

SHATTERING GLASS CEILINGS: ARE WE THERE YET IN ELIMINATING THE GENDER GAP AND PREGNANCY DISCRIMINATION?

FACTORS THAT PREVENT WOMEN FROM ENTERING THE WORKFORCE AND BARRIERS AGAINST WOMEN WITHIN THE WORKPLACE ENVIRONMENT IN MALAYSIA

Simarpreet Kaur Harbindar Singh*

ABSTRACT

The glimmer of hope of having a progressive legal system was revived post-14th general election and hence, the term Malaysia Baru (New Malaysia) was coined. Many pressing issues cropped up, one of them being; creating a safe and secure environment for women at the workplace without discrimination on the grounds of gender. With this issue in mind, the objectives of this study are to examine the factors that prevent women from entering the labour force and to scrutinise the barriers against women within the work-place environment, focusing on pregnancy discrimination (also known as maternity discrimination). The methodology for this study will be retrospective and prospective that is past statistics as well as other data and possible legislation or policies put forward by the present government will be considered. By using this methodology, this study will focus on certain aspects of pregnancy discrimination such as the age group of women and the economic cost involved to achieve the results aimed at. At the same time, the study will also look at the current and draft legislation in place to address the issue of pregnancy discrimination. It is the aim of the study that the subject of female labour force participation rate and pregnancy discrimination would be fully comprehended in terms of its nature as well as factors. In conclusion, it is also the intention of this study to review the measures in place to address these pressing issues.

Introduction

The recent World Economic Forum's report on Gender Equality noted that it would take another 108 years to close the global gender gap and 202 years for the economic gender gap to close. Despite improvements in narrowing the gender gap worldwide, there are still 'proportionately' fewer women than men in the labour force.¹

The same situation reflects in Malaysia where even though there have been significant changes such as including prohibition of gender discrimination in the Federal

* LLB candidate, HELP University. Currently continuing her studies at the School of Law, University of Leeds. The paper was presented at the 2nd Tan Sri Dato' Seri Dr Abdul Malek Law Students' Conference 2019, 30 March 2019, HELP University.

¹ World Economic Forum, *The Global Gender Gap Report 2018* (World Economic Forum 2018) <http://www3.weforum.org/docs/WEF_GGGR_2018.pdf> accessed 13 February 2018.

Constitution, female labour force participation remains lower than males. Additionally, there are several barriers within the workplace, and one of them is pregnancy discrimination (also known as “maternity discrimination”).

Malaysia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as “CEDAW”) in 1995 and this allowed the country to take affirmative action to ensure that Malaysian women enjoy the rights laid out in the treaty. The rights include Article 10 (Education) and Article 11 (Employment). Thus, this paper seeks to examine the factors that prevent Malaysian women from entering the labour force and analyse the barriers within the workforce, focusing on pregnancy discrimination, in line with these two Articles.

Factors that prevent women from entering the workforce

CEDAW, through Article 11 on employment, recognises the right to work as an ‘inalienable right of all human beings’.² As such, the duty is on the State to take suitable measures to ensure that women enjoy the same rights as men in the field of employment. This applies to Malaysia as well since it is a signatory member of the CEDAW which is why it was lauded in last year’s CEDAW Committee for making progress in providing access to education to women and girls.

However, despite females constituting a higher proportion of tertiary students than males as tertiary students, the labour force participation for women remains significantly lower at 54.1% as compared to 80.6% for men.³ Although there have been marginal improvements in these figures, they have remained consistently low for many years. In addition to this, Malaysia ranks behind some ASEAN countries like Laos, Singapore, Vietnam, and Thailand in terms of the global gender gap index for the labour force participation rate (LFPR, in short).⁴

Thus, with such contrasting statistics on education and LFPR, the question remains as to what factors prevent women from entering the labour force? Some of the factors include cultural issues, employment as well as motherhood and childcare centres which will be further expounded by the writer.

a. Cultural issue

The cultural issue surrounding female labour force participation is interlinked with the traditional gender roles of men and women in society. Langdon and Klomegah argue that ‘gender is a social relationship’ which varies historically and includes ‘elements of labour,

² Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 art. 11(1)(a).

³ Ministry of Women, Family and Community Development, ‘Statistics on Women, Family and Community’ (2016), 32, 54
<<https://www.kpwkm.gov.my/kpwkm/uploads/files/Penerbitan/Buku%20Perangkaan/Perangkaan%202016.pdf>> accessed 14 February 2018.

