

**Title** : The Adequacy of The Law on Sexual Harassment in Workplace  
in Malaysia: An Analysis

**Author(s)** : (1) Nur Khalidah ‘Afifah binti Hasmi, (2) Siti Nurnajihah binti  
Mohamad Nizam

**Institution** : Faculty of Law and International Relations, Universiti Sultan  
Zainal Abidin

**Category** : Article, Competition

**Topics** : Law



**THE ADEQUACY OF THE LAW ON SEXUAL HARASSMENT IN WORKPLACE IN  
MALAYSIA: AN ANALYSIS**

Nur Khalidah 'Afifah binti Hasmi

Siti Nurnajihah binti Mohamad Nizam

Faculty of Law and International Relations

30<sup>th</sup> January 2021

## **ABSTRACT**

The problem of sexual harassment in Malaysia's workplace is increasing every year, as reported in the statistic. This problem has caused concern of people, especially among the workers. This research aims to identify the extent of existing laws that are adequate in combatting sexual harassment at Malaysia's workplace. The methodology adopted in this research is a doctrinal and qualitative study. A comparative study was also adopted in conducting this research by comparing Malaysian and Pakistan laws. The study found that Malaysian laws are insufficient in addressing this problem. Therefore, this research suggests that our laws be more specific and serious in considering this issue. It is also necessary to give more attention to the implementation of the laws in the workplace. This research also suggested establishing a regulatory body under the Employment Act 1955 to ensure the laws are carried out transparently. This research found that the Malaysian government should evaluate the current laws thoroughly in identifying its scarcity and take further steps for extensive improvement. The Protection against Harassment of Women at the Workplace 2010 of Pakistan should be referred to in identifying loopholes to improve the current laws in combatting this issue.

Keywords: Adequacy, sexual harassment, Malaysia, workplace, law,

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(Pakistan)

## **CHAPTER ONE: INTRODUCTION**

## **1.0 Background of The Study**

Sexual harassment has become one of the most misconduct happens in the workplace to both male and female employees. Even though there are already several laws governing this issue, the number of sexual harassment cases is still high, as a consistent increase can be seen from the most recent statistics from 2013 to 2016.<sup>1</sup> The laws that covered sexual harassment in Malaysia's workplace are the Employment Act (EA) 1955, Penal Code (PC), and the Industrial Relations Act 1971. To improve the whole system in serving justice to the victim, the loopholes in these laws should be filled. It is time to improve the law that governs sexual harassment in Malaysia's workplace. This study also compares the existing laws in Pakistan that address the same issue in discussion. With the study of the loopholes and Pakistan laws, this paper also proposes to study the possible improvements to combat this issue more effectively.

## **1.1 Problem Statement**

The main problem is the absence of specific and comprehensive laws on sexual harassment in Malaysia's workplace. Sexual harassment is common in Malaysia. Hence, there is no reason not to move against it. The guidelines for sexual harassment were only in the form of a Code of Practice before the new provisions added in the EA 1955. It is essential to note that the Code is not a law, and it is only optional for the workplace to adopt it. Since the Code is just an internal investigation document, it is hardly an efficient method to resolve it.<sup>2</sup> After enacting the EA 1955, an employee may seek legal redress from the courts based on constructive dismissal upon resignation. The employee involved was also entitled to file a police report. However, the perpetrator's criminal punishment did not include damages for the employee's loss resulted from the sexual harassment incident.

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<sup>1</sup> Hannah Yeoh, 'Men Also Face Sexual Harassment in Workplace' *The Star* (Kuala Lumpur, 14<sup>th</sup> February 2019) <<https://www.thestar.com.my/news/nation/2019/02/14/hannah-yeoh-says-men-also-face-sexual-harassment-in-the-workplace>> accessed 20 June 2020.

<sup>2</sup> *ibid.*

Moreover, the employees suffering from sexual harassment in the workplace are not provided with legal redress and protection while they are still at work. The Malaysian government realised these inadequacies, and thus in 2012, the EA 1955 was amended by introducing Part XVA to address the issue of sexual harassment at the workplace. However, the Act still has many loopholes that lead to its inadequacy.

The issue is on the adequacy of the current laws in combatting the problems of sexual harassment in the workplace to protect the victims by penalising the perpetrators and providing forms of redress to them. In Malaysia, there is no legislation to address the crime of sexual harassment at the workplace. As the law stands, matters relating to sexual harassment are covered under the Penal Code, Employment Act 1955, and the Industrial Relations Act 1967.<sup>3</sup> Unfortunately, these existing laws are insufficient to address sexual harassment cases effectively. Therefore, it is crucially important to improve existing laws or stand-alone law to address this issue. For example, the Penal Code provides few protections that particularly physical forms of sexual assault and violence.<sup>4</sup> In contrast, the definition of sexual harassment under Section 2 of EA 1955 includes unwanted conduct of sexual nature non-verbal, gestural, or physical directed at a person, which is offensive or humiliating or is a threat to his well-being.<sup>5</sup> The existing laws failed to provide comprehensive protection to workers against sexual harassment. There are specific laws enacted in other countries in criminalising sexual harassment.<sup>6</sup> The laws concern with punishing the predators and protecting victims. The laws can be found in several jurisdictions from other countries, including Australia Government enacted Sex Discrimination Act 1984, the Philippines Government enacted the Anti-Sexual Harassment Act 1995, Russian government enacted the Criminal Code, France

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<sup>3</sup> Muzaffar Syah Mallow, 'There's No Excuse to Fight Sexual Harassment' *News Straits Times* (Kuala Lumpur, 7 August 2018) <<https://www.nst.com.my/opinion/letters/2018/08/398802/theres-no-excuse-not-fight-sexual-harassment>> accessed 21 June 2020.

<sup>4</sup> Penal Code.

<sup>5</sup> Employment Act, s. 2.

<sup>6</sup> Hannah Yeoh (n 1).

Government enacted Labour Code, Criminal Code, the United Kingdom Government enacted the Sex Discrimination Act 1975, India Government enacted the Sexual Harassment of Women at Workplace 2013 and Pakistan Government enacted the Protection against Harassment of Women at the Workplace Act 2010.<sup>7</sup>

In Malaysia, sexual harassment happens very often. However, there are no necessary measures taken to curb them. The Royal Malaysian Police reported 1,218 cases of sexual harassment from 2013 to 2017.<sup>8</sup> Based on the report, 1,187 cases were still under investigation, and 31 individuals had been convicted and charged under Section 509 of the Penal Code. Nonetheless, various reasons have come to light, including the unequal rights and authority between men and women on social and economic status.<sup>9</sup> It is noteworthy that sexual harassment reduces the quality of working life, endangers employees' well-being, and affects firms' reputations where the offence is committed. In *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan [1996] 1 MLJ 261*, the court's opined that the Federal Constitution recognises 'life' is valuable and has to be treated with reverence.<sup>10</sup> In Article 5 (1) of the Federal Constitution, the word 'life' confined a person's physical existence and the quality of life, dignity, and honour.<sup>11</sup>

## 1.2 Objectives

1. To analyse the law applicable in the cases of sexual harassment in the workplace in Malaysia.
2. To identify the loopholes in the law that governs sexual harassment, the Employment Act 1955, Penal Code, and the Industrial Relations Act 1967.

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<sup>7</sup> Jason Ong, 'Timely for Malaysia to have a Sexual Harassment Act' (24 August 2018) <<https://www.malaysiakini.com/news/440145>> accessed 20 June 2020.

<sup>8</sup> Hannah Yeoh (n 1).

<sup>9</sup> Donovan and Ho, 'Federal Court Allows Sexual Harassment Claim' (15 August 2016) <<http://www.mylabourlaw.net/quick-guides/36-sexual-harassment.php>> accessed 20 June 2020.

<sup>10</sup> *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan [1996] 1 MLJ 261*.

<sup>11</sup> Federal Constitution, Art. 5.

3. To compare the governing laws between Malaysia and Pakistan.
4. To suggest an improvement that can be made for the existing laws.

### **1.3 Research Questions**

1. How is the relevant legislation being applied in the cases of sexual harassment in workplace Malaysia?
2. Whether existing legislation is sufficient to protect workers against sexual harassment?
3. What are the suggestions to improve the existing legislation relating to sexual harassment at the workplace?
4. Does it necessary to enact a specific act to govern sexual harassment at the workplace in Malaysia as what few other countries had enforced?

### **1.4 Research Methodology**

In preparing this research paper, a doctrinal study will be applied. The legal research relies primarily on a doctrinal study that involves rigorous analysis and synthesis of theoretical legal points of view. The legal concepts emerge from economic, social, political, and psychological reality. The doctrinal study deals with reviewing the existing rules, regulations, and policies in primary sources, such as case law and statutory provisions.<sup>12</sup> Secondary sources such as textbooks, journal articles, reports, and any official website data will also be referred to. Therefore, this is the most suitable method to identify the adequacy of existing laws to curb sexual harassment in the workplace in Malaysia and suggest a possible improvement that may be made. The qualitative research methodology will also be applied in conducting the research. The primary qualitative research involves gathering and analysing non-numerical data to understand concepts, opinions, or experiences, such as text, video, or audio.<sup>13</sup> It can gather in-depth insights into an issue or create fresh

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<sup>12</sup> Katerina Linos and Melissa Carlson, 'Qualitative Methods for Law Review Writing' (13 May 2017) <<https://chicagounbound.uchicago.edu/uclrev/vol84/iss1/10/>> accessed 17 November 2020.

