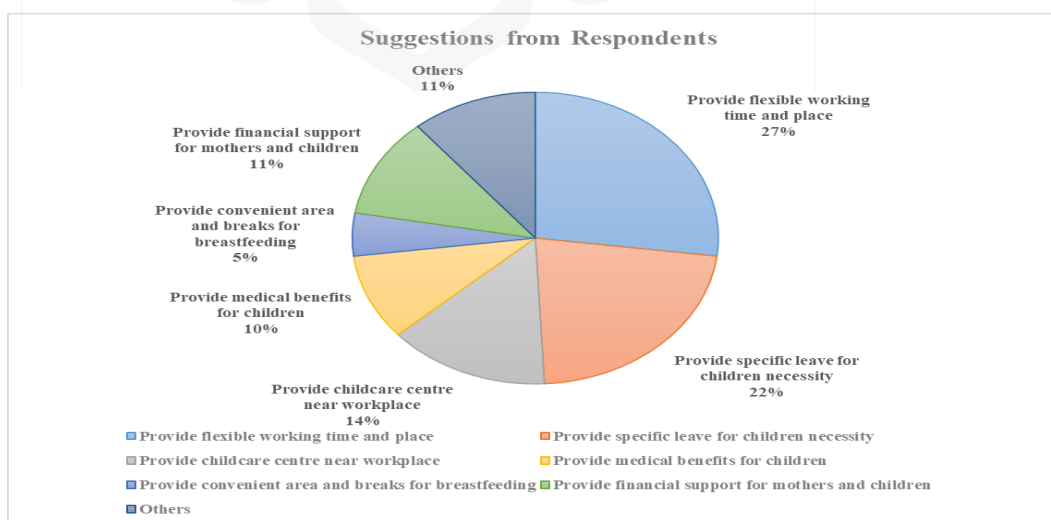


Figure 4.32: Chart Showing Suggestions from Respondents

The last question in the questionnaire is about the respondents' suggestions to improve the policies of their companies for working mothers. The most popular suggestion is to provide flexible working time and place for working mothers. The percentage of the respondents who suggested this is more than one fourth (27%). Some of them suggested having shorter working hours, some of them felt adjusting the working hours in order to make them convenient for working mothers would help while some of them suggested reconsidering the working time for working mothers to end earlier than the time for male workers. A few also suggested that working mothers should not work over time and should go home on time.

Secondly, is to provide specific leave for female workers to attend to their children's needs, especially when the children are sick and hospitalised. This is suggested by more than one fifth (22%) of the respondents. Next, more than one tenth (14%) of the respondents suggested that their companies should provide a childcare centre near the workplace, followed by suggestions by more than one tenth (11%) of the respondents to provide financial support to working mothers and children. Other suggestions include offering higher salary to working mothers due to bigger responsibilities, increasing their annual leave, providing longer maternity leave and providing maternity allowance. There is also a suggestion to allow bringing children to the office when the baby sitter or childcare centre is closed and there should be specific policies for single mothers. Other than that, there is also a suggestion to reduce tax for employers who provide childcare centre and there should be other colleagues who can handle the tasks of working mothers who are on maternity leave.

One tenth (10%) of the respondents suggested that their companies should provide medical benefits for their children and the remaining respondents (5%) suggested providing a convenient area and breaks for breastfeeding mothers.

The findings indicate that the main concern for working mothers is work-life balance as the most popular suggestion made was to have flexible working time and place. Work-life balance can be achieved if the mothers are given the right to work flexibility. They can rearrange their schedule to fit more quality time with their family, especially their children. If they are provided with the right to work from home, for example, they can also have more quality time for themselves as well as for their family.

In addition, the findings also indicate that another utmost concern of the working mothers is their children's needs and well-being. This is the reason why the respondents suggested specific leave to attend to children's needs and a childcare centre to be set up near the workplace. Generally, the findings clearly indicate that all suggestions made are concerned with the welfare, growth and development of the children. For working mothers, their children are as important as their career.

4.5 DISCUSSION

The results of the questionnaires and interviews show that employers in Malaysia, whether from public or private sector, do comply with the laws governing working mothers. As the laws are with legal effect, both employers and employees are bound to follow them. The example is right to leave. With regards to public companies, they comply with the right to leave laid down in the Employment Act 1955. For instance, IIUM², SYABAS³ and Clinical Research Malaysia (CRM)⁴ provide 90 days of maternity leave to their pregnant employees.

² Puan Raheme binti Ahmad, interview with author, Gombak, Selangor, 30 August, 2019. At the time of the interview, she was the Administrative Assistant (Clerical/Operation), Management Services Division, IIUM.

³ Encik Abdul Latif Ismail, interview with author, Kuala Lumpur, Wilayah Persekutuan, 15 October, 2019. At the time of the interview, he was the Vice President, Human Resources Section, SYABAS.

This is similar with regards to private companies where they comply with the Employment Act 1955. For instance, the paid maternity leave provided by Tan Chong Education Services Sdn. Bhd.⁵, MARA Incorporated Sdn. Bhd.⁶ and Tetuan Azmi Ramlan, Ain Ali & Co⁷ was for 60 days following the previous laws stated in the Employment Act 1955 for private companies.

Nonetheless, if it is only policy on particular rights, the employers, whether from public or private sector, usually do not follow the policy as they are not bound to it. This shows that laws must be regulated to achieve maximum results.

This is consistent with the results attained from the questionnaires and interviews. There is inadequacy of protection relating to the rights to work flexibility and breastfeeding. Since it is only a policy and not law regulating on work flexibility, most companies, either public or private sector, do not cater to it. Most of them have specific working hours and the workplace is limited to the office.

The same relates to the breastfeeding policy. As there is no law that obligates employers to support breastfeeding, most of them do not have a specific policy on breastfeeding for their working mothers but some of them do take their own initiative to support their employees who are breastfeeding.

⁴ Puan Nurul Atiqah binti Abd Rahman, interview with author, Kuala Lumpur, Federal Territory, 14 February, 2020. At the time of the interview, she was the Senior Legal Executive, Clinical Research Malaysia.

⁵ Dato' Dr. Lim Weng Khuan, interview with author, Kuala Lumpur, Wilayah Persekutuan, 20 August, 2019. At the time of the interview, he was the Director/ Head, of Tan Chong Education Services Sdn. Bhd.

⁶ Puan Zahariah binti Ahmad, interview with author, Kuala Lumpur, Wilayah Persekutuan, 27 September, 2019. At the time of the interview, she was the Head of Corporate Services, Mara Incorporated Sdn Bhd.

⁷ Puan Nurul Ain binti Ahmad Ali, interview with author, Kuala Lumpur, Kajang, Selangor, 3 January, 2020. At the time of the interview, she was a law firm partner, Tetuan Azmi Ramlan, Ain Ali & Co.

SYABAS, a public company, is an example which has the best practice for this. They allocate an area for mothers to express their breastmilk and the mothers can also take breaks for that purpose.⁸

For private company, the example the best practice is Tan Chong Education Services Sdn. Bhd. They provide a medical unit at the company's headquarters where they have experienced nurses and Chinese sensei on their panel clinic. At the back of the medical clinic, a fridge is provided to keep the expressed breastmilk of the working mothers. Regarding the breaks for breastfeeding, they depend on the requirements. As to the area of breastfeeding, there is a private place to express breastmilk where men are not allowed to go. They provide medical talks by experts on the benefits of breastfeeding. Awareness campaign on breastfeeding is a proof of the company's moral support.⁹

Based on the results of the questionnaires and interviews, the law on discrimination is adequate. All employers at both public and private sectors do not discriminate women in recruiting them as employees. The employers even recruit pregnant women as long as they are qualified for the position in the company. They do not have gender bias in recruiting employees.

However, there is an issue on the inadequacy of laws regarding childcare centre where most of the employers, either in public or private companies, do not provide any childcare centre at the workplaces. It depends on the company's own initiative to provide the childcare centre. The inadequacy has led to more serious problems like child abuse at the childcare centre, especially the unregistered childcare centres. In this study, only some of the employers provide childcare centres near the

⁸ Encik Abdul Latif Ismail.

⁹ Dato' Dr. Lim Weng Khuan.

workplace, for example, IIUM¹⁰, Tan Chong Education Services Sdn. Bhd.¹¹ and MARA Incorporated Sdn. Bhd.¹²

Based on the findings from the surveys and interviews, the employers and the employees, especially working mothers, are aware of the laws and regulations concerning them. The employers then provide assistance accordingly and therefore, most of the working mothers are satisfied with the companies' policies.

4.6 CONCLUSION

This chapter has discussed and analysed the policies and laws that are being practised by the public and private companies in Malaysia pertaining to the legal rights of the working mothers. Analysis in this chapter is based on the survey questionnaires done on 183 working mothers. The data was analysed and divided into five parts.

Firstly, the rights of working mothers on leave. It is observed that most of the respondents have utilised their annual leave to attend to their children's needs. Secondly, rights to work flexibility. Based on the data, the majority of the respondents are not provided with work flexibility to facilitate their responsibility as working mothers. Thirdly, rights pertaining to children. It is observed that most of the companies in Malaysia do not provide childcare centres. It is the same whether it is public company or private company. However, in terms of breastfeeding, the policies are more convenient for the working mothers even though there is still room for improvement. Fourthly, financial rights of working mothers. The majority of the respondents are financially supported by their husband or ex-husband. Finally, regarding satisfaction towards the policies of their company, it was observed that the

¹⁰ Puan Raheme binti Ahmad.

¹¹ Dato' Dr. Lim Weng Khuan.

¹² Puan Zahariah binti Ahmad.

majority of the respondents were satisfied with the policies of their company with regards to working mothers.

Overall, this quantitative research is significant to this study as it provides valuable insights into the effectiveness of the companies' policies and identifies areas of improvement for enhancement in the companies' policies.



CHAPTER FIVE

POLICIES AND LAWS GOVERNING WORKING MOTHERS IN OTHER JURISDICTIONS

5.1 INTRODUCTION

This chapter discusses the policies and laws of other jurisdictions that govern working mothers. The jurisdictions chosen are from Singapore, Australia, the United Kingdom and Maldives. These countries were selected for the purpose of benchmarking and to address best practices regulating female employees. It is not the intention of the study to discuss the details of employment law in each jurisdiction. However, certain laws which can be modelled upon will be discussed. This chapter discusses the policies and laws that relate only to women employment and working mothers.

5.2 POLICIES AND LAWS GOVERNING WORKING MOTHERS IN SINGAPORE

5.2.1 The Policies for Working Mothers in Singapore

There are five policies in Singapore related to working mothers which are Government-Paid Maternity Leave (GPML) scheme, Employer's Guide to Breastfeeding at the Workplace, Government-Paid Child Care Leave (GPCL) and Extended Child Care Leave (ECL) Scheme, Infant/Childcare Subsidies and Kindergarten Fee Assistance Scheme (KiFAS) and Work-Life Grant. Detailed discussions on the policies are presented next.

5.2.1.1 Government-Paid Maternity Leave (GPML) Scheme

The Government-Paid Leave Scheme under the Marriage and Parenthood Package (M&P) aims to foster a pro-family environment in Singapore. This leave scheme supports parents in having and raising children. The scheme supports eligible working mothers including self-employed mothers in recovering from delivery and caring for their newborn children.¹

Under the scheme, working mothers in Singapore are entitled to either 16 or 12 weeks of maternity leave based on some criteria. The important criteria for 16-week eligibility are that the child is a Singaporean citizen and was born or has an estimated delivery date (EDD) on or after 1st January 2017. Other criteria include that working mothers must have worked for their current employer for at least three continuous months and must give their employer at least one week's notice before going on their maternity leave. For self-employed working mothers, they must have been self-employed for at least three continuous months before the birth of their child and have lost income during the maternity leave period. During the maternity leave, working mothers will get their usual monthly salary and their employer can then claim from the government under the Government-Paid Maternity Leave (GPML) scheme.

On the other hand, working mothers are eligible for a 12-week maternity leave if they are covered by the Employment Act 1968. Additional criteria are similar with the 16-week eligibility which comprises of working mothers who have served their employer for at least three continuous months before the birth of their child, have one living child of their own at the time of delivery and must give their employer at least one week's notice before going on leave. If these criteria are fulfilled, the working mothers will get their usual monthly salary for the first eight weeks of the maternity

¹ MSF, "Government-Paid Maternity Leave (GPML)," <<https://www.profamilyleave.msf.gov.sg/schemes/maternity-leave>> (accessed 9 February, 2023).

leave. The remaining four weeks of maternity leave are unpaid. However, it totally depends on the discretion of the employer and their employment contract.

Hence, this GPML scheme provides more paid maternity leave than the Employment Act 1968 with the condition that the child is a Singapore citizen who is born or has an EDD on or after 1 January 2017. 16 weeks of maternity leave is in line with the international standards as Maternity Protection Convention, 2000 (No. 183) states that all working women are entitled to 14 weeks of maternity leave. This scheme also provides paid maternity leave for self-employed working mothers who are not covered under the Employment Act 1968.

5.2.1.2 Employer's Guide to Breastfeeding at the Workplace

The Employer's Guide to Breastfeeding at the Workplace aims to protect and support every working mother at the workplace after the birth of their child. This Project Liquid Gold initiative guide is jointly formed by the National Trade Union Congress (NTUC), Family, Health Promotion Board (FHPB) and Singapore National Employers Federation (SNEF). It provides guidelines for employers on how to support breastfeeding employees.

The guide states that there are many benefits of being a breastfeeding-friendly employer which include reduced absenteeism, increased productivity and improved employee morale. Among the steps that employers can take to support breastfeeding workers are to provide place and privacy for milk expression, provide flexible breaks and work options, and provide supportive workplace culture.

A working mum's milk kit is prepared for the purpose of encouraging a breastfeeding-friendly culture at the workplace. The kit contains items like a "Nursing Mum Inside" door hanger, a "Mum Off to Pump" desk sign and "Mummy's Milk"

milk labels. The items in the kit are meant to assist the breastfeeding process for working mothers at the workplace.

There is also funding support for working mothers which are Work-Life Grant and U Flex Family-Friendly Grant. The Work-Life Grant provides funding and incentives for organisations to form a more supportive environment for Singaporeans to produce and raise families. Employers can co-fund up to 50% (limited to \$20,000) for certain employee support schemes such as building lactation facilities. Organisations which have been successfully selected for the Work-Life Grant are entitled to an additional incentive of \$10,000 under the U Flex Family-Friendly Grant. They are required to provide family care leave and family support schemes such as lactation support policies to obtain this grant.²

This policy has encouraged many companies in Singapore to put extra efforts in creating comfortable atmosphere for breastfeeding mothers. The existence of the two grants supports the companies financially to give working mothers the work-life harmony. The breastfeeding support received by breastfeeding employees will lead to higher productivity and loyalty. This consequently helps employers to keep their best employees and save their money from hiring and training new employees. Hence, it can be said that this policy gives benefits towards both the employers and the breastfeeding employees.

However, the policy is insufficient on its own because there is still a lack of support for nursing in terms of both space and time as there is no explicit law that requires companies to provide a nursing place and break times.

² *National Trades Union Congress*, “Employer’s Guide to Breastfeeding at the Workplace,” <https://snf.org.sg/wp-content/uploads/2016/10/NTUC_PLG_EmployerGuide_Final.pdf> (accessed 29 September, 2019).

In 2018, which is before the Covid-19 pandemic, although employers were encouraged by the Ministry of Health to support mothers who want to continue breastfeeding after returning to work, there was still stress on the part of mothers who had to express their breastmilk in the toilet due to lack of support from employers. The 2011 National Breastfeeding Survey disclosed that breastfeeding dropped significantly after mothers returned to work. Among the reasons given by the mothers are lack of facilities and inflexible working hours.³

After the pandemic started, most working mothers were required to work from home. It has been agreed by mothers that working from home made it easier and more comfortable to continue breastfeeding than while working at the office.⁴ Consequently, the government and employers were urged to make breastfeeding easier for mothers when returning to work as the Employer's Guide to Breastfeeding at the Workplace is a mere recommendation and does not obligate employers to provide the recommended support.⁵

5.2.1.3 Government-Paid Child Care Leave (GPCL) and Extended Child Care Leave (ECL) Scheme

The function of the Government-Paid Child Care Leave (GPCL) and Extended Child Care Leave (ECL) Scheme is to offer adequate time for working parents to cater to and spend quality time with their children including stepchildren, adopted and foster

³ Jalelah Abu Baker, "The Stress of Expressing Milk in the Toilet: Breastfeeding Mums Call for More Workplace Support, Facilities", CNA, 12 January, 2018, <https://www.channelnewsasia.com/singapore/stress-expressing-milk-toilet-breastfeeding-mums-call-more-workplace-support-facilities-838906>.

⁴ Stephanie Yeo, "Pandemic A Boon for Breastfeeding Mums", *The Straits Times*, 26 July, 2021 <https://www.straitstimes.com/singapore/parenting-education/pandemic-a-boon-for-breastfeeding-mums>

⁵ Tamara Lacroix, "Forum: Make breastfeeding easier for mums when they return to workplaces", *The Straits Times*, 2 August, 2021 <https://www.straitstimes.com/opinion/forum/forum-make-breastfeeding-easier-for-mums-when-they-return-to-workplaces>

children. Working parents including self-employed parents are entitled to childcare leave under the GPCL and ECL schemes.

The GPCL can be applied if the youngest child is below 7-years-old. Both parents are entitled to six days of paid childcare leave over a 12-month relevant period as agreed with their employer. The government will pay for the 4th to 6th day of childcare leave. This means that the government will refund the employer or the parents themselves if they are self-employed for a maximum of three childcare leave days over a 12-month relevant period. It is limited to \$500 per day.

The ECL can be applied if the youngest child is between 7 to 12-years-old. Both parents are entitled to a 2-day paid childcare leave over a 12-month relevant period as agreed with the employer. The government will refund both days which are limited to \$500 per day.

This policy is a good policy for the development of children. Growing up, children need adequate quality time and attention from their parents. The leave scheme is also financially supported by the government which shows that their government is very concerned with the development of the children in the country. When children grow healthily and happily, accordingly, the parents can work with higher commitment and efficiency. This then leads to more productivity of the organisations.

5.2.1.4 Infant/Childcare Subsidies and Kindergarten Fee Assistance Scheme (KiFAS)

The purpose of KiFAS is to aid parents to pay some of the cost of childcare fees and to ensure affordability and availability of childcare services to those who need the services. The available subsidies are basic subsidy and additional subsidy. For basic

subsidy, the amount is higher if the applicant is working. For additional subsidy, it is applicable for a working applicant who has a gross monthly income of \$7,500 or per capita income (PCI) of \$1,875 and below for larger families. A working applicant here refers to a mother or single father who works at least five hours a month including in full-time, part-time and freelance working arrangements.

It was announced at the National Day Rally 2019 that means-tested pre-school subsidies would be improved to make pre-schools more affordable. The government would raise the gross monthly household income ceiling for additional subsidy and KiFAS to \$12,000, or \$3,000 on PCI basis. The government would also increase the subsidy amounts across all income tiers qualifying for additional subsidy and KiFAS. These improvements took effect from January 2020.⁶

This policy is another policy that is good for the development of children in Singapore. This policy ensures the quality of pre-schools, making them more affordable and accessible. Moreover, this subsidy helps children from low-income families. The three policies provided in Singapore which are Employer's Guide to Breastfeeding at the Workplace, Government-Paid Child Care Leave (GPCL) and Extended Child Care Leave (ECL) Scheme and Infant/Child Care Subsidies and Kindergarten Fee Assistance Scheme (KiFAS) show that the government of Singapore is really concerned about the development of their children.

5.2.1.5 Work-Life Grant

The Work-Life Grant is designed under Work Pro Scheme. It is jointly established by the Ministry of Manpower (MOM) and Workforce Singapore (WSG) in consultation

⁶ Sandra Davie, "National Day Rally: Pre-school Subsidies' Income Ceiling Raised from \$7,500 to \$12,000; 30,000 More Families to Qualify", *The Straits Times*, 19 August, 2019 <https://www.straitstimes.com/politics/national-day-rally-30000-more-families-to-qualify-for-additional-pre-school-subsidies>

with the Singapore National Employers Federation (SNEF) and National Trades Union Congress (NTUC).⁷

The objective of this grant is to give incentives to companies to withstand the practice of flexible work arrangements (FWAs) for all employees and consequently, to create work-life balance at the workplace. FWAs can be categorised into three which are flexi-time, flexi-place and flexi-load which include job sharing incentives. This Work-Life Grant provides up to \$105,000 per company over two years.

This policy benefits both employers and employees. This kind of grant reduces absenteeism. Employees can negotiate their work schedule with their colleagues rather than take leave while employers can reduce cost due to absenteeism. In turn, employees get satisfaction working with employers who can lessen cost of employees' shifting, making new hiring and training. Employees can also balance between personal life and working life. The productivity of work is also increased.

It was suggested that companies in Singapore should consider offering their staff flexible working arrangements in terms of place of work which will authorise them to work at the office and from home interchangeably. This is also important as one of the ways to increase the fertility rate in the country as most of the families complained that work stress and less time spent for elderly parents and young children are factors of non-readiness for more children.⁸ This shows that Singapore still has poor practice of flexible working arrangement.

⁷ Ministry of Manpower, Work-Life Grant (WLG) for flexible work arrangements," <<https://www.mom.gov.sg/employment-practices/good-work-practices/work-life-grant>> (accessed 30 September, 2019).

⁸ Tham Yuen-C, "Companies should consider making flexible work arrangements the norm: Indranee", *The Straits Times*, 1 April, 2021 <https://www.straitstimes.com/singapore/politics/companies-should-consider-making-flexible-work-arrangements-the-norm-indranee>

5.2.2 The Governing Laws for Working Mothers in Singapore

There are six legislations in Singapore that protect the legal rights of working mothers which are Constitution of the Republic of Singapore 1965, Employment Act 1968, Child Development Co-Savings Act 2001, Early Childhood Development Centres (ECDC) Act 2017, Women's Charter and Administration of Muslim Law Act 1966. Detailed discussions on the laws are presented in the following sections.

5.2.2.1 Constitution of the Republic of Singapore 1965

The purpose of the Constitution of the Republic of Singapore 1965 is to provide the basic framework for the three branches of government in the country which are the executive, the legislature and the judiciary. It also protects the fundamental liberties of the citizens.

Article 12 of the Constitution provides for equal protection. According to the article, all Singaporean citizens are equal in law and entitled to equal protection in law.⁹ No discrimination is allowed against citizens in view of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment. The exceptions to this are any provision regulating personal law or any provision or practice restricting office or employment connected with the affairs of any religion, or an institution managed by a group professing any religion to persons professing that religion.

According to the article, employers in Singapore should recruit employees based on their qualities such as skills and experiences. They are not allowed to recruit

⁹ Constitution of the Republic of Singapore 1965 (Cap. Const.), Article 12.

based on age, race, gender, religion, marital status and family responsibilities, or disability. The treatment given by employers must be justly towards all their employees.

In addition, it has been suggested by the Association of Women for Action and Research (AWARE) to enact a Workplace Equality Act that would provide legal remedies for employees experiencing discrimination. The suggestion is made as the current non-legislative approach is not enough to control discriminatory employment practices as there is still unequal pay for equal work, unpaid care work, men always get higher paying jobs compared to women and also discrimination against motherhood or pregnancy. Therefore, the implementation of strong legislative measures to protect employees from unfair discrimination is of utmost urgency.

The absence of such legislation consequently places Singapore behind international standards as the country needs to implement proper legislation to prohibit race, gender and disability discrimination. Singapore is among the countries that have not ratified the International Labour Organization's (ILO) 1958 Discrimination (Employment and Occupation) Convention. Therefore, enactment of such law will place Singapore in line with the international standards and prevent discrimination in employment.¹⁰

5.2.2.2 Employment Act 1968

Employment Act 1968 is the primary Singaporean labour law. It covers the laws regarding working conditions of all employees. Section 76 (1) of the Employment Act

¹⁰ Daryl Yang Wei Jian, "Forum: Singapore would benefit from an anti-discrimination law," *The Straits Times*, 30 September, 2020 <https://www.straitstimes.com/forum/forum-singapore-would-benefit-from-an-anti-discrimination-law>

1968 states that working women are entitled to 12 weeks of maternity leave which includes four weeks before confinement and eight weeks after confinement.¹¹

Meanwhile, Section 87A of the Employment Act 1968 provides for childcare leave for parents. A parent is entitled to a two-day leave if he/she has any child below seven-years-old and has served his employer no less than three months. However, the leave should not be more than 14 days for any child.¹²

As discussed earlier, the Maternity Protection Convention, 2000 (No. 183) states that all working women are entitled to at least 14 weeks of maternity leave. Maternity Protection Recommendation 2000 (No. 191) recommends at least 18 weeks of maternity leave. Therefore, 12 weeks of maternity leave is not in compliant with international standards. Even though it is not in compliant with international standards, in the context of Asian countries, 12 weeks of maternity leave is common. On the other hand, childcare leave provided by Singapore in their employment legislation has many advantages. It does not only benefit the parents but also the children in many ways. As for the parents, this kind of leave will make it easier for them to balance their work and family. It can also improve parents' mental health. In return, this will increase their work productivity. As for the children, childcare leave will help and improve their development physically, mentally as well as emotionally. They can get proper physical care, adequate bonding time with their parents and sufficient emotional support from them as well.

5.2.2.3 Child Development Co-Savings Act 2001

The Child Development Co-Savings Act 2001 aims to aid parents in defraying the costs of raising children and encouraging parents to have savings to cover for their

¹¹ Employment Act 1968 (Cap 91), s 76 (1).