⁴ Ibid 122. Malaysia’s index for labour force participation rate (LFPR) is 0.650, while Laos stands at 1.000, Singapore at 0.798, Thailand at 0.814 and Vietnam at 0.919 (1 indicates gender equality).

power, emotion, and language'.⁵ This shows that the appropriate gender roles for men and women are determined by society.

Few of the factors, as suggested by Langdon and Klomegah, that contribute to the problem of gender gap include 'traditional gender ideology' and 'feminine behaviour'.⁶ Traditional gender ideology is likened to a coercive force where women are confined to domestic spheres while men to working spheres. This is due to the power and advantages that men have over women which have resulted in gender inequality. The feminine behaviour factor, on the other hand, is analogous to a voluntary force where women internalise such gender roles as constructed by society and thus, make them a norm. These two factors explain the reason for the lower female labour force participation rate.

It must be noted, however, that women have broken this cycle over time and have attained higher levels of independence primarily due to education and investing in human capital. Nevertheless, traditional gender roles continue to exist and hamper such efforts to narrow the gender gap.

In Malaysia, housework is cited as the main reason by women for staying out of the workforce, with 58% or 2.6 million women not joining the labour force. This is compared to the considerably low figure of 3.2% or 70,000 men for the same reason.⁷ These figures illustrate the conventional gender roles which are reinforced through social norms. According to Khazanah Research Institute (KRI, in short), if the same housework is equally distributed between men and women, the LFPR would be relatively identical for both males and females, proving that gender parity is not possible if this ideology is challenged.⁸

In contrast, independent working women do feel a sense of guilt when they give up their duties at home due to being focused on their careers.⁹ This guilt portrays the 'feminine behaviour factor' which explains why some mothers engage their daughters' help in housework to teach them that a working woman ought to balance her work duties and household responsibilities. As a result, this subtly reinforces the conventional gender roles and 'feminisation of unpaid care work'.¹⁰ Consequently, such division of labour at home using gender roles translates itself into low female LFPR.

b. Employment

The second factor that contributes to women having a low LFPR is underemployment. Underemployment is a situation whereby one is employed, but not to one's full capacity. This is especially the case with women where they take up jobs that are 'less productive'

⁵ D L Langdon and R Klomegah, 'Gender wage gap and its associated factors: An examination of traditional gender ideology, education and occupation' (2013) 39(2) *International Review of Modern Sociology* 173, 174.

⁶ *Ibid* 176.

⁷ Khazanah Research Institute, *The State of Households 2018: Different Realities* (3rd edn, Khazanah Research Institute 2018).

⁸ *Ibid*.

⁹ Langdon and Klomegah (n 5) 180.

¹⁰ *Ibid*. The observations were made by Education International.

for which they are over-qualified.¹¹ Hence, they are paid lower wages and faced with fewer opportunities for advancement.

The said scenario can be observed in Malaysia where women opt for low to mid-level paying jobs such as health professionals, clerical work and teaching. According to KRI, the percentage of women in such occupations is considerably high, reaching up to 70%.¹² This is in comparison with the high-level paying jobs which include executive-level positions as women only make up 20% of such positions, thus explaining the underemployment of Malaysian women.¹³

This explains why Malaysian women face a “single-peaking” pattern throughout their careers compared to men whose careers mirror the “life-cycle” pattern.¹⁴ A “single-peaking” graph refers to a short period where the person is at the peak of his career – it only occurs once throughout that person’s career. “Life-cycle” graph, in contrast, refers to a period where the peak occurs throughout the person’s career, hence being permanent until that person retires. It is observed that women face a “single-peaking” graph because they tend to leave their jobs to become caregivers in their families. Men, on the other hand, do not face a similar situation and hence have the “life-cycle” graph in their careers. Although most women do return to the workforce at the later stages of their lives, the rate of their return is still low.

In addition to that, women tend to take up jobs that are seen as “feminine” in nature. This can be seen from the fact that women make up most of the unpaid caregivers, increasing from 63.2% in 2011 to 70.1% in 2015, as noted by the Penang Institute.¹⁵ Besides this, women tend to start their own businesses and hence, become self-employed. Though this may seem like good news, this raises the important notion of flexibility versus security.

KRI observes that 33.8% of the increase in the female LFPR is due to self-employment which poses the question of flexibility versus security.¹⁶ This is because although women are actively joining the labour force, they also value the flexibility to care for their families which is why some of them opt to become self-employed workers. Self-employability provides flexibility to women as they get to choose how the business operates, but at the same time, the issue of security remains. This includes questions like whether the business is covered by insurance and whether it is registered with a provident fund. As such, though self-employability provides flexibility, its security may be uncertain and this is coupled with the fact that it reinforces the stereotype that ‘women are caregivers and men are providers’.¹⁷

¹¹ Women’s Aid Organisation (WAO) and Joint Action Group for Gender Equality (JAG), *The Status of Women’s Human Rights: 24 years of CEDAW in Malaysia* (2019) 243.

