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MALAYSIAN EMPLOYMENT LEGISLATION
FOR WOMEN AT WORK: A SOCIO-LEGAL
STUDY ON MALAYSIAN
SECRETARIES/CLERKS

BY

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ABSTRACT

Many women have diverted from their traditional single role as home makers who are financially dependent on their husbands to the double roles of being home makers and wage earners. In fitting into their second role as wage earners women are often confronted with their main challenge of being treated fairly as their male counterparts. In analysing the situation of employed women this study looked into the socio-legal aspects of employed women. For convenience this study was divided into legal and social aspects. Among the challenges faced by employed women in the legal aspects are inequality of wages, inequality of employment opportunities, lack of maternity benefits, lack of child care facilities and the presence of sexual harassment (these were the legal issues). The other problem in holding dual roles is the juggling act of balancing work and family which often cause work-family conflict. Therefore the social aspects of this study looked into the work conditions namely time at work, workload, conflict at work and lack of support at work; family conditions namely number of children, presence of young children and lack of support at home; and work-family conflict (these were the social predictors). This study determined the effects of the issues/predictors on employed women's well-being. The participants of this study were limited to secretaries/clerks in the Klang Valley. One hundred and eighty participants volunteered in filling up the questionnaires and thirty of these participants also volunteered to be interviewed. In conclusion, this study found that the above issues/predictors did affect employed women's well-being but in different ways including psychological distress, physical health symptoms and low job satisfaction. Participants of this study believed that more precise legislation or regulations are needed. This study has shown that legislation can reduce the problems faced by employed women to enhance their well-being. This study is significant in that it reflected the fusion of the problems of employed women in terms of legal aspects and social aspects, where both demonstrated the outcome of negative well-being of employed women. This study also showed that legislation as a whole can help reduce both legal and social problems ultimately enhancing employed women's well-being.

ملخص البحث

تحول العديد من النساء من دورهن الوحيد التقليدي بوصفهن ربات البيوت اللاتي يعتمدن مالياً على أزواجهن إلى الأدوار المضاعفة؛ ربات البيوت وكاسبات النفقة. ففي المسيرة إلى دورهن الثاني بوصفهن كاسبات النفقة يواجهن غالباً التحدي الرئيس وهو الحصول على المعاملة المتساوية كنظرائهن من الذكور. وفي حالة النساء العاملات، هذه الدراسة تنظر إلى حالتهم من الجهة القانونية والاجتماعية. وللتسهيل، هذه الدراسة تُقسّم إلى القسمين؛ الجهة القانونية والمظاهر الاجتماعية. ومن بين التحديات التي تواجه النساء العاملات من الجهة القانونية عدم المساواة في الأجور، وعدم المساواة في فرص الأعمال، وقلة المنافع الممنوحة في مدة الحمل والولادة، وقلة وجود وسائل رعاية الطفولة، ومواجهة المضايقة الجنسية (هذه هي التوقعات القانونية). والمشكلة الأخرى في لعبهن الأدوار الثنائية هي عدم القدرة على الموازنة بين العمل والعائلة الذي في أغلب الأحيان يكون سبباً في النزاع بينهما. ولذلك، تكون المظاهر الاجتماعية لهذه الدراسة هي التأمل في حالة العمل من مدة العمل وأعباءه، والنزاع، وقلة الدعم في العمل. وكذلك الحالة العائلية من عدد الأولاد، ووجود الأولاد الصغار، وقلة الدعم في البيت والنزاع بين العمل والعائلة (وهذه هي التوقعات الاجتماعية). هذه الدراسة تحدد تأثيرات هذه التوقعات على مصلحة النساء العاملات. وتقتصر المشاركات في هذه الدراسة على السكرتيرات في وادي كلنج. وشاركت في الاستفتاءات مائة وثمانون ومن بينهن ثلاثون اشتركن في المقابلة. والخلاصة، هذه الدراسة اكتشفت أن التوقعات المذكورة أعلاه قد تؤثر فعلاً على مصلحة النساء العاملات بطرق مختلفة، من ضمنها الضيق النفسي، والأعراض الصحية البدنية، وانخفاض نسبة القناعة في العمل. والمشاركات في هذه الدراسة اعتقدن أن التشريع أو التعليمات الأكثر دقة مطلوبة. وهذه الدراسة تبرهن بأن التشريع يمكن أن يقلل المشكلات التي تواجه النساء العاملات لتحسين مصالحهن. هذه الدراسة مهمة في أنها تنعكس في مشكلات النساء العاملات من الناحية القانونية، والمظاهر الاجتماعية، حيث أن كلا منهما يعبر عن النتيجة الحاصلة عن الحالة السلبية بالنسبة للنساء العاملات. وهذه الدراسة أيضاً تبين بأن التشريع ككل يمكن أن يساعد في تقليل المشكلات القانونية والاجتماعية وتحسين مصالحهن في النهاية.

APPROVAL PAGE

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DECLARATION

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

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**MALAYSIAN EMPLOYMENT LEGISLATION ON WOMEN AT WORK: A
SOCIO-LEGAL STUDY ON MALAYSIAN SECRETARIES/CLERKS.**

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This thesis is dedicated to my parents Mr. and Mrs. Amar Singh Sandhu, my husband Baljit Singh Sidhu and my children Mannvir Singh Sidhu, Baaldesh Singh Sidhu and Ishnajit Kaur Sidhu.

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Protection of Women's Rights and Interest Act 1992 (China)

Sexual Harassment Act 1978 (Israel)

Sex Discrimination Ordinance 1995 (Hong Kong)

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The Constitution of the Islamic Republic of Iran

Women's and Children's Harassment Law 1999 (Bangladesh)

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INTERNATIONAL LABOR STANDARDS

C111 Discrimination (Employment and Occupation) Convention, 1958

C100 Equal Remuneration Convention, 1951

C103 Maternity Protection Convention 1952

C183 Maternity Protection Convention 2000

C158 Workers with Family Responsibilities Convention, 1981

OTHER INSTRUMENTS

Code of Practice on the Prevention and Eradication of Sexual Harassment in the
Workplace (Malaysia)

Sexual Harassment Bill (Malaysia)

Treaty of Rome (European Economic Community)

The Universal Islamic Declaration of Human Rights

United Nations Convention on the Elimination of All Forms of Discrimination
Against Women

CHAPTER ONE

INTRODUCTION

CONTENTS

More women work today. Official statistics¹ show that female labour force participation in Malaysia registered an increase from 44% in 1998 to 44.5% in 2000. Although the increase is small, more women are entering the work force nonetheless, thus changing the traditional family structure of the husband being the sole breadwinner and the wife the sole homemaker. With this restructure, a woman now holds multiple roles, which can lead to role interference². This means that one role will interfere with the other role, for example, a clerk's role as an employee doing clerical job at her office may interfere with her role as a mother and wife at home. This research on the topic relating to woman, work, family and policies/legislation is indeed timely and important.

This research is divided into two main categories. First, it looks into the legal aspects of women's work conditions. Second, the social aspects of employed women and work-family conflict.

The outcome of this study is the well-being of the employed women which is measured in terms of their psychological distress, physical health symptoms and job satisfaction. In achieving a positive well-being, an analysis will be done in determining whether the present legislations (or their implementation) are sufficient or further legislations are needed to improve the condition of these employed women.

¹ The Eight Malaysian Plan, chapter 20- women and development, at 20.5 page 558.

² Jeffery H