<sup>13</sup> *ibid.*

research ideas. Several qualitative approaches are most commonly used, which are by doing observations, surveys, and distribution of the questionnaire. Meanwhile, secondary qualitative research includes the compilation of existing data in text, photographs, and audio or video recording.<sup>14</sup> Qualitative research is suitable for this research because it can help researchers immerse themselves in groups or organisations to understand the offence and experience better.

In conducting this research, comparative studies were also used in studying sexual harassment in the workplace from a comparative perspective. The research will examine similarities and dissimilarities between one situation in two legal systems. This research will also include comparing the Employment Act (EA) 1955 of Malaysia with The Protection Against Harassment of Women at Workplace Act 2010 of Pakistan (PAHWW) specifically enacted to combat sexual harassment in the workplace. The purpose of including comparative studies is to bring about the improvement of the law. By comparing the law, the law's effectiveness in each country can be identified and improve the existing law of sexual harassment in Malaysia.

The data needed in this research are obtained through primary sources such as provisions of the law and decided cases and secondary sources such as books, journals, and news excerpts. Other than that, the researchers will also conduct surveys by conducting interviews and distributing questionnaires to the public. The analysis will be conducted based on the research objectives. For the first objective, online research will be conducted to obtain the data on reported statistics or cases relating to sexual harassment at Malaysia's workplace. For the second objective, Part XVA of the Employment Act 1955 and other relevant provisions relating to sexual

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<sup>14</sup> Pritha Bhandari, 'An Introduction to Qualitative Research' (19 June 2020) <<https://www.scribbr.com/methodology/qualitative-research/#:~:text=Qualitative%20research%20involves%20collecting%20and,generate%20new%20idea s%20for%20research.>> accessed 17 November 2020.

harassment will be studied. For the third objective, possible improvements to the existing laws will be discussed.

### **1.5 Significance of the Study**

In general, this study will benefit the readers, especially the researchers, the public, and the government as policymakers.

This study is expected to be significant to the researchers. This study will contribute to the literature on comparing the current laws and new improvements that should be made to curb cases of sexual harassment in Malaysia's workplace for future use.

In educating the public, this study is expected to help the public be aware of the sexual harassment that might be happening to them in their workplaces and provide them with knowledge of Malaysia's current laws to address sexual harassment. The public may also find this study beneficial as this study will inform them on how the policy may be improved to ensure justice is served to the victims.

As the policymakers, the government will benefit from this study as this study will be an eye-opener for improving the justice system in handling sexual harassment. A thorough reading of this study will help them improve the laws that whichever is necessary and suit the best for both government and people's sake.

### **1.6 Research Scope**

In conducting this legal research, the adequacy of Part XVA of the EA 1955 will be focused on. The researchers will take a more in-depth look into this Act to identify the extent to which the Act helps protect workers against sexual harassment. The researchers will mainly study the loopholes or any missing part in the provisions relating to sexual harassment. Possible improvement needed to provide comprehensive and fair protection for the workers in sexual harassment will also be discussed. At the end of the study, suggestions will be developed for improving the

existing laws, including the Penal Code and Industrial Relations Act 1967. In this study, the analysis of existing administrative laws relating to sexual harassment is excluded due to time constraint.

## **CHAPTER TWO: LITERATURE REVIEW**

## 2.0 Literature Review

This chapter highlights the relevant research on sexual harassment in the workplace conducted earlier by other researchers.

### 2.1 Various Definition of Sexual Harassment

Some writers had published their writing in addressing this issue in Malaysia. According to Section 2 of the Employment Act (EA) 1955, sexual harassment is any unwanted conduct of a sexual nature directed at a person during or in the course of employment in verbal, visual, gestural, or physical that is offensive, humiliating or threatening one's well-being.<sup>15</sup> It is essential to note that sexual harassment exists in various forms, not only physical but also verbal, non-verbal, psychological, and visual.<sup>16</sup> Sexual harassment is also defined as unwanted and unwelcome sexual conduct that leads to a hostile or intimidating work environment.<sup>17</sup> Many of the victims do not dare to report the misconduct that happened to them due to not having confidence in the authorities, and believing that the situation will remain unchanged, mainly because of the fear of putting family or one self's name at stake.<sup>18</sup> Sexual harassment usually happens in the workplace, especially if the workplace favoured particular sex or, in other words, those who had been stigmatised with the patriarchal mindset that has long afflicted men and women. In another article, Article 4 of the 1999 Malaysian Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace<sup>19</sup> is applicable in defining sexual harassment.

Additionally, there are two categories of sexual harassment emerging-sexual coercion and sexual annoyance. The former is defined as sexual harassment, directly

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<sup>15</sup> Hannah Yeoh (n 1).

<sup>16</sup> The Effectiveness of Existing Law to Prevent and Curb Sexual Harassment (2019), Asian Strategy & Leadership Institute <[https://www.asli.com.my/files/resource/13/00013\\_1575883476.pdf](https://www.asli.com.my/files/resource/13/00013_1575883476.pdf)> accessed 15 June 2020.

<sup>17</sup> Hassan, Kamal & Lee, Yee. (2015). Sexual Harassment in the Workplace: Selected Court Cases and New Legal Provisions in Malaysia. Asian Social Science. 11. 10.5539/ass.v11n16p9 <[https://www.researchgate.net/publication/281505774\\_Sexual\\_Harassment\\_in\\_the\\_Workplace\\_Selected\\_Court\\_Cases\\_and\\_New\\_Legal\\_Provisions\\_in\\_Malaysia](https://www.researchgate.net/publication/281505774_Sexual_Harassment_in_the_Workplace_Selected_Court_Cases_and_New_Legal_Provisions_in_Malaysia)> accessed 21 June 2020.

<sup>18</sup> *ibid.*

<sup>19</sup> Malaysian Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, Art 4.

affecting the victim's employment, mainly within a superior-subordinate relationship. Meanwhile, the latter is sexual-related conduct that is offensive, hostile, or intimidating to the recipient but has no direct link to any job benefit, which may occur by an employee against a co-employee or a client to an employee.<sup>20</sup> It is also proved that sexual harassment may be recognised when an employer or supervisor asks the employees to fulfil their sexual desires, and if the victim rejects they might be sacked. This scenario shows how the power of the higher-ups may be abused in sexual misconduct.<sup>21</sup> In another article, sexual harassment is defined as repeated behaviour that causes hardship to the victims.<sup>22</sup> Therefore, it can be observed that the authors unanimously agreed that the existing definition of sexual harassment is not comprehensive. There are still grey areas defining sexual harassment, as affirmed by the author.<sup>23</sup> One of the reasons is sexual harassment is difficult to definitively defined as individuals may have different perceptions of sexual harassment.<sup>24</sup>

## **2.2 The Enactment of the Sexual Harassment Act**

It is undeniable that the existing laws in tackling sexual harassment are incomplete. Malaysia has been considering sexual harassment under various legislations, including administrative regulation, Code of practice, criminal law, and labour laws since there is no specific legislation to govern this issue.<sup>25</sup> Improvement of the laws is needed to fill the loopholes in combatting this serious issue. Firstly, the

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<sup>20</sup> Cecelia Ng and Jamilah Othman (2002). Unwanted and Unwelcome. Sexual Harassment in the Malaysian Workplace <<https://sci-hub.do/https://doi.org/10.1177/097185240200600304>> accessed 29 December 2020.

<sup>21</sup> Fonny Hutagalung and Zahari Ishak, Gangguan Seksual: Peramal Ke Atas Kepuasan Kerja Dan Tekanan Kerja di kalangan Pekerja <[https://umexpert.um.edu.my/public\\_view.php?type=publication&row=MjUxNDA%3D](https://umexpert.um.edu.my/public_view.php?type=publication&row=MjUxNDA%3D)> accessed 29 December 2020.

<sup>22</sup> Ishak bin Mad Shah and others, Sexual Harassment in Workplace: A Study on Victims and Harassers in Johor Bahru <<http://eprints.utm.my/id/eprint/2702/1/71958.pdf>> accessed 29 December 2020.

<sup>23</sup> Hassan, Kamal & Lee, Yee (n 17).