¹² (n 7).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ida Lim, ‘Report: More Women Joining Workforce, But Have Low Wages’ *Malay Mail* (Kuala Lumpur, 9 October 2016) <<https://www.malaymail.com/news/malaysia/2016/10/09/report-more-women-joining-workforce-but-have-low-wages/1224113>> accessed 23 March 2019.

¹⁶ (n 7).

¹⁷ Langdon and Klomegh (n 5) 176.

Therefore, even though women are joining the labour force, most of them remain underemployed by becoming unpaid caregivers or self-employed workers.

c. Motherhood and Childcare Centres

Another factor contributing to the low female LFPR is a situation called “motherhood penalty”. “Motherhood penalty” is a situation faced by mothers where they are less likely to be hired by employers or if they do get hired, they are offered lower wages. Furthermore, some mothers are also discriminated against women without children where the former are paid lower wages than the latter.¹⁸ This raises the question as to why women are somewhat penalised or punished when they become mothers.

The driving factor behind such treatment is the conflict of roles between “ideal motherhood” role versus “ideal worker” role.¹⁹ The ideal worker is perceived to be someone productive and committed to his or her job where, as the ideal motherhood role is seen as one where a mother is a full-time caregiver for her children. As a result of the incompatibility of these roles, mothers are often viewed as ‘less competent and less committed’ towards their jobs by their employers and are thus, faced with such workplace discrimination.²⁰

Besides that, there is a lack of registered childcare centres in Malaysia, with only 4302 centres as of June 2018. According to the Women’s Ministry, Malaysia needs at least 38333 registered childcare centres to cater to children.²¹ In addition to that, Malaysia also has 16873 childcare workers, of which only 3173 fulfil the minimum qualification to become a child caregiver.²² Hence, this gap is then filled by unregistered childcare centres and caregivers with at least 1685 centres operating illegally since 2014.²³ Even though the said Ministry has announced in the past to assist in the registration of new childcare centres, the number of these new centres remain considerably low due to the perception of high cost and too much time taken. This, therefore leaves a large gap to be filled by unregulated centres and babysitters which then creates the risk of children’s safety.

Furthermore, there is no national-level policy that regulates these childcare centres. As such, there are no integrated or uniform guidelines for these centres to operate. Instead, the monitoring of registered childcare centres falls solely under the remit of the Ministry of Women, Family and Community Development (MWFCD, in short) to ensure that they abide by the standard operating procedures, leaving no form of a standardised toolkit to run a centre. Despite having a National Child Policy 2009, and focusing on ‘affordability and accessibility of childcare’ as well as including ‘expansion of childcare’ as part of the

¹⁸ S J Correll, S Benard and I Paik, ‘Getting a Job: Is There a Motherhood Penalty?’ (2007) 112(5) *AJS* 1297.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ The Sun Daily, ‘Malaysia Needs 38,333 Registered Childcare Centres: Wan Azizah’ (Sepang, 18 September 2018) <<https://www.thesundaily.my/archive/malaysia-needs-38333-registered-childcare-centres-wan-azizah-GUARCH578979>> accessed 23 March 2019.

²² The Star, ‘Malaysia Needs More Childcare Centres’ (Putrajaya, 13 August 2018) <<https://www.thestar.com.my/news/nation/2018/08/13/malaysia-needs-more-childcare-centres-dpm-we-are-also-in-dire-need-of-qualified-workers-to-ensure-sa/>> accessed 23 March 2019. The statistics are based on data received in June 2018.

²³ New Straits Times, ‘938 Nurseries, 747 Childcare Centres Not Registered Nationwide’ (Kuala Lumpur, 2 August 2016) <<https://www.nst.com.my/news/2016/08/162519/938-nurseries-747-childcare-centres-not-registered-nationwide>> accessed 1 July 2019.

