



INTRODUCTION

The International Women's Alliance for Family Institution and Quality Education (WAFIQ) is a women's civil society organisation, registered with the Malaysian Registrar of Society PPM-015-10-23032018. It upholds the rights of women to be respected and valued, ensures the sanctity of families to be preserved for better functioning of the society and strives for better education for all. It is a source for women to voice their concern on matters pertaining to their rights in various spheres of life. WAFIQ engages with relevant governmental bodies and non-governmental organisations to bring women's issues to light and for proper actions to take place.

RIGHTS OF WOMEN

A1 Discrimination Towards Obligatory Headscarves

Freedom of religion is protected by Article 11 of the Federal Constitution of Malaysia. No person shall be discriminated against based on gender, race or religion and that any policy which contradicts this goes against the spirit of the Federal Constitution.

Malaysia has long been a supporter of women's rights insofar as the same are not contrary to *local legis* and the Federal Constitution. Malaysia had acceded to the United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) back in 1995, but until presently has never incorporated it into domestic law, posing problems illustrated by cases such as *Noorfadilla bt Ahmad Saikin v Chayed Bin Basirun & Ors* [2012] 1 MLJ 832 where the court held that CEDAW is applicable in Malaysia domestically, and *Airasia Berhad v Rafizah Shima bt Mohamed Aris* [2014] MLJU 606 which holds that it does not apply in Malaysia unless incorporated by an Act of Parliament.

Muslim women in particular suffer from discrimination in employment due to their choice in wearing headscarves in accordance with their religious teachings. The cases were as reported as follow:

- a. In January 2016, a Muslim convert was forced to remove her head-scarf at a national school in Johor, Sekolah Jenis Kebangsaan Cina (SJKC) Nan Ya Telok Sengat.¹ She was threatened and forced to remove her head-scarf if she wanted to continue teaching at the school.
- b. Similarly, Muslim stewardesses are compelled to oblige to the companies' rulings where their rights to cover their aurat and their religious obligation not to serve liquor are not respected. The National Union of Flight Attendants Malaysia (Nufam) has reiterated its call for Malaysian Airlines (MAS) female crew to be given the option to observe the Muslim dress code since 2014, but to no avail.² The issue was brought to national attention again in 2016,³ when a stewardess had to use social media to express her grievances.⁴
- c. In November 2017, the nation was shocked to learn that hotel industries have been discriminating women based on their religious belief. The Malaysian Association of Hotels (MAH) stated its members' policy of prohibiting their front-line staffs from wearing hijab, or headscarf, saying it is based on the international practice and not meant to be discriminatory. Cheah Swee Hee, the President of MAH said the hotels, especially the international hotels, in Malaysia, followed a standard operating procedure (SOP) and policy on the matter.⁵
- d. The Malaysian Labour Centre of the Union Network International (Uni-MLC) has highlighted that hotel employees complained about discrimination against Muslim workers who were told to remove their headscarves. The centre said this was also happening to hospitality and tourism students applying for internship.⁶

WAFIQ has recently conducted a research on *Discriminatory Practices And Sexual Harassment Among Working Women In Malaysia* in collaboration with a local university involving 402 working female respondents aged 18-60 years old and found that 1 in 5 women experienced religious discrimination, which include inability to perform the obligatory prayer, prohibited from wearing headscarf and denied promotion. 60.9 % of these cases were from private sector. **(refer to Appendix A: Research Pamphlet).**

Recommendations:

- i. Fortify the existing Act 265, the Industrial Relations Act 1967 (Act 177), and Part VI of the Occupational Safety And Health Act 1994 (Act 514) by providing more protections against gender-based discrimination.
- ii. Enact Equality Act in strict compliance with domestic law and taking into account of the cultural sensitivities in the Malaysian society.