<sup>24</sup> Siti Rapidah and others, The Effects of Sexual Harassment in Workplace: Experience of Employees in Hospitality Industry in Terengganu, Malaysia. *Mediterranean Journal of Social Sciences* (2015) <[https://www.researchgate.net/publication/322820131\\_The\\_Effects\\_of\\_Sexual\\_Harassment\\_in\\_Workplace\\_Experience\\_of\\_Employees\\_in\\_Hospitality\\_Industry\\_in\\_Terengganu\\_Malaysia](https://www.researchgate.net/publication/322820131_The_Effects_of_Sexual_Harassment_in_Workplace_Experience_of_Employees_in_Hospitality_Industry_in_Terengganu_Malaysia)> accessed 29 December 2020.

<sup>25</sup> Muzaffar Syah Mallow, 'Sexual Harassment in the Workplace: An Overview over the International Law and Current Law and Practice in Malaysia' (July 2013) <[http://www.ijhssnet.com/journals/Vol\\_3\\_No\\_13\\_July\\_2013/10.pdf](http://www.ijhssnet.com/journals/Vol_3_No_13_July_2013/10.pdf)> accessed 14 June 2020.

sexual harassment code launched by the Minister of Human Resources was a mere guideline and advice to private companies to handle the problem within their workplace. The companies are not obliged to adopt the Code entirely.<sup>26</sup> As observed, even companies that have implemented the laws find it difficult to curb this issue, let alone those that did not. The offences included in existing laws are also limited and do not cover many other forms of sexual harassment such as upskirting and unlawful stalking. It is also difficult to seek damages and to gain a protection order. Most of the writings emphasised the loopholes that the current laws have and why the Parliament needs to enact a specific law regulating it. If new policies are successfully introduced and implemented by the government, it is safe to say that a guarantee for workplaces to be safer can be made. It is important to note that the way a person is being treated at their workplace will profoundly affect their lives in so many aspects.<sup>27</sup> It is also supported that a sexual harassment bill currently proposed will affect the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), allowing eliminating possible discrimination in the workplace.<sup>28</sup> The author of this article also opined that without specific legislation, sexual harassment at the workplace would only be often dealt with as dismissal cases under the Industrial Relations Act 1967, preventing our courts from dealing with sexual harassment issues.<sup>29</sup> The author also addressed unawareness on the victim because there are cases where the victim is unaware of what action constituted sexual harassment. Even if it happens, they might not know where to complain. This occurrence will give rise to sexual harassment cases being unreported.<sup>30</sup> Another author opined that the available choices for the victims such as filing complaints to the employer, a complaint to the Labor Department, the enforcement of criminal charges under the Penal Code, and the

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<sup>26</sup> *ibid.*

<sup>27</sup> Lekha Laxman, Hishamuddin Md Som, Maisarah Saat and Low Hock Seng, 'A Study on Sexual Harassment in Small and Medium Enterprises of Malaysia' <<http://eprints.utm.my/id/eprint/2682/1/71875.pdf>> accessed 14 June 2020.

<sup>28</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

<sup>29</sup> Sarvinder Kaur, 'The Necessity for A Sexual Harassment Act In Malaysia' (2009)

<<https://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/view/39/38>> accessed 29 December 2020.

<sup>30</sup> *ibid.*

initiation of action under tort law are not conducive.<sup>31</sup> Therefore, it is observed that the authors unanimously agreed on the enactment of a specific sexual harassment act is highly needed to curb this issue.

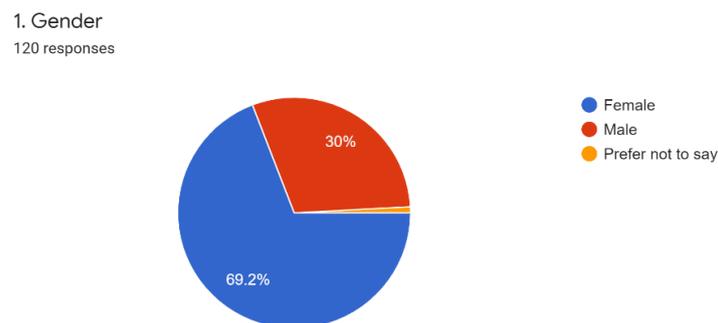
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<sup>31</sup> Sarvinder Kaur (n 29).

## **CHAPTER THREE: EVALUATION OF STATUTES AND LOOPHOLES**

### 3.0 Introduction

The issue of sexual harassment had become a worrying concern in the workplace in Malaysia. Sexual harassment has proven to cause the victims to suffer adverse consequences, which may be long term or short term. The effects are severe as they can cause much mental and physical distress to the victims.<sup>32</sup> It is important to note that the way a person is being treated at their workplace will profoundly affect their lives in so many aspects.<sup>33</sup> A conducive and safe work environment is crucial for the employees to ensure their well-being and simultaneously enhance their performance. It is essential to understand that sexual harassment does occur to both female and male.<sup>34</sup> This statement may be illustrated in Figure 1 following the survey we have conducted.



*Figure 1. The percentage of male respondents that had encountered sexual harassment in the workplace in Malaysia*

Due to a lack of confidence in the authorities, victims do not dare to report the incident, hence turning a blind eye. This fearful situation is accompanied by their belief that nothing will change and fear taunting oneself's name at stake.<sup>35</sup> There are also other reasons why the victim does not take action, as illustrated in Figure 2 below.

<sup>32</sup> Hassan, Kamal & Lee, Yee (n 17).

<sup>33</sup> Lekha Laxman (n 27).

<sup>34</sup> 'We Need A Sexual Harassment Act' <<https://wao.org.my/we-need-a-sexual-harassment-act/>> accessed 10 December 2020.

<sup>35</sup> Katerina Linos and Melissa Carlson (n 12).

What you or the victim do after the incident happened?  
95 responses

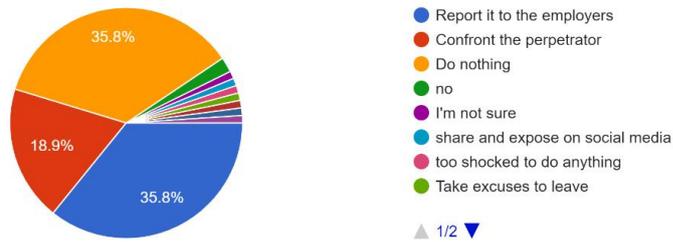


Figure 2. The above figure shows various actions taken by the victims after sexually harassed.

Under Section 2 of the Employment Act (EA) 1955, sexual harassment is elucidated as any unwanted conduct of a sexual nature, whether verbal, visual, gestural, or physical, directed at a person and is either offensive, humiliating, or a threat to his or her well-being, which occurs in the course of employment.<sup>36</sup> It is also defined as unwanted and unwelcome sexual conduct that leads to a hostile or intimidating work environment.<sup>37</sup> It needs to be noticed that sexual harassment comes in various forms, not only physical but also verbal, non-verbal, psychological, and visual.<sup>38</sup> In *Loganathan Maniam V. Murphy Sarawak Oil Co Ltd [2020] 4 ILJ 4*,<sup>39</sup> the claimant had been dismissed from his workplace and contended that he had been unjustly dismissed from his position. He was sacked after his secretary reported his sexual misconduct against her. This case has highlighted that sexual harassment may happen verbally. In this case, the claimant called his secretary with the term “sayang” which is commonly used by two intimate people as a term of endearment. He also gave her unwanted gifts such as branded perfume, flowers, chocolate, and unwanted attention through text messages and in person. The claimant also had committed physical harassment in which he put his hands around her shoulders, touching her cheek and shaking her hands unnecessarily. The court held that it is

<sup>36</sup> Employment Act 1955, s.2.

<sup>37</sup> Katerina Linos and Melissa Carlson (n 12).

<sup>38</sup> The Effectiveness of Existing Law to Prevent and Curb Sexual Harassment (n 16).

<sup>39</sup> *Loganathan a/l Maniam v Murphy Sarawak Oil Co Ltd [2020] 4 ILJ 4*.

unreasonable for the company to continue the claimant's employment after the misconduct committed by him and that the dismissal is not unjust.