¹² Ibid., s 87A.

children's needs. Part III of the Child Development Co-Savings Act 2001 provides for maternity protection and benefits, adoption leave, childcare leave, extended childcare leave, unpaid infant care leave, shared parental leave and paternity leave.

According to Section 9 (1) of the Act, all female employees are entitled to 16 weeks of maternity leave¹³ if they satisfy all the requirements in Section 9A (1), namely her confinement occurs on or after the date of commencement of Section 5 (1) (a) of the Child Development Co-Savings (Amendment No. 2) Act 2016; they are citizens of Singapore; and in the case of a female employee, she has served her employer for a period of at least three months before the day of her confinement, while for self-employed woman, she has been carrying on her trade, business, profession or vocation for a continuous period of at least three months before the day of her confinement.¹⁴ On the other hand, a mother is entitled to 12 weeks of maternity leave¹⁵ if the child is not a Singaporean citizen. Apart from that, there is even a new bill which was just introduced on 5th July 2021 which gives some parents, including those who adopt, cash benefits if their current employment does not qualify them for maternity and paternity leave.¹⁶

Section 12B (1) of the same Act states that any employee who has served his employer no less than three months and has a child below seven-years-old is entitled to 2-6 days of childcare leave depending on how long he has served his employer.¹⁷

¹³ Child Development Co-Savings Act 2001 (Cap. 38A), s 9(1).

¹⁴ Ibid., s 9A.

¹⁵ Employment Act (Chapter 91), s 76 (1).

¹⁶ Yuen Sin, "New Bill will give parents without maternity or paternity leave cash benefits," *The Straits Times*, 5 July, 2021 <https://www.straitstimes.com/singapore/politics/parliament-new-bill-will-give-parents-without-maternity-or-paternity-leave-cash>

¹⁷ Child Development Co-Savings Act 2001 (Cap. 38A), s 12B (1).

Section 12B (1A), on the other hand, states that any employee who has served his employer no less than three months and has a child above seven-years-old but below 13-years-old is entitled to two days of extended childcare leave.¹⁸

Length of benefit period, etc., in respect of shared parental leave 12E -

- (1) This section applies to a male employee or a self-employed man, if -
 - (a) he is -
 - (i) the natural father of a child and satisfies the requirements of section 12F (1); or
 - (ii) the adoptive father of a child and satisfies the requirements of Section 12F(1A); and
 - (b) the appropriate applicant in subsection (6) has made an election under subsection (5) for him, or subsection (7B) entitles him -
 - (i) to take shared parental leave, in accordance with subsection (2); or
 - (ii) to claim lost income in accordance with subsection (3).¹⁹

According to the quotation above, Section 12E (1) of the Child Development Co-Savings Act 2001 provides for shared parental leave. It applies to a working father or self-employed father if he is a natural father or adopted father.

- (2) Subject to this section and Section 12F and any regulations made under Section 20, the male employee mentioned in subsection (1) is entitled -
 - (a) to absent himself from work on shared parental leave, within the period of 12 months commencing on the date of the child's birth, for -
 - (i) one period equal in duration to N weeks;
 - (ii) more than one period, each being of one or more whole weeks, and all of which in aggregate are equal in duration to N weeks; or
 - (iii) more than one period, each being of a duration that is agreed between him and his employer, and all of which in aggregate are equal in duration to N times the lower of the male employee's weekly index or 6 days; and
 - (b) to receive from his employer his gross rate of pay for each day of such leave that is taken by him.²⁰

¹⁸ Ibid., s 12B (1A).

¹⁹ Ibid., s 12E (1).

²⁰ Ibid., s 12E (2).

Based on the sub-section quoted above, the shared parental leave also applies to a working father if the natural mother or adopted mother has chosen to take shared parental leave under Section 12E (2).

(3) Subject to this Section and Section 12F and any regulations made under Section 20, if the self-employed man mentioned in subsection (1)

-

(a) within 12 months commencing on the date of the child's birth, ceases to be actively engaged in his trade, business, profession or vocation during one or more than one period, all of which in aggregate are equal in duration to N times the lower of the self-employed man's weekly index or 6 days; and

(b) has lost any income by reason of his ceasing to be actively engaged in that trade, business, profession or vocation, he is entitled to claim from the Government his lost income for each period of cessation of active engagement in his trade, business, profession or vocation mentioned in paragraph (a).²¹

Meanwhile, according to the sub-section quoted above, a self-employed father is entitled to claim loss of income under Section 12E (3). However, in practice, the law significantly affects companies in the country. Continuous comments are received from stakeholders as this type of leave has its strengths and weaknesses. One of the weaknesses is that shared parental leave may not work as the criteria laid down is difficult. The father has to get consent from the mother in order to have a week leave from the mother's 16-week maternity leave. This will in turn lead the father to request for his annual leave which is time consuming for the human resources to complete the form. In addition, the 16-week maternity leave is not sufficient to care for a new born baby. A six-month maternity leave would be better. However, the one week paid paternity leave is excellent. Another weakness is that there is possibility that the

²¹ Ibid., s 12E (3).

companies need to cope with overwhelming job allocation due to the numerous leave types. This is because the staff might be applying for those leave simultaneously.²²

On the other hand, there is a good impact of the leave on fertility issue in the country. The leave provided is very balanced as it allows people to have more kids and at the same time, they could minimize the impact on business.²³ Nevertheless, for another stakeholder, there is no direct linkage between the leave and fertility rate.²⁴

The good part about the new parenthood leave provided by the government is that it could enhance pro-family and shared parental leave. The childcare leave for parents would help working parents manage children aged 7-12-years-old. The paternity leave of one week will encourage fathers to play a pro-active role in taking care of babies. This leave supports working mothers to return to work after the birth of the child.²⁵

Section 12AA (1) (a) of the act provides for adoption leave for female employees. All female employees who apply to adopt a child according to any related written law and fulfil all the requirements under Section 12AC are entitled to 12 weeks of adoption leave within 12 months from the date of the child's birth.²⁶

Meanwhile, Section 12AB (1) of the Act provides for adoption leave for self-employed women. All self-employed women who apply to adopt a child according to any related written law and fulfil all the requirements under Section 12AC are entitled to 12 weeks of adoption leave within 12 months from the date of the child's birth.²⁷

²² *Singapore Business Review*, "How do companies feel about the parental leave?", <<https://sbr.com.sg/hr-education/exclusive/how-do-companies-feel-about-parental-leave>> (accessed September 16, 2021).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Child Development Co-Savings Act 2001 (Cap. 38A), s 12AA (1) (a).

²⁷ *Ibid.*, s 12AB (1).

The eligibility criteria are laid down in Section 12AC of the Act. The criteria include that she must have served her employer for a continuous period of at least three months immediately before the birth of her child and if she is a self-employed woman, she must have engaged in her work for at least three continuous months and have lost income during the maternity leave period.²⁸

In the case that the child is not a Singaporean citizen, the working mother must be a Singaporean citizen on the date of the issuance of the dependant's pass if the application is made in the sole name of the working mother and if the application is made in the joint names of the working mother and her husband; either the working mother or her husband must be a Singaporean citizen on the date of the issuance of the dependant's pass.²⁹

The legislation lays down good laws for the development of children in the country. It encourages married couples to have more children and gives support to the parents for the sake of their children's development. The leave provided in the Act is beneficial for both parents and children. The maternity leave of 16 weeks is also in line with the international standards stated in the Maternity Protection Convention, 2000 (No. 183).

5.2.2.4 Early Childhood Development Centres (ECDC) Act 2017

Singapore has just enacted a new law in 2017 which is Early Childhood Development Centres (ECDC) Act 2017. The ECDC Act 2017 is enacted to regulate the operation of early childhood development centres in Singapore. Section 6 (1) of the ECDC Act 2017 states that all early childhood development centres must have license. If anyone

²⁸ Ibid., s 12AC.

²⁹ Ibid., s 12AC (e).

operates an early childhood development centre without a license, he/she is liable under Section 6 (3) of the ECDC Act 2017 on conviction:

- a) to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both; and
- b) in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues after conviction.³⁰

Under Section 23, performance and deployment of individuals to perform prescribed duties must be done with the approval of the Chief Licensing Officer. The application of approval is laid down in Section 24. In granting the approval, the Chief Licensing Officer should consider some matters listed in Section 25 including whether the licensee or individual has the requisite professional expertise and qualification to perform the prescribed duties, whether he/she has been convicted of any offence under this Act or any offence involving dishonesty or has acted dishonestly or committed any offence prescribed and whether the grant of approval is contrary to public interest.³¹

The Act emphasises on the registration of early childhood development centres. The registration is fundamental for the safety and health of the children. As discussed earlier, the Convention on the Rights of Child states that every child has the right to education and development. Article 3 of the Convention states that state parties should make sure that childcare centres comply with the standards made by competent authorities and accompanied by knowledgeable supervision. To add, Article 18 of the convention provides that state parties should ensure that working

³⁰ Early Childhood Development Centres (ECDC) Act 2017 (No. 19 of 2017), s 6.

³¹ Ibid., ss 23 & 25.

parents are accessible to childcare centres. Hence, the ECDC Act 2017 is in line with the international convention in which the Act lays down the strict laws and regulations on childcare centres. According to the Ministry of Social and Family Development, babies who are Singaporean citizens are entitled to a basic subsidy of \$600 when enrolled in full-day infant care and an additional subsidy is available if the total household income is less than \$7,500.³²

Apart from that, the Early Childhood Development Agency (ECDA) has listed important rules for setting up childcare centres in Singapore. These include the fact that a childcare centre should always be located on the ground floor of a building and the operator of the childcare centre must ensure that the safety and well-being of children are not compromised. Measures are to be taken seriously such as ensuring children's evacuation path is in place in the event of a fire and the indoor space should be large enough to accommodate all children. The ECDA takes a serious view of child mismanagement in pre-schools. Therefore, the ECDA will investigate every reported case by conducting unannounced centre visits, interviews and verification of records. For serious cases, such as where there appears to be clear intent to harm the child, the case will be referred to the police for criminal investigation. Depending on the nature of the offence, the perpetrator may be prosecuted under the Children and Young Persons Act (CYPA) or other laws.

It is claimed that childcare centres in Singapore practise high legislative adherence based on the low number of negligence cases reported.³³ From 2011 to 2012, only seven cases had been reported; significantly there is no increase in the

³² *Mindchamps*, "Pros & Cons of Infant Care and Having Your Parents or In-laws Care for Baby in Singapore," <<https://www.mindchamps.org/blog/infant-care-singapore-or-in-laws/>> (accessed 20 June, 2022).

³³ Ekmil Krisnawati Erlen Joni and et al, "Negligence in Child Care Centres: Law Versus Reality in Malaysia," in *Proceedings of the Regional Conference on Science, Technology and Social Sciences (RCSTSS 2016)*, (Singapore: Springer, 2016).

trend. It is also reported that during 2016-2018, there was only an average of 15 reported cases of alleged child mismanagement annually. For other cases, the ECDA has issued warning letters to teachers for acts such as spanking or neglecting children. The ECDA has also issued warning letters to selected centres and shortened their licence tenure for not having adequate measures in place to support teachers' classroom management. Negligence cases can be avoided in Singapore due to the fact that parents are entitled to a basic subsidy to offset the fees for putting their child in childcare centres in Singapore. Thus, parents can opt for registered and proper childcare centres for their children without worrying about the expensive fees.

5.2.2.5 *Women's Charter 1961*

The function of Women's Charter 1961 is to protect the legal rights of women in the country. The legal rights include termination of marriages, division of matrimonial assets and protection against family violence.

In terms of financial protection of working mothers, Section 113 of the Women's Charter 1961 states on the power of court to order maintenance. The court may order a husband or ex-husband to pay maintenance to his wife or former wife during marriage or after divorce.³⁴

The law laid down in the Act is vital in protecting the financial rights of working women. All working women are entitled to maintenance from their husband or ex-husband. Their status as working women does not cease their right. This consequently leads to the good development of the children.

However, the implementation of the laws is lacking. Most applicants seeking maintenance orders are married women. The figures released for the first time by the

³⁴ Women's Charter, s 113.

Family Justice Courts (FJC) indicates two out of three of the 1,315 applications filed on average each year between 2016 and 2018 were by wives against their husbands for financial support for themselves or their children.³⁵

5.2.2.6 Administration of Muslim Law Act 1966

The Administration of Muslim Law Act (AMLA) 1966 is an Act that regulates Muslim religious affairs in Singapore. Section 51 of AMLA provides for the maintenance of a wife. Section 51 (1) states that a married woman is entitled to maintenance by application to the court and order made against her husband during marriage. Likewise, Section 51 (2) states that a divorced woman is entitled to maintenance by application to the court and order made against her former husband during the period of *iddah*.³⁶ It is similar to the civil law maintenance where a wife is entitled to maintenance from the husband. However, the similarity ends there. Under the Women's Charter and common law, the wife is entitled to maintenance until she remarries or upon death. In a Muslim divorce, the wife is only entitled for the duration of her *iddah* period and it is the practice that this is rounded up to three months. Another difference is that there are increasingly cases in civil courts where the courts have deemed that there be no order for the maintenance of a wife who is financially independent. There is also the situation of wives who have an obligation to maintain an incapacitated husband which does not apply in a Muslim marriage.³⁷

Section 52 (2) of the same Act provides for the consolatory gift of *mutaah*. A divorced woman may make application to the court and the court may order payment

³⁵ Theresa Tan, "Maintenance orders: Most applicants are wives", *The Straits Time*, 12 January, 2020 <https://www.straitstimes.com/singapore/maintenance-orders-most-applicants-are-wives>

³⁶ Administration of Muslim Law Act 1966, s 51.

³⁷ MLPC Feedback on the Administration of Muslim Law (Amendment) Act 2017.

according to the Muslim law after hearing both parties.³⁸ The Shariah Court lacks power of enforcement, so its orders for maintenance, *mutaah* (compensation), marriage expenses, custody and property division are enforceable pursuant to Section 53 of the AMLA but not reviewable by the civil courts.

It is submitted that the Act is in line with Islamic principles in which a wife is entitled to maintenance from her husband or ex-husband regardless of her status as a working woman as long as she is working with the permission of her husband. The responsibility of maintenance of the children is still on the husband or father even though the wife or mother is working. The legislation is good in protecting the financial rights of working women in the country.

5.3 POLICIES AND LAWS GOVERNING WORKING MOTHERS IN THE UNITED KINGDOM

5.3.1 The Policies for Working Mothers in the United Kingdom

There are two policies in the United Kingdom covered in this study that provide for protection of working mothers. The first policy is the Civil Service Employee Policy: Guide to Job Sharing. The second policy is UNICEF Baby-Friendly Initiative: Guide to Breastfeeding after Returning to Work or Study. Detailed discussions on the policies are presented next.

5.3.1.1 Civil Service Employee Policy: Guide to Job Sharing

³⁸ Provisions consequent on matrimonial proceedings.

This policy is a policy for civil servants. It aims at providing civil servants with flexible working option which leads to better working condition. The job-sharing guide is set up as a guideline for civil servants on job sharing. It contains regulations and guidelines for both job sharers and their managers on the job-sharing arrangement.

Job sharing is flexible working type which allows two employees to voluntarily share the responsibilities and duties of one full-time job. Pay, benefits and leave entitlement for job sharing are distributed on a pro rata basis in which it is divided approximately by the total number of working hours. It is normally done by dividing the total number of working hours in several ways. Both employees will normally be doing the same type of work but not necessarily the same amount of work.

There are many possible advantages of job sharing. Among them are better quality of and/or increased work productivity because of the involvement of a broader range of skills, experience and creativity of two people rather than one, forming learning opportunities where both employees have different strengths and work experiences and they can learn from each other and access a broader range of job scopes than simply working part-time.³⁹

Nevertheless, there are also challenges of job sharing. It is not easy to ensure that there is fair job sharing for both employees. It is challenging to find compatible partner, to arrange the time, to pay their salary fairly and to supervise their job as added supervision is needed.⁴⁰

³⁹ Civil Service HR, "Guide to Job Sharing: Issue 2," <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406045/JobShareGuide260115FVnoDNs.pdf> (accessed 26 December, 2019).

⁴⁰ Nina Janza, "Job Sharing – What it is, when to employ it, and how to make it work," SPICA, <<https://www.spica.com/blog/job-sharing-advantages-disadvantages>> (accessed 26 December, 2019).

5.3.1.2 UNICEF Baby-Friendly Initiative: Guide to Breastfeeding after Returning to Work or Study

This policy is aimed to protect the health and safety of mothers who are breastfeeding. This initiative is made as breastfeeding is significant to the development of the children, mothers and society.

The policy does not provide a particular entitlement for working mothers to breastfeed after returning to work but the policy does oblige employers to protect the health and safety of the working mothers who have given birth in the last six months and mothers who are breastfeeding.

The policy does not presently provide the right to time off for breastfeeding breaks or to express milk. Nevertheless, the employer should ensure that the working mothers and their babies' health and safety are not put in danger. The employer should ensure that the mothers get adequate rest breaks and consequently, they can continue to take plenty of fluids and nutrition while they are breastfeeding.

Working mothers have the right to ask for flexible working arrangements to suit the work and family balance responsibilities. They can request for changes to the hours of work, days of work or place of work.

The policy requires employers to provide a suitable place for breastfeeding mothers to rest. The Approved Code of Practice issued by the Health and Safety Executive states that this should include the capability to lie down. However, the employers are not required to provide accommodations for mothers to breastfeed but the Health and Safety Executive states that it is good practice for employers to provide appropriate accommodations such as a private room, washing facilities and clean

fridge or section of a fridge for expressing and storing milk. Toilets are not regarded as an appropriate place.

To summarise, the policy stipulates guidelines concerning breastfeeding at the workplace in detail. The guidelines make it compulsory on employers to care for their breastfeeding mothers' health and safety. These guidelines include the right of breastfeeding mothers to a convenient space for breastfeeding and the right to flexible working arrangement for the sake of breastfeeding. However, the policy does not provide the right for breastfeeding at the workplace as well as the right to have breaks for breastfeeding at the workplace.

This policy, nonetheless, has followed the World Health Assembly (WHA) Resolution. Paragraph 28 of the Resolution states that working mothers are entitled to continue breastfeeding after returning to work. This is also in line with the Maternity Protection Convention, 2000 (No. 183) and Maternity Protection Recommendation, 2000 (No. 191) as has been discussed earlier.

In terms of practice, a global survey was conducted in conjunction of World Breastfeeding Week 2021. The survey involved 48,973 employers from four countries which are Australia, Canada, Ireland and the United Kingdom. The survey was done to observe the attitudes towards breastfeeding in the workplace and examine how companies were supporting their employees.

The results of the survey showed that there were mixed reactions from the employers. Some of them said that the employers still do not support their breastfeeding employees in which there are still many cases where the former do not provide a clear designated area for breastfeeding employees. The employees should be

provided with a private, secure and hygienic place to express their breastmilk and the employers should consider proper storage facilities for the milk.⁴¹

On the other hand, the rest of the employers said that there are those who support their breastfeeding employees in their own ways. Some of them provide a designated area and fridge for breastfeeding and storage purposes. Other employers said that they do not have designated space for the same purposes but breastfeeding employees in the companies can make use of any of the space in the office in which they feel comfortable to express their breastmilk. There were also employers who put the blame on the landlord who does not want to provide such facilities.⁴²

As for the figures, according to the research, less than half (43%) of the British employers are comfortable with breastfeeding at work and nearly all (95%) of the employers in the United Kingdom said that they run an inclusive workplace. However, only 22% offer a designated space for employees to breastfeed.⁴³

5.3.2 The Governing Laws for Working Mothers in the United Kingdom

There are five legislations in the United Kingdom that protect the legal rights of working mothers. These include the Employment Rights Act 1996, Statutory Maternity Pay (General) Regulations 1986, Workplace (Health, Safety and Welfare) Regulations 1992, Management of Health and Safety at Work Regulations 1999 and Equality Act 2010. Detailed discussions on the laws are presented in the following sections.

⁴¹ Kate Palmer, "Moving the dial on attitudes towards breastfeeding in the workplace," HRD Online, <<https://www.thehrdirector.com/features/diversity-and-equality/dont-make-the-rest-of-us-uncomfortable-attitudes-towards-breastfeeding-in-the-workplace/>> (accessed 21 September, 2021).

⁴² Ibid.

⁴³ Emma Greedy, "Breastfeeding still taboo in the workplace," HR Magazine, <<https://www.hrmagazine.co.uk/content/news/breastfeeding-still-taboo-in-the-workplace>> (accessed 21 September, 2021).

5.3.2.1 *Employment Rights Act 1996*

The Employment Rights Act 1996 is a legislation that consolidates all other legislations pertaining to employment rights. The rights include right against unfair dismissal, protection of wages and termination of employment.

According to this Act, a woman is entitled to three kinds of maternity leave which are ordinary leave, compulsory leave and additional leave. Section 71 of the Act provides for ordinary leave.⁴⁴ According to Section 71 (3) (a) of the Act, a woman is entitled to at least 26 weeks of leave if she has satisfied all the requirements under the section.⁴⁵ Section 72 of the same Act provides for compulsory leave.⁴⁶ Section 72 (3) states that the compulsory leave should not be less than two weeks and the compulsory leave should fall within the ordinary leave.⁴⁷ Section 73 provides for additional maternity leave. It is the other 26 weeks of leave which gives a total of 52 weeks of maternity leave.⁴⁸ This means that eligible employees can take up to 52 weeks of maternity leave. The first 26 weeks is known as ‘Ordinary Maternity Leave’ while the last 26 weeks as ‘Additional Maternity Leave’. ‘Compulsory Maternity Leave’ on the other hand, is the two-week leave that must be taken by eligible employees and it falls within the first 26 weeks of the ordinary maternity leave.

It is observed that the Act stipulates the right to maternity leave in detail. It provides for a maximum of 52 weeks of maternity leave which makes the United Kingdom to have among the longest period of maternity leave. It is equal to one year. UNICEF recommends six months of leave for all parents for optimum children development and to strengthen the parental bond. Data from New America shows

⁴⁴ Employment Rights Act 1966, s 71.

⁴⁵ Ibid., s 71 (3) (a).

⁴⁶ Ibid., s 72.

⁴⁷ Ibid., s 72 (3).

⁴⁸ Ibid., s 73.

anything less than 25 weeks of leave does not meet basic maternal or infant needs. New American data agrees with UNICEF that six months or 52 weeks off with pay is ideal for new families. As for the American Academy of Paediatrics, it supports legislation to guarantee 12 weeks of paid leave for new parents. Expert say the more time a parent is able to take off – which is the first six to nine months – the better.⁴⁹

Furthermore, Section 75E (1) of the Employment Rights Act 1996 provides rights to shared parental leave due to the birth of a child. The conditions are laid down under the section as follow:

(1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions -

- (a) as to duration of employment,
- (b) as to being, or expecting to be, the mother of a child,
- (c) as to caring or intending to care, with another person (“P”), for the child,
- (d) as to entitlement to maternity leave,
- (e) as to the exercise of that entitlement and the extent of any such exercise,
- (f) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
- (g) as to the consent of P to the amount of leave under this subsection that the employee intends to take, to be absent from work on leave under this subsection for the purpose of caring for the child.⁵⁰

In the meantime, Section 75G (1) of the Employment Rights Act 1996 provides rights to shared parental leave due to adoption. An employee who satisfies the requirements under the section is entitled to shared parental leave for the purpose of care of a child. The requirements are as follow:

⁴⁹ Caitlin Knute, “How much maternity leave is enough for new moms?,” KSHB, <<https://www.kshb.com/news/local-news/how-much-maternity-leave-is-enough-for-new-moms>> (accessed 22 June, 2022).

⁵⁰ Employment Rights Act 1996, s 75E (1).

(1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions -

- (a) as to duration of employment,
 - (b) as to being a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom,
 - (c) as to caring or intending to care, with another person (“P”), for the child,
 - (d) as to entitlement to adoption leave,
 - (e) as to the exercise of that entitlement and the extent of any such exercise,
 - (f) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
 - (g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,
- to be absent from work on leave under this subsection for the purpose of caring for the child.⁵¹

The rights during and after the shared parental leave are listed in Section 75I of the Act. An employee who is on leave according to Section 75E or 75G is entitled to the same benefit of employment as if he or she had not been absent, is bound by obligations arising under those terms and conditions (unless the obligations are inconsistent with Section 75E (1) or (4) or 75G (1) or (4)), and is entitled to return from leave to the same kind job.⁵²

Meanwhile, Section 76 of the Employment Rights Act 1996 provides for rights to parental leave. An employee who satisfies the requirements under Section 76 (1) is entitled to parental leave for the purpose of caring for a child.⁵³

Section 77 of the Act lays down the rights during and after parental leave. The employee who is entitled for leave under Section 76 is also entitled to the same benefit under the terms and conditions of employment as if he/she had not been absent, is

⁵¹ Ibid., s 75G (1).

⁵² Ibid., s 75I.

⁵³ (1) *The Secretary of State shall make regulations entitling an employee who satisfies specified conditions -*

(a) as to duration of employment, and

(b) as to having, or expecting to have, responsibility for a child, to be absent from work on parental leave for the purpose of caring for a child.

bound by any obligations arising under those terms and conditions and is entitled to return from leave to the same kind job.