¹ 'Tudung' incident: Issue has been handed over to Education Ministry. Available at: <http://english.astroawani.com/malaysia-news/tudung-incident-issue-has-been-handed-over-education-ministry-28435> (Accessed: 14th January 2017)

² Union wants hijab option for Muslim MAS crew. Available at: <http://www.malaysiakini.com/news/269821> (Accessed: 14th January 2017)

³ Allow MAS stewardesses to cover up and not serve alcohol, Perlis mufti tells Putrajaya. Available at: <http://www.themalaymailonline.com/malaysia/article/allow-mas-stewardesses-to-cover-up-and-not-serve-alcohol-perlis-mufti-tells> (Accessed: 14th January 2017)

⁴ MAS stewardesses should be given choice to wear hijab, says Khairy. Available at: <http://www.thestar.com.my/news/nation/2014/08/26/mas-hujab-khairy/> (Accessed: 14th January 2017)

⁵ Hijab ban is international practice, says hotel group. Available at <https://www.themalaysianinsight.com/s/22351/> (Accessed: 11th Nov 2017)

⁶ Improper to ban headscarf at workplace, says MEF. Available at <http://www.freemalaysiatoday.com/category/nation/2017/11/07/improper-to-ban-headscarf-says-mef/> (Accessed: 7th Nov 2017)

A2 Sexual Harassment

In the same study by WAFIQ (**Appendix A**), it was found that as many as 33.7% have been sexually harassed in the forms of unwelcome sexual connotations, glances, gestures and comments, and 32.6% experienced unwelcome conscious body contact. 57.1% of the women did not make any formal complaint as they felt the current legal redress is inadequate to protect them. These data showed that the prevalence of sexual harassment has increased from media report in 2015 that estimated 10% of the women suffered from sexual harassment in the form of threats; and another 10% experienced verbal harassment⁷. The reluctance of many women to report these cases officially to the authority was reflected in the case of a hijab-clad Muslim female officer who struggled to break free from a man, who clearly made unwanted physical contact with her under the pretext of protesting against a parking ticket.⁸ He was merely charged under Section 353 of the Penal Code, for interference of duty, when there was a Section 354 of the Penal Code for outraging the officer's modesty.⁹ A standalone Sexual Harassment Act will serve better as a deterrent to such acts.

Recommendations:

- i. Enact Equality Act to protect women's rights in the workplace, taking into account of the cultural sensitivities in the Malaysian society
- ii. Fortify procedures to deal with sexual harassment at workplace in Act 265 & Act 177
- iii. Enact Sexual Harassment Act that includes Code of Practice, with more comprehensive definition of sexual harassment

A3 Discrimination Against Pregnant Women at Workplace

Previous study reported that 44% women stated that they had been victimized by their employers upon finding out that they were pregnant. The 5 discriminating ways faced by the women are by making the women's positions redundant, denying them promotions, placing them on prolonged probation, demoting them and terminating their services.¹⁰ Cases where pregnant women have to work at the work-sites that are considered hazardous were reported; with companies taking their complaints lightly.

Recommendations:

- i. Enact Pregnancy Discrimination Act.
- ii. Enact Equality Act to protect women's rights in the workplace, taking into account of the cultural sensitivities in the Malaysian society
- iii. For the existing Employment Act 1955 and the Industrial Relations Act 1967, and Part VI Of the Occupational Safety And Health Act 1994 to be fortified.¹¹
- iv. For the Government of Malaysia to adopt and implement policies in line with Recommendation No. 191, Paragraph 6(1) from the International Labour Office (ILO), with respect to protection from dangerous and unhealthy work for pregnant and nursing women.

⁷ <http://www.malaysiadigest.com/features/528114-sexual-harassment-at-work-where-do-you-draw-the-line.html>

⁸ Couple who abused MBSA traffic officer get enhanced sentence <https://www.thestar.com.my/news/nation/2017/01/20/sentence-for-couple-who-abused-mbsa-traffic-officer-increased/> (Accessed November 2017).