Essentially, in the workplace, sexual harassment may occur between employees, employers and employees. It may also occur due to discrimination instilled based on sexual orientation. It may again come in the form of obscene or offensive gestures. These gestures are not necessary to explicitly define improper conduct. It is just sufficient to be classified as obscene or offensive when it makes the victims feel uncomfortable. For physical harassment, the perpetrator most likely to request sexual favours, touching or grabbing the victims' body. It is also essential to note that unwanted attention may also constitute sexual harassment.<sup>40</sup> Unfortunately, it is common for sexual harassment to occur primarily when the employer uses his power or position to harass his or her subordinates sexually. The case of *Mohd Ridzwan bin Abdul Razak v Asmah bt Mohd Nor [2016] 4 MLJ 282*, is a landmark case for this issue. The court had awarded damages to the victim, thus at once enabling tort claims to be applied for future sexual harassment cases in the workplace. In this case, both parties were employees of Lembaga Tabung Haji (The Pilgrimage Fund Board). The defendant had complained to the Chief Executive Officer (CEO) alleging the plaintiff had sexually harassed her. The alleged harassments include using vulgar remarks repeatedly, dirty jokes of a sexual nature, use of rude and uncouth words in emails, and repeated offers to make the defendant his second wife. The company conducted an inquiry but could not warrant disciplinary action against the plaintiff since the evidence was insufficient. Subsequently, the plaintiff was discontented by the complaint and was transferred to another division of the company. Later, he decided to seek disciplinary action against the defendant for submitting a claim of sexual harassment without evidence, but the company took no action. This decision further led the plaintiff to bring a defamation claim against the

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<sup>40</sup> 'Types of Sexual Harassment at Work', <<https://www.wmlawyers.com/oakland-sexual-harassment-attorneys/types/>> accessed 9 December 2020.

defendant. In defence, the defendant had filed the sexual harassment allegation against the plaintiff. The Federal Court had affirmed the High Court decision in which it had ordered general and aggravated damages for the tort of sexual harassment.<sup>41</sup>

### **3.1 Evaluation of Statutes and Loopholes**

Notwithstanding the various forms of legislation enacted by the government in combatting this issue, a specific law has yet to be passed. It is undeniable that the introduction of the tort of sexual harassment in our legal and judicial system had brought help to the victims. However, it is yet to be deemed comprehensive in combatting this issue effectively. Thus, it is time for Malaysia to consider other effective and executable mechanisms and a new separate act that deals with sexual harassment. It has to be realised that the current governing laws have weaknesses that need to be studied and analysed before a new specific better law can be made in the future.

#### **3.1.1 Employment Act 1955**

The Employment Act 1955 (EA) is enacted to regulate the relationship between employers and employees in Malaysia's workplace. This Act regulates what the employers can expect from their employees, what employers can ask from their employees of what to do, and govern the employees' rights at their work. The purpose of this Act is to preserve the employers' and the employees' rights. However, this Act only covers those within the definition of "employee." The Act covers any person who, irrespective of the number of monthly wages, has entered into a contract of service with an employer engaged in manual labour. Those that are non-employees under the EA 1955 are subject to every other relevant legislative obligation to be regulated by the terms of their employment contract.<sup>42</sup> Thus, it is

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<sup>41</sup> *Mohd Ridzwan bin Abdul Razak v Asmah bt Hj Mohd Nor* [2016] 4 MLJ 282.

<sup>42</sup> Muzaffar Syah Mallow (n 25).

clear that the definition given by the EA is not comprehensive since this Act does not cover some employees' categories.

According to Section 2 of EA 1955, sexual harassment is defined as any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which are offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment.<sup>43</sup> In 2012, the Malaysian government introduced a new part under EA 1955 to combat sexual harassment in the workplace, Part XVA. Section 81A of Part XVA of EA aims to address the complaint about sexual harassment in the workplace, in any means of sexual harassment accusation made (i) by an employee against another employee (ii) by an employee against any employer or (iii) by an employer against an employee.<sup>44</sup> Employers shall inquire into the complaint in a manner prescribed by the Minister if any complaint of sexual harassment is made. In comparison, Section 81F of Part XVA of EA provides that any employer who fails (a) to investigate the sexual harassment complaint made (b) to ensure that the complainant knows the refusal for investigation and on what ground for the refusal as required (c) to investigate sexual harassment complaints as ordered to do so by the Director-General of the Ministry or (d) to submit a report of an inquiry into sexual harassment to the Director-General, he is said to commit an offence.<sup>45</sup> Thus, he will be liable to a fine not exceeding ten thousand ringgit on conviction. This section's application can be illustrated in *Sitt Tatt Berhad v Flora a/p Gnanaprasagam & Anor* [2006] 1 MLJ 497. In this case, the senior manager and executive director had failed to entertain the employee's complaint to sexual harassment by her superior and could not lodge a police report. The court held that the Senior Manager and the Executive Director are guilty for their dereliction to conduct their duties and obligations towards the claimant.<sup>46</sup> Thus, it can be seen

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<sup>43</sup> Employment Act 1955, s. 81A.

<sup>44</sup> *ibid.*

<sup>45</sup> *ibid.*, s. 81F.

<sup>46</sup> *Sitt Tatt Berhad v Flora a/p Gnanaprasagam & Anor* [2006] 1 MLJ 497.

that employers shall be liable when they refused to perform their duties and responsibility to inquire about the victim's complaint of sexual harassment in the workplace.

The EA 1995 is indeed very stern in applying the law from its very beginning. However, even after the new Part is introduced, it still lacks the adequacy in addressing this alarming issue. This Act only protects the strict relationships between employers and employees, where not all working people will be covered under this Act. Although the new Part of the Employment Act includes Section 81G of Part XVA for applying this Part irrespective of employees' wages, there are still many working people or "non-employees" under EA that are not being protected by this Act. Section 81G of Part XVA of EA states that notwithstanding paragraph 1 of the First Schedule, this Part refers to any employee working under a contract of service regardless of the employee's salary.<sup>47</sup> The Act also covers those working under the contract of service only, like those involved in income-generating activities such as teachers and doctors. Therefore, the internship students who mostly did not generate income but gaining experience are not within the ambit of an employee under this Act and will not be protected. This lacking definition will possibly make them targeted sexual harassment victims in their workplace during their internship.

### **3.1.2 Industrial Relations Act 1967**

The Industrial Relations Act 1967 (Act 177) is a foundation of law for industrial relations in Malaysia, which came into force on 7<sup>th</sup> August 1967. As provided by its preamble, it promotes and maintains industrial harmony and regulates employers and employees' relations.<sup>48</sup> However, this Act applies only to private sectors, whereas the public sector is subject to the Service Circular No. 22 of 2005, issued by the Public

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<sup>47</sup> Employment Act 1955, s. 81A.

<sup>48</sup> Industrial Relations Act 1967.

Service Department of Malaysia.<sup>49</sup> The relevance of this piece of legislation in sexual harassment can be seen when the complainants are terminated after filing a complaint of sexual harassment against their employers. Under this circumstance, the complainants are entitled to make a representation to the Industrial Department according to Section 20 of the Industrial Relation Act 1967 on the ground of unfair or constructive dismissal.<sup>50</sup> It is essential to note that legal action may be taken after the employer fails to discharge its duty to take action regarding the alleged report. It is important to note that the burden of proof is on the claimant in proving the occurrence of sexual harassment.

This Act is not as helpful as it might seem since concrete evidence is highly needed in proving any allegation of sexual harassment against the perpetrators. The burden of proof that needs to be established by the claimant is not easy to be discharged. This fact can be fortified with *Tong Yong Industries Sdn Bhd v. Tan Song Poh- Award No.: 432 of 2011* where the claimant, a general manager in the company had been dismissed due to sexual harassment allegation and received no compensation when the domestic inquiry was held. He later claimed that he was unfairly dismissed. The Industrial Court later found that the domestic inquiry conducted by the company violated natural justice rules. The respondent also failed to provide particulars such as the offence's time and place to prove her allegations against the claimant. Thus, the Industrial Court held that the claimant was indeed unfairly dismissed. However, the industrial court held the claimant's reinstatement is not a suitable remedy due to their affected relationship. The court then ordered compensation and back-wages instead of reinstatement.<sup>51</sup> From this, it can be observed that this particular provision is not as helpful as it is supposed to be for the victims. It is difficult to prove the accusation, mostly if the victims only plucked the

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<sup>49</sup> Sarvinder Kaur (n 29).

<sup>50</sup> *ibid*, s 20.

<sup>51</sup> *Tong Yong Industries Sdn Bhd v. Tan Song Poh - Award No.: 432 of 2011*.

courage after years of being harassed, making it harder to have a shred of substantial evidence.

### 3.1.3 Penal Code

The Penal Code (PC) is a law in Malaysia whose long title is “An Act relating to criminal offences.”<sup>52</sup> It codifies most criminal offences and procedures. The Malaysian Penal Code, no provision defines explicitly sexual harassment. Supposedly, there should be a clear and detailed definition of sexual harassment to ensure it covers all forms of sexual harassment conduct. Suppose there is any report to the Malaysian Royal Police made by a victim concerning sexual harassment in the workplace. The case will be investigated under Section 354, Section 355, Section 375 and Section 509 of the Penal Code.

Firstly, Section 354 of PC provides for assault or use of criminal force to a person with the intent to outrage modesty.<sup>53</sup> Meanwhile, Section 355 of PC provides for assault or criminal force with intent to dishonour a person, otherwise than on grave provocation.<sup>54</sup> Next, Section 375 provides for rape,<sup>55</sup> and Section 509 provides for word or gesture intended to insult women’s modesty.<sup>56</sup> In the judgment of *Yahya Talla v Petroliam Nasional Berhad* [2017] ILJU 171 case, the conduct of sexual harassment towards a person has violated the victim’s honour and dignity and also the victim’s constitutional and private individual rights by degrading and objectifying them.<sup>57</sup> In 2006, an amendment was made to the Penal Code on sexual harassment in the workplace by introducing a new sub-section under Section 375 of the Penal Code, subsection (f). Section 375 (f) of the Penal Code states rape is when a man has sexual intercourse with a woman where the consent is gained by using his power

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<sup>52</sup> Penal Code.