11th Malaysian Plan, the number of newly registered childcare centres remain low.²⁴ Plus, there are doubts over the effectiveness of such policies as childcare remains relatively expensive and family-based care remains the first choice over childcare centres and caregivers for many Malaysian families at almost 60%.²⁵

In addition to that, the childcare schemes provided target only a segment of the whole population; namely the low-income group, also known as the B40. This includes monetary benefits like children's assistance.²⁶ However, the average monthly fee for childcare centres ranges from RM300 to RM500 and even reaches up to RM900. The increasing cost of childcare coupled with the absence of monetary assistance to the middle-income group (M40) therefore results in many Malaysians opting for family-based care. As such, since women are generally perceived as primary caregivers, they tend to quit the labour force and become full-time caregivers, which results in a low LFPR for them. Therefore, the situation of the motherhood penalty coupled with expensive childcare and lack of integrated childcare policy are factors that compel women to leave the labour force and become unpaid caregivers.

d. Possible Reforms

Increasing the female LFPR is beneficial for the nation as a whole as this contributes towards higher productivity and hence, higher gross domestic product (GDP, in short) value. It is estimated by the KRI that increasing the female LFPR by approximately 30% within the next 10 years will lead to an increase in the GDP value by 5%.²⁷ This helps in reducing the negative impact of Malaysia being an ageing society soon, as higher productivity will result in more resources that can be utilised to anticipate an ageing society.

Furthermore, flexibility is an important factor in the minds of Malaysian women who seek to balance their work and families and this has led to the proposal by the MWFCDC to set up childcare facilities within the workplace. This policy has been implemented in a few ministries and the private sector is also being encouraged to follow suit with tax deductions as financial incentives for employers. However, the issue remains as to the total cost of operating these facilities and whether they would be regulated by the MWFCDC.

Further to the above, dividing house chores equally between daughters and sons would reverse traditionally entrenched stereotypes on gender roles. As such, this together with the above-proposed reform will ensure that women actively participate in the labour force and also maintain their work-family balance.

²⁴ Christopher Choong Weng Wai and others, 'Labour Market and The Shifting Landscape of Care in Malaysia: The Missing Link' Khazanah Research Institute Discussion Paper 1/19
<http://www.krinstitute.org/Discussion_Papers-@-Labour_Market_and_The_Shifting_Landscape_of_Care_in_Malaysia-;_The_Missing_Link.aspx> accessed 23 March 2019.

²⁵ Ibid.

²⁶ Ibid.

²⁷ (n 7).

Barriers against women within the workplace: Pregnancy Discrimination

a. Open-system theory: Underlying Stereotypes of Pregnancy Discrimination

One of the barriers that women face at their workplace is called pregnancy discrimination which is a situation where pregnant women are treated unfairly solely due to their pregnancy. This is explained through the open-system theory which states that workplace organisations are interdependent with the home environments.²⁸ As such, our attitudes at home shape our thoughts and behaviour at work.

According to this theory, men in traditional marriages (married to unemployed women or homemakers) perceive that organisations with more female employees do not run smoothly. This is due to the gender roles within their marriages which result in a similar expectation about gender roles at workplaces.²⁹ Hence, this theory explains the discrimination of pregnant women due to the stereotype of the “ideal worker”.

Since employers view workers as fully productive and efficient in their jobs, pregnant women are, more often than not, targeted because of this generalisation. They are perceived as less committed and competent at their jobs compared to the other workers. This is because pregnant women take medical leaves for medical appointments or when they are not feeling well due to the many physiological changes that their bodies experience during pregnancy. However, this is seen by most employers as being not fully productive in their work which is why some pregnant women are forced to resign or are terminated from their jobs.

According to a survey done by the Women’s Aid Organisation (WAO, in short) in 2016, over 50% of women surveyed faced workplace discrimination when they were between the age of 30 to 39 years.³⁰ This is because most Malaysian women during that age start to focus on having families and children which is why they are discriminated against the most at that age group, including pregnancy discrimination.

Additionally, almost 40% of women surveyed by WAO stated that they were asked about pregnancy plans at job interviews or during job applications.³¹ Such questions which are irrelevant and personal to these women are asked by employers even before these women are offered those jobs. As such, the above statistics illustrate the phenomena of pregnancy discrimination faced by pregnant women at work. However, the question is, what may be the reason behind such unfair treatment of pregnant women?

²⁸ S D Desai, D Chugh and A P Brief, ‘The Implications of Marriage Structure for Men’s Workplace Attitudes, Beliefs and Behaviours toward Women’ (2014) 59(2) *Adm Sci Q* 330, 332.

²⁹ *Ibid* 332.

³⁰ Women’s Aid Organisation (WAO), ‘Workplace Discrimination Survey’. Figures reported by WAO.

³¹ *Ibid*.

b. The economic cost of pregnant women at workplaces

The discrimination against pregnant women in organisations is rationalised as a “business necessity” where these workers are viewed as economic liabilities by their employers.³² This is because the benefits provided for pregnant women in workplaces are seen as conflicting with the overall organisational goals such as reducing cost and maximising profits. Hence, the economic costs for these workers including paid medical leaves and medical insurance are regarded as incompatible with goals like efficiency and profit-maximising within an organisation.