The act also provides for paternity leave. This is stated in Section 80A (1) of the Act. An employee who satisfies the specific requirements under the section is entitled to paternity leave due to the birth of his child for the purpose of caring for it and the mother.⁵⁴ Section 80A (3) of the Act states that the employee is entitled to at least two weeks of paternity leave.⁵⁵ Meanwhile, Section 80A (4) of the Act states that the leave should be taken before the end of the period of 56 days which begins on the child's birth date.⁵⁶

Meanwhile, Section 80B (1) of the Act provides for paternity leave due to adoption of a child. An employee who satisfies the conditions laid down under the section is entitled to paternity leave due to adoption of the child for the purpose of caring for it and supporting the person as prescribed under Sub-section (c).⁵⁷ Section 80B (3) of the Act provides that the leave should be at least two weeks.⁵⁸ Section 80B (4) of the Act provides that the leave must be taken before the end of the 56 days which starts on the child's birth date.⁵⁹

⁵⁴ (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions -

(a) as to duration of employment,

(b) as to relationship with a newborn, or expected child, and

(c) as to relationship with the child's mother, to be absent from work on leave under this section for the purpose of caring for the child or supporting the mother.

⁵⁵ Employment Rights Act 1966, s 80A (3).

⁵⁶ Ibid., s 80A (4).

⁵⁷ (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions -

(a) as to duration of employment,

(b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom, and

(c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption, to be absent from work on leave under this section for the purpose of caring for the child or supporting the person by reference to whom he satisfies the condition under paragraph (c).

⁵⁸ Employment Rights Act 1966, s 80B (3).

⁵⁹ Ibid., s 80B (4).

Section 80C lays down the rights during and after paternity leave. An employee who is entitled for paternity leave under Section 80A is entitled to the benefits of the terms and conditions of employment which would have applied if he had not been absent, is bound by obligations arising under those terms and conditions, and is entitled to return from leave to a job of a kind.⁶⁰

Other than maternity leave, the Act also provides for shared parental leave and paternity leave which are uncommon in other countries. The leave does not only focus on the birth of children but also include for the purpose of adoption. The adoption part has always been left out by other countries that only focus on the birth of biological children. It is good when a country provides paternity leave in addition to maternity leave. A father should also be given leave to care and support the mother and the child. This is good for the emotion of the mother as it lessens the burden on her. This leads to a greater relationship stability and good development of the child.

Nonetheless, in practice, according to the latest report by UNICEF, only 2% to 8% of eligible fathers are making use of paternal leave. This is mainly due to financial constraint. In addition, according to an analysis done by the University of Birmingham, only 9,200 new parents which equal to only over 1% of those entitled, took the shared parental leave in 2017-2018. The amount increased to 10,700 in 2018-2019. Flexible and improved parental leave policies can lead to better commitment and loyalty from employees, can increase work productivity and company's reputation as well as support workplace gender equality, consequently narrowing the gender pay gap. Another vital part is to ensure that employees feel capable and supported to apply for the leave.⁶¹

⁶⁰ Ibid., s 80C.

⁶¹ "Unicef UK gives all staff equal parental leave," *BBC News*, 15 January, 2020 <https://www.bbc.com/news/business-51117845>

According to the Act, there are two types of adoption leave which are ordinary adoption leave and additional adoption leave. According to Section 75A (1) of the Act, an employee who fulfils the requirements under the section is entitled to ordinary adoption leave. The requirements are laid down under Sub-section (1A). The requirements are: the employee should be a local authority foster parent, the employee should be approved as a prospective adopter, the employee should be notified by a local authority in England that a child is to be, or is expected to be placed with the employee under Section 22C of the Children Act 1989 and the employee should be notified by a local authority in Wales that a child is to be, or is expected to be placed with the employee under Section 81 of the Social Services and Well-being (Wales) Act 2014.⁶²

On the other hand, Section 75B provides for additional adoption leave. An employee who fulfils the requirements is entitled to the leave. The period of leave is calculated according to the regulations made by the Secretary of State.⁶³

Right to adoption leave accommodates the more diverse family structures. However, adoption leave is not a statutory requirement in many countries. According to Mercer's 2016 Global Parental Leave Report, more than one-quarter (29%) of companies worldwide provide adoption leave beyond what is required by law. Furthermore, when asked how they handle adoption leave for same-sex couples, 87% of companies indicate the leave is handled in the same manner as opposite-sex couples. The United Kingdom is one of the top ten countries with the highest percentage of organizations providing adoption leave above the statutory requirement.

⁶² Employment Rights Act 1966, s 75A.

⁶³ Ibid., s 75B.

The Act also provides right to time off for ante-natal care. This is stated in Section 55 of the Act. A woman who is pregnant and has an ante-natal appointment is entitled to take time off to go to the appointment.⁶⁴

Moreover, Section 57ZE provides for right to time off to accompany a pregnant woman to an ante-natal appointment. An employee who is related to a pregnant woman or her expected child is entitled to time off to accompany her for an ante-natal appointment. The right to take time off should not be more than twice. Every appointment should not be more than six and a half hours.⁶⁵

This kind of time off is also uncommon in other countries. This right is good as it supports the pregnant mothers starting from the beginning of their pregnancy when it is crucial for the health and safety of the mother and the child. The father who accompanies will also give physical and mental support to the pregnant mother.

Section 57A (1) of the Employment Rights Act 1996 provides for time off for dependants. An employee is entitled to take time off within a reasonable time to take the necessary action when the dependants are sick, injured or have died. Subsection (3) lists the 'dependants' in this section. They include spouse, child, parent(s) and person who lives in the same household with the employee.⁶⁶

Section 80F of the Act provides for flexible working arrangements. A qualified employee has statutory right to request contract variation. The variation may relate to the hours of work, time of work, place of work or other variations that the Secretary of State may specify.⁶⁷

Finally, the Act also provides the right for employees to flexible working arrangements. Working mothers are also entitled to this right. Flexible working

⁶⁴ Ibid., s 55.

⁶⁵ Ibid., s 57ZE (1) – (3).

⁶⁶ Ibid., s 57A (1) & (3).

⁶⁷ Ibid., s 80F.

arrangements have many advantages including improved workplace productivity, increased staff commitment, satisfaction and loyalty, and reduced absenteeism and staff resignation which consequently may lead to lower recruitment and training costs. Flexible working arrangements became more relevant and acceptable after the Covid-19 pandemic. As many employees were required to work from home during the pandemic, employers trusted their employees more as productivity was more or less the same with them working at the office.

To date, the government is recommending providing the right to request flexible working to all employees from the first day they start working. A survey by Totaljobs found that nine in ten employees wanted flexible place of working.⁶⁸ The law on this needs to be changed so that employees have the legal right to flexible working arrangement, not just the right to apply for it as employers can still refuse the application.⁶⁹

5.3.2.2 The Statutory Maternity Pay (General) Regulations 1986

The Statutory Maternity Pay (General) Regulations 1986 is a legislation that details the paid maternity leave, the period for which it is paid and the ways payment is made. Statutory maternity pay in the United Kingdom is paid up to 39 weeks. This is stated in Section 2 of the regulations.⁷⁰

⁶⁸ “Staff to gain right to request flexible working from first day,” *BBC News*, 21 September, 2021 <https://www.bbc.com/news/business-58636439>

⁶⁹ Ibid.

⁷⁰ 2. - (1) Subject to paragraph (3), where a woman gives notice to her employer that she intends to stop work and does in fact stop work because of her pregnancy in a week which is later than the 12th week before the expected week of confinement, then the first week in the maternity pay period shall be the week following the week in which she stopped work, or the 6th week before the expected week of confinement, whichever is the earlier.

(2) The maternity pay period shall end not later than the end of the 11th week immediately following the expected week of confinement and subject thereto shall be for a period of 18 consecutive weeks.

(3) Where -

(a) a woman is confined before the 11th week before the expected week of confinement, or

The legislation specifies on paid maternity leave. The maximum period of the paid maternity leave is 39 weeks. The period is among the longest period in the world. Hence, it can be said that the United Kingdom has a very good law on maternity leave. Long paid maternity leave gives good impact to working mothers, their children and the employers. Working mothers can raise their newborn babies without financial constraints. Employers will also be able to keep their good employees.

5.3.2.3 Workplace (Health, Safety and Welfare) Regulations 1992

The Workplace (Health, Safety and Welfare) Regulations 1992 lay down health, safety and welfare issues which protect most workplaces in the United Kingdom. Section 25 (4) of the Workplace (Health, Safety and Welfare) Regulations 1992 states that a pregnant woman or breastfeeding mother should be provided with proper accommodations to rest and eat.⁷¹ According to Section 25 (2) of the same Act, rest facilities should be provided in one or more rest rooms, or, in other cases, in rest rooms or rest areas where it is necessary for health and safety. Rest facilities include suitable facilities to eat meals where food eaten in the workplace would otherwise be likely to become contaminated.⁷²

Suitable facilities should be provided for workers to rest away from any contaminants or other hazards. These facilities should include appropriate seating. Areas to eat meals in a clean environment shall also be provided. All rest and eating areas shall be so arranged that non-smokers are not subjected by tobacco smoke from

(b) is confined after the 12th week but before the 6th week before the expected week of confinement and the confinement occurs in a week which precedes that mentioned in a notice given to her employer as being the week she intends to give up work, the first week in the maternity pay period shall be the week after the week in which she is confined.

⁷¹ Workplace (Health, Safety and Welfare) Regulations 1992, s 25 (4).

⁷² Ibid., s 25 (2).

the smokers in the workforce. Office workers may use their workstations as rest and eating facilities, if they will not be disturbed by others.⁷³

Pregnant women and breastfeeding mothers are also covered in this section. This is because they need to have enough rest and proper meal. The section is therefore a good law in ensuring the health, safety and welfare of pregnant women and breastfeeding mothers are well-looked-after.

5.3.2.4 Management of Health and Safety at Work Regulations 1999

The main purpose of the Management of Health and Safety at Work Regulations 1999 is to ensure that all employers in the United Kingdom carry out risk assessments for the purpose of detection of any possible danger towards the health and safety of their employees.

Section 16 of the Management of Health and Safety at Work Regulations 1999 provides for risk assessment in respect of new or expectant mothers. According to the section, the risk assessment should include a woman of child-bearing age when her work involves risk due to her condition as a new or expectant mother or due to the health and safety of the baby.⁷⁴

Section 17 of the Act states that if a new or expectant mother works at night and a certificate from a registered medical practitioner shows that she should be at work at any time specified due to her health or safety, she should be suspended from work by her employer.⁷⁵

⁷³ *Safety Matters - Health & Safety Community*, “Workplace (Health Safety & Welfare) Regulations 1992,” <<https://www.aisolutions.co.uk/community/Knowledge/Topic/564/900/Workplace-Health-Safety-Welfare-Regulations-1992>> (accessed 15 June, 2022).

⁷⁴ Management of Health and Safety at Work Regulations 1999, s 16.

⁷⁵ *Ibid.*, s 17.

Section 18 states that the employer should not take any action according to Section 16 or 17 if there is no written notification from the employee that she is a new or expectant mother.⁷⁶

The sections are in line with the international standards stated in Article 3 of the Maternity Protection Convention, 2000 (No. 183). As discussed earlier, in Article 3 of the convention, all state parties must take appropriate actions to ensure that pregnant or breastfeeding women are not obligated to carry out tasks which are harmful to the health of the mother or the child or where an evaluation has established a significant risk to the mother's or the child's health.

The pandemic has greatly affected pregnant women as they have lower immunity than other people and they are at high risk of pregnancy complications if they are infected with the virus. Therefore, the Royal College of Obstetricians and Gynaecologists had provided a guideline specifically for pregnant women who were working during the pandemic. According to the guideline, employers had the responsibility towards the health and safety of their pregnant employees while carrying out risky work. If there were risks, employers should change the working environment or working hours that better suit the pregnant employees.

Despite the provision, it has been reported that the government had failed to protect pregnant women at work during the pandemic and had been urged for improvement. In general, pregnant women received less support from the government as they were left to make a choice between unsafe working conditions, taking sick leave, taking early maternity leave or resigning.⁷⁷ However, the efforts generally

⁷⁶ Ibid., s 18.

⁷⁷ Miranda Bryant, "A kick in the teeth': British mothers and pregnant women fear return to workplace," The Observer, <<https://www.theguardian.com/business/2021/sep/04/a-kick-in-the-teeth-british-mothers-and-pregnant-women-fear-return-to-workplace>> (accessed 28 September, 2021).

reflected the concern that employers had taken into consideration all the available regulations then.

5.3.2.5 Equality Act 2010

There are three main purposes of the Equality Act 2010. The purposes are to abolish discrimination, to develop equality of opportunity and to promote good relations.

Section 18 of the Equality Act 2010 is concerned with cases of pregnancy and maternity discrimination at work. This section is designed to replicate the effect of similar provisions in the Sex Discrimination Act 1975. It is unlawful discrimination to treat a woman unfavourably because of her pregnancy or a related illness, or because she is exercising, has exercised or is seeking or has sought to exercise her right to maternity leave.⁷⁸

This section defines what it means to discriminate at the workplace because of a woman's pregnancy or pregnancy-related illness, or because she takes or tries to take maternity leave. The period during which protection from these types of discrimination is provided is the period of the pregnancy and any statutory maternity leave to which she is entitled. During this period, these types of discrimination cannot be treated as sex discrimination. For instance, an employer must not demote or dismiss an employee, or deny her training or promotion opportunities just because she is pregnant or on maternity leave. Also, an employer must not take into account an employee's period of absence due to pregnancy-related illness when making a decision about her employment.⁷⁹

⁷⁸ Equality Act 2010, s 18.

⁷⁹ *Legislation.gov.uk*, "Explanatory notes Section 18, Equality Act 2010," <<https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/2/2/6>> (accessed 21 September, 2022).

In considering whether there has been pregnancy and maternity discrimination, the employer's motive or intention is not relevant and neither are the consequences of pregnancy or maternity leave. Such discrimination cannot be justified. However, unlike cases of direct sex discrimination, there is no need to compare the way a pregnant worker is treated with the treatment of any other workers. If she is treated unfavourably by her employer because of her pregnancy or maternity leave, this is automatically discrimination. Unfavourable treatment of a woman because of her pregnancy or maternity leave during 'the protected period' is unlawful pregnancy and maternity discrimination. In some cases, employers have to treat workers who are pregnant or have recently given birth more favourably than other workers. Men cannot make a claim for sex discrimination in relation to any special treatment given to a woman in connection with pregnancy or childbirth, such as maternity leave or additional sick leave.⁸⁰

According to the Act, a person is considered discriminating against a pregnant woman if he/she treats the pregnant woman unfavourably because of her pregnancy or because of her illness due to her pregnancy during the protected period of her pregnancy. A person is also considered discriminating against a woman if he or she treats her unfavourably because the woman is on compulsory maternity leave. In addition, a person is considered as discriminating against a woman if he or she treats the woman unfavourably because the woman is exercising or seeking to exercise or has exercised or sought to exercise her right to ordinary or additional maternity leave.⁸¹ Unfavourable treatment is when an employee is treated badly or poorly on the

⁸⁰ DRAFT Code of Practice – Employment Code, Equality Act 2010.

⁸¹ 18 *Pregnancy and maternity discrimination: Work cases*

(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably

(a) because of the pregnancy, or

grounds of her pregnancy or pregnancy-related illness, or because she is seeking to take maternity leave.⁸²

There are two related cases on discrimination. The first case is *McFarlane and another v. easyJet Airline Company Ltd.*⁸³ In this case, there were two employees: McFarlane and another employee who were crew members at easyJet Airline Company Ltd. Both of them were breastfeeding mothers who had just returned to work after taking maternity leave.

During that time, the company operated a roster system which required employees to work more than eight hours non-stop. Therefore, the two employees made requests for flexible working arrangements so that they would not be expected to work more than eight hours or alternatively, carry out ground duties to enable them to express milk between shifts. Both employees attached certificates from their general practitioners to support their requests. The certificates clearly stated that they would be at risk of mastitis if they were prohibited from expressing their milk and they should not be allowed to work more than eight hours non-stop.

However, their requests were rejected by the company as expressing milk was “a choice.” The Tribunal found that the company’s actions amounted to indirect sex discrimination against the employees and the company was ordered to pay compensation.

(b) because of illness suffered by her as a result of it.

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

⁸² Equality Commission for Northern Ireland, “Unfavourable treatment,” <<https://www.equalityni.org/Employers-Service-Providers/Large-Business/Pregnancy-and-maternity/Guidance/Unfavourable-treatment-legal-provisions>> (accessed 21 September, 2022).

⁸³ *McFarlane and another v easyJet Airline Company Ltd.* (Case No: 1401496/2015, 3401933/2015.)

The second case is the case of *Squillaci v. WS Atkins (Services) Ltd.*⁸⁴ In this case, the employee was specially advised by her general practitioner to breastfeed her child for at least 12 months. This is due to the fact that they have a strong family history of eczema. Thus, the employee requested for flexible working arrangements to attend to her child's feeding time. However, the employer refused to approve her request and was found to have discriminated unlawfully against the employee.

The law is reasonably workable and effective in protecting working mothers against discrimination at the workplace. It is in line with international standards that are provided in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, specifically Articles 2 (2) and 11. All state parties should take appropriate actions in order to prevent discrimination against women due to marriage or maternity. These include prohibition of dismissal during pregnancy and maternity leave, and also protection of maternity leave with pay.

5.4 POLICIES AND LAWS GOVERNING WORKING MOTHERS IN AUSTRALIA

5.4.1 The Policies for Working Mothers in Australia

There are two policies with regards to working mothers in Australia. The first policy is Breastfeeding Friendly Workplace Program and the second policy is National Quality Framework. The following are detailed discussions on the policies.

⁸⁴ *Squillaci v WS Atkins (Services) Ltd.* [1999] I.C.R. 694 (EAT).

5.4.1.1 Breastfeeding Friendly Workplace Program

The main function of Breastfeeding Friendly Workplace Program is to support women in combining work and breastfeeding.⁸⁵ Breastfeeding Friendly Workplace Accreditation (BFW) is awarded by the Australian Breastfeeding Association (ABA) to organisations that provide three simple requirements to support their breastfeeding employees at the workplace: space, time and support.

As the first requirement, a private space to feed or express breastmilk should be provided in order to become a breastfeeding-friendly workplace. The second requirement is the employer should provide breaks for breastfeeding and/or expressing breastmilk. The third requirement is support including a clear communication strategy and other workplace incentives.⁸⁶

The programme encourages employers to provide a better environment and support for all working mothers. The accreditation enables employers to do so in a faster and simpler way. The three elements for the accreditation are the most important tools for breastfeeding mothers at the workplace. When breastfeeding mothers are provided with a convenient area, breaks and support from their employers, they can work more efficiently and increase productivity. The health of their children is also ensured. This, in turn, gives advantages to employers when their employees stay with the companies as the latter are pleased and comfortable working with the companies.

⁸⁵ Australian Breastfeeding Association, “Breastfeeding Friendly Workplaces,” <<https://www.breastfeeding.asn.au/workplace>> (accessed 5 June, 2021).

⁸⁶ Ibid.

5.4.1.2 National Quality Framework

The National Quality Framework (NQF) has three aims which are to guarantee the safety, health and well-being of children receiving education and care services, to enhance educational and developmental results for children and to promote continuous improvement in the provision of quality education and care services.⁸⁷ The framework provides a national approach to regulation, assessment and quality improvement for early childhood education and care, and outside school hours care services throughout Australia.⁸⁸

The seven quality areas that will be assessed are educational programme and practice, children's health and safety, the physical environment, staffing arrangements, relationships with children, collaborative partnerships with families and communities, leadership and service management.⁸⁹

The National Institute of Child Health and Human Development (NICHD) of the United States of America has done a comprehensive study on early childcare centres which investigates the relationship between different early childcare centres and development of children. The study found that quality of care is the most consistent childcare predictor of child development outcomes. Higher quality care gives more positive impacts in terms of social, emotional, cognitive, language and behaviour whereas lower quality care gives more negative impacts on the children.

⁸⁷ *Early Childhood Education and Care*, "National Quality Framework," <<https://earlychildhood.qld.gov.au/legislation-and-guidelines/national-quality-framework-and-queensland-legislation/NQF>> (accessed 5 June, 2021).

⁸⁸ *Australian Children's Education & Care Quality Authority*, "National Quality Framework," <<https://www.acecqa.gov.au/nqf/about>> (accessed 26 December, 2019).

⁸⁹ *Goodstart Early Learning*, "Policies and procedures," <<https://www.goodstart.org.au/policies-and-procedures>> (accessed 26 December, 2019).

Therefore, it is important for policy-makers to support the establishment and successful operation of high-quality early childcare programmes.⁹⁰

As NQF is a very good scheme that assesses the quality of childcare centres. The programme is great in ensuring the quality of every childcare centre in Australia. As stated in the NICHD study, a quality childcare centre does give good impacts on child development. Consequently, information on quality childcare centres will assist working mothers to focus on their work.

5.4.2 The Governing Laws for Working Mothers in Australia

There are five legislations which provide legal protection to working mothers in Australia: Fair Work Act 2009, Sex Discrimination Act 1984, Equal Opportunity Act 2010, Family Law Act 1975 and Education and Care Services National Law Act 2010. Detailed discussions on the laws are given next.

5.4.2.1 Fair Work Act 2009

The Fair Work Act 2009 aims at setting up a legal framework of the relations between employers and employees for most companies in Australia. Division 5 of the Fair Work Act 2009 specifically provides for parental leave and related rights.

Section 67 of the Act states the general rule for parental leave whereby the employee should have completed 12 months of service before applying for leave. Employees other than casual employees are governed by Section 67 (1) of the Fair Work Act 2009 while casual employees are governed by Section 67 (2) of the Act. Employees other than casual employees are entitled to parental leave only if they have

⁹⁰ Kathleen McCartney, “What Do We Know About the Effects of Early Child Care?,” Purdue, <https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_mifis01c03.pdf> (accessed 16 August, 2021).

completed or will complete at least 12 months of continuous service with the company. On the other hand, casual employees are entitled to parental leave only if they are or will be long term casual employees of the company.⁹¹

According to Section 60 of the Fair Work Act 2009, ‘employee’ in Section 67 means national system employee.⁹² National system employee is defined in Section 13 of the same Act:

13 Meaning of national system employee –

A national system employee is an individual so far as he or she is employed, or usually employed, as described in the definition of national system employer in Section 14, by a national system employer, except on a vocational placement.⁹³

A national system employer is defined in Section 14 of the Act which includes a constitutional corporation, the Commonwealth and a Commonwealth authority.⁹⁴ On the other hand, casual employee is defined in Section 15A of the Act as such:

15A Meaning of casual employee -

- (1) A person is a casual employee of an employer if:
- (a) an offer of employment made by the employer to the person is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person; and
 - (b) the person accepts the offer on that basis; and
 - (c) the person is an employee as a result of that acceptance.⁹⁵

Section 68 of the Fair Work Act 2009 provides for adoption-related leave. Adoptive parents are entitled to the leave if the child is under 16-years-old, the child

⁹¹ Fair Work Act 2009 (No. 28, 2009), s 67.

⁹² Ibid., s 60.

⁹³ Ibid., s 13.

⁹⁴ Ibid., s 14.

⁹⁵ Ibid., s 15A.

does not live or will not have lived with the parents for a period of six months and the child is not of the parent or his/her spouse's child or his/her *de facto* partner's child.⁹⁶ This shows that the law treats adoptive parents and biological parents as equally sharing common rights regarding children.

Section 70 provides for the right of employees to unpaid parental leave. An employee has the right to a 12-month unpaid leave if the leave is related to the birth of the child or the placement of an adopted child and the employee has or will have responsibility towards the child.⁹⁷

Section 85 of the Act provides for unpaid pre-adoption leave. Section 85 (1) of the Act states that an employee is entitled to two days of the unpaid pre-adoption for the purpose of attending related occasions needed for the adoption of a child. Nevertheless, Sub-section (2) states that if the employee could take another kind of leave and the employer allows the employee to take that leave, the employee is not entitled to the unpaid pre-adoption leave. Sub-section (3) further states that an employee who is entitled to the leave could take the leave as two continuous days or separately.⁹⁸

Section 65 (1) which is under Division 4 of the Fair Work Act 2009 states that an employee may request for a flexible working arrangement if any situation laid down in Sub-section (1A) applies to the employee and the employee would like to request for a flexible working arrangement because of the situation. According to Sub-section (1A) (a), one of the situations is the employee is a parent or has responsibility for the care of a child who is of school age or younger.⁹⁹

⁹⁶ Ibid., s 68.

⁹⁷ Ibid., s 70.

⁹⁸ Ibid., s 85.

⁹⁹ Ibid., s 65 (1) – (1A) (a).

The legislation provides for parental leave in detail. The legislation details the paid and unpaid parental leave as to the birth of a child and adoption of a child. Parental leave like this is vital for the parents as well as the children. The benefits of paid parental leave are well-known. This kind of leave encourages healthy development, improves maternal health and increases families' economic security. Unpaid parental leave also has its advantages in which it gives the parents more time to care and spend with their children for a healthy family growth, especially in the emotional aspect.

The legislation also provides for flexible working arrangements for parents who have to care for their school-age or younger children. This right is good for working mothers who would like to balance between work and family. Nevertheless, the right depends on the age of the children. It does not cover parents who have older children who might need special care.