<sup>53</sup> *ibid*, s. 354.

<sup>54</sup> *ibid*, s. 355.

<sup>55</sup> *ibid*, s. 375.

<sup>56</sup> *ibid*, s. 509.

<sup>57</sup> *Yahya Talla v Petroliam Nasional Berhad* [2017] ILJU 171.

of influence over her or his professional relationship or relationship of confidence.<sup>58</sup> This new sub-section primarily aims to apprehend criminals in situations that violated their roles or trust to obtain consent for sexual intercourse, which amounts to rape.<sup>59</sup> Section 509 is another provision that governs sexual harassment under the Penal Code. A guilty person for offending anyone's modesty may be liable for imprisonment for up to five years, or with a fine or both. The offensive Act includes uttering words, sound, expression, or showing anything that is purposely made to be heard and witnessed by another and further violates one's privacy.<sup>60</sup>

Regardless of the Penal Code's amendment regarding using the criminal law in addressing sexual harassment in the workplace, there are still several weaknesses identified in resolving this issue. Criminal law cases brought under general laws are usually carried out in compliance with ordinary procedures, which are frequently criticised as being too public, too complicated, isolating the claimant, and insufficiently sensitive to the complexities of proving sexual harassment in the workplace.<sup>61</sup> This circumstance might occur since the case is heard in an open court. The accused will be called to the dock to provide evidence. The victim will often be subjected to humiliation and public embarrassment. The aftermath of the investigation under this Act will cause mental stress for the victims. The ineffectiveness can be fortified by referring to *Jennico Associates Sdn Bhd vs Lilian Therera De Costa & Anor*. In this case, the burden of proof lays on the claimant to prove the balance of probability that the perpetrator's conduct towards her amounts to sexual harassment. However, the claimant failed to prove the occurrence of sexual harassment. The claimant only reported the case after two weeks from the day of the incident, and she did not inform her husband about what had happened. Besides, a doubt arose when her behaviour was different from the victim who has been sexually

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<sup>58</sup> Penal Code, s. 375.

<sup>59</sup> Muzaffar Syah Mallow (n 25).

<sup>60</sup> Penal Code, s. 509.

<sup>61</sup> Muzaffar Syah Mallow (n 25).

harassed. In most cases, the victims of sexual harassment will make a report immediately due to emotional distress, but not the claimant. The court held that the perpetrator is not liable because the claimant failed to prove the occurrence of sexual harassment.<sup>62</sup>

The burden of proof needed to prove the crime is very high, which is beyond a reasonable doubt, and the victims would have to bear the strong onus to satisfy it. The case itself would usually proceed at a languid pace through the courts, and the defendant would possibly have to wait for a decision for a few years.<sup>63</sup> While the plaintiff was waiting for the procedures, sexual harassment is still unchecked in the workplace. Besides, the complainant has to endure the perpetrator's presence in the workplace until the trial ends as no protection provided within that time. The criminal prosecution also tends to exclude the complainant's remedy for substantial damages such as income loss and detrimental effects for the victim's future and career, the injured of emotions and feelings, embarrassment, and dignity.<sup>64</sup> Moreover, the criminal system does not give the plaintiff assistance, such as counselling and therapy. Thus, it can be said that the existing law failed to provide proper procedures to address complaints of sexual harassment.

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<sup>62</sup> *Jennico Associates Sdn Bhd vs Lilian Therera De Costa & Anor* [1998] 3 CLJ 583.

<sup>63</sup> Leonard Yeoh and Pua Jun Wen, 'Workplace sexual harassment – the new normal?' (19 June 2020) <<https://focusmalaysia.my/opinion/workplace-sexual-harassment-the-new-normal/>> accessed 8 December 2020.

<sup>64</sup> Hassan, Kamal & Lee, Yee (n 17).

**CHAPTER FOUR: PROTECTION AGAINST HARASSMENT OF WOMEN AT THE  
WORKPLACE 2010 OF PAKISTAN**

## 4.0 Introduction

According to Lahore research study, it is shown that approximately 58% of nurses and physicians are sexually abused, typically by other doctors, nurses, attendants, patients, and tourists.<sup>65</sup> Similarly, in 2013, an Inquiry Report on the Status of Women in Jobs was conducted by the National Commission on Women's Status in Employment. It was reported that almost 50% of women interviewed in the public sector are alleged to have been sexually abused.<sup>66</sup> Another study carried out shows that 24,119 cases of violence against women were registered in Pakistan between 2008 and 2010, and 520 cases are from harassment in the workplace. Besides, the Human Rights Commission of Pakistan (HRCP) has estimated that about 91% of women face violence in the domestic labour sector.<sup>67</sup> These figures show that, along with the exploitative and abusive working conditions they face in workplaces, women's verbal and physical abuse is widespread in Pakistan. This deterring women from continuing jobs in Pakistan, and decreasing their work performance leads to long-lasting psychological effects and health implications.

With this statistical evidence in mind, the Government of Pakistan has passed the Protection Against Harassment of Women at The Workplace 2010 of Pakistan (PAHWW), which aims to protect women from sexual harassment. This legislative analysis attempts to examine through a critical and empirical lens subsequently offers a legal perspective on the topic of workplace harassment.<sup>68</sup> The Act builds upon the principles of equal opportunity for men and women and their right to earn a livelihood. It further clarifies that the legislation's primary purpose is to create a safe working

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<sup>65</sup> Maria Khan and Ayesha Ahmed, "The Protection against Harassment of Women at the Workplace Act 2010: A Legislative Review" <[https://sahsol.lums.edu.pk/law-journal/protection-against-harassment-women-workplace-act-2010-legislative-review#\\_ftn1](https://sahsol.lums.edu.pk/law-journal/protection-against-harassment-women-workplace-act-2010-legislative-review#_ftn1)> accessed 29 December 2020.

<sup>66</sup> Leonard Yeoh and Pua Jun Wen (n 63).

<sup>67</sup> *ibid.*

<sup>68</sup> *ibid.*

environment where women can contribute to the country's economy without fear of harassment, abuse, or discrimination.

#### **4.1 Similarities between Employment Act and Protection against Harassment of Women at the Workplace 2010 of Pakistan**

In Malaysia, Part XVA enumerated in Employment Act 1955 (EA) has a similar main objective with the Protection against Harassment of Women at the Workplace 2010 of Pakistan (PAHWW). Both Acts provide provisions for reference by those who involved in this situation at the workplace. Two similarities have been identified from the provisions provided in the Acts. Firstly, it can be seen from the definition of sexual harassment in both Acts. The EA defined sexual harassment under Section 2 as "any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive, humiliating or a threat to their well-being".<sup>69</sup> In Section 2 (h) of PAHWW defined harassment as any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile, or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.<sup>70</sup> The definition of harassment provided by both provisions includes the feeling of being unwanted or unwelcome. It is also highlighted that a person's consent is vital in determining sexual harassment conduct to another. If a person gives his consent for sexual conduct, he cannot complain that he has been harassed. In PAHWW the definition given is more comprehensive in describing and determining the acts of sexual harassment where it is not found in the EA 1955. Secondly, the similarity can also be seen where both Acts include provisions to allow victims of sexual harassment to report to the inquiry committee to investigate the case before taking

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<sup>69</sup> Employment Act 1955, s. 2.

<sup>70</sup> Protection against Harassment of Women at the Workplace 2010 of Pakistan, s. 2 (h).

further action. The EA 1955 provides provision for an inquiry into complaints of sexual harassment under Section 81B of Part XVA in EA where it states that an employer or other class of employees shall investigate the complaint in the manner specified by the Minister upon receipt of a complaint of sexual assault.<sup>71</sup> While in PAHWW, the inquiry body's provision is under Section 3(1). Every organisation shall establish an Inquiry Committee to investigate the victims' complaints under thirty days of enacting this Act.<sup>72</sup> Therefore, it can be seen that the victims from both countries are provided with an inquiry committee under these Acts for them to make a complaint and for an investigation on the complaint before taking further steps.

#### **4.2 Differences between Employment Act and Protection against Harassment of Women at the Workplace 2010 of Pakistan**

As a result of the study that has been conducted in both Acts, some differences are identified. Firstly, the significant difference is that Part XVA of EA does not limit its application according to gender. It applies to both men and women victims of sexual harassment in the workplace. In contrast, the PAHWW was enacted to address sexual harassment only towards women victims. It is likely because the number of women victims is higher compared with men victims. In Pakistan, women are seen as weak and dominated by men. Thus, this Act is considered imperative to protect and defend women from sexual harassment in their workplace. Secondly, the difference between parties prescribed to involve in the inquiry committee. In Part XVA of EA, the inquiry committee is mentioned under Section 81B, where the employer or any class of employer, and the victims also may refer to Director-General under Section 81B (4) of the same Act if the victims are dissatisfied with the refusal of the employer to inquire about the complaint.<sup>73</sup> The Director-General can either direct the employer to conduct an inquiry or to agree with the employer's decision not to

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<sup>71</sup> Employment Act 1955, s. 81B.