⁹ Charge man in summons dispute with sexual harassment. Available at: <http://www.freemalaysiatoday.com/category/opinion/2016/11/28/charge-man-in-summons-dispute-with-sexual-harrasment/> (Accessed: December 2017)

¹⁰ Discrimination Towards Pregnant Women Remains Prevalent In The Malaysian Workplace. Available at: http://www.wao.org.my/news_details.php?nid=383&ntitle=Discrimination+Towards+Women+Remains+Prevelant+in+the+Malaysian+Workplace (Accessed December 2017)

¹¹ MTUC: Stop discrimination against pregnant women. Available at: <http://www.freemalaysiatoday.com/category/nation/2016/08/17/mtuc-stop-discrimination-against-pregnant-women> (Accessed: 14th January 2017)

A4 Dissolution of Marriage by Women (*Fasakh*)

According to statistics¹² in 2015 (until November) alone, there are about 590 cases of domestic violence in Malaysia. From this number, about 327 cases involves Muslim / Malays, where 309 were women while 18 were men. *Fasakh* is seen as one way out of marriage for those suffering from violence in the marriage. However, it takes a long time for Syariah Court judges to adjudicate the *Fasakh* cases, due to various reasons: a) In terms of proof as it is difficult for the women to get witnesses. Despite having all the relevant documents such as medical report, police reports, Interim Protection Order and Protection Order, there are still cases where Protection Order was transgressed and subsequently caused delay. This prolonged the process of hearing in the court. b) Lack of cooperation from the Defendant or Husband to attend the court and comply the procedure. The absence without reason is prevalent and again, prolonged the case as the court needs both parties to attend. c) While the proceeding of *Fasakh* is on-going, the husband may file an application of *Kembali Taat and Nusyuz*, or requirement for the wife to come back to the husband. While this is literally proof that he has no intention anymore to protect and to love the women as his wife, it further delays the case settlement. The main serious reason for *Fasakh* application is due to violence inflicted by husband. Prolong cases, delay in hearing and reaching decision means the women continue to live in a danger and fear.

Recommendations:

- i. For the state governments to amend various laws to allow for interim applications based on domestic violence to be heard by way of Ex Parte
- ii. To regulate a Standard Operating Procedure applicable on all relevant agencies as to expedite the process of hearing *fasakh* applications that are filed on the basis of domestic violence

RIGHTS OF CHILDREN

B1 Child Marriages

Child marriage is defined as marriage below the minimum legal age which requires the approval of a Syariah Court judge for Muslims or from the Chief Minister/ *Menteri Besar* for non-Muslims.¹³ Even though it is allowed in this country for various reasons, concerns were raised whether the system was being manipulated and whether this marriage can be sustained. Statistics from the Syariah Judiciary Department of Malaysia (JKSM) shows that between 2005 and 2015, there are approximately 10,240 applications for child marriage submitted to and approved by the Syariah Courts in Malaysia. From this number, the highest application was 2,064 from Sarawak, followed by 1,929 from Kelantan and 924 from Terengganu. The number of applications for non-Muslims' child marriage were 7,719 for 2000 to 2014 involving girls aged between 16 and 18 years. This number has stirred controversy where the authority was accused of allowing child marriage to take place.

Child marriage is seen as exposing young children to sexual acts too early before they are physically and emotionally ready. According to the Ministry of Family Development, child marriage is not encouraged because a child should be given opportunity to develop

¹² www.data.gov.my

¹³ Section 8 Islamic Family Law Act (Federal Territory) Act 1984 provides that no marriage can be solemnised for man under 18 and woman under 16 without written permission from a Syariah court. Similarly under section 10 Law Reform (Marriage and Divorce) Act 1976 makes it compulsory for woman under 16 and man under 18 years of age to obtain permission from Chief Minister prior to solemnisation of marriage.