5.4.2.2 Sex Discrimination Act 1984

The main purpose of the Sex Discrimination Act 1984 is to prohibit discrimination in Australia in terms of sex, marital status and pregnancy. Section 7 of the Sex Discrimination Act 1984 provides for prohibition against discrimination on the ground of pregnancy or potential pregnancy. According to the section, it is considered a discrimination when the discriminator discriminates the aggrieved woman because of her pregnancy or potential pregnancy.¹⁰⁰

¹⁰⁰ 7 Discrimination on the ground of pregnancy or potential pregnancy (1) For the purposes of this Act, a person (the discriminator) discriminates against a woman (the aggrieved woman) on the ground of the aggrieved woman's pregnancy or potential pregnancy if, because of:

- (a) the aggrieved woman's pregnancy or potential pregnancy; or
- (b) a characteristic that appertains generally to women who are pregnant or potentially pregnant; or
- (c) a characteristic that is generally imputed to women who are pregnant or potentially pregnant; the discriminator treats the aggrieved woman less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat someone who is not pregnant or

Section 7A of the Act provides for prohibition against discrimination on the basis of family responsibilities. The discrimination happens when the employer treats the employee with family responsibilities less positively than the employee with no family responsibilities.¹⁰¹

The Act is in line with international standards. It is in line with Article 11 of CEDAW that prohibits discrimination against women in employment. This includes discrimination due to pregnancy and possible pregnancy. The Act is also in line with Workers with Family Responsibilities Convention, 1981 (No. 156). Article 3 of the convention obviously forbids discrimination and conflict between employment and family responsibilities. Nonetheless, the Act has its own weakness where discrimination against maternity is not included.

5.4.2.3 Equal Opportunity Act 2010

The function of the Equal Opportunity Act 2010 is to protect people of Australia from discrimination against personal characteristics. Section 6 which is under Part 2 of the Equal Opportunity Act 2010 lays down the attributes in which discrimination is prohibited in the areas of activity set out in Part 4 of the Act. Among the attributes are breastfeeding, parental status or status as a carer and pregnancy.¹⁰²

Division 1 under Part 4 of the Act provides for discrimination in employment. Section 16 provides for discrimination against job applicants. Under the section, it states that:

potentially pregnant. (2) For the purposes of this Act, a person (the discriminator) discriminates against a woman (the aggrieved woman) on the ground of the aggrieved woman's pregnancy or potential pregnancy if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging women who are also pregnant or potentially pregnant."

¹⁰¹ Sex Discrimination Act 1984 (No. 4, 1984), s 7A.

¹⁰² Equal Opportunity Act 2010 (No. 16 of 2010), s 6.

Part 4 – When is discrimination prohibited? Division 1 – Discrimination in employment:

16 Discrimination against job applicants –

An employer must not discriminate against a person -

- (a) in determining who should be offered employment; or
- (b) in the terms on which employment is offered to the person; or
- (c) by refusing or deliberately omitting to offer employment to the person; or
- (d) by denying the person access to a guidance program, an apprenticeship training.¹⁰³

There must be no discrimination on the part of the employer against any person who should be offered the employment, the terms of the employment, the refusal or deliberate omission of the employment or the denial to access to a guidance programme, an apprentice training programme or other occupational training or retraining programme.

Section 17 of the Act further prohibits discrimination against parent or carer. The employer should not unreasonably refuse to accommodate the person's responsibilities as a parent or carer. The section also lists down all the criteria that should be taken into consideration in determining whether the refusal is made unreasonably.¹⁰⁴

It can be seen that the legislation is in line with Article 11 of CEDAW that prohibits discrimination against women in employment. The Act is considered comprehensive as it covers most types of discrimination against working mothers. The

¹⁰³ Ibid., s 16.

¹⁰⁴ 17 Employer must accommodate responsibilities as parent or carer of person offered employment:
(1) An employer must not, in relation to the work arrangements of a person offered employment, unreasonably refuse to accommodate the responsibilities that the person has as a parent or carer.
Example: An employer may be able to accommodate a person's responsibilities as a parent or carer by offering work on the basis that the person could work additional daily hours to provide for a shorter working week or occasionally work from home.

attributes of the discrimination of employment are stated in detail. Furthermore, it also provides for discrimination against parent or carer which include working mothers.

5.4.2.4 Family Law Act 1975

The Family Law Act 1975 is slightly different from other family law legislations as it emphasises on the rights of children instead of the rights of parents. The Act also provides for the responsibilities of parents towards their children.

According to Section 66C of the Family Law Act 1975, all parents have, as their main responsibility, to maintain a child.¹⁰⁵ The section of the Act clearly protects the financial right of the children in Australia. In this section, both parents have the responsibility to financially maintain their children. However, this section does not specify the responsibility on the father like other countries' legislations do.

Section 67B of the Family Law states that the father of a child who is not married to the child's mother is liable to make proper contributions towards maintenance and expenses of the mother. The contributions include childbirth maintenance, the mother's reasonable medical expenses in relation to the pregnancy and birth, reasonable expenses of the mother's funeral if the mother dies and the death is as a result of the pregnancy or birth, and reasonable expenses of the child's funeral if the child is stillborn, or dies and the death is related to the birth.¹⁰⁶

Section 72 of the Act provides for the right of a spouse to maintenance. Spousal maintenance is financial support paid by a party to a marriage; one who has financial capacity, to their husband or wife in circumstances where they are unable to adequately support themselves. The circumstances include that they have care of a

¹⁰⁵ Family Law Act 1975 (No. 53, 1975), s 66C.

¹⁰⁶ Ibid., s 67B.

child of the marriage under the age of 18-years or because of their age or physical or mental incapacity, they are limited from obtaining appropriate gainful employment,¹⁰⁷ or due to the additional factors listed in Section 75 (2) which include the age and health of the party, the parties' income, property and financial resources, the parties' capacity for gainful employment and whether a party has care of a child under the age of 18-years.¹⁰⁸

The Act implies that, in Australia, both husband and wife are responsible for each other's maintenance. The responsibility is not on the husband alone like most of other countries' laws. The provision for spousal maintenance recognises the economic contributions of spouses within a marriage and aims to ensure financial support for those who may be unable to adequately support themselves due to caregiving responsibilities. In the context of working mothers, this provision acknowledges that women who prioritise caregiving may face challenges in maintaining employment or obtaining appropriate gainful employment due to their caregiving duties.

Additionally, the factors listed in Section 75(2) of the Act, which include age, health, income, property, and capacity for gainful employment, further recognise the unique challenges faced by working mothers. These factors acknowledge that caregiving responsibilities can impact a person's ability to earn income and accumulate financial resources, particularly if they have been out of the workforce for an extended period.

5.4.2.5 Education and Care Services National Law Act 2010

The Education and Care Services National Law Act 2010 aims at creating a national standard for education and care system of the children in Australia. Part 6 of the Act

¹⁰⁷ Ibid., s 72.

¹⁰⁸ Ibid., s 75 (2).

provides for the operation of an education and care service. This part lists the possible offences made in operating the education and care service. One of the offences is operating the education and care service without a nominated supervisor; upon conviction, there is a penalty of \$5000 in the case of an individual and \$25,000 in any other case. This is laid down in Section 161 of the Act.¹⁰⁹

As the purpose of the Act is to create a nationwide quality framework for the delivery of education and care services to children, the Act is in line with the Convention on the Rights of the Child 1989 (CRC). Every child has the right to education and development. A good education and care service centre leads to a good development of children. Therefore, there should be a law regulating the operations of the centre to make ensure its good quality. Article 6 of the Act lays down the offences that may be made in the running of the centre. This shows how serious the country is in ensuring the good quality of their education and care service centres.

In addition, this Act demonstrates a commitment to ensuring the quality and safety of education and care service centers, which is particularly relevant for working mothers who rely on these facilities to support their participation in the workforce while also ensuring the welfare of their children.

5.5 POLICIES AND LAWS GOVERNING WORKING MOTHERS IN MALDIVES

5.5.1 The Policy for Working Mothers in Maldives

There is only one policy for working mothers in Maldives. It is a policy on maternity and paternity leave. In March 2019, the government announced that all mothers

¹⁰⁹ Education and Care Services National Law Act 2010 (No. 69 of 2010), s 161.

working in the civil service will be given a six-month paid maternity leave and one-month paid paternity leave for fathers.¹¹⁰ The move is taken by the government as the first six months is the most crucial period in raising a child as all familial routines change drastically and babies are constantly being breastfed during this time.

Many state-owned and private companies have also started implementing the new policy. These include the Maldives Airports Company Limited (MACL), state trading organizations, police services and customs.¹¹¹

5.5.2 The Governing Laws for Working Mothers in Maldives

The rights of working mothers in Maldives are mainly governed by legislations rather than policy. There are four legislations that protect the legal rights of working mothers in Maldives. The legislations are Constitution of the Republic of Maldives 2008, Employment Act 2008, Maldives Civil Service Regulation 2014 and Family Act 2000. The laws are discussed in detailed in the following sections.

5.5.2.1 Constitution of the Republic of Maldives 2008

The Constitution of the Republic of Maldives 2008 is the supreme law of Maldives. The constitution provides the legal basis for the existence of Maldives, lays down the rights and duties of the people of Maldives, and outlines the structure of its government.

Article 17 of the constitution provides for non-discrimination. According to the article, there should be no discrimination based on race, national, origin, colour, sex

¹¹⁰ *The President's Office*, "President Solih announces the implementation of 6 months paid maternity leave," <<https://presidency.gov.mv/Press/Article/20794>> (accessed 29 September, 2021).

¹¹¹ *Humaam Ali*, "Police, Customs implement six-month paid maternity leave policy," Raajje, <<https://raajje.mv/53427>> (accessed 29 September, 2021).

and others.¹¹² Moreover, all citizens are equal legally. This is mentioned in Article 20 of the constitution.¹¹³ The citizens in the country are also given the right to work and this is specified in Article 37 of the constitution.¹¹⁴

The constitution is the supreme law of the country and the article is a general law against discrimination in the country. It is obviously stated in Article 17 (a) of the constitution that discrimination due to sex is prohibited. It is further supported by Article 20 in which every citizen is equal in law. The constitution then specifies the right to work. All citizens have the right to work regardless of their backgrounds. This means that there should be no discrimination against women in employment.

Hence, the constitution is in order with the Charter of the United Nations and most of the human right treaties including the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1996 and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979.

5.5.2.2 *Employment Act 2008*

The function of the Employment Act of Maldives is also similar with other employment legislations in which it protects the legal rights of the employers and employees of Maldives and it sets out all other things related to employment.

Section 4(a) of the Employment Act 2008 prohibits discrimination against all employees on the basis of race, colour, social standing, religion, sex and many more.¹¹⁵

¹¹² Constitution of the Republic of Maldives 2008, Article 17.

¹¹³ Ibid., Article 20.

¹¹⁴ Ibid., Article 37.

Section 43 (a) of the same Act provides for maternity leave. Female employees are entitled to 60 days of maternity leave. The leave should not begin 30 days before the estimated birth date. Employees are also entitled to return to work at the end of the maternity leave. Section 43 (c) further states that female employees are also entitled to all the rights and benefits granted under the employment agreement such as the right to a promotion during the maternity leave. Section 43 (d) states that the female employee should be paid on the same day of usual course of business even during the maternity leave. An extra 28 days of leave should be granted if it is endorsed by a medical practitioner that the female employee is unable to return to work because she or her baby is ill. The leave can be taken before the estimated date of delivery or after the delivery. However, the employer has the discretion not to pay during such leave.¹¹⁶

Section 44 (a) provides for right to return to work. There are only two situations when the employee's right to return to work might be rejected. The first situation is when the position is no longer in existence at the workplace because of economic, professional or organisational purposes. The second situation is if the employee is incapable of resuming work in the same job.¹¹⁷

Section 45 of the Employment Act 2008 provides for the right of working mothers to get a break to attend to her child. At the end of the maternity leave, employees are entitled to two daily breaks of 30 minutes each. The purpose of the

¹¹⁵ *Non-discrimination 4. a) It is prohibited to discriminate amongst persons carrying out equal work either in the granting of employment, determination of remuneration, increase in remuneration, provision of training, determination of conditions and manner of employment, dismissal from employment or resolution of other employment related matters, based on race, colour, social standing, religion, political beliefs or affiliation with any political party, sex, marital status, family obligations, and in so far as it does not contravene the provisions herein age or disability.*

¹¹⁶ Employment Act 2008 (Act No. 2/2008), s 43.

¹¹⁷ Ibid., s 44 (a).

breaks is to attend to their child. There should be no deductions from pay and employees are entitled to such breaks until their child turns one-year-old.¹¹⁸

According to Section 46, after the maternity leave ends, the mother or the father of the newborn child could take unpaid leave up to one year. If the mother and the father are working with the same employer, the leave could be distributed between both of them according to their preference.¹¹⁹

Section 47 states that every employee is entitled to ten days of paid leave annually to take care of family responsibilities.¹²⁰

Section 48 of the Act states that all male employees have the right to three days of paid leave due to the birth of a child which starts on the date of the birth of the child.¹²¹

According to Section 49 of the act, all employees are entitled to five days of paid leave because of the circumcision of a child which starts on the date of the circumcision.¹²²

It can be seen that the legislations provide rights to working mothers in many aspects. The primary right provided is the right against discrimination. This is followed by the right to maternity leave and the right to return to work after maternity leave. Other rights which are highly needed by most working mothers but are not available in other countries' legislations include the right to a break to attend to the child and the right to unpaid leave up to a year after maternity leave. Both rights ease the working mothers in Maldives who are struggling to juggle between taking care of

¹¹⁸ Ibid., s 45.

¹¹⁹ Ibid., s 46.

¹²⁰ Ibid., s 47.

¹²¹ Ibid., s 48.

¹²² Ibid., s 49.

their newborn babies and working. They also help in the development of the newborn babies.

Another essential right provided is the right to ten days of leave for family responsibilities. This kind of right is vital in supporting working mothers to balance between their personal and working life. The fathers are entitled to three days of paternity leave. This leave is important to support the mothers during the early days of delivery for their physical and mental health. Lastly, Maldives also provides a rare yet useful right through this legislation. It is the right to five days of leave due to circumcision of a child. As the country applies Islamic law and circumcision is compulsory for every Muslim, this type of leave is very valuable for the parents. Circumcision needs proper care. Hence, the leave provided for the parents is helpful for the healthy development of the child.

5.5.2.3 Maldives Civil Service Regulation 2014

Maldives Civil Service Regulation 2014 is aimed specifically in protecting the legal rights of their civil servants. In addition, this regulation is also enforceable to government offices and civil services agencies.¹²³

Chapter 18 of the regulation provides for holidays and leave granted to employees. Article 180 of the regulation covers maternity and paternity leave. Article 180 (a) states that a mother or a father is entitled to a non-paid leave for a maximum of one year to take care of the child after the maternity leave ends.¹²⁴

¹²³ Maldives Civil Service Regulation 2014 (No. 2014/R-311), s 2(a).

¹²⁴ Ibid., s 180.

Article 181 of the regulation is similar to Article 43 of the Employment Act where female employees are entitled to 60 days of maternity leave.¹²⁵ It states that:

Leave Related to Pregnancy and Delivery -

181. (a) Where an employee delivers after 27 (twenty seven) weeks of pregnancy (and whether the baby is alive or deceased), the employee shall be entitled to, as stipulated in Article 43 of the Employment Act, to the following leave and benefits -

(b) Upon submission of a medical certificate of a registered medical practitioner by the employee stating the date of delivery, the employee shall be granted paid maternity leave of 60 (sixty) days without the inclusion of public holidays commencing from the date of delivery as stated on the certificate.¹²⁶

Meanwhile, Article 182 is made in accordance to Section 45 of the Employment Act. It states that:

Benefits Related to Delivery -

182. Pursuant to Article 45 of the Employment Act, upon delivery an employee is entitled to the following benefits -

(a) 1. From the date an employee returns to work after completion of maternity leave, the employee shall be granted two daily breaks of thirty minutes each to attend to the needs of the child. No deductions from pay shall be made for such breaks and the employee shall be granted such breaks until the child is 12 months old.

2. These two 30-minute breaks may be combined and granted to the employee, should the employee desires so.¹²⁷

Article 183 of the regulation provides for flexible working arrangements for pregnant women and breastfeeding mothers¹²⁸ while Article 184 of the regulation

¹²⁵ *Leave Related to Pregnancy and Delivery 181. (a) Where an employee delivers after 27 (twenty seven) weeks of pregnancy (and whether the baby is alive or deceased), the employee shall be entitled to, as stipulated in Article 43 of the Employment Act, to the following leave and benefits.*

¹²⁶ Maldives Civil Service Regulations 2014 (No. 2014/R-311), Article 181 (a) and (b).

¹²⁷ *Ibid.*, Article 182 (a).

¹²⁸ *Ibid.*, Article 183 (a).

states that all male employees are entitled to three days of paid leave because of the birth of a child.¹²⁹

Article 185 provides for circumcision leave. Article 185 (a) of the regulation states that all employees are entitled to five days of paid leave because of the circumcision of a child.¹³⁰

Article 187 (a) states that all employees are entitled to a maximum of ten days of paid leave annually to care for family members.¹³¹

Basically, the regulation is pursuant to the Employment Act but it is specific for civil service employees. Therefore, the rights conferred in this regulation is the same with the Employment Act except that the regulation states on the right of pregnant and breastfeeding mothers to flexible working arrangements which is not stated in the Employment Act.

5.5.2.4 Family Act 2000

The Family Act 2000 has the same purpose with other family legislations in which it covers matters pertaining to family including marriages, divorces, maintenance and custody. Section 35 of the Family Act provides for the attribution of payment of maintenance. According to the section, the court has the discretion to make an order to the husband or ex-husband to pay maintenance to his wife, ex-wife or children according to the principles of Shari'ah.¹³²

The religion of the country is Islam. Islamic law prevails over any other laws in Maldives. Therefore, the law of maintenance in Maldives is based on Islamic law. As has been deliberated earlier, working women are entitled to maintenance from the

¹²⁹ Ibid., Article 184.

¹³⁰ Ibid., Article 185 (a).

¹³¹ Ibid., Article 187 (a).

¹³² Family Act 2000, s 35.

husband as long as they get permission to work from their husbands. Thus, the act is in line with the Islamic principles and it is a good law as Islam is the way of life. Islam gives complete guidelines in every aspect of life including maintenance of wife and children.

5.6 CONCLUSION

As a whole, it is observed that there are several kinds of leave which have been well demonstrated in benchmarked countries. The first leave is a law on long maternity leave which is up to 52 weeks. A long maternity leave like this is very beneficial for the development of the children as well as the physical and mental health of the working mothers as the first year of life is the most important and challenging phase.

Two other leaves are childcare leave and extended childcare leave. The law on them which have been practised by a benchmarked country assists the working mothers in managing their young children and consequently, the children will get the attention and bonding that they need for their emotional, physical and mental development.

Adoption leave is also an advantageous leave that has been practised by benchmarked countries although the leave is uncommon in many other countries. One of the benchmarked countries even provides law on adoption leave for self-employed women. This sort of leave supports diversity of family structures. To add, leave for family responsibilities and leave for circumcision are incentives to encourage women to work and at the same time, to have a balanced lifestyle.

Other than leave, there is also best practice on time off. The laws on time off for ante-natal appointment, time off to accompany for ante-natal appointment as well as time off for dependants have been the best practices by a benchmarked country in

this study. The time off for ante-natal appointment and accompany for the appointment are vital for the health of pregnant working mothers as well as their unborn babies. This encourages them to work while taking care of their health as well as their unborn babies.

Time off for dependants has similar benefit as leave for family responsibilities because both of them support work-life balance of working mothers. Meanwhile, break to attend to a child has the same purpose as childcare leave which is to help working mothers to manage their children while working but in different applications.

Another best practice that has been done by benchmarked countries is the law which requires employers to provide flexible working arrangements for breastfeeding mothers and also areas for breastfeeding. This law aids breastfeeding mothers to focus on their work and at the same time, carry out their duties as mothers. The policy on job sharing is also workable for the same aim. In addition, the law on flexible working arrangements for the purpose of childcare is also a good practice which is valuable for the development and health of children.

A law which ensures the health and safety of breastfeeding mothers and pregnant women including prohibiting employers to put expectant mothers in danger while working is also a good practice.

Regarding childcare centres, the best practice is the fee assistance policy. The main reason for increasing numbers of child abuse at these centres is due to high and unaffordable fees of registered and safe childcare centres; so, this kind of policy assists in overcoming this matter. If working mothers are provided with this type of financial assistance, the issue of child abuse can be lessened.

Finally, relating to the law on discrimination in employment. The best practice on this is done by a benchmarked country where the law is comprehensive due to the

fact that it covers most types of discrimination against working mothers. The attributes of the discrimination are laid down exhaustively. The discrimination in employment is stated in detail. Moreover, it also provides for discrimination against parent or carer which include working mothers. A thorough law like this is helpful in avoiding confusion in interpreting the law.



CHAPTER SIX

CONCLUSION AND SUGGESTIONS

6.1 INTRODUCTION

This study has focused on legal rights in terms of policies and laws which protect working mothers in Malaysia. Besides focusing on Malaysian policies and laws, the study has also made critical analyses on international conventions, treaties and Shariah law on women employment as well as comparative analyses with the policies and laws of other countries such as Singapore, Australia, the United Kingdom and Maldives.

The research has identified the issues of working mothers in Malaysia which include their financial rights and rights pertaining to their children via qualitative and quantitative methods. This chapter then synchronizes the summary, findings and conclusion of the research. Beneficial recommendations will also be suggested in this chapter for the purpose of legal reform of the policies and laws of Malaysia with regards to working mothers.

6.2 SUMMARY OF THE FINDINGS

After examining the policies and laws governing working mothers in Malaysia, in order to answer the first objective of the study, the study shows that Malaysia has extensive policies on women empowerment. There are several policies encouraging participation of women in employment including the Malaysian Plan, National Policy for Women and National Family Policy. These policies support women and their double responsibilities for work and family well-being.

Malaysia also has a policy on breastfeeding which is the National Breastfeeding and Infant Feeding Policy 1993 in which the policy encourages breastfeeding up to two-years of age. Another policy which concerns the development of children is the Early Childhood Care and Development Policy 2007 where it supports comprehensive development and quality care of children up to eight-years-old.

Lastly, Malaysia has a policy on flexible working arrangements which aims at providing work-life balance for all employees, especially working parents. By going through these policies, it can be said that Malaysia has comprehensive policies governing working mothers in the country.

Overall, the laws governing working mothers in Malaysia are continuously being improved over the years as many are still not inclusive. The laws focus more on the rights of working women rather than working mothers. In addition, the Federal Constitution prohibits sexual discrimination including in terms of employment.

The main legislation on employment in Malaysia which is the Employment Act 1955 was amended in 2022 and enforced on 1st January 2023. There are many laws governing working mothers which have been included in the amendment. These include laws protecting pregnant mothers against termination, flexible working arrangements and paternity leave which are vital for the development of children as well as work-life balance of working mothers. Regarding Sabah and Sarawak, they have their own Labour Ordinances which are Labour Ordinance Chapter 67 and Labour Ordinance Chapter 76. These ordinances set out some similar provisions like Employment Act 1955 but most of their provisions are different with Employment Act 1955 including their length of maternity leave.

Regarding rights on children, Malaysia has Child Care Centre Act 1984 which obligates all childcare centres to be registered. However, it lacks on the implementation in which has caused many child abuse cases to occur in childcare centres. On the other hand, with regards to financial rights of working mothers, Malaysia has an adequate law which compels husbands and former husbands to pay maintenance to their spouses and former spouses, including the maintenance of their children. The related legislations are the Islamic Family Law (Federal Territories) Act 1984, Married Women and Children (Maintenance) Act 1950 and Law Reform (Marriage and Divorce) Act 1976.

Corresponding to the second research objective which is examining the strengths and weaknesses of the policies and laws, the research found that the first strength of Malaysian laws is that they are compliant with international standards. This can be obviously seen with regards to the law on equality between man and woman in employment. The supreme law of the country which is the Federal Constitution clearly prohibits such discrimination. Malaysia is signatory to CEDAW so as to end discrimination against women. Malaysia is reviewed by the United Nations every four years for the government's compliance with CEDAW. Malaysia is also a state party to CRC. The ratification is made to protect the legal rights of children in Malaysia.

The second strength is that there are policies on rights that are not stated clearly in the laws. This is observed in the policy on breastfeeding in Malaysia. The National Breastfeeding and Infant Feeding Policy 1993 recognises breastmilk as the best nutrition for new born babies and encourages its consumption up to two-years of age, which is important for their physical and mental growth.

The third strength is that there are ministries and agencies established for the purpose of women empowerment like the Ministry of Women, Family and Community Development, Ministry of Human Resources, Human Rights Commission of Malaysia (SUHAKAM), Association of Registered Childcare Providers Malaysia (ARCPM), National Advisory Council on Women in Development (NACIWID) and Women's Development Department (HAWA).

The fourth strength is that there are efforts made in order to increase women's participation in the workforce. The policies and laws provided have encouraged more women to join employment in Malaysia. The Malaysian Plans for example, have always emphasised on women's participation. The National Policy for Women as well as the National Family Policy also emphasise on the same matter.

The final strength is that the policies and laws are in compliant with Shariah laws. As Malaysia is a country with Muslims as the majority, it is important to make policies and laws which are in accordance with Islamic laws. With regards to the protection of working mothers, Malaysian policies and laws do not contradict Shariah laws.

The research also found some weaknesses in Malaysian laws. The first weakness is that Malaysia only ratifies three out of nine international treaties. Although Malaysia ratifies CEDAW and CRC, it does not ratify ICCPR and ICESCR even after many recommendations to do so have been made by experts. By ratifying these covenants, Malaysia will be legally bound to uphold the rights and principles outlined within them and also will be required to align the domestic laws and policies with the provisions of the ICCPR and ICESCR. This may involve enacting new legislation or amending existing laws to ensure compliance with international human rights standards.