<sup>72</sup> Protection against Harassment of Women at the Workplace 2010 of Pakistan, s. 3 (1).

<sup>73</sup> Employment Act 1955, s. 81B (4).

conduct the inquiry.<sup>74</sup> While in the PAHWW, the inquiry committee is provided under Section 3(2) where the inquiry committee shall consist of three members. It shall be a woman, senior management, a senior representative of the employees or a senior employee with no Collective Bargaining Agent.<sup>75</sup> The organisation may also co-opt one or more members from outside of the organisation if they cannot form an inquiry committee. The victims may choose to make a report to the Ombudsman if they refuse to make a report to the inquiry committee as provided under Section 8(1) of the PAHWW.<sup>76</sup> Ombudsman is a person who is appointed by the Government at Federal and provincial levels where he has been a judge of the High Court, or he is qualified to be appointed as a judge of the High Court.<sup>77</sup> Section 8 (3) of the PAHWW 2010 of Pakistan states that the Ombudsman shall perform an investigation into the matter in compliance with the rules laid down in this Act and shall conduct hearings as the Ombudsman finds necessary.<sup>78</sup>

By comparing the provisions relating to the inquiry committee in both Acts, it is seen that the parties of the committee are different. The study of the provisions in both Acts on inquiry committee found that the PAHWW provides more detail and prevents any non-transparent treatment from occurring. For example, the inquiry committee specifically mentioned that it needs to be three members from different positions, and one shall be a woman. Thus, the inquiry promotes fair and impartial discussion to the parties, either to the victim or the accused. The risk of being biased may be reduced by forming an inquiry committee involving others outside the organisation. The victims also have the option to report to the Ombudsman, an expert in the field of law where the inquiry has a high probability of being executed transparently and guided by proper prescribed rules. While in Part XVA of EA, the inquiry committee is not explicitly stated. It mentioned “employers” and “General

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<sup>74</sup> Ibid (n 73).

<sup>75</sup> Protection against Harassment of Women at the Workplace 2010 of Pakistan, s. 3(2).

<sup>76</sup> Ibid, s. 8 (1).

<sup>77</sup> Ibid, s. 7 (2).

<sup>78</sup> Ibid, s. 8 (3).

Director” only and with limited involvement of the party’s party in the inquiry committee. Therefore, it is clear that the provisions relating to the inquiry committee in the PAHWW are more comprehensive, fair, and transparent to be compared with the EA 1955.

Thirdly, the difference also can be seen from the inclusion of employees covered under the Acts. In Section 81G Part XVA of EA, it is stated that this Part refers to irrespective of the employee’s salary and any employee working under the contract of service.<sup>79</sup> While in the PAHWW, the meaning of employee covered under Section 2(f) where it defined employee as a regular or contractual employee who is working on a daily, weekly, or monthly or hourly basis and involving an intern or an apprentice.<sup>80</sup> It is clear that the definition given is broader and includes more working people as employees to be compared with the employees covered under Part XVA of EA. Therefore, there are many more sexual harassments victims in the workplace in Malaysia who are not given a chance to get justice and suffer emotional distress since they are not entitled to be protected under this Act for sexual harassment. Simultaneously, the perpetrators live freely without fear of any penalties to be inflicted upon him. It encourages the perpetrators to make those who are not included in the definition of employees under EA as the target for his sexual harassment conducts, especially the interns since he knows the circumstances will be in his favour.

Fourthly, the different penalties provided for the perpetrators. In Part XVA of EA when a person is proven to commit sexual harassment conduct towards another employee, the employer shall take disciplinary action as prescribed under Section 81 C Part XVA of EA. In para (a) of this section, the disciplinary actions include the (i) dismissing the employee without notice, (ii) downgrading the employee or (iii) impose any other lesser penalty, as he finds fit and it shall not to exceed two weeks if a perpetrator is punished with suspension from his employment without wages. In para

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<sup>79</sup> Employment Act 1955, s. 81G.

<sup>80</sup> Protection against Harassment of Women at the Workplace 2010 of Pakistan, s. 2 (f).

(b) provides that if the complainant is not an employee of the company, the complainant shall request that person to be taken before an appropriate authority body of whom the individual is subject.<sup>81</sup> The PAHWW provide penalties to the guilty perpetrator under Section 4(i) for minor penalties, which include (a) censure, (b) withholding for a specific period, promotion or increment, (c) stoppage for a specific period at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar and (d) recovery from pay or some other source of the perpetrator of the fee owed to the claimant.<sup>82</sup> For significant penalties under Section 4(ii) include (a) reduction to a lower post or time-scale, or to a lower stage in a time-scale, (b) compulsory retirement (c) removal from service, (d) dismissal from service and (e) fine. As for the complainant, a portion of the fine may be taken as restitution. The fine shall be payable by the owner to the claimant.<sup>83</sup> The investigation committee's findings shall focus on a resolution, and the appropriate authority shall enforce it after they have been consistently satisfied with the meeting and monitoring of the situation. This circumstance clearly shows that the Act is more serious in imposing penalties on the perpetrator. The prescribed penalties are divided into two, which are minor and major, and maybe imposed according to the extent of sexual harassment conducted by the perpetrators. The sentences also focus on punishing the perpetrators, and it also gives the complainant a chance to obtain compensation. While in EA, the penalties provided are limited and not serious enough. Thus, it may lead to this Act's failure to eradicate this problem from occurring more often.

Fifthly, the difference identified is the presence of provision to provide the victims with psycho-social counselling or medical treatment. In EA, there is no such provision for the organisation to arrange the victims for psycho-social counselling or medical treatment to help them manage the stress and trauma experienced due to sexual harassment conduct towards them. However, in PAHWW such provision

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<sup>81</sup> Employment Act 1955, s. 81C.

<sup>82</sup> Protection against Harassment of Women at the Workplace 2010 of Pakistan, s. 4.

<sup>83</sup> *ibid.*

exists under Section 4(7), which states that the organisation will provide the complainant with psycho-social counselling or medical treatment and extra medical leave which is in distress resulted from the occurrence sexual harassment.<sup>84</sup> Therefore, this Act can be more concerned with the trauma experienced by a victim and place the organisation's responsibility to help employees deal with stress and trauma to return to work as usual. Not having this provision in EA shows this Act has a very significant shortcoming that needs improvement. Lastly, the difference between this Act is that the EA does not make the implementation of the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace (1999) mandatory. In contrast, PAHWW makes Conduct for Protection against Harassment of Women at the workplace to be mandatory. Therefore, when this Code is being made obligatory to be adopted into every organisation, it may help curb this problem.

Ultimately, after comparing the two acts, the Part XVA of EA 1955 still has many shortcomings in its provisions governing sexual harassment at Malaysia's workplace. The advantages identified in the PAHWW should be weighed to reference the local laws' development and improvement. The Malaysian government should enact more detailed and stricter laws not to be taken lightly to reduce sexual harassment at the workplace rate in Malaysia. In realising this objective, the laws need to be evaluated and improved by focusing on punishing the perpetrators and providing the victims with appropriate protection and defence.

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<sup>84</sup> Protection against Harassment of Women at the Workplace 2010 of Pakistan, s. 4 (7).

## **CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION**

## **5.0 Introduction**

This chapter covers possible recommendations to address the issue in this paper after a thorough analysis that had been done in the previous chapter.

### **5.1 Stricter Enforcement and Heavier punishment**

By analysing these inadequacies, it can be observed that the problem is rooted in the unclear existing policy and procedures. Thus, before going straight into new suggestions, it is best to improve current policies.

The existing policies had failed to assist the victims, requiring a formulation of proper and precise procedures for the victims. The offenders must be disciplined in ensuring the policy and mechanism are implemented effectively. The punishment or penalty imposed on the offender shall depend upon the severity of their offences. In overcoming possible false accusation circumstances, it is best to set forth penalties on the person who had irresponsibly made the accusations. This initiative is vital to ensure no parties will be falsely accused. Knowing these misconducts happen in the workplace, human resource management should take a better and proper domestic inquiry to cater to the complaints and impose any penalty against the accused. The bodies shall find a solution to protect the victims from further embarrassment after filing complaints. A step-by-step procedure should also be appropriately introduced in filing complaints. It should govern the initiating procedure, investigation procedure, and appeal procedure.

Stricter enforcement of the existing solutions such as the Code and Regulation introduced by the Ministry of Human Resources is much needed since some complaints are not dealt with and remain unreported. This situation is possible because the procedures are not transparent, especially if the perpetrators are among the superiors. When a complaint is lodged, the report is being set aside because of the connection between them. Hence, it is clear that there is a risk of being bias and

impartial. This risk can be lessened if Malaysia adopts the Ombudsman approach as practised in Pakistan instead of going through an inquiry among the internal employers.

Moreover, the punishment shall focus not only on the perpetrators but also on anyone who tries to cover it up. If it is done, it will surely promote transparency and honesty among employers. Respondents of the survey conducted had responded that no actual action is taken even though complaints have been filed. Some might have their pay docked, or some only receive a warning as provided under our current legislation. A heavier punishment of fine with a specific amount that includes the cost of mental and physical therapy for the victims shall be levied on the perpetrators. If the misconduct is repeated, imprisonment shall be one of the many punishments to deter the cycle of misconduct. The current laws have undoubtedly set forth the possible punishment, but lightest punishment will be chosen in most cases. In specifying and lessen the option of punishment, it may help to portray the seriousness of punishments. Moreover, the procedures shall be more precise to protect the victim's privacy by ensuring the victim is not embarrassed or humiliated for doing the right thing by filing complaints. Having these solutions is more hopeful for the victims to do something about their sexual harassment.

As suggested by the Code that had been in force for years, a trade union's involvement will help handle this issue if executed correctly. Involving a trade union may also be a way out of this problem. Trade unions are aimed to achieve common goals by the members to it. In this situation, if a company involves a trade union in which it consists of workers that seek to protect the workers' rights in many aspects, including the victims of sexual harassment, it will positively help to cater to this issue. The issue that needs to be focused on is execution. It is known that companies are not made obligated to create a trade union. The absence of such union is one of the contributing factors to this issue. In another perspective, the incorporations should be

proactive in creating a functioning and effective trade union as mere existence without proper enforcement would bring nothing but only a façade. For the company's behalf, each company should take the initiative to formulate and establish an in-house mechanism to eradicate sexual harassment by carrying more promotional and educational programs more often. If such a program is being held monthly before this, the companies may make it twice a month but with mandatory participation. This will indirectly help to create a work environment that is safe and healthy for every employee notwithstanding of position, status, age and gender. It is vital to note that every individual employee shall be free from any form of harassment.

Moreover, within the organisations themselves, the organisations shall disseminate the mechanism correctly among the employees. It is also better if the employer can afford to provide training to handle this matter. It can be done monthly to remind everyone how this matter should be taken seriously. The employer may also opt for special training sessions, especially the human resources department, to handle this matter. The company may also opt for installing a surveillance camera at hidden spots that may be the spots where the misconduct commonly happens. If this is possible, the perpetrator will not dare to commit this misconduct since the CCTV footage can be used as substantial evidence. This will further help to lessen this issue as it serves as a warning to possible perpetrators.

## **5.2 Educate and Involving the Public**

It is also notable that prevention is the most effective mechanism to address this issue. Thus, to prevent this issue from becoming more serious, the public also needs to be educated on this issue in depth. This is because the public is an internal contributing factor to the non-reported cases of misconduct. Regrettably, this happens a lot in the circumstances where the victim is a male. Society had been stigmatised that it is illogical for a man who should be able to fight, to be sexually harassed. It is also essential to educate the public to believe the victim as this will

discourage the victims from coming forward for further action. In achieving these, many initiatives can be taken, such as producing more advertisements on social platforms and televisions that promote sexual harassment that can be understood by laymen, not only in the workplace but also in general. In making this more understandable, infographics should be disseminated to the public more often. Besides, an application should also be introduced considering the technologies development nowadays. The application should have useful features such as an alert alarm that can be used when the victim is in an unwanted situation. The application may also offer an online report or complaints to save time.

On the other hand, the school should also start an early education to educate the youngsters regarding early exposure. Awareness is also critical because many did not know what they had experienced is sexual harassment. Many think of them as jokes between colleagues. If the public is aware of this issue, rather than believing it is taboo to speak up about this, it will surely help lessen sexual harassment in workplace cases. It is also noteworthy that empathy will be much of help in combatting this issue.

Additionally, the involvement of the public may also help in combatting this issue. This is possible if the public is also allowed to lodge reports in regards to this misconduct. As known, the parties who can bring an action is only the one who has *locus standi* in the situation. Suppose the public is made permissible also to have the right to report. In that case, they shall also be credible enough to bring this matter against the authority or committee on few conditions, such as reports must be made together with a piece of concrete evidence, and must be reported within a certain period. The period is vital as the witnesses' memory may be questioned as time passes. In involving the public, confidentiality has to be guaranteed as this will also put the concerned witnesses at risk. Protection is necessary to return their bravery to file reports as witnesses.

### 5.3 The Legislation of Specific Act Governing Sexual Harassment In Workplace

The findings of the objectives of the research suggest that the legislative body shall pass a specific act governing this matter. From the comparative analysis in Chapter 3, it is observed that the following recommendations regarding the adequacy of law governing sexual harassment in Malaysia. From the previous chapter, it is undeniable that the current laws are insufficient. This statement can also be supported by the survey conducted as per Figure 3 below.

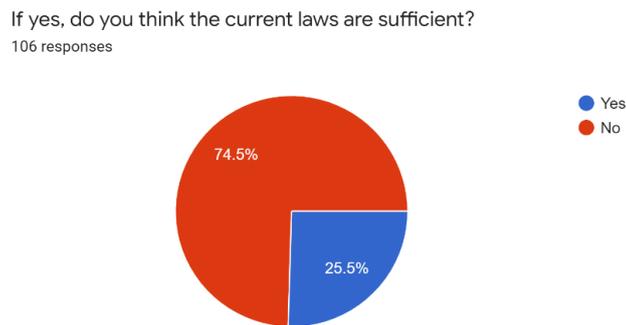


Figure 3: The percentage of people affirmed the inadequacies of the current laws.

Consequently, there will be a rising recommendation for the Parliament to enact specific laws regarding this issue due to the existing laws' inadequacies. Based on the survey conducted (Figure 4), 96.4 % of the respondents find it is necessary to pass a specific act to govern this issue more effectively.

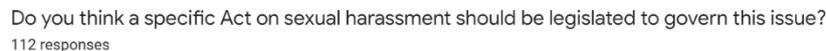


Figure 4: The figure above shows the number of people agreed to enact specific legislation is needed to govern this issue.

It is also noteworthy that enacting specific legislation will be one of the most vital mechanisms to enhance the recommendations above in combatting sexual

harassment. As of December 2020, no specific act governing sexual harassment has been passed by Parliament. Remarkably, the sexual harassment bill has yet to be presented in Parliament. It is said that it still has to be scrutinised before having it passed to become an Act. The recommendation for passing this specific Act is imperative. Even though the enforcement of current laws is put into the extra effort in its implementation, it is still insufficient and lacking in some crucial aspects.

It is crucial to understand and acknowledge this bill's efficacy if Parliament passed it. Firstly, the definition of sexual harassment will be more apparent if the bill is passed in which it covers all forms of sexual harassment compared to the current governing laws. It will also help address the issue more comprehensively by providing more privacy protection and rights for the victims. It is also plausible that the bill will widen its coverage in sexual harassment cases regardless of time, place and persons. With this being said, it is crystal clear that we also need to consider that such misconduct does not happen only in the workplace. For instance, it is also sexual harassment if it occurs after office hours by the superior or clients through messaging or any other possible ways. This bill also intends to introduce a tribunal, which is more effective than the court hearing we currently have. It is also convenient for the victim to get justice since the tribunal will enable the parties not to have legal representation. The tribunal establishment can also help save cost as, under the current laws, a lawsuit under tort is costly.

Moreover, this bill also ought to apply the balance of probability instead of beyond reasonable doubt to make justice is more accessible for the victims. Additionally, this bill also imposes an obligation to the organisations to implement policies. Considering this, it is evident that once the implementation of policies is made obligatory, the organisations or incorporations will be more thorough and far-reaching in handling this issue. Therefore, the enactment of specific legislation to cater to this problem is highly proposed.

#### **5.4 Conclusion**

Ultimately, it is observed that there are indeed laws governing the issue of sexual harassment in the workplace in Malaysia. However, it is undeniable that there are loopholes in the current laws. By comparing the laws of Malaysia and Pakistan's laws in this issue, it is evident that there are adequate laws that should be adopted from Pakistan laws into our country's law. Despite having good laws, we also need to consider our country's circumstances before adopting other countries' laws. It is important to remember that law is dynamic in which it changes as time passes by. It has many variants that will lead to necessary changes for the benefit of society. Every individual in society plays a significant role in combatting this issue effectively. Sexual harassment in the workplace is a demeaning experience for an employee to suffer in which it will damage the health of the victims, especially emotionally and psychologically. Consequently, it will further affect the victims' job performance as it will reduce their productivity. Likewise, many of the victims choose to lose their job rather than endure the workplace's trauma and humiliation.

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in the Workplace

# APPENDICES

1/23/2021

The Adequacy of Existing Laws of Sexual Harassment in Workplace in Malaysia

## The Adequacy of Existing Laws of Sexual Harassment in Workplace in Malaysia

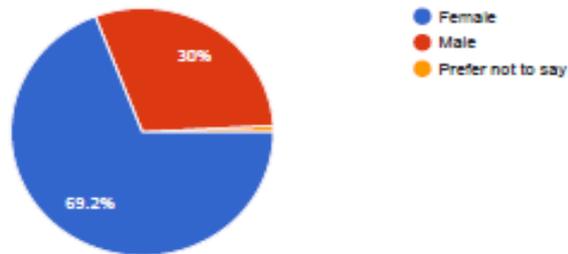
120 responses

[Publish analytics](#)

### Part A: Respondent Demography

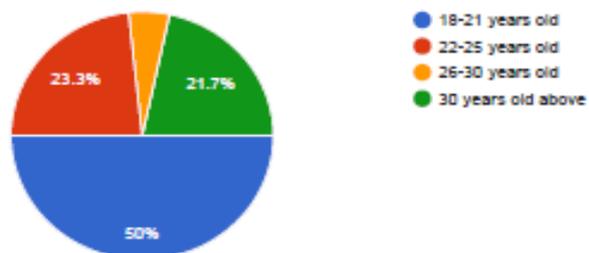
#### 1. Gender

120 responses



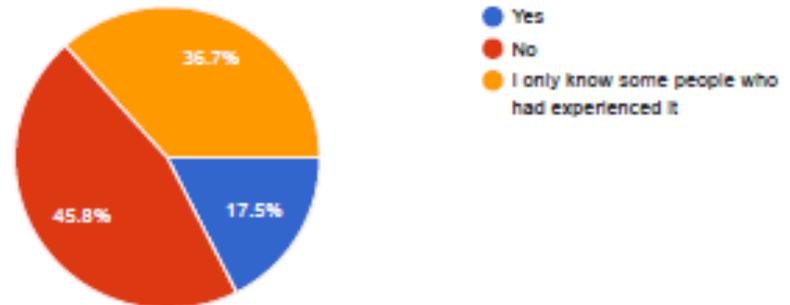
#### 2. Age

120 responses



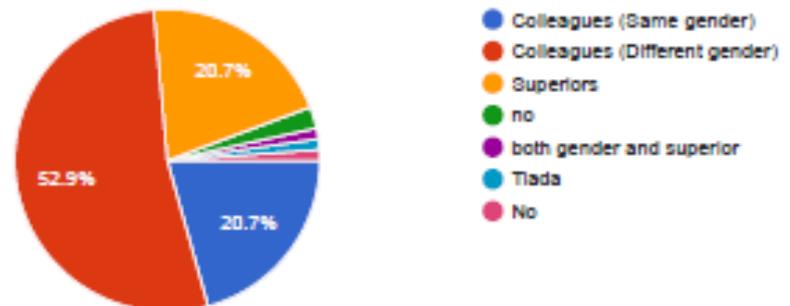
### 3. Have you ever experienced any kind of sexual harassment in your workplace?

120 responses



### 4. Who is the perpetrator?

87 responses



## What you or the victim do after the incident happened?

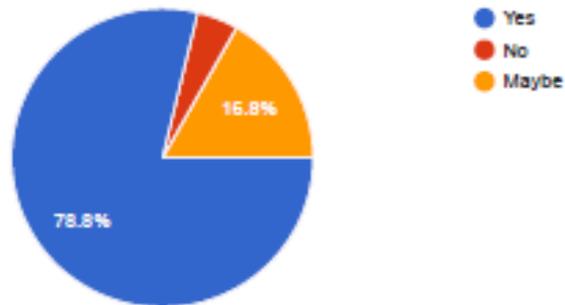
95 responses



## Part C

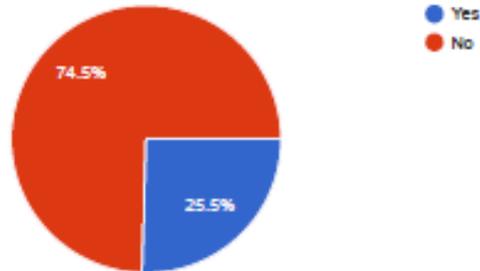
## Do you know there are laws governing this issue?

113 responses



If yes, do you think the current laws are sufficient?

106 responses



If yes, why do you think so?

24 responses

Because have section for counter this issues

Sexual harassment harms us all. Harassment leads to absenteeism, poor morale, loss of focus, and legal consequences. Failure to prevent sexual harassment in the workplace will break compliance with title VII of the Civil Rights Act and similar state civil rights laws and fair employment laws.

Because we can report and report to court

Every each section have the specific wrong doing with the right justification and punishment

there is no problem with our current law but the thing is whether the victim is brave enough to report it bcs it will bring effect onto the Plaintiff too in future. it just matter of time

Can prevent the harassment

If yes, why do you think so?

24 responses

- Yes, I'm sure with answer
- Yes,because it can help so much people to against sexual harassment
- No comment
- NIL
- because i saw some related issue in the news and the perpetrator has receive the punishment
- Because any kind of harassment will be charged under Penal Code
- 
- Masa hadapan akan terjejas dan keluarga malu
- The cases are still increasing as people dont feel afraid to commit that
- 100

1/23/2021

The Adequacy of Existing Laws of Sexual Harassment in Workplace in Malaysia

If not, why?

66 responses

not cover everything

Some superiors are close friends with each other i think

The current penalty dont really suited

because they take this case lightly

There have been many sexual harassment cases but a lot of people just let it go without doing nothing.

I think the law should be tightly

unfair to the victim since it is not only the outer side has been triggered but also inner side

Because they not alert about it

If not, why?

66 responses

- The punishment is not heavy enough
- No specific law
- Because not everyone knew about the sexual harassment act
- Not publicly known by netizens
- There should be more awareness regarding this matter.
- Need to be conducted more serious
- Because most of the victim gets the blame and the perpetrator is getting nothing
- because sometimes the perpetrators does not receive enough punishment
- because if there's sufficient law regarding this issue.. the rights for the sexual harassment victims had already settled.. but there are still lots of confusion and most

If not, why?

66 responses

- No enforcement
- because the system took to long to solve one cases, sometimes it take more years to be proven..
- sexual harasser need to get sufficient punishment on what he/she do to the victim that maybe also cause traumatied
- The rate for sexual harrassment in workplace still increase day by day
- Bcs it is still hard to collect the evidence to accuse the harrasser
- It doesnt function as its supposed to
- should give em what they deserve. they dont even know what course those victim, could be PTSD
- not really fair and comes to the need

if the current law is sufficient, why in our country still have sexual harassment?

The punishment doesn't suitable with what the victim experience.

Can current legislations protect victims of sexual harassment not only by penalising the perpetrators, but by providing forms of redress for said victims as well?

Because the cases are still happening nowadays

Strengthen the enforcement of the law

Because there is still sexual harassment happening

The punishment is not sufficient

It need many evidence to proof.

Maybe people take it easy on harassment issues

Too many process

Sometime the person incharge would ignore because I'm a guy and they think that it's small matter

Because not fully supported to the victims.

It was not that common to public and there are some loop holes

Not sure

Sometimes, reporting it to the police make it even worse even though we have laws. They don't believe the victim. Its useless.

Cases are not too strong to carry justice

There are still a lot of cases of sexual harassment happening on daily basis

Such legislation is not accessible to public. Only people acquired legal training would know the law. The government did not use effective medium to spread the awareness. (My humble opinion)

Idk

We need give motivation, religions program to provide a awareness.

no actual action is taken against the perpetrator

as you mentioned earlier, even there are already laws governing sexual harassment, but it is not sufficient. the case of sexual harassment is increasing day by day.

Too general not specific

Imposed more strictly lawsp

as you mentioned earlier, even there are already laws governing sexual harassment, but it is not sufficient. the case of sexual harassment is increasing day by day.

Too general not specific

Imposed more strictly lawsp

i think it's not strong to help those people in need because most of them are not brave enough to voice out their experiences

IT IS NOT COMPREHENSIVE

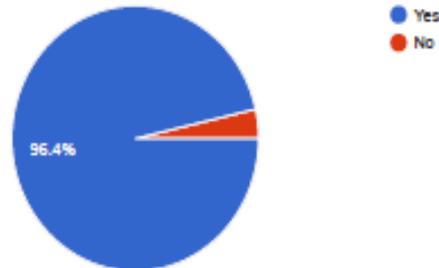
Not helpful at all

too limited

tak specific

Do you think a specific Act on sexual harassment should be legislated to govern this issue?

112 responses



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The Adequacy of Existing Laws of Sexual Harassment in Workplace in Malaysia

What is your suggestion on combatting this worrying issue?

75 responses

strict enforcement and awareness campaign

Each employee have know their rights on this cases and company management should handle this matter in proper as per return in legal orders and avoid any bias

-

Start educate it at school

Have clear harassment reporting procedures in place. All staff must feel comfortable reporting any behaviour that makes them or other staff feel uncomfortable. One thing we have learnt from the most recent allegations is that staff have protected, rather than reported colleagues behaving inappropriately at work.

specific act

In my opinion the issues should be exposed in the internet so the whoever experienced this know the way to tell the authorities

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