This is illustrated through the survey done by WAO in 2016 where 52% of women surveyed stated that they feared for their job security when taking leave to visit doctors for pregnancy-related illnesses.³³ Therefore, this shows the anxiety pregnant women face when taking paid leaves (as part of their employment rights) for medical reasons which are solely due to their physical condition. Furthermore, 34% of women surveyed in the same study stated that they were given a poor performance evaluation primarily due to their pregnancy.³⁴ This portrays the general employers’ perception of pregnant workers whom they deem as less productive compared to the other workers.

Additionally, most employers find pregnant workers as unwanted liabilities due to maternity leave, which is why they often either terminate them or force them to resign. This unfair treatment of pregnant women is thus, justified as being necessary for upholding business goals.

c. Possible Reforms

Therefore, there is a need to protect the rights of pregnant women at workplaces so that they are not compelled to leave their jobs due to their pregnancy. Moreover, pregnant workers also contribute as part of the nation’s labour force. As such, the proposed amendments to the Employment Act 1955 by the Ministry of Human Resources (MOHR, in short) - which may be tabled in the October 2019 parliamentary session - seek to rectify this issue.

One of the suggested amendments is to prohibit discrimination on the grounds of pregnancy which protects existing employees and extends to job seekers as well.³⁵ The MOHR also proposed to introduce legal protection for pregnant women from termination due to their pregnancy.³⁶ Hence, these amendments, if passed, would be a positive step in protecting pregnant women from discrimination at workplaces. However, the draft amendments do not include compensation for victims of pregnancy discrimination.³⁷

³² R A Byron and V J Roscigno, ‘Relational Power, Legitimation and Pregnancy Discrimination’ (2014) 28(3) *Gend Soc* 435, 438.

³³ (n 30).

³⁴ *Ibid.*

³⁵ Proposed Amendments to the Employment Act 1955, Section 17B, <<https://www.mohr.gov.my/pdf/SerantaAwam/Public%20Engagement%20EA.doc>> accessed 24 March 2019.

³⁶ Proposed Amendments to the Employment Act 1955, Section 42, <<https://www.mohr.gov.my/pdf/SerantaAwam/Public%20Engagement%20EA.doc>> accessed 24 March 2019.

³⁷ Tan Heang Lee, ‘Amend the Employment Act to Ensure Rights for Parents’ (Women’s Aid Organisation, 30 May 2019) <<https://wao.org.my/amend-the-employment-act-to-ensure-rights-for-parents/>> accessed 23 July 2019.

Instead, they only propose to penalise the employers for their unfair behaviour, leaving little legal redress for the victims especially if they were affected due to loss of employment.

The government, therefore, needs to decide between the special treatment or equal treatment approach in dealing with the issue. The special treatment approach involves providing benefits to pregnant workers to accommodate the specific physical burdens of pregnancy since it recognises pregnancy as a “unique condition”.³⁸ The equal treatment approach, in contrast, looks at benefits that extend equally to all workers with all kinds of disability.³⁹ However, the former is criticised for targeting women as an inferior group resulting in the need for special benefits, while the latter is disapproved for treating pregnancy as a “temporary disability” and thus, “stigmatising childbirth”.⁴⁰

Therefore, the government, in addressing pregnancy discrimination in the Employment Act, needs to decide whether it looks at the issue as a disability or as providing special benefits to pregnant women for them to come on an equal footing at the workplace. Alternatively, they could also incorporate both approaches by paying attention to individual needs - like pregnant women, parents, ageing employees, handicapped or temporarily-disabled workers, instead of the ‘male versus female dichotomy’.⁴¹ Hence, the government can tackle pregnancy discrimination at the workplace only by fully understanding the issue at hand and the nature of both approaches.

Concluding Remarks

In conclusion, the above study focused on two objectives. First, the factors that prevent women from participating in the labour force; my research has narrowed it down to three aspects - cultural issue, employment, and motherhood, as well as childcare centres, followed by a possible reform of introducing childcare facilities at workplaces and reversing stereotypes on gender roles. The second objective is the barriers against women within the workplace, with one of them being pregnancy discrimination. The study explored this issue and its underlying stereotypes together with its economic cost and proposed a reform to the government to amend the Employment Act.

³⁸ Lise Vogel, ‘Debating Difference: Feminism, Pregnancy and the Workplace’ (1990) 16(1) *Fem Stud* 9, 23.

³⁹ *Ibid* 18.

⁴⁰ *Ibid* 23.

⁴¹ *Ibid* 24.