Moreover, ratification can empower domestic courts to consider international human rights treaties when interpreting domestic laws and adjudicating cases. This allows individuals to invoke their rights under the ICCPR and ICESCR before national courts, potentially enhancing the protection of human rights at the domestic level. Malaysia will also be required to submit periodic reports to the respective treaty monitoring bodies (such as the Human Rights Committee for the ICCPR and the Committee on Economic, Social, and Cultural Rights for the ICESCR) detailing their progress in implementing the covenants. This process encourages transparency and accountability and provides opportunities for international scrutiny of a country's human rights record.

Not only that, international organisations and other treaty parties will often provide support to Malaysia in fulfilling the obligations under the ICCPR and ICESCR. This may include technical assistance, capacity-building initiatives, and financial support to strengthen institutions and mechanisms for promoting and protecting human rights. Furthermore, ratification of these human rights treaties can enhance Malaysia's reputation and standing in the international community, demonstrating its commitment to upholding universal human rights principles.

Overall, ratifying the ICCPR and ICESCR reflects Malaysia's willingness to adhere to international human rights standards and can contribute to the promotion and protection of human rights domestically and internationally.

The second weakness is that laws relating to working mothers are insufficiently inadequate and not comprehensive enough. There are some rights which can only be found in policies rather than laws. Laws are legally binding and carry legal consequences for non-compliance, whereas compliance with policies is often voluntary and subject to internal disciplinary measures within organisations or

governments. Thus, laws have a higher degree of authority, scope, and enforceability compared to policies. Moreover, the laws are not specific to working mothers; rather the laws generally provide for working women.

The third weakness is the policies are not binding. Even though Malaysia has good policies in protecting working mothers in the country, the policies are not binding. In other words, Malaysians are not bound by the policies. As such, there are employers who do not comply with the policies as they are not mandatory.

The fourth weakness is on the part of implementation. Enforcement of the laws is still lacking. There are good laws that protect working mothers in Malaysia but they are of no use if the enforcement part is not carried out.

As for the third research objective, the research found that other jurisdictions also have their own strengths and weaknesses. There is no one jurisdiction with the best practices in protecting the legal rights of working mothers in their country. Every jurisdiction has its own best practices.

Singapore has the best practice in childcare and extended childcare leave in which the government will refund to the employers. This kind of leave is important for work-life balance, work productivity as well as maintaining the health of both parents and children. Singapore also provides 16 weeks of maternity leave including for self-employed women in which the employers can claim from the government the usual monthly salary. To add, Singapore has shared parental leave specifically for fathers including for self-employed father and adopted father. Another leave that is provided is adoption leave including for self-employed women. All these show that the country emphasises on the development of children. Singapore also has fee assistance policy for their childcare centres which helps working mothers financially.

On the other hand, the United Kingdom has the best practice on maternity leave where they provide up to 52 weeks of maternity leave. Their paid maternity leave is up until 39 weeks. Their law also provides for shared parental and paternity leave due to birth and adoption, in addition to parental and adoption leave. Another best practice by them is that they provide legal right to time off for ante-natal appointment and time off to accompany for ante-natal appointment. Their law also provides for time off for dependents. The time off is to attend to dependents who are sick, injured or have died and the dependents in the law include their children.

The United Kingdom also provides the law which obligates flexible working arrangement for breastfeeding mothers and compels employers to provide areas for breastfeeding. It is not just a policy but a law. This shows how vital it is. It can increase work productivity and efficiency; at the same time, it can lead to better work-life balance of working mothers. On top of that, the law specifically provides for workplace safety for breastfeeding and pregnant women. Their policy on job sharing is also one of the best ways to practise flexible working arrangements.

As for Australia, the country also provides parental leave and adoption- related leave just like Singapore and the United Kingdom. Australia also has law on flexible working arrangements for the purpose of care for the child. Among the best practices by the country is that they have a specific law which prohibits discrimination against family responsibilities. Not only that, they also have a law which prohibits discrimination against pregnant women, breastfeeding women and persons with parental status or a carer. Pertaining to education and care centres in the country, the law obligates a nominated supervisor to ensure the quality and safety of the centres.

In contrast, the best practice in Maldives is the legal right to a break for the purpose of attending to a child. The country also has a law that allows mothers and

fathers to have up to one-year leave to care for their new born babies after the maternity leave has ended. The law also provides a ten-day paid leave to attend to family responsibilities and a five-day paid leave for circumcision of a child. Moreover, they provide flexible working arrangements for pregnant and breastfeeding women. This indicates that they really care for the development and health of the parents as well as the children in the country.

6.3 SUGGESTIONS

After a thorough discussion, this section attempts to achieve the fourth research objective which is suggesting recommendations for legal reform. The first recommendation is to amend the Employment Act 1955. It is suggested to amend 98 days of maternity leave to paid and unpaid 6 months maternity leave depending on the companies. It should be made available as according to UNICEF, the length of 6 months is the best period for the good health of the mothers and children. The first six months of a baby is the most vital period for their development. This is due to the fact that the six months is the period of adjusting to new life for parents and also the period of exclusive breastfeeding for the new born baby.

It is also suggested to amend the Employment Act 1955 to add child care leave as an extensive support for working mothers. Childcare leave should be provided specifically for the purpose of caring for children who are sick, injured or have died. This type of leave is significant for work-life balance of the parents as well as for the health development of children including their mental health.

Another kind of leave that is suggested to add in the Act is special leave for family responsibilities. This kind of leave is suggested to be made especially for

parents to cater to their children's needs such as educational needs. This recommendation is made because children's brain development is also important.

Another leave that should be added in the Act is leave for ante-natal appointment. This is significant for continuous monitoring of pregnant mothers and their babies. When the leave is specified by law, employers cannot hesitate to approve the leave. This, in turn, will reduce stress faced by pregnant mothers.

Furthermore, this research suggests that Malaysia should have a law on adoption leave. The law should be provided in the Employment Act 1955. For now, Malaysia only has leave due to birth. There is no leave for parents who are adopting children like in Singapore and the United Kingdom. Adoptive parents also need leave as much as biological parents to raise their adopted children.

Unlike Singapore, Malaysia does not stipulate maternity leave for self-employed women. Thus, this study recommends for such law to be adopted in the Employment Act 1955.

In Malaysia, the right to flexible working arrangements is provided after the amendments made to the Employment Act 1955. The right is provided under Employment (Amendment) Act 2022. However, the right is not automatic. It must be applied by employees instead of being based on their sole discretion to approve the application or not. Thus, this research also suggests to consider to provide law on flexible working arrangements automatically without application in future amendment. Such right is very important for work-life balance of working mothers and the health development of their children. Surveys have also shown that flexible working arrangements like working from home and flexible working time have improved work productivity during the Covid-19 pandemic.

However, a Standard Operating Procedure (SOP) is necessary when providing this law automatically as to ensure a smooth, fair, and legally compliant implementation. It enhances clarity, consistency, and efficiency within the organisation while promoting employee satisfaction and retention. It also provides a structured approach to managing potential conflicts and continuously improving the policy based on feedback and reviews.

Finally, this research suggests to add law prohibiting mothers to work over time and law prohibiting sex discrimination especially for private sector in the same Act. Even though Malaysia has law on the prohibition of sex discrimination based on the Federal Constitution, the decided cases discussed earlier indicate that the law is still inefficient. Thus, the law needs to be weighed in again to ensure its efficiency.

The second recommendation is to amend the Child Care Centre Act 1984. This study suggests to incorporate law that mandates employers to establish child care centre near the office. As there are many unwanted abuse cases with regard to baby sitters in Malaysia, this law will lessen the mental burden on parents and ensure good health and safety of the children. This law will also save parents' time and money and consequently, will increase job productivity. It is also suggested to incorporate law that mandates employers to provide financial assistance and government to provide adequate subsidies for child care centre fees into the Act to assist the working parents financially.

The third recommendation is to amend the National Breastfeeding and Infant Feeding Policy 1993. It is suggested for the policy to provide specific time and comfortable area for breastfeeding. This policy can give moral support to the breastfeeding mothers to continue their breastfeeding task even after coming back to

work after maternity leave. Previous studies have shown that breastfeeding gives many benefits to babies, especially new born babies.

The final recommendation is pertaining to the enforcement of the laws. This research suggests to strengthen enforcement of the law on financial support of single working mothers. Financially, the most affected group is the group of single working mothers. The enforcement of the law will subsequently lessen the burden faced by them in balancing between their work and responsibilities towards their children.

As a conclusion, the public and private sectors should follow the checklist in the table below. The table shows summary of the suggestions.

Table 6.1: Summary of the Suggestions

Subject Matters	Suggestions	Models
1. Maternity leave	- To amend 98 days to paid and unpaid 6 months maternity leave. - To provide maternity leave for self-employed women.	- UNICEF - The United Kingdom - Singapore
2. Child care leave	To provide for child care leave.	Singapore
3. Special leave for family responsibilities	To provide for special leave for family responsibilities.	- Workers with Family Responsibilities Convention, 1981 (No. 156) - Maldives
4. Leave for ante-natal appointment	To provide for leave for ante-natal appointment.	The United Kingdom
5. Adoption leave	To provide for adoption leave.	Singapore

6. Right to flexible working arrangements	• To provide for flexible working arrangements automatically without application.	• Australia • Maldives
7. Work over time	• To prohibit working mothers from working over time.	
8. Sex discrimination	• To prohibit sex discrimination in employment especially private sector.	• CEDAW • Discrimination (Employment and Occupation) Convention, 1958 (No. 111) • Australia
9. Child care facilities	• To establish child care centre near the office. • To provide financial assistance to working parents. • To provide adequate subsidies for working parents.	• CRC • Singapore
10. Breastfeeding	• To provide specific time and comfortable area for breastfeeding working mothers.	• UNICEF • Maternity Protection Convention, 2000 (No. 183) • Singapore • The United Kingdom • Australia
11. Financial support of single working mothers	• To strengthen enforcement of the law.	

6.4 LIMITATIONS OF THE STUDY

Some limitations have been observed in relation to data collection, research analysis, research findings and regulatory restraints of the study. Moreover, the comparative legal methodology adopted has been restrictive due to the inability of the researcher to

visit the countries of reference which are Singapore, the United Kingdom, Australia and Maldives.

The first limitation arose from the data collection process due to poor cooperation from the Malaysia Civil Defense Force (JPAM). Several contacts for interview requests were neither acknowledged nor replied. On the part of the interviewees who accepted to participate, some of them wanted to be interviewed only through online platforms which are through e-mail or Whatsapp application which resulted in some of the data left pending. There were also limited documents available for the analysis.

Methodological limitations happened in the sample size of the conducted survey. This is because the Covid-19 pandemic occurred when the time came for the survey to be distributed and so the movements of the researcher to reach for many respondents were limited. Initially, the researcher wanted to have 200 respondents – 100 respondents from the public sector and another 100 respondents from the private sector. However, the researcher only got 183 respondents who consisted of only 57 respondents from the public sector and 126 respondents from the private sector. Most of them were reached through online applications which are Facebook and Whatsapp.

This study identifies the comparative nature of the legal rights of working mothers. For that purpose, reference has to be made to the legal rights of working mothers in other countries such as Singapore, the United Kingdom, Australia and Maldives. Although it is important to have a model regulation from other countries, the research could have been enhanced with first-hand information from the four countries. Therefore, reliance was placed on the information available on related official government websites which elaborate on the legal rights of working mothers in those countries.

6.5 IMPLICATIONS FOR FUTURE RESEARCH

The research identifies the need for future research on the legal protection of working women in general. Although this research has analysed the legal protection of working mothers, there might be slight differences between the two. Thus, future research is needed. Further study is also required on the issue of sexual harassment. This study has not discussed that matter as the issue is exhaustive and requires its own study.



REFERENCES

- Adisa, T. A., Aiyenitaju, O., and Adekoya, O. D. (2021). The work-family balance of British working women during the COVID-19 pandemic. *Journal of Work-Applied Management*, 13(2), 253. Retrieved from Emerald Insight: <https://www.emerald.com/insight/content/doi/10.1108/JWAM-07-2020-0036/full/html>
- Adzmel Mahmud, et al. (2014). Laporan penemuan utama kajian penduduk dan keluarga Malaysia kelima (KPKM-5). *Population and Family Research Sector*.
- Allen, M. (2011). Global human rights culture, *Encyclopedia of Global Justice*, p. 417- 419.
- Arumugam, T. (2022, May 30). HR Ministry encourages GLCs, private firms to introduce menstrual leave policy. Retrieved June 30, 2022. Retrieved from <https://www.nst.com.my/news/online-special/2022/05/800578/hr-ministry-encourages-glcs-private-firms-introduce-menstrual>.
- Asbjørn Eide, Catarina Krause and Allan Rosas. (1995). *Economic, social and cultural rights*. London: Martinus Nijhoff Publishers.
- Asian Development Bank. (n.d.). Sector assessment (summary): Water and other urban infrastructure and services. Retrieved February 24, 2024, from <https://www.adb.org/sites/default/files/linked-documents/54373-001-ssa.pdf>
- Astro Awani. (2022, July 15). Challenges remain despite support for childcare and working women policies. Retrieved from <https://www.astroawani.com/berita-malaysia/challenges-remain-despite-support-childcare-and-working-women-policies-371163>
- Australian Bureau of Statistics. (n.d.). Labour force, Australia. Retrieved February 24, 2024, from <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>
- Azizah Al-Hibri. (1982). *Women and Islam*. Great Britain: Pergamon Press.
- Azizah Mohd & Badruddin Hj Ibrahim. (2010). Muslim wife's rights to maintenance: Husband's duty to maintain a working wife in Islamic law and the law in Malaysia, *IIUM Law Journal* Vol. 18. pp. 112-114.
- Aishah Bidin and Shereen Khan. (2022). Compatibility analysis of Malaysian civil and syariah laws to the international covenant on civil and political rights (ICCPR). Kuala Lumpur: Human Rights Commission of Malaysia (SUHAKAM).
- Aisyah Abdullah. (n.d.). *Child care*. Scribd. Retrieved from <https://www.scribd.com/document/209299668/Child->

[Care#:~:text=The%20government%20has%20agreed%20to,their%20kids%20to%20these%20centers](#)

- Asma Saleem & Hawwa Shiuna Musthafa. (2022). The role of length of parental leave in strengthening mother-child bond and the husband-wife relationship in the Maldives. *The Maldives National Journal of Research*, 9(1), 86. Retrieved from ResearchGate: https://www.researchgate.net/publication/353655459_The_role_of_length_of_parental_leave_in_strengthening_mother-child_bond_and_the_husband-wife_relationship_in_the_Maldives
- BBC News. (2020, January 15). Unicef UK gives all staff equal parental leave. Retrieved September 27, 2021. Retrieved from <https://www.bbc.com/news/business-51117845>.
- BBC News. (2021, September 21). Staff to gain right to request flexible working from first day. Retrieved September 28, 2021. Retrieved from <https://www.bbc.com/news/business-58636439>.
- Bala Krishnan, D. (n.d). Malaysia elected vice-president of 75th World Health Assembly. Retrieved March 18, 2022. Retrieved from <https://www.nst.com.my/news/nation/2021/10/740089/malaysia-elected-vice-president-75th-world-health-assembly>.
- Baxter, J., & Renda, J. (2015). Review of government initiatives for reconciling work and family life (p. 7). Melbourne: Australian Institute of Family Studies.
- Bernama. (n.d). Major achievements of the 10th Malaysia plan. Retrieved August 14, 2018. Retrieved from <https://www.nst.com.my/news/2015/09/major-achievements-10th-malaysia-plan>.
- Bernama. (2017, December 13). Employers must allow female staff 90 days maternity leave. Retrieved June 29, 2020. Retrieved from <https://www.nst.com.my/news/nation/2017/12/314176/employers-must-allow-female-staff-90-days-maternity-leave>.
- Bernama. (2020, April 10). Work-at-home challenges for women. Retrieved June 22, 2022. Retrieved from <http://www.dailyexpress.com.my/news/150574/work-at-home-challenges-for-women/>.
- Bernama. (2022, June 11). More than 1,000 unregistered childcare centres still running. Free Malaysia Today. Retrieved from <https://www.freemalaysiatoday.com/category/nation/2022/06/11/more-than-1000-unregistered-childcare-centres-still-running/>.
- Bernama. (2024, May 1). Amendments to Sarawak Labour Ordinance finalised, says deputy state minister. Malay Mail. Retrieved from <https://www.malaymail.com/news/malaysia/2024/05/01/amendments-to-sarawak-labour-ordinance-finalised-says-deputy-state-minister/131874>

- Bernama. (2024, May 2). Unions: Hurry up with labour amendments in Sabah, Sarawak. The Star. Retrieved from <https://www.thestar.com.my/news/nation/2024/05/02/unions-hurry-up-with-labour-amendments-in-sabah-sarawak>
- Bernasek, A., & Gallaway, J. H.. (1997). Who gets maternity leave?: The case of Malaysia, *Western Economic Association International*, Vol. XV, p. 101-102.
- Bhatt, J. K. (2015). Pregnancy and maternity entitlements under the Employment Act 1955: Are women workers in Malaysia being short-changed?, *Malayan Law Journal*, Vol. 5, No. lxxxiii p. 13.
- Bon Tai Soon, E. (2015, December 16). A modest proposal: A call for Malaysia to sign on to the ICESCR. Malay Mail. Retrieved from <https://www.malaymail.com/news/malaysia/2015/12/16/a-modest-proposal-a-call-for-malaysia-to-sign-on-to-the-icescr/1023813>
- Breastfeeding Friendly Workplaces. (n.d). Retrieved June 5, 2021. Retrieved from <https://www.breastfeeding.asn.au/workplace>.
- Bryant, M. (2021, September 4). ‘A kick in the teeth’: British mothers and pregnant women fear return to workplace. Retrieved September 28, 2021. Retrieved from <https://www.theguardian.com/business/2021/sep/04/a-kick-in-the-teeth-british-mothers-and-pregnant-women-fear-return-to-workplace>.
- Carvalho, M. (2013, December 3) Deputy Minister: Malaysia will sign ICCPR only if beneficial to nation. The Star. Retrieved from <https://www.thestar.com.my/news/nation/2013/12/03/malaysia-iccpr-signatory/>
- Carvalho, M., & Lee, B. (2024, May 1) Sabah, Sarawak to increase maternity and paternity leave, says Anwar. The Star. Retrieved from [https://www.thestar.com.my/news/nation/2024/05/01/sabah-sarawak-to-increase-maternity-and-paternity-leave-says-anwar#:~:text=%22Working%20fathers%20there%20will%20also,Employment%20\(Amendment\)%20Act%202022](https://www.thestar.com.my/news/nation/2024/05/01/sabah-sarawak-to-increase-maternity-and-paternity-leave-says-anwar#:~:text=%22Working%20fathers%20there%20will%20also,Employment%20(Amendment)%20Act%202022)
- CEDAW Committee (2018, March 14) Concluding observations on the combined third to fifth periodic reports of Malaysia. Retrieved June 22, 2022. Retrieved from <https://bit.ly/2Bya14n>
- Charlesworth, S. and Elder, A. (2012) Convention no 156 and recommendation no 165: Australia in Cruz (Ed) *Good practices and challenges on the Maternity Protection Convention, 2000 (No 183) and the Workers with Family Responsibilities Convention, 1981 (No 156): A Comparative Study* Geneva: International Labour Organisation
- Cheng, C. (2020) Pushed to the margins: The unequal impacts of the COVID-19 crisis on marginalised Malaysian workers, *Institute of Strategic and International Studies (ISIS) Malaysia*, 2-4 Retrieved from <https://www.jstor.org/stable/resrep29703>

- Chiam, H. K (2008) Child care in Malaysia: Then and now. *International Journal of Child Care and Education Policy*, 2(2), 37. Retrieved from <https://ijccep.springeropen.com/articles/10.1007/2288-6729-2-2-31>
- Children's rights in Malaysia (n.d). Retrieved June 16, 2022. Retrieved from https://en.wikipedia.org/wiki/Children%27s-rights_in_Malaysia
- Christopher, E. M (2012) *International management: Explorations across cultures* United States: Kogan Page Publishers
- Civil Service HR (2020, November 17) Guide to job sharing: Issue 2. Retrieved December 26, 2019. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406045/JobShareGuide260115FVnoDNs.pdf
- Colodro-Conde L, Sánchez-Romera J F, Tornero-Gómez M J et al (2011) Relationship between level of education and breastfeeding duration depends on social context: Breastfeeding trends over a 40-year period in Spain, *J Hum Lact*, 27 p 272–278
- Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (n.d). Retrieved June 17, 2022. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0207>
- Dandavati, N. (2020, July 17). Heed UN and SUHAKAM calls for action to address gendered impacts of COVID-19. Retrieved June 20, 2022. Retrieved from <https://wao.org.my/heed-un-and-suhakam-calls-for-action-to-address-gendered-impacts-of-covid-19/>.
- Dato' Dr. Siti Norlasiah Ismail (n.d.). National family policy in Malaysia. Retrieved March 8, 2024. Retrieved from <https://www.familyperspective.org/HL17/Norlasiah.pdf>
- Dato' Hajah Siti Zailah Binti Mohd Yusoff. (2021, October 6). *Rancangan Malaysia kedua belas 2021-2025* [Paper presentation]. Penggulangan Usul Rancangan Malaysia Kedua Belas, Kuala Lumpur.
- Dato' Sri Ismail Sabri. (2021, October 12). *Rancangan Malaysia kedua belas 2021-2025* [Paper presentation]. Pembentangan Usul Rancangan Malaysia Kedua Belas, Kuala Lumpur.
- DaVanzo J., Sine J., Peterson C. et al. (1994). Reversal of the decline in breastfeeding in peninsular Malaysia? Ethnic and Educational Differentials and Data Quality Issues, *Soc Biol*, p. 4.
- Davie, S. (n.d). National day rally: Pre-school subsidies' income ceiling raised from \$7,500 to \$12,000; 30,000 more families to qualify. Retrieved September 29, 2019. Retrieved from <https://www.straitstimes.com/politics/national-day-rally-30000-more-families-to-qualify-for-additional-pre-school-subsidies>.

- Deloitte. (n.d). Understanding the pandemic's impact on working women. Retrieved June 22, 2022. Retrieved from <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-about-deloitte-understanding-the-pandemic-s-impact-on-working-women.pdf>.
- Department of Statistics Malaysia. (2023). Key statistics of labour force in Malaysia, 2023. Retrieved February 24, 2024. Retrieved from https://v1.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=124&bulid=Z05rK25YRVF5SVFTcUU5dElaZ2ttQT09&menu_id=Tm8zcnRjdVRNWlWlpWjRlbmtlaDk1UT09
- Department of Statistics Malaysia. (2016). Labor force survey report, Malaysia, 2016. Retrieved November 29, 2018. Retrieved from [https://v1.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=126&bulid=SGZCNnMrWW9ZTEdpYys4YW0yRlhoQT09&menu_id=Tm8zcnRjdVRNWlWlpWjRlbmtlaDk1UT09#:~:text=Labour%20force%20participation%20rate%20\(LFPR,points%20to%203.4%20per%20cent](https://v1.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=126&bulid=SGZCNnMrWW9ZTEdpYys4YW0yRlhoQT09&menu_id=Tm8zcnRjdVRNWlWlpWjRlbmtlaDk1UT09#:~:text=Labour%20force%20participation%20rate%20(LFPR,points%20to%203.4%20per%20cent)
- Department of Statistics Malaysia. (2022). Labor force survey report, Malaysia, 2022. Retrieved February 22, 2024. Retrieved from https://v1.dosm.gov.my/v1/index.php?r=column/ctwoByCat&parent_id=436&menu_id=Tm8zcnRjdVRNWlWlpWjRlbmtlaDk1UT09
- Department of Statistics Malaysia. (2020, April). Retrieved March 18, 2018. Retrieved from <https://www.dosm.gov.my/v1/>
- Department Profile. (n.d). Women's Development Department, Ministry of Women's Development. Retrieved November 15, 2022. Retrieved from <https://www.jpw.gov.my/en/about-jpw/department-profile>.
- De Ravindranath, H., et al. (2021). Exploring the challenges faced by working mothers and the perceived factors to retain them in the private education sector, *International Journal of Human Resource Studies*. Vol. 11. Issue No. 2. p. 23.
- Devi, P. S., et al. (2017). Discrimination against women in workforce: The need to move forward, *Malayan Law Journal*. Vol. 3. No. xlvii. p. 6.
- Dhanapal, S., Nair, H. L., & Kanapathy, J. (2014). A Review of married women and Children Maintenance Act 1950 and Married Women and Children (Enforcement of Maintenance) Act 1968, *European Journal of Business and Social Sciences*. Vol. 3.Vol. 4. p. 249.
- Doling, J. F. & Roziah Omar. (2017). *Social welfare east and west: Britain and Malaysia*. Routledge.
- Dr. 'Abdullah bin Muhammad Alu Syaikh. (2014a). *Tafsir Ibnu Katsir Jilid 1*. Jakarta: Pustaka Imam Asy- Syafi'i.
- Dr. 'Abdullah bin Muhammad Alu Syaikh. (2014b). *Tafsir Ibnu Katsir Jilid 2*. Jakarta: Pustaka Imam Asy-Syafi'i.

- Dr Muzaffar Syah Mallow. (2018). Work life balance policy in Malaysia: The current position and the way forward, *Malayan Law Journal Articles*. Vol. 3. p. 3.
- Ending male guardianship in Saudi Arabia. (n.d). Equality now. Retrieved March 26, 2023. Retrieved from https://www.equalitynow.org/ending_male_guardianship_in_saudi_arabia/.
- Erlen Joni E.K., et al. (2016). Negligence in child care centres: Law versus reality in Malaysia. *Proceedings of the Regional Conference on Science, Technology and Social Sciences (RCSTSS 2016)*. Singapore: Springer.
- EUR-Lex. (1976, February 9). Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Retrieved June 17, 2022. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0207>
- Explanatory notes section 18, Equality Act 2010. (n.d). Retrieved September 21, 2022. Retrieved from <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/2/2/6>.
- Fayyadh Jaafar. (2021, December 3). Numbers of children in need of care, protection drops. Retrieved March 17, 2023. Retrieved from <https://themalaysianreserve.com/2021/12/03/numbers-of-children-in-need-of-care-protection-drops/>.
- Firdaus Latif. (2018, August 28). Deputy Minister: 199 cases of abuse in childcare centres reported this year. Retrieved April 18, 2019. Retrieved from <https://www.malaymail.com/news/malaysia/2018/08/28/deputy-minister-199-cases-of-abuse-in-childcare-centres-reported-this-year/1666886>.
- Forman, M. R. (1984). Review of research on the factors associated with choice and duration of infant feeding in less-developed countries, *Paediatrics* 74 p. 667–694.
- General discussion on the draft general comment on Article 7 of the ICESCR: Right to just and favourable conditions of work. Retrieved September 14, 2018. Retrieved from <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/Discussion2015.aspx>.
- Goh, J. (2020, April 29). Working from home — the new normal. Retrieved June 29, 2022. Retrieved from <https://www.theedgemarkets.com/article/working-home-%E2%80%94-new-normal>.
- Greedy, E. (2021, August 5). Breastfeeding still taboo in the workplace. Retrieved September 21, 2021. Retrieved from <https://www.hrmagazine.co.uk/content/news/breastfeeding-still-taboo-in-the-workplace>.
- Hana Maher. (2016, November 30). Malaysians agree mothers should be allowed flexibility in the workplace. Retrieved November 30, 2016. Retrieved from

- <http://www.malaysiandigest.com/frontpage/282-main-tile/645572-malaysians-agree-mothers-should-be-allowed-flexibility-in-the-workplace.html>.
- Hanis Zainal. (2017, November 20). Paid paternity leave extension proposed. Retrieved April 18, 2019. Retrieved from www.thestar.com.my.
- Harlida Abdul Wahab. (2013). Islamic perspective on employment discrimination, *Shariah Law Reports Articles*. Vol. 1. pp. 4-5.
- Harlida Abdul Wahab. (2013). The international labor standard on the elimination of discrimination in employment: Response and prospect of Malaysia. *International Journal of Social, Management, Economics and Business Engineering*. Vol. 7. No. 6. p. 670.
- Hassan Kamal Halili & Norsuhaida Che Musa. (2014). Women's right to breastfeed in the workplace, *Asian Women*. Vol. 30. No. 2. pp. 85-108.
- HR Asia. (2018, May 11). 75% of Malaysian mothers quit their jobs due to a lack of flexibility. Retrieved June 23, 2022. Retrieved from <https://hr.asia/uncategorized/75-of-malaysian-mothers-quit-their-jobs-due-to-a-lack-of-flexibility/>.
- Humaam Ali. (2019, March 29). Police, customs implement six-month paid maternity leave policy. Retrieved September 29, 2021. Retrieved from <https://raajje.mv/53427>.
- Ibn Kathir and Isma'il ibn 'Umar. (2007). *Tafsir Ibn Kathir (Abridged)*. Egypt: Dar al-Manarah.
- Indramalar, S. (2015, January 2). More commitment needed to end discrimination against women. Retrieved March 28, 2019. Retrieved from <https://www.thestar.com.my/lifestyle/people/2015/01/02/more-commitment-needed-to-end-discrimination-against-women/>.
- International Labour Organization. (n.d). Retrieved November 24, 2018. Retrieved from www.ilo.org.
- International Labour Organization. (2007). *ABC of women workers right and gender equality*. Second Edition. Geneva: International Labour Office.
- International Labour Organization. (2019). *A quantum leap for gender equality: For a better future of work for all*. Switzerland: ISBN.
- International Labour Organization. (1999). *Decent work. Report of the Director-General to the 87th session of the International Labour Conference*. Geneva: International Labour Office.
- International Labour Organization. (n.d). ILO modelled estimates and projections database (ILOEST). Retrieved March 18, 2018. Retrieved from <https://data.worldbank.org/indicator/SL.TLF.ACTI.1524.FE.ZS>.

- International Labour Organization. (2012). *Maternity protection resource package: From aspiration to reality for all*. Italy: ISBN.
- International Labour Organization. (2003). *Time for equality at work, a global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference 91st session*. Geneva: International Labour Office.
- International Labour Organization. (2016). *Women at work: Trends 2016* (PRODOC No. 78). Geneva.
- IWRAW Asia Pacific and ESCR Net. (n.d). Claiming women's economic, social and cultural rights. N.p: Human Rights Council.
- Jalelah Abu Baker. (n.d). The stress of expressing milk in the toilet: Breastfeeding mums call for more workplace support, facilities. Retrieved September 9, 2021. Retrieved from <https://www.channelnewsasia.com/singapore/stress-expressing-milk-toilet-breastfeeding-mums-call-more-workplace-support-facilities-838906>.
- James, G. (2003). All that glitters is not gold: Labour's latest family-friendly offerings, *Web Journal of Current Legal Issues*.
- Janza, N. (2020, December 23). Job sharing – What it is, when to employ it, and how to make it work. Retrieved December 26, 2019. Retrieved from <https://www.spica.com/blog/job-sharing-advantages-disadvantages>.
- Jayasooria, D. (n.d). Our constitution and human rights. Retrieved July 22, 2022. Retrieved from <https://www.nst.com.my/opinion/columnists/2019/01/450208/our-constitution-and-human-rights>.
- Jun, S. W. (2018, June 19). Lawyer: Ratify 6 human rights treaties now to protect nation. Retrieved November 29, 2018. Retrieved from www.freemalaysiatoday.com.
- Kanesalingam, S., et al. (2022). *Research on the compatibility of the International Covenant on Economic, Social and Cultural Rights*. Kuala Lumpur: Human Rights Commission of Malaysia (SUHAKAM).
- Kannan, H. K. (2018, August 12). More than 80% of caregivers for children not registered with government. Retrieved April 18, 2019. Retrieved from <https://www.nst.com.my/news/nation/2018/08/400568/more-80-caregivers-children-not-registered-government>.
- Karima El Korri. (2021, January 14). Women's empowerment principles (WEPs) activator Malaysia launch event. Retrieved June 22, 2022. Retrieved from <https://malaysia.un.org/en/107990-womens-empowerment-principles-weps-activator-malaysia-launch-event>.

- Kälin, W., & Künzli, J. (2009). *The Law of international human rights protection*. New York: Oxford University Press.
- Kementerian Pembangunan Wanita, Keluarga dan Masyarakat. (n.d.). Retrieved February 24, 2024, from <https://www.kpwkm.gov.my/>
- Kementerian Pembangunan Wanita, Keluarga dan Masyarakat. (2021). *Pelan strategik Kementerian Pembangunan Wanita, Keluarga dan Masyarakat 2021-2025* (p. 12). Putrajaya: KPWK M.
- Kementerian Sumber Manusia. (n.d.). Retrieved February 24, 2024, from <https://www.mohr.gov.my/>
- Khazanah Research Institute. (2019). *Time to care: Gender inequality, unpaid care work and time use survey*. Kuala Lumpur, Malaysia: Khazanah Research Institute.
- Knute, C. (2022, March 31). How much maternity leave is enough for new moms? Retrieved June 22, 2022. Retrieved from <https://www.kshb.com/news/local-news/how-much-maternity-leave-is-enough-for-new-moms>.
- Lacroix, T. (n.d). Forum: Make breastfeeding easier for mums when they return to workplaces. Retrieved September 9, 2021. Retrieved from <https://www.straitstimes.com/opinion/forum/forum-make-breastfeeding-easier-for-mums-when-they-return-to-workplaces>.
- Lawal Mohammed Bani, Hamza A. Pate. (2015). The role of spouses under Islamic family law, *International Affairs and Global Strategy*, Vol. 37, p. 104.
- Lee, C. (2022, June 17). Malaysia makes amendments to Employment Act. Retrieved August 17, 2022. Retrieved from <https://hrmasia.com/malaysia-makes-amendments-to-employment-act/>.
- Leoi Leoi, S. (2009, February 23). Women first to be retrenched. *The Star*. Retrieved from <https://www.thestar.com.my/news/nation/2009/02/23/women-first-to-be-retrenched>
- Li L., Zhang M., Scott J.A. et al. (2004). Factors associated with the initiation and duration of breastfeeding by Chinese mothers in Perth, Western Australia, *J Hum Lact*, 20 p. 188–195.
- Lim Fui Yee, B. (2019). Women left behind? Closing the gender gap in Malaysia, *Japan Labor Issues*, Vol. 3, No. 17, p. 22-29.
- Linnecar, A., & Yee, V. (n.d). Maternity legislation: Protecting women's rights to breastfeed. Retrieved July 20, 2022. Retrieved from <http://www.waba.org.my/resources/activitysheet/acsh6.htm>.
- Loh, F. F. (2018, August 25). All babysitters may have to register with ministry says Wan Azizah. Retrieved April 18, 2019. Retrieved from

<https://www.thestar.com.my/news/nation/2018/08/25/all-babysitters-may-have-to-register-with-ministry-says-wan-azizah/>.

Maimunah Aminuddin. (2006). *Malaysian employment law practices*. Kelana Jaya: Lexis Nexis.

Malaysia. (2010). *Rancangan Malaysia kesepuluh 2011-2015*. Putrajaya: Unit Perancang Ekonomi.

Malaysia and the United Nations. (n.d). Retrieved June 18, 2022. Retrieved from https://en.wikipedia.org/wiki/Malaysia_and_the_United_Nations.

Manpower Research and Statistics Department, Ministry of Manpower, Republic of Singapore. (2023). *Labour force in Singapore advance release 2023* [PDF]. Retrieved February 24, 2024, from https://stats.mom.gov.sg/iMAS_PdfLibrary/mrsd-labour-force-in-singapore-advance-release-2023.pdf

Mashitah Abdul Mutalib, Nik Salida Suhaila Nik Saleh & Arasy bin Masut @ Masod. (2018). Quality, enhancement of child care centres in Malaysia: An analysis on laws and regulations, *Journal of Education and Social Sciences*. Vol. 9. Issue 1. pp. 23-28.

McCartney, K. (n.d). What do we know about the effects of early child care? Retrieved August 16, 2021. Retrieved from https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_mifis01c03.pdf.

Md. Irshad Khan. (2012). *Empowerment of Muslim women*. London: Koros Press Limited.

Mehrpisheh, S., et al. (2020). The importance of breastfeeding based on Islamic rules and Qur'an, *Hospital Practices and Research*. Vol. 5. No. 2. pp. 39-40.

Mindchamps. (2018, August 15). Pros & cons of infant care and having your parents or in-laws care for baby in Singapore. Retrieved June 20, 2022. Retrieved from <https://www.mindchamps.org/blog/infant-care-singapore-or-in-laws/>.

Ministry of Economic Affairs. (2018). *Mid-term review of the 11th Malaysia plan 2016-2020* (p. 7-6). Kuala Lumpur: PNMB.

Ministry of Manpower. (n.d). Work-life grant (WLG) for flexible work arrangements. Retrieved September 30, 2019. Retrieved from <https://www.mom.gov.sg/employment-practices/good-work-practices/work-life-grant>.

Ministry of National Planning Housing & Infrastructure. (n.d). Statistical release IV: Employment. Retrieved March 19, 2018. Retrieved from <http://statisticsmaldives.gov.mv/statistical-release-iv-employment/>.

- Ministry of Women, Family and Community Development. (2019). *Beijing Declaration and Platform for Action: Malaysia progress report 2014 – 2019* (p. 16).
- Ministry of Women, Family and Community Development. (2004). *Malaysia: Report to the United Nations Committee on the elimination of discrimination against women*. Kuala Lumpur: ISBN.
- Moghadam & Valentine, M. (1991). The reproduction of gender inequality in Muslim societies: A case study of Iran in the 1980s, *World Development*. pp. 335-349.
- Mohamad Nawawy Jusoh & Fatmawati Latada. (2020). The challenges faced by single mothers in Malaysia during the COVID-19 pandemic. *Jurnal al-Sirat*, 19, 83-84. Retrieved from EJournal Unipsas: <https://ejournal.kuipsas.edu.my>
- MSF. (n.d). Government-paid maternity leave (GPML). Retrieved February 9, 2023. Retrieved from <https://www.profamilyleave.msf.gov.sg/schemes/maternity-leave>.
- Muzaffar Syah Mallow. (2018). Formulating regulative framework on flexible working hours in Malaysia, *Malayan Law Journal*. Vol. 1. No. lxx. pp. lxxiv-lxxv.
- My Government. (n.d). Registered child care center. Retrieved November 22, 2022. Retrieved from <https://www.malaysia.gov.my/portal/content/31020>.
- M. Sultana Alam. (2013). Constraints faced by working and non- working women in their families, *Australian Journal of Basic and Applied Sciences*. Vol. 6. No. 7. p. 721.
- Najibah Mohd Zin. (2017). Protecting the rights of working mothers; Are the laws adequate? in Abdul Monir Yaacob & Nurul ‘Uyun Haji Zainal (Eds.). *Women and Development in the 21st Century: The Way Forward*. Selangor: Universiti Islam Antarabangsa Malaysia.
- National Quality Framework. (n.d). Retrieved June 5, 2021. Retrieved from <https://earlychildhood.qld.gov.au/legislation-and-guidelines/national-quality-framework-and-queensland-legislation/NQF>.
- National Quality Framework. (n.d). Retrieved December 26, 2019. Retrieved from <https://www.acecqa.gov.au/nqf/about>.
- National Trades Union Congress. (n.d). Employer’s guide to breastfeeding at the workplace. Retrieved September 29, 2019. Retrieved from https://snef.org.sg/wp-content/uploads/2016/10/NTUC_PLG_EmployerGuide_Final.pdf.
- National Trades Union Congress. (n.d.). Initiatives for working women at work, live and play. Retrieved February 24, 2024, from <https://www.ntuc.org.sg/uportal/news/Initiatives-for-working-women-at-work-live-and-play/>

- Noraini M. Noor & Nor Diana Mohd Mahudin Noor. (2015). work, family and women's well-being in Malaysia. In M. Connerley & J. Wu (Eds.), *Handbook on Well-Being of Working Women* (p. 40). Springer Science+Business Media Dordrecht.
- Normadiah Daud, et al. (2020). Breastfeeding wages according to al Quran and al Sunnah, *International Journal of Psychosocial Rehabilitation*. Vol. 24. No. 04. pp. 2524- 2525.
- Nor'Aznin Abu Bakar & Norehan Abdullah. (2007, December). Labor force participation of women in Malaysia in International Economic Conference on Trade & Industry, The City Bayview, Penang, Malaysia.
- Novitz, T. (2020). COVID-19 and labour law: United Kingdom. *Italian Labour Law e-Journal*, 13(1), 3-4. Retrieved from Sage Journals: <https://journals.sagepub.com/doi/full/10.1177/2031952520934583>
- NTUC U Family, Health Promotion Board (HPB) and Singapore National Employers Federation (SNEF). (2018) *Employer's guide to breastfeeding at the workplace*, (Singapore: National Trades Union Congress).
- Nurulbahiah Awang, Salma Yusof & Nassar Nordin. (2021). The challenges of COVID-19 pandemic on working women: The need for comprehensive social support system. *Global Business and Management Research: An International Journal*, 13(4s), 550. Retrieved from ResearchGate: <http://www.gbmrjournal.com/pdf/v13n4s/V13N4s-48.pdf>
- Nurullah Karta. (2016). The economic activities of women in ottoman empire, *Journal of Economics, Finance and Accounting*, Vol. 3, Issue No. 2, p. 150-151.
- Office of International Religious Freedom. (n.d). 2020 Report on international religious freedom: Singapore. Retrieved October 16, 2022. Retrieved from <https://www.state.gov/reports/2020-report-on-international-religious-freedom/singapore/>.
- Palmer, K. (2021, August 4). Moving the dial on attitudes towards breastfeeding in the workplace. Retrieved September 21, 2021. Retrieved from <https://www.thehrdirector.com/features/diversity-and-equality/dont-make-the-rest-of-us-uncomfortable-attitudes-towards-breastfeeding-in-the-workplace/>.
- Poduval J & Poduval M. (2009). Working mothers: How much working, how much mothers, and where is the womanhood?, *Mens Sana Monogr* Jan 7(1), pp. 63-79.
- Policies and procedures. (n.d). Retrieved December 26, 2019. Retrieved from <https://www.goodstart.org.au/policies-and-procedures>.
- President Solih announces the implementation of 6 months paid maternity leave. (2019, March 7). Retrieved September 29, 2019. Retrieved from <https://presidency.gov.mv/Press/Article/20794>.

- Prof. Dr. H. Abdulmalik Abdulkarim Amrullah (Hamka). (1984). *Tafsir Al-Azhar Juzu ke-24*. Surabaya: Yayasan Latiminjong.
- Prof. Dr. H. Abdulmalik Abdulkarim Amrullah (Hamka). (1984). *Tafsir Al-Azhar Juzu' IV*. Jakarta: Yayasan Nurul Islam.
- Prof Dr. H. Abdulmalik Abdulkarim Amrullah (Hamka). (1983). *Tafsir Al-Azhar*. Jakarta: Penerbit Pustaka Panjimas.
- Rahmah Mohd Amin, et al. (2011). Work related determinants of breastfeeding discontinuation among employed mothers in Malaysia. *International Breastfeeding Journal*, 6, 4.
- Ragu, D. (2022, March 21). Consider needs of breastfeeding working mums, govt urged. Retrieved June 20, 2022. Retrieved from <https://www.freemalaysiatoday.com/category/nation/2022/03/21/consider-needs-of-breastfeeding-working-mums-govt-urged/>.
- Ramachandran, J., & Mathialagan, S. (2018). Women empowerment in Malaysia: Legal constraints and positive developments, *Malayan Law Journal Articles*, Volume 2, p. 2.
- Ratifications of C183 - Maternity Protection Convention, 2000 (No. 183). Retrieved November 8, 2022. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312328.
- Rizzo, et al. (2007). The relationship between gender equality and democracy: A comparison of arab vs. non-arab Muslim societies, *Sociology* 41 pp. 1151-170.
- Ruban, A. (2018, July 7). Why some parents use unregistered child care. Retrieved April 18, 2022. Retrieved from <https://www.malaymail.com/news/malaysia/2018/07/07/why-some-parents-use-unregistered-child-care/1649681>.
- Saeed Bayyenat, et al. (2014). The importance of breastfeeding in holy Quran, *International Journal of Pediatrics*. Vol. 2. No. 4-1. Serial No. 10. p. 345.
- Sakini Mohd Said. (2020, April 8). Work-at-home challenges for women. *The Malaysian Reserve*. Retrieved from <https://themalaysianreserve.com/2020/04/08/work-at-home-challenges-for-women/>
- Sankari, S., et al. (2022). An exploratory study on challenges faced by working women and their perceived supports towards remote work in Malaysia. *Electronic Journal of Business and Management*. Vol. 7. No. 1. pp. 73-87.
- Sarawak Bank Employees Union. (n.d.). Special forum on Sarawak Labour Ordinance 1959 and Employment Act 1955. Retrieved May 5, 2024, from <https://sbeu.org.my/news/publication/forum.html>

- Scott J.A., Shaker I., Reid M. (2004). Parental attitudes toward breastfeeding: Their association with feeding outcome at hospital discharge, *Birth*, 31 p. 125–131.
- Seager, Joni. (n.d). *The penguin atlas of women in the world: Completely revised and updated (reference)*. N.p: Amazon.com.
- Sharifah Mahsinah Abdullah. (2022, January 30). 217 abuse cases recorded at childcare centres nationwide last year. Retrieved June 20, 2022. Retrieved from <https://www.nst.com.my/news/nation/2022/01/767417/217-abuse-cases-recorded-childcare-centres-nationwide-last-year>.
- Sheith Khidhir. (2019, October 4). Malaysia's deadly babysitters, The Asean Post, <<https://theaseanpost.com/article/malaysias-deadly-babysitters>> (accessed 28 November 2019).
- Short History of CEDAW Convention. (n.d). Retrieved November 13, 2022. Retrieved from <https://www.un.org/womenwatch/daw/cedaw/history.htm>.
- Singapore Business Review. (2013). How do companies feel about the parental leave? Retrieved September 16, 2021. Retrieved from <https://sbr.com.sg/hr-education/exclusive/how-do-companies-feel-about-parental-leave>.
- Singapore: Female labor force participation. (n.d). Retrieved July 7, 2018. Retrieved from https://www.theglobaleconomy.com/Singapore/Female_labor_force_participation/.
- Singh, A. (2018, July 22). Childcare: Keeping our children safe. Retrieved September 2, 2018. Retrieved from <https://www.malaysiakini.com/letters/435380>.
- Singh, A. (2018 July 23). Unregistered childcare centres a concern. Retrieved April 18, 2019. Retrieved from <https://twentytwo13.my/expressions/unregistered-childcare-centres-a-concern/>.
- Sin, Y. (2021, July 5). New bill will give parents without maternity or paternity leave cash benefits, Retrieved September 20, 2021. Retrieved from <https://www.straitstimes.com/singapore/politics/parliament-new-bill-will-give-parents-without-maternity-or-paternity-leave-cash>.
- SJr Fatimah, et al. (2010). Breastfeeding in Malaysia: Results of the third national health and morbidity survey (NHMS III) 2006, *Malays J Nutr*, 16 pp. 195–206.
- Smith, B. (2011). What kind of quality can we expect from the Fair Work Act? *Melbourne University Law Review*. Vol. 35. pp. 571- 577.
- Smith, B., & Riley, J. (2004). Family-friendly work practices and the law, *The Sydney Law Review*. Vol. 26. pp. 415- 416.
- Smith, R. K. M. (2016). *Textbook on international human rights*. United Kingdom: Oxford University Press.

- Statista. (n.d.). Labor force participation rate of women in Australia from 2000 to 2021. Retrieved February 24, 2024, from <https://www.statista.com/statistics/1178624/australia-female-labor-force-participation-rate/>
- Statista. (n.d.). Labor force participation rate of women in Singapore from 2014 to 2023. Retrieved February 24, 2024, from <https://www.statista.com/statistics/951113/singapore-female-labor-force-participation-rate/>
- Statistics Singapore. (n.d.). Singapore labor force participation rate. Retrieved July 7, 2022. Retrieved from <https://tradingeconomics.com/singapore/labor-force-participation-rate>
- Stromquist, N. P. (1998). *Women in the third world: An encyclopedia of contemporary issues*. New York & London: Garland Publishing, Inc.
- Subramaniam, G. (2011). *Flexible working arrangements in Malaysia and the participation of women in the labour force*. (Unpublished Ph.D. thesis). Victoria University of Wellington.
- Subramaniam, G., & Selvaratnam, D. P. (2010). Family friendly policies in Malaysia: Where are we?, *Journal of International Business Research*. Vol. 9. Issue No. 1. p. 45.
- Subramanian, Vasumathi. (2014). Relevance of national breastfeeding policy (NBP) in Malaysian society. Paper presented at International Social Development Conference 2014 (ISDC 2014), Bayview Hotel Langkawi, Malaysia.
- SUHAKAM. (2014). *A report to the United Nations Commission on eliminating of discrimination against women on the implementation of the CEDAW in Malaysia*. Kuala Lumpur.
- SUHAKAM. (2010). *SUHAKAM's report on the status of women's rights in Malaysia*. Kuala Lumpur: SUHAKAM.
- SUHAKAM. (n.d.). Retrieved February 24, 2024, from <https://suhakam.org.my/>
- Tan Sri Ismail. (2017, May 3). Malaysia should accede to ICCPR without further delay. *Malaysia Kini*. Retrieved from <https://www.malaysiakini.com/letters/381059>.
- Tan, R. (2021, February 10). Signs of abuse in childcare: What parents need to watch out for. Retrieved June 15, 2022. Retrieved from <https://smiletutor.sg/signs-of-abuse-in-childcare-what-parents-need-to-watch-out-for/>.
- Tan, T. (n.d). Maintenance orders: Most applicants are wives. Retrieved September 20, 2021. Retrieved from <https://www.straitstimes.com/singapore/maintenance-orders-most-applicants-are-wives>.

- Thailand's ratification of ILO Convention No. 111 on Discrimination (Employment and Occupation), 1958. (n.d). Retrieved November 7, 2022. Retrieved from [https://doha.thaiembassy.org/en/content/78594-thailand%E2%80%99s-ratification-of-ilo-convention-no-111-on-discrimination-\(employment-and-occupation\),-1958?cate=5d7e40bb15e39c032c005710](https://doha.thaiembassy.org/en/content/78594-thailand%E2%80%99s-ratification-of-ilo-convention-no-111-on-discrimination-(employment-and-occupation),-1958?cate=5d7e40bb15e39c032c005710).
- Thawley, L. (2014). Time to limber up? The extended right to request flexible working, *Tolley's Employment Law Newsletter*. Issue 7. p. 51.
- The Star. (2022, June 23). Have agencies under one roof to oversee childcare centres. Retrieved August 1, 2022. Retrieved from <https://www.thestar.com.my/news/nation/2022/06/23/have-agencies-under-one-roof-to-oversee-childcare-centres>.
- The Star. (2018, June 18). R.AGE newsflash: Childcare abuse in Malaysia, Retrieved June 18, 2022. Retrieved from <https://www.thestar.com.my/news/nation/2018/11/28/rage-newsflash-childcare-abuse-in-malaysia>.
- UNDP. (2020). *How we worked from home; findings from the WFH experience in response to the COVID-19 global health crisis in Malaysia*. UNDP.
- UNDP. (2023, December 12). First of its kind women in local governance forum held in the Maldives. Retrieved from <https://www.undp.org/maldives/press-releases/first-its-kind-women-local-governance-forum-held-maldives>
- Unfavourable treatment. (n.d). Retrieved September 21, 2022. Retrieved from <https://www.equalityni.org/Employers-Service-Providers/Large-Business/Pregnancy-and-maternity/Guidance/Unfavourable-treatment-legal-provisions>.
- United Nations Human Rights Office of the High Commissioner. (2014). *Women rights are human rights*. United Nations Publication.
- United Nations Human Rights. (n.d.). General discussion on the draft general comment on Article 7 of the ICESCR: Right to just and favourable conditions of work. Retrieved September 14, 2018, from <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/Discussion2015.aspx>
- United Nations. (2015, September 25). Transforming our world: The 2030 agenda for sustainable development. Retrieved June 16, 2022. Retrieved from <https://bit.ly/2BkJUxP>.
- UN Special rapporteur on the situation of human rights defenders. (2011). Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
- UN Women. (n.d.). Australia makes new commitments internationally and at home to empower women and girls (updated). Retrieved February 24, 2024, from <https://www.unwomen.org/en/get-involved/step-it-up/commitments/australia>

- UN Women. (2014). *Beijing Declaration and Platform for Action: Beijing+5 Political Declaration and outcome*. New York: UN Women.
- UN Women. (n.d.). 12 critical areas. Retrieved March 8, 2024, from <https://www.unwomen.org/en/news/in-focus/csw59/feature-stories>
- UN Women. (n.d.). Endorse the women's empowerment principles. Retrieved July 20, 2022. Retrieved from <https://www.unglobalcompact.org/take-action/action/womens-principles>.
- UN Women. (n.d.). Short history of CEDAW Convention. Retrieved November 13, 2022, from <https://www.un.org/womenwatch/daw/cedaw/history.htm>
- UN Women. (n.d.). UN Women: The United Nations entity for gender equality and the empowerment of women. Retrieved November 7, 2022. Retrieved from, <https://www.un.org/youthenvoy/2013/07/un-women-the-united-nations-entity-for-gender-equality-and-the-empowerment-of-women/>.
- Ustazah Nadia Hanim, (n.d.). 4 things you should know about Aisyah r.a. *muslim.sg*. Retrieved January 31, 2023, from <https://www.muslim.sg/articles/4-things-you-should-know-about-aisyah-r-a>
- Valticos, N. & Von Potobsky, G. (1995). *International labour law*. Netherlands: Kluwer Law and Taxation Publishers.
- Viveros Añorve, J. L., & Wirth, L. (2019). *Women in business and management: The business case for change*. Italy: ISBN.
- Waldheim, K. (1978). *The United Nations and human rights* (New York: United Nations Publication.
- Wong, P. K., & Nair. (n.d.). International women's day – Legal rights and policies aimed at promoting gender equality in Singapore. Retrieved February 24, 2024, from <https://pkwongnair.com/2023/02/28/international-womens-day-legal-rights-and-policies-aimed-at-promoting-gender-equality-in-singapore/#:~:text=4.,tax%20incentives%20for%20working%20mothers>
- Workplace (Health Safety & Welfare) Regulations 1992. (n.d.). Retrieved June 15, 2022. Retrieved from <https://www.aisolutions.co.uk/community/Knowledge/Topic/564/900/Workplace-Health-Safety-Welfare-Regulations-1992>.
- World Health Organization. (2002). *Infant and young child nutrition*. Geneva.
- World Health Organization. (n.d.). Implementation of the baby-friendly hospital initiative. Retrieved February 24, 2024, from [https://www.who.int/tools/elena/bbc/implementation-bfhi#:~:text=BFHI%20has%20been%20shown%20to,of%20infant%20abandonment%20\(12\)](https://www.who.int/tools/elena/bbc/implementation-bfhi#:~:text=BFHI%20has%20been%20shown%20to,of%20infant%20abandonment%20(12)).

- World Health Organization. (n.d.). Ten steps to successful breastfeeding. Retrieved March 13, 2024, from <https://www.who.int/teams/nutrition-and-food-safety/food-and-nutrition-actions-in-health-systems/ten-steps-to-successful-breastfeeding>
- Yang Wei Jian, D. (2020, September 30). Forum: Singapore would benefit from an anti-discrimination law. Retrieved July 19, 2021. Retrieved from <https://www.straitstimes.com/forum/forum-singapore-would-benefit-from-an-anti-discrimination-law>.
- Yeo, S. (n.d). Pandemic a boon for breastfeeding mums. Retrieved September 9, 2021. Retrieved from <https://www.straitstimes.com/singapore/parenting-education/pandemic-a-boon-for-breastfeeding-mums>.
- Yuen-C, T. (n.d). Companies should consider making flexible work arrangements the norm: Indranee, Retrieved September 20, 2021. Retrieved from, <https://www.straitstimes.com/singapore/politics/companies-should-consider-making-flexible-work-arrangements-the-norm-indranee>.
- Zakirah Zaid, Suhaida Mohd Amin & Abd Halim Mohd Noor. (2020). Positioning childcare matters among working mothers, *Journal of Contemporary Social Science Research*. Vol. 4. Issue 1. pp. 108-109.
- Zoelle, D. (2000). *Gobalizing concern for women's human rights: The failure of the American model*. New York: St. Martin's Press.
- "Have agencies under one roof to oversee childcare centres." (2022, June 23). *The Star*. Retrieved from <https://www.thestar.com.my/news/nation/2022/06/23/have-agencies-under-one-roof-to-oversee-childcare-centres>

APPENDIX A
SURVEY QUESTIONNAIRE

INTERVIEW QUESTIONS

SOALAN KAJI SELIDIK

Assalamualaikum w.b.t..

I, Ira Rozana binti Mohd Asri, a PhD candidate from IIUM, Gombak would like to ask your cooperation to fill out the survey form below.

For your information, my thesis title is "Legal Protection for Working Mothers in Malaysia: A Socio- Legal Study". My thesis is related to the legal rights of working women specifically working mothers in Malaysia. The survey below is to measure the satisfaction of working mothers on the support in the workplace.

Your cooperation in responding to this questionnaire is very much appreciated.

.....

Saya, Ira Rozana binti Mohd Asri, calon PhD daripada UIAM, Gombak ingin memohon jasa baik saudara/saudari bagi mengisi borang kaji selidik di bawah.

Untuk pengetahuan saudara/i, tajuk tesis saya ialah "Legal Protection for Working Mothers in Malaysia: A Socio- Legal Study". Tesis saya adalah berkaitan hak undang-undang wanita bekerja terutamanya ibu- ibu bekerja di Malaysia. Kajian selidik di bawah adalah bagi mengkaji kepuasan ibu- ibu bekerja terhadap sokongan di tempat kerja.

Kerjasama saudara/i dalam menjawab soalan kajian selidik ini amat saya hargai dan saya dahului dengan ucapan terima kasih.

.....

Number (Nombor):

Date/ Day (Tarikh/ Hari):

Please tick [✓] the most appropriate information about you.

Sila tandakan [✓] pada kotak yang paling tepat berkaitan diri anda.

A. Profile:

A. Profil:

1) Age:

- ☐ 18-20 years old
- ☐ 21-30 years old
- ☐ 31-40 years old
- ☐ 41-50 years old
- ☐ 51-60 years old
- ☐ 60 years old above

1) Umur:

- ☐ 18-20 tahun
- ☐ 21-30 tahun
- ☐ 31-40 tahun
- ☐ 41-50 tahun
- ☐ 51-60 tahun
- ☐ 60 tahun ke atas

2) Status:

- ☐ Single
- ☐ Married
- ☐ Divorced

2) Status:

- ☐ Bujang
- ☐ Berkahwin
- ☐ Bercerai

3) Highest completed education:

- ☐ SPM
- ☐ Bachelor degree
- ☐ Master degree
- ☐ Doctorate degree
- ☐ Others

3) Taraf pendidikan tertinggi:

- ☐ SPM
- ☐ Ijazah Sarjana Muda
- ☐ Ijazah Sarjana
- ☐ Doktor falsafah
- ☐ Lain- lain

4) Sector of Occupation:

- ☐ Public
- ☐ Private

4) Sektor pekerjaan:

- ☐ Kerajaan
- ☐ Swasta

5) Designation:

5) Jawatan:

6) Period of working at current company:

- ☐ Less than a year
- ☐ 1 year – 5 years
- ☐ 6 years – 10 years
- ☐ More than 10 years

6) Tempoh bekerja di syarikat sekarang:

- ☐ Kurang dari setahun
- ☐ 1 tahun – 5 tahun
- ☐ 6 tahun – 10 tahun
- ☐ Lebih dari 10 tahun

7) Period of total working experience:

- ☐ Less than a year
- ☐ 1 year – 5 years
- ☐ 6 years – 10 years
- ☐ More than 10 years

7) Tempoh keseluruhan pengalaman bekerja:

- ☐ Kurang dari setahun
- ☐ 1 tahun – 5 tahun
- ☐ 6 tahun – 10 tahun
- ☐ Lebih dari 10 tahun

8) Number of children

- ☐ None
- ☐ 1 – 5
- ☐ 6 – 10
- ☐ More than 10

8) Bilangan anak

- ☐ Tiada
- ☐ 1 – 5
- ☐ 6 – 10
- ☐ Lebih dari 10

9) Age of children

- ☐ 0 – 5 years old
- ☐ 6 – 10 years old
- ☐ More than 10 years old

9) Umur anak

- ☐ 0 – 5 tahun
- ☐ 6 – 10 tahun
- ☐ Lebih dari 10 tahun

B. Legal Protection for Working Mothers:

B. Hak Undang- undang Ibu Bekerja:

10) How many leaves did you utilised last year?

- ☐ Less than 1 week
- ☐ More than 1 week
- ☐ Less than 1 month
- ☐ More than 1 month
- ☐ Others, please specify: _____

10) Berapa banyak cuti yang awak telah gunakan tahun lepas?

☐ Kurang dari 1 minggu

☐ Lebih dari 1 minggu

☐ Kurang dari 1 bulan

☐ Lebih dari 1 bulan

☐ Lain- lain, sila nyatakan: _____

11) Reasons for leave

☐ Sick (medical certificate) ☐ Emergency leave

☐ Children necessity ☐ Maternity leave

☐ Others, please specify: _____

11) Sebab- sebab cuti

☐ Cuti sakit (sijil sakit) ☐ Cuti kecemasan

☐ Keperluan anak ☐ Cuti bersalin

☐ Lain- lain, sila nyatakan: _____

12) Among those leaves, how many of them were unpaid leaves?

☐ Less than 1 week

☐ More than 1 week

☐ Less than 1 month

☐ More than 1 month

☐ Others, please specify: _____

12) Di antara cuti- cuti tersebut, berapa banyak daripadanya cuti yang tidak berbayar?

☐ Kurang dari 1 minggu

☐ Lebih dari 1 minggu

☐ Kurang dari 1 bulan

☐ Lebih dari 1 bulan

☐ Lain- lain, sila nyatakan: _____

13) Working hours

☐ Normal office hours

☐ Shift hours

☐ Flexible hours

☐ Others, please specify: _____

13) Waktu bekerja

☐ Waktu normal pejabat ☐ Waktu peralihan

☐ Waktu fleksibel

☐ Lain- lain, sila nyatakan: _____

14) Will you be required to work on weekends?

☐ Yes

☐ No

14) Adakah anda dikehendaki untuk bekerja pada hujung minggu?

☐ Ya

☐ Tidak

15) Working place:

☐ In the office

☐ Any other place including home (flexible)

15) Tempat bekerja:

☐ Di dalam pejabat

☐ Lain- lain tempat termasuk rumah (fleksibel)

16) Does your company provide child care centre?

☐ Yes

☐ No

16) Adakah syarikat anda menyediakan pusat jagaan kanak- kanak?

☐ Ya

☐ Tidak

17) Does your company provide allowance for child care centre fee?

☐ Yes

☐ No

(If your answer is yes, please proceed to questions 18 and 19 but if your answer is no, please proceed to question 20.)

17) Adakah syarikat anda menyediakan elaun untuk yuran pusat jagaan kanak-kanak anda?

☐ Ya

☐ Tidak

(Jika jawapan anda adalah ya, sila teruskan ke soalan 18 dan 19 tetapi jika jawapan anda adalah tidak, sila teruskan ke soalan 20.)

18) Amount of allowance per child

☐ RM 1 – RM 100

☐ RM 101 – RM 200

☐ RM 201 – RM 300

☐ More than RM 300

18) Kadar elaun setiap anak

☐ RM 1 – RM 100

☐ RM 101 – RM 200

☐ RM 201 – RM 300

☐ Lebih daripada RM 300

19) Is the amount sufficient?

☐ Yes

☐ No

19) Adakah jumlah tersebut mencukupi?

☐ Ya

☐ Tidak

20) Is the fee of child care centre affordable?

☐ Yes

☐ No

20) Adakah anda berkemampuan untuk membayar yuran pusat jagaan kanak-kanak?

☐ Ya

☐ Tidak

21) Do you breastfeed your child?

☐ Yes

☐ No

(If the answer is yes, please proceed to questions 22 and 23 but if the answer is no, please proceed to question 24.)

21) Adakah anda menyusukan anak anda?

☐ Ya

☐ Tidak

(Jika jawapan anda adalah ya, sila teruskan ke soalan 22 dan 23 tetapi jika jawapan anda adalah tidak, sila teruskan ke soalan 24.)

22) Does your company provide a convenient area to express breast milk in your office?

☐ Yes

☐ No

22) Adakah syarikat anda menyediakan ruang yang selesa untuk memerah susu ibu di dalam pejabat?

☐ Ya

☐ Tidak

23) Does your company provide breaks to express breast milk during working hours?

☐ Yes

☐ No

23) Adakah syarikat anda menyediakan waktu rehat untuk memerah susu ibu semasa waktu bekerja?

☐ Ya

☐ Tidak

24) Does your company provide medical benefits for your children?

☐ Yes

☐ No

24) Adakah syarikat anda menyediakan faedah perubatan untuk anak- anak anda?

☐ Ya

☐ Tidak

25) Is your husband working?

☐ Yes

☐ No

☐ Not applicable

25) Adakah suami anda bekerja?

☐ Ya

☐ Tidak

☐ Tidak berkaitan

26) Does your husband or ex-husband provide financial support for you and your children?

☐ Yes

☐ No

(If the answer is yes, please proceed to question 28 but if the answer is no, please proceed to question 27.)

26) Adakah suami atau bekas suami anda memberi sokongan kewangan untuk anda dan anak- anak anda?

☐ Ya

☐ Tidak

(Jika jawapan anda adalah ya, sila teruskan ke soalan 28 tetapi jika jawapan anda adalah tidak, sila teruskan ke soalan 27.)

27) Who provides you financial support?

☐ Zakat

☐ State aid

☐ Social welfare department

☐ Others, please specify: _____

27) Siapakah yang memberikan anda bantuan kewangan?

☐ Zakat

☐ Bantuan kerajaan negeri

☐ Jabatan Kebajikan Masyarakat

☐ Lain- lain, sila nyatakan: _____

28) Do you know your legal rights as a working mother in Malaysia?

☐ Yes

☐ No

28) Adakah anda tahu hak- hak anda sebagai seorang ibu bekerja di Malaysia?

☐ Ya

☐ Tidak

29) Are you satisfied with your company's policies on working mothers?

☐ Yes

☐ No

29) Adakah anda berpuas hati dengan polisi- polisi syarikat anda berkaitan ibu bekerja?

☐ Ya

☐ Tidak

30) Suggestions to improve the policies, please specify:

30) Cadangan- cadangan untuk memperbaiki polisi- polisi tersebut, sila nyatakan:

APPENDIX B

INTERVIEW QUESTIONS



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
يُونَيْتِي اِسْلَامِي اِبْتِدَائِي اِبْتَدَائِي اِبْتَدَائِي

Fieldwork study by	Ira Rozana binti Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	Pn. Aishahton Safinaz bte Abd Aziz, Deputy Director, Labour Standard Division, Department of Labour, Ministry of Human Resource.

List of questions:

- 1) What is the percentage of working mothers in Malaysia?
We have no data on this. May refer to Ministry of Women, Family and Community Development.
- 2) What are the efforts of the ministry to ensure the rights of working mothers are protected?
For our part, our laws are not really gender specific like Employment Act 1955, except for certain sections like maternity protection, prohibition against working underground, prohibition against working at nights where they have specific laws for women. However, sexual harrassment is not specific to women. So, laws in malaysia are not gender specific.
- 3) What are the policies regarding working mothers that you have?
We do not actually have the policies regarding working mothers. As far as we received in form of complaints, yes it can be gender based but we do not have the date whether they are working mothers or not. We consider them as workers but there are complaints from working women. Among the complaints include complaints on salary and working conditions. There is not much specific complaint regarding the rights of working mothers except for example if the working mothers are not paid with allowance for maternity leave. There is a circular by the governement regarding quarantine when the child is sick like having chicken pox which is not stated in the Act. This is specific for government servants, not yet extended to private workers. Other circulars include pregnant women are allowed to go back early and there are leaves for

working parents if their kids sick. The specific informations on circulars can be referred to the Public Service Department.

4) How do you implement the policies?

This can be referred to the Ministry of Women, Family and Community Development.

5) Do you have any suggestion or future plan for the development of working mothers?

For the government servants, I think the laws are quite flexible. There are a lot of things that the government are offering like there is a breastfeeding room for breastfeeding mothers, there is an affordable child care centre for the working parents, there is a special parking for pregnant women which is nearer to the office. Thus, there are a lot benefits for the government servants. However, for the private workers, the rights are only under the Employment Act 1955.

6) Do you have any documented report or research on women employment issues specifically on the issues of working mothers?

No. We do not have such report.

THANK YOU.



Fieldwork study by	Ira Rozana binti Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	YBrs. Dr. Jashpal Kaur A/P Kulwant Singh, Gender Expert, Women's Policy and Gender Unit, Ministry of Women, Family and Community Development (KPWKM)

List of questions:

- 1) What is the percentage of working mothers in Malaysia?
The Department of Statistics, Malaysia or DOSM publishes the national sex-disaggregated data on the Labour Force Participation Rates (LFPR). I urge you to make your enquiries with DOSM to get the latest data. KPWKM also publishes some of the data on our website. You must ensure that you take note of the fact that women work in the formal and informal economy in formal and informal/atypical work relationships. Consider also who is outside the workforce and who is unemployed and the reasons thereof.
As to how many of these women are mothers, that is difficult to determine as not all working women are mothers. Perhaps, you could consider data on the number and ages of women who are married and have children. In this way, you may be able to make a supposition in respect of working mothers.
- 2) What are the efforts of the ministry to ensure the rights of working mothers are protected?
Malaysia is committed to ensuring that women have the right to equality and to protecting women against gender based discrimination as stipulated in Article 8(1) and (2) respectively of the Federal Constitution. It is also committed under the National Policy on Women to support women's empowerment and is internationally obligated to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the pledges made to the implementation of the Beijing Platform for Action, since 1995 as well as ensuring the achievement of Goal 5: Gender Equality under the Sustainable Development Goals (SDG).
These commitments have resulted in the formulation of the Plan of Action for the Advancement of Women that outlines various programmes and projects covering 13 identified sectors - to be implemented by the government, non-governmental organisations (NGOs) and the private sector. The 13 sectors include economy; poverty; legislation; violence against women; health; education and training; science and technology; media; environment; sports;

religion, culture, arts and heritage; decision-making level and politics; as well as mechanism, machinery and institution for women development.

Empowering women in the economic sector is a key approach adopted by KPWKM in fulfilling its national and international commitments. Specifically, KPWKM has worked on increasing the LFPR of women from 54% in 2016 to 56.5 in 2020 and in ensuring an increase in the number of women in key decision making and leadership roles. (Please refer to the Beijing Declaration and Platform For Action Malaysia Progress Report (or Beijing + 25 Malaysia Progress Report) as it has data from the 2014-2019 period).

KPWKM's focus on the bigger issue of increasing women's economic empowerment is an important strategy in protecting the rights of working mothers by ensuring that they have work opportunities at a time when they need it for their economic and social well-being.

As a Ministry, KPWKM works with its agencies and other Ministries and in turn their respective agencies in carrying out its work. KPWKM ensures that the interests of working women are taken into account and therefore also that of working mothers. However, do note that from a gender equal perspective, the interests of working fathers are also within KPWKM's purview.

3) What are the policies regarding working mothers that you have?

Key policies are aimed at helping working mothers cope with their double burden and to help them in their work-life balance. To this end, KPWKM has:

- promoted the adoption of Flexible Work Arrangements or FWA like clocking in and clocking out has been relaxed.
- created increased access to and the number of childcare centres at the workplace for example in-house childcare centers in government offices. Under the 2019 Budget, RM10 million was allocated for setting up 50 childcare centres at government buildings.
- introduced Tax incentives in the 2020 National Budget which among others include:
 - The Women@Work incentive, for instance, is aimed at providing 33,000 job opportunities per year for women between 30-50 years old who have taken a break from their careers. Women returning to the workforce will receive a wage incentive of RM500 per month for 2 years, while their employers will receive a hiring incentive of up to RM300 per month for 2 years. Moreover, the current income tax exemption for women returning to work will be extended up to 2023;
 - Allocation of RM30 million for childcare facilities and access to childcare facilities will enable more women to participate in the workforce; and
 - Individual tax relief for fees paid for children's early childhood education will be increased from RM1,000 to RM2,000. Public funding for childcare is critical because it is largely out of reach for many parents, especially those from the low-income groups.
- support women's entrepreneurship and business development by introducing the MAMACARE or Confinement Care Programme under its agency, the National Population and Family Development Board (LPPKN) for low-income households to generate income by offering traditional and holistic post-natal services for mothers.

- recognised that legal reform is required and not just policies to enable women to work in a safe environment. Among the key legislation KPWKM is involved in includes:
 - a Sexual Harassment Bill,
 - amending the existing Employment Act 1955 to address harassment and discrimination at work including increasing the levels of maternity protection and introducing paternity leave benefits.
 - amending the Penal Code to criminalise stalking.
- worked together with the Ministry of Human Resources (MOHR) and its agency, Talent Corporation Malaysia (TalentCorp) to introduce the Career Comeback Programme which was created to encourage women to return to work after taking a career break. The programme involves upskilling and/or reskilling women workers on a career break. Between 2015-2019 1136 women were registered with the programme and 820 were recruited.
- Besides that, the MOHR through the Human Resource Development Fund (HRDF) has established the Housewives Enhancement and Reactivate Talent Scheme (HEARTS) targeting B40 married women or single mothers whom are unemployed, aged between 25 - 60 years old and who hold a Diploma and above, to actively participate in the workplace. HEARTS aims to:
 - enable housewives and thus contribute productively to the country's economic growth;
 - provide a platform for housewives to enhance their knowledge and skills in specific areas to enable them to work independently from home whilst maintaining their status quo as housewives;
 - help increase the percentage of LFPR of women workers; and
 - help increase household income and elevate housewives from the B40 group.
- Other government Ministries have also adopted measures which impact working mothers. For example, the Ministry of Rural Development (MRD) has launched the Rural Development Plan (2018 – 2023) which consist of six thrusts. One of the thrusts is to empower rural women, which consists of three strategies and nine programmes. One of the three strategies focuses on optimizing the capacity and employment rate for rural women. In terms of implementation, MRD has introduced several programmes to eradicate poverty and increase household income of rural population, including women such as:
 - Income Enhancement Programme - To provide assistance to B40 individuals, especially the poor and hard core poor in the rural areas. Priority is given to single mothers. Under this programme, MRD provides assistance up to RM10,000 in grant to help the target group to participate in economic activities such as setting up small businesses, delivering services, agriculture, fishery and farming as well as setting up agro-based activities. Assistance is provided in the form of tools, seedlings, premises, raw materials and trainings.
 - Skills Training and Career Programme - To provide training grant to B40 individuals ages 15 and above, especially the poor and hard core poor, in the rural area. The training grants enable the targeted

individuals to undergo skills training to increase their potential and employability. The grant includes tuition fees and subsistence allowance.

- Quick Wins Course - This course is targeted for B40 individuals, especially housewives, single mothers and rural youth. MRD provides skills training such as sewing, culinary, computer literacy, handicraft and grooming, as well as toolkit worth up to RM2,000 for the recipients to start their own business.

4) How do you implement the policies?

KPWKM policies are implemented by the agencies under the Ministry, who operate under its mandate.

5) Do you have any suggestion or future plan for the development of working mothers?

The term “development” is not clear. Do you mean an increase in the number of working mothers or do you mean assistance to working mothers?

KPWKM is aware that working women mothers and fathers face a number of challenges at the workplace. Key to overcoming these issues is the protection from discrimination at the workplace. KPWKM is keen to introduce a Gender Equality Act which will address the concerns of working parents, not just working mothers, on the basis of the need for the social protection of maternity, shared parental responsibilities and recognising the role of a father in the family. These approaches have been introduced internationally to overcome women’s double burden in respect of work and family responsibilities.

6) Do you have any documented report or research on women employment issues specifically on the issues of working mothers?

There are country reports that KPWKM and other Ministries and agencies have prepared and submitted at the international level and also information contained in the 11 Malaysia Plan and its Review, which may assist you. Further, there also NGO and CSO reports that may provide relevant information.

For guidance, KANITA has conducted workshops and research projects on maternity protection. There have also been a number of PhD thesis on various aspects of the issues of working mothers. Lastly, from the aspect of maternity protection, please be guided by the International Labour Organization’s (ILO) Maternity Convention 2000 which offers comprehensive information on this matter.

THANK YOU.



Fieldwork study by	Ira Rozana Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	Puan Sarah Adibah Hamzah, Secretary, The Human Rights Commission of Malaysia (SUHAKAM)

List of questions:

- 1) SUHAKAM is one of the most important organisations in upholding human rights in Malaysia. Regarding issue of women employment especially working mothers, can you explain on the efforts made by SUHAKAM to ensure that the rights of the working mother are protected?

SUHAKAM adalah salah satu organisasi yang penting dalam memperjuangkan hak asasi manusia di Malaysia. Mengenai isu wanita dan pekerjaan terutamanya ibu bekerja, boleh jelaskan apakah usaha yang dilakukan oleh SUHAKAM bagi memastikan hak2 ibu ini terjaga?

There are many examples of efforts made by SUHAKAM in ensuring that the rights of working women are protected. For example, previously, Malaysia reserved a few provisions in Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), including Article 7(b).1 Since 2005, SUHAKAM recommended to the Government to ensure that women have the right to participate and implementation of government policy, to hold public office and to perform all functions at all levels of government. In 2012, Malaysia removed the reservation on Article 7(b).

Apart from that, although Article 8 of Federal Constitution was amended early in 2001, but in reality, discrepancies still occur within the private and even government sector. In 2008, SUHAKAM organised a roundtable discussion on the principle of equal pay for equal work, non-discrimination in career mobility and job placement.

- 2) What are the policies of SUHAKAM in protecting the rights of working mothers?

Apakah polisi yang dibuat oleh SUHAKAM dalam menjaga hak2 ibu bekerja?

SUHAKAM is a statutory body and is subject to its Act 597. Hence, SUHAKAM adopt government's circulars with few amendments. For example, SUHAKAM adopted circulars of guideline in handling sexual harassment in workplace, child care leave which allow leave without pay for 1825days per child. SUHAKAM also allow maternity leave for 90 days/ birth

and in the process to discuss the possibility to increase paternity leave from 7 days to 14 days.

In addition to that, SUHAKAM also supports exclusive 6 months breastfeeding and provides facility such as nursery space for working mother. Though it is not an express policy, but in SUHAKAM ensures that there is balance between gender. For example, Head of Divisions in SUHAKAM consists of 4 males and 4 females. Meanwhile there are 1 male Deputy Secretary and 2 females Deputy Secretary. SUHAKAM's commissioners consist of 5 males and 3 females Commissioners.

- 3) One of the vision of SUHAKAM is protection of gender equality which is supported by international conventions like ILO and CEDAW, what are the roles and influences of these conventions on the policies of SUHAKAM?

Antara salah satu visi SUHAKAM adalah untuk mencapai kesamarataan gender sebagaimana yang didukung oleh badan antarabangsa dan konvensyenkonvensyennya seperti CEDAW dan ILO, apakah peranan dan pengaruh ILO dan CEDAW kepada polisi SUHAKAM.

SUHAKAM has been working on three main areas of women rights:

1. Civil rights and the legal status of women.
2. Reproductive rights (including shared responsibility for child-rearing for both sexes and right to maternity protection and childcare and right to reproductive choice).
3. Cultural factors influencing gender relations (including need to modify traditional roles of women and men in the family and society to eliminate gender bias; and the need to remove gender stereotypes from school programs, textbooks and teaching methods).

- 4) The concept of gender equality may differ according to different organisations, what is the concept of gender equality in SUHAKAM policies on working mothers' issues?

Kesamarataan gender mungkin berbeza mengikut perspektif pelbagai pihak, apakah konsep kesamarataan gender yang menjadi polisi SUHAKAM dalam isu ibu yang bekerjaya?

SUHAKAM believes that working mothers should not be discriminated due to their status and should be afforded certain allowances to ensure that they can balance between being mothers and carrying out their job. These include, amongst others, flexible working hours and providing nursing rooms at the workplace.

- 5) What are the steps and programs done by SUHAKAM in ensuring the gender equality in working mothers' issues and what are the challenges?

Bagi melestarikan kesamarataan gender dalam isu ibu bekerja di Malaysia, apakah langkah-langkah dan program-program yang dilaksanakan oleh SUHAKAM dan apakah cabaran yang dihadapi dalam melaksanakannya.

As provided in SUHAKAM's Act, SUHAKAM continuously promote awareness of and provide education, advice and recommend to the government in relation to human rights, including working women's right. Apart from that, SUHAKAM also inquires if there are any complaints related to it. Amongst the challenges is the implementation of gender equality policies and practice amongst the private sector and how can such policies or practices be monitored.

- 6) Does SUHAKAM have any documented report or research on women employment issues specifically on the issues of working mothers?

Adakah SUHAKAM mempunyai sebarang laporan atau penyelidikan bertulis berkaitan isu wanita dan pekerjaan terutamanya isu wanita berkerjaya?

- 1) In 2010, SUHAKAM published a report on the status of Women's rights in Malaysia. The report can be downloaded from [here](#).
- 2) In 2014, SUHAKAM published a report to the United Nations Committee on Eliminations of Discrimination Against Women on the Implementation of The Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) in Malaysia 2014. The report can be downloaded from [here](#). In 2015, SUHAKAM conducted a round-table-discussion (RTD) on the reservations made in CEDAW. The detail of the RTD is in [here](#).
- 3) In 2017, SUHAKAM in its oral to the CEDAW committee expressed the need to expedite the process of introducing gender equality legislation, training on handling sexual harassment, ensure that the empowerment of women is prioritised. The detail can be read in SUHAKAM's 2017 annual report.
- 4) What is the statistics of unclaimed moneys in the past 5 years until now? How much the amount of unclaimed moneys that has been returned, and how much is the amount that still unclaimed?

**THANK YOU.
SEKIAN, TERIMA KASIH.**



Fieldwork study by	Ira Rozana binti Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	Puan Raheme binti Ahmad, Administrative Assistant (Clerical/ Operation), Management Services Division, International Islamic University of Malaysia (IIUM).

List of questions:

- 1) What is the percentage of working mothers in your company?

Not available.

- 2) What is your company's vision in recruiting women?

I am not the person in charge for recruiting employees but as far as I know, if a woman we recruited told us that is pregnant and she is in her third trimester of her pregnancy, we will ask her to report duty after she delivered her baby.

- 3) What is the duration your company provide for paid maternity leave?

360 days paid maternity leave during service. For one pregnancy, a pregnant woman is entitled for 60 to 90 days paid maternity leave. Therefore, approximately, a pregnant woman is entitled for paid maternity leave for 5 surviving children. She needs to take unpaid maternity leave for subsequent children.

- 4) Does your company provide child care centre for your employees' children or any allowance for child care centre?

Yes. It is called IIUM Educare. It is meant for the employees and students. However, there is no allowance for child care centre. The fees are fully paid by the employees themselves.

- 5) Does your company support breastfeeding? If yes, in what ways is the support?

We do not have specific policy on breastfeeding. There is no specific area or time for breastfeeding or expressing the breast milk. However, we do not

oppose if a working mother is expressing her breast milk or going to the child care centre in the university during lunch hour to breastfeed her child.

6) Does your company provide flexible working arrangements policy?

We do have flexible working arrangements for all the employers. The office hours are flexible either 7.30 a.m. to 4.30 p.m., 8.00 a.m. to 5.00 p.m. or 8.30 a.m. to 5.30 p.m. In the new policy, it is stated that a pregnant woman who has reached 28 weeks of pregnancy is allowed to go back home one hour early. For example, if she takes the 7.30 a.m. to 4.30 p.m. office hour, she can go back at 3.30 p.m. However, there is no flexible working place. All works must be done in the office.

7) What are other incentives your company provide for working mothers? For example, medical benefits for their children.

There is maternity allowance provided for the delivery of children. The entitlement rate is depending on the rate of salary of the pregnant mothers. There are panel clinics and hospitals provided for this purpose. Nevertheless, the pregnant mothers can also opt for another clinics or hospitals and if the payment is higher than that is provided, they need to pay the balance by themselves. Immediate family members like children and spouse are entitled for outpatient clinic benefits in IIUM healthcare centre and other panel clinics. The children is entitled for the medical benefit until they are 18 years old or if they are students in IIUM or other institutions, they are entitled for the medical benefit until they are 22 years old. Paternity leave is provided for 7 days including weekends and public holidays. Death leave for immediate family members is 3 days.

8) Do you have any suggestions on policies regarding working mothers in your company?

There is no problem for breastfeeding even though there is no specific area provided for that purpose. I think in IIUM, the working mothers are being taken in good care. A recent policy states that if a woman is married more than two years but still cannot get pregnant, IIUM provides a budget for fertility test and treatment. IIUM also has a fertility centre in Kuantan for this purpose. There are also a lot of leave. There is specific leave for sick children who need to be quarantined. There are seven illnesses under this type of leave. The leave is called quarantine leave. If the illness is not listed under the quarantine leave, the mothers can take annual leave. If all annual leaves have been utilised, the mothers can apply for half pay. This means that there is no issue for leave. Annual leave is depending on position or grade of the employees. It is between 20 to 30 days. Employees who have been long in service are entitled to 35 days. This is applied the same to the permanent lecturers and administration staffs in the IIUM. So far, it is convenient working in IIUM. For example, a

mother can extend her maternity leave up until 90 days unpaid maternity leave to take care of her child. She can still extend her leave afterwards which she can take half pay leave. The unpaid leave for serious sick children like cancer is up to 2 years. All these policies are applied to all branches of IIUM. IIUM is registered as a company that applies Companies Act 1955. However, IIUM does consider government policies and improvise like policy on promotion.

THANK YOU.





Fieldwork study by	Ira Rozana binti Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	Encik Abdul Latif Ismail, Vice President, Human Resources Section, Syarikat Bekalan Air Selangor Sdn Bhd (SYABAS).

List of questions

- 1) What is the percentage of working mothers in your company?

Here, we have 4500 staffs and most of our staffs are men. In terms of women staffs, we have about 700 married women staffs or 71% out of 900 women staffs.

- 2) What is your company's vision in recruiting women?

We do not have sort of policy where pregnant women for instance are not accepted to work with us. However, we practise gender diversity which means we practise gender equality. Even engineer can be women worker.

- 3) What is the duration your company provide for paid maternity leave?

We provide 90 calendar days but subject to 5 surviving children. After the 5 children, it would be unpaid maternity leaves.

- 4) Does your company provide child care centre for your employees' children or any allowance for child care centre?

Currently, we do not have child care centre but last week we presented to the top management that we want to have it and it has been approved by the management. Thus, eventually, we will have it. Most probably we will start in HQ first. There will be partial payment by the company for the child care centre fees. Nevertheless, there is no allowance provided if for outside child care centre.

- 5) Does your company support breastfeeding? If yes, in what ways is the support?

Yes, we do support breastfeeding. We allocate area for breastfeeding mothers in all branches. The breastfeeding mothers can also take breaks to express their breast milk.

- 6) Does your company provide flexible working arrangements policy?

We do not have such policy. The working hours in this company is 8.30 a.m to 5.30 p.m from Monday to Friday. Saturday and Sunday is non- working days.

- 7) What are other incentives your company provide for working mothers? For example, medical benefits for their children.

We provide everybody with same medical benefits. They are covered with medical coverage including their children, medical insurance, life insurance and also maternity allowance which is RM 2000. For pregnant ladies, we provide car parking. The medical benefits are extended to the immediate family.

- 8) Do you have any suggestions on policies regarding working mothers in your company?

The improvement that we are doing is on the child care centre.

THANK YOU.



Fieldwork study by	Ira Rozana binti Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	Puan Nurul Atiqah binti Abd Rahman, Senior Legal Executive, Clinical Research Malaysia.

List of questions

- 1) What is the percentage of working mothers in your company?

In estimation roughly 70% of the employees are working mothers.

- 2) What is your company's vision in recruiting women? Does your company recruit pregnant women?

From past experience and as to my knowledge, so far the company has never recruit a pregnant lady.

- 3) What is the duration your company provide for paid maternity leave?

3 months of paid maternity leave but the expecting employees may apply for annual leave if she wished to extend the leave.

- 4) Does your company provide child care centre for your employees' children or any allowance for child care centre?

There is no child care centre and no allowance for childcare centre.

- 5) Does your company support breastfeeding? If yes, in what ways is the support? Is there any break or area provided for expressing breast milk?

Yes. The company supports breastfeeding by providing a multipurpose room in the office. The room can be utilized and can be accessed at any time.

- 6) Does your company provide flexible working arrangements policy? For example, job sharing or flexibility to work from home.

No flexible working hours.

- 7) What are other incentives your company provide for working mothers? For example, maternity allowance or medical benefits for their children.

The company provide medical benefits for the children. The Inpatient benefit is up to RM 50000 a year and the outpatient benefit is up to RM 2000 a year. Other than that the employees are allowed to apply for Compassionate Leave in the event the child is admitted to the hospital. The Compassionate Leave is only for 7 days a year.

- 8) Do you have any suggestions on policies regarding working mothers in your company?

I would suggest them to have some flexibility in case the child is admitted to hospital like work from home. In addition, for mothers who have to send the child to childcare early in the morning to be given flexibility to come a bit later and not be punished.

THANK YOU.



Fieldwork study by	Ira Rozana binti Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	Dato' Dr. Lim Weng Khuan, Director/ Head, Tan Chong Education Services Sdn Bhd.

List of questions

- 1) What is the percentage of working mothers in your company?

Tan Chong group has many branches of company. We have about 12,500 employees. We have 3 public listed companies. Tan Chong Education Services Sdn Bhd is subsidiary company of Tan Chong Motor Holding. In Tan Chong Education Services Sdn Bhd, we have only 60 employees. The policies are applied to the Tan Chong Group as a whole. The percentage of working mothers in Tan Chong Group is roughly 25%.

- 2) What is your company's vision in recruiting women?

We do not have such policy like pregnant women will not be accepting working with us but if we want to recruit engineers for example, we would usually recruit men from all races. However, we do not have gender bias if working in the office except if pregnant women who are expecting, all employers, not only us, are hesitate to recruit. Nevertheless, if the pregnant women are still in early pregnancy, we will still consider to recruit them to work with us. These are all because of business continuity. In my view, our company believes in gender diversity, like in our headquarters, there are many women employees, thus we do not have gender bias except for positions that need more masculinity and security, in majority we recruit men.

- 3) What is the duration your company provide for paid maternity leave?

We found that in Employment Act 1955, the leave is still 60 days. Unlike the government, they have changed to 90 days. However, the union of National Labour Advisory Council are pushing for the 90 days of maternity leave but it is still in the process. They are trying to abrogate into the October parliament seating to pass the bill. It is a tripartite stakeholder engagement between the government, National Trade Union Council (NTUC) and Malaysian Employers Federation (MEF). I am one of the members of the MEF. Thus,

currently, the paid maternity leave in Tan Chong Group is still 60 days as we follow what the law is.

- 4) Does your company provide child care centre for your employees' children or any allowance for child care centre?

Yes, we do provide child care centre at the headquarter office for four to eight years old children. The working mothers only need to pay RM 10. There is also a preschool which provides early childhood education (ECE). There will be also teachers who will teach the children basic learning like practical life skills and drawing according to their age. The employees from Tan Chong Group's subsidiary companies can also send their children to the child care centre. However, many parents will send their children to the nearest child care centre to their home or office due to convenience factor. With regards to the allowance provided, presently there is no allowance provided for any other child care centre.

- 5) Does your company support breastfeeding? If yes, in what ways is the support?

I would say yes because at the headquarter, we provide medical unit where we have experienced nurses and Chinese sensei. This is one of our panel clinic. Behind the medical clinic, there is a fridge provided for expressed breast milk for the working mothers. It does encourage the mothers to breastfeed their children. We also have medical talks on breastfeeding. The talks were about the benefits of breastfeeding where we call experts to give the talks. This means we do support breastfeeding in terms of awareness campaign and moral support. Regarding the breaks for breastfeeding, they are all depend on the requirements. As to the area of breastfeeding, there is a private place to express breast milk where men are not allowed to go.

- 6) Does your company provide flexible working arrangements policy?

So far, there is no such policy but we allow a little bit of flexibility in business unit. For example, our auxiliary police can arrange among themselves in terms of their working hours. However, there is still no such policy in terms of flexibility to work from home.

- 7) What are other incentives your company provide for working mothers? For example, medical benefits for their children.

Yes. We have outpatient and hospitalisation medical benefits for the women employees including the working mothers. We also provide medical benefits for children based on seniority not by whether you are working mother or not. For example, like my children who are below 21 years old, they are entitled to unlimited outpatients medical benefits. As to hospitalisation, for my children,

they are entitled to single bedded private room. There are no special incentive designed for working mothers. They are treated like working men. There is no gender bias. Either you are male, female or LGBT, we treat the same. There is no advantage or disadvantage. In my opinion, no company will specifically give incentive to working mothers including the government companies. With regards to maternity allowance, we do not provide such allowance yet.

- 8) Do you have any suggestions on policies regarding working mothers in your company?

For me, I will encourage to work according to their capability and passion. The policy, if possible, should take consideration the pregnant women but not working mothers as the working mothers are not sick. If the working mothers are sick, they will be treated like working men. I will incline to take into account pregnant women during the pregnancy and working mothers only few months after delivery like post- natal recovery when making policies.





Fieldwork study by	Ira Rozana binti Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	Puan Zahariah binti Ahmad, Head of Corporate Services, Mara Incorporated Sdn Bhd.

List of questions

- 1) What is the percentage of working mothers in your company?

The percentage is 30%.

- 2) What is your company's vision in recruiting women?

We do not really have vision in recruiting women because it looks like bias. When it comes to recruitment policy, we do not look at gender but we look at the full skill of competency and age. For example, if a 50 years old guy applies for account executive, it is not that we do not hire him but he might be over qualified. However we still not discriminate, we will still interview him. Always at the back of our mind, which is normal for all employees, despite men or women, we will look at things like does the person has any illness especially long term illness. This does not mean that we discriminate sick people but if we recruit them, we can provide proper medical care for him and his family. Thus, when you ask us about recruitment, we do not really look at whether it is a woman or man, we do not have policy on that. As for pregnant women, there was a pregnant woman who was not pregnant during the first interview but became pregnant during the second interview and she did disclosed on that as she was almost being chosen, she told us that she just got pregnant. Then I discussed with my head of division. We were in the position that we wanted the position to be filled on the spot, we wanted the candidate to tender resignation on the spot and we will pay the compensation, thus we did not recruit her. Nevertheless, she was put in KIV as she was good. Maybe we will recruit her later on when there is opening. If, for example, we did not need the position to be filled that fast, we will recruit her. Hence, it is all depending on the situation.

- 3) What is the duration your company provide for paid maternity leave?

According to our policy, there are 60 days of paid maternity leave. The leave is up to five surviving children.

- 4) Does your company provide child care centre for your employees' children or any allowance for child care centre?

No. We do not provide child care centre. However, MARA has their own child care centre. We, as subsidiary company wanted to collaborate with them for the child care centre but because MARA has huge number of employees which are approximately 20,000 nationwide, thus it is impossible. We ourselves also have considered to provide our own child care but the challenge is the cost of the place. The place rental in Kuala Lumpur is very high. We do not think that we can afford it. There are also studies that say it is good to bring your child near to your workplace. However, the infrastructure of Kuala Lumpur is rather challenging. Not everyone is driving car. So, it is not safe for baby and toddler to ride public transport. It is the matter of their safety. In Kuala Lumpur, travelling takes time and stressful. Hence, we should not put the stress on the kids. It can be said that it is not really practical unless all the employees have own cars but again not everyone can afford it. Even the people who has car also prefers to ride motorcycle because of the traffic issue. Realistically, that are among the reasons why most companies opt not to provide child care centre. We also do not provide allowance for child care centre.

- 5) Does your company support breastfeeding? If yes, in what ways is the support?

Most of the times the working mothers will use the prayer room to express their breast milk. The employers always understand the need. We work as a big family here. So, in that way yes, we do support breastfeeding. We do not specify break for expressing breast milk but the working mothers have to inform the employers that they need to express their breast milk in the prayer room like thirty minutes and in case the employers want to see them the employers know where to find them. Most of the times the employers will understand this need. We also created awareness among the employees a long time ago. We invited an NGO to give talk on the benefits of breastfeeding. Here, under the Human Resources department, we have work life balance initiative. We would run programmes that encourage work life balance.

- 6) Does your company provide flexible working arrangements policy?

No. We do not have. Our office hours are from 9 a.m. to 6 p.m. with one hour break.

- 7) What are other incentives your company provide for working mothers? For example, medical benefits for their children.

First of all, we provide maternity allowance. It is the paid leave allowance during the maternity leave. It is depending on the level of the employees. For example, manager level is given RM 4,500 as maternity allowance. We also provide the maternity allowance to male employees whose wife delivered baby. It is extended to the wife. As for medical benefits, there are two types. The first one is outpatient where we cover the dependants and we also go extra miles where we also cover the parents. We do have limit on this. For example, for senior managers, they are entitled to RM 9800 a year. Another type is hospitalisation. We cover dependants which include wife and children up until 18 years old and if the children are full time students, they are entitled up until 23 years old. For example, for senior managers, every child is entitled to RM 60,000 a year of the hospitalisation fee and for executive level, every family members are entitled to RM 40,000 a year. For me, it is quite generous. We also provide 3 days of paternity leave. We do not cover if male employee married more than one. We do not cover his second wife but we cover his children.

- 8) Do you have any suggestions on policies regarding working mothers in your company?

All these policies are only applied to MARA Incorporated Sdn Bhd. We follow Employment Act 1955 unlike MARA which has their own MARA Act. I think I do not have any suggestion as I think all of our policies are enough for working mothers. As a policy maker, I will give a lot to my employees in return of good performance.

THANK YOU.



Fieldwork study by	Ira Rozana binti Mohd Asri
Area of research	Family Law, Labour Law
Level of study	Postgraduate student (PhD)
Respondent	Puan Nurul Ain binti Ahmad Ali, Legal Firm Partner, Tetuan Azmi Ramlan, Ain Ali & Co.

List of questions

- 1) What is the percentage of working mothers in your company?

The percentage of working mothers in this firm is 90%.

- 2) What is your company's vision in recruiting women?

As so far as I concern, the firm respect women especially pregnant women. There will be a monetary gift when delivery the baby. The firm also allows working mothers to bring their children to the office if there is no one to take care of the children. The firm is really considerate on this matter. The firm also prefer women rather than men in recruiting workers.

- 3) What is the duration your company provide for paid maternity leave?

Currently, 2 months paid maternity leave.

- 4) Does your company provide child care centre for your employees' children or any allowance for child care centre?

No. However, the firm is very considerate when it comes to taking care of the children.

- 5) Does your company support breastfeeding? If yes, in what ways is the support?

Yes. Although there is no specific room for expressing milk, but the breastfeeding mothers can express their milk in their own room and the times are depending on the mothers themselves. The firm always tolerates on that.

- 6) Does your company provide flexible working arrangements policy?

No. The firm does not provide this policy. There is a fixed working time for all workers which is from 8.30 a.m until 5.30 p.m. Nevertheless, the firm is still flexible when it comes to emergency matters like hospital appointments. The firm also allows the workers to work from home in emergency situations like children having infectious diseases. These are all depends on the discretion of the employer.

- 7) What are other incentives your company provide for working mothers? For example, medical benefits for their children.

No. There is no other incentive.

- 8) Do you have any suggestions on policies regarding working mothers in your company?

I would like to suggest that there should be specific policy or law on leave to attend sick children.

THANK YOU.

APPENDIX C

LIST OF INTERVIEWS

No.	Name and Position	Office and Place of Interview	Date
1	Puan Sarah Adibah Hamzah, Secretary.	The Human Rights Commission of Malaysia (SUHAKAM), Kuala Lumpur.	8 February, 2019.
2	Pn. Aishahton Safinaz bte Abd Aziz, Deputy Director, Labour Standard Division, Department of Labour.	Ministry of Human Resource, Putrajaya	8 July, 2019.
3	Dato' Dr. Lim Weng Khuan, Director/Head.	Tan Chong Education Services Sdn. Bhd., Kuala Lumpur.	20 August, 2019.
4	Puan Raheme binti Ahmad, Administrative Assistant (Clerical/Operation), Management Services Division.	International Islamic University of Malaysia (IIUM), Gombak, Selangor.	30 August, 2019.
5	Puan Zahariah binti Ahmad, Head of Corporate Services.	Mara Incorporated Sdn. Bhd., Kuala Lumpur.	27 September, 2019.
6	Encik Abdul Latif Ismail, Vice President, Human Resources Section.	Syarikat Bekalan Air Selangor Sdn Bhd (SYABAS), Kuala Lumpur.	15 October, 2019.
7	Puan Nurul Ain binti Ahmad Ali, law firm partner.	Tetuan Azmi Ramlan, Ain Ali & Co., Kajang, Selangor.	3 January, 2020.
8	Puan Nurul Atiqah binti Abd Rahman, Senior Legal Executive.	Clinical Research Malaysia, Kuala Lumpur.	14 February, 2020.
9	YBrs. Dr. Jashpal Kaur A/P Kulwant Singh, Gender Expert, Women's Policy dan Gender Unit.	Ministry of Women, Family and Community Development (KPWKM), Putrajaya.	3 April, 2020.