her/himself. She or he may not have full understanding about marriage, the responsibility and what entails after that. The young phase should be spent on capacity building, focusing on the development of personality, talents, mental and physical abilities to their fullest potential. Marriage at the tender age would mean preventing their physical, emotional and psychological development. At the same time, the situation deprives them from continuing their formal education. It is found that the decision to marry away the daughter were due to several reasons surrounding the girl who: i. was pregnant out of wedlock; ii. was school drop-out and intend to get married; iii. is ready to become a wife. Child marriage is also driven by tradition and culture and is prevalent among indigenous communities in Sarawak or Sabah. Even though Section 8 Islamic Family Law (Federal Territories) Act 1984 makes it compulsory to seek permission prior to getting married for those under sixteen, there is no detailed procedures for that until now.

Recommendations:

To restrict the application by adding that:

- i. it must be submitted by the parent, parents or guardian of the bride
- ii. All parties (the guardian, the bride-to-be and the bridegroom-to-be) must be present during hearing,
- iii. Reason or reasons for marriage must be provided,
- iv. The Social Report from the Department of Social Welfare must be enclosed,
- v. The Medical Report must be submitted,
- vi. Financial status of the bridegroom must be enclosed, vii. background information of the bridegroom-to-be must be provided

B2 Malnutrition of Children in Low Cost Housing

Malaysia has ratified the Convention on the Rights of the Child (CRC) in 1995. A key outcome of Malaysia's ratification is the Child Act 2001 (Act 611) which forms part of the protective legal environment for children in the country. Several initiatives have been introduced under this Act to safeguard children from violence, abuse, neglect and exploitation. For example, incest has been criminalised by the Penal Code (Act 574), while the Domestic Violence Act 1994 (Act 521) protects the child against violence within the family.

Recently, UNICEF revealed in its study that levels of poverty and malnutrition among children living in low cost housing in Kuala Lumpur Malaysia are alarming, as compared to the national average.¹⁴ The study found that as compared to the average children in Kuala Lumpur, children below the age of five in low cost housing are two times higher being underweight (15%) and stunted (22%). This clearly contravene article 6 which protects the child's rights to life, survival and development.

Recommendations:

- i. Government to revisiting poverty indicators, that include the nutritional status of children and relative income poverty
- ii. Government to provide universal child care grants.
- iii. Relevant ministries eg ministry of health, ministry of labour to ensure Promotion of exclusive breastfeeding for at least six months
- iv. To implement policies that facilitate access to nutritious food, such as taxes on sugar-sweetened beverages (SSB), regulation of food sold in and around schools.

¹⁴ https://www.unicef.org/malaysia/media_urban_child_poverty.html

B3 Exposure to Pornographic Materials

It was reported that 37% of Malaysian parents felt their children's online life was interfering with their home and school obligations while 18% said their children were sacrificing basic social activities¹⁵. Recently, cases where minors were emulating sexual acts shocked the nation. These probably stemmed out from the fact that they were exposed to pornography materials available at home and even at school. This contravene article 2 – to ensure child's best interest. Measures that may help to reduce, if not totally abolishing, cases of pornography exposure and addiction should be considered. South Korea had applied internet curfew called "Cinderella Law" for their youth as well as providing an effective rehab camp for internet addicts.¹⁶

Recommendation

The Malaysian Communication and Multimedia Commission (MCMC) should respond to this aggressively by reviewing its regulatory actions to curb cases of pornography exposure.

¹⁵ <http://www.thestar.com.my/news/nation/2016/10/07/internet-addiction-on-the-rise-among-malaysian-youths-enough-evidence-to-show-links-to-anxiety-decre/#mLtx2hLfkI95oHB3.99>

¹⁶ https://www.washingtonpost.com/world/asia_pacific/in-south-korea-a-rehab-camp-for-internet-addicted-teenagers/2016/01/24/9c143ab4-b965-11e5-85cd-5ad59bc19432_story.html?utm_term=.df4fc7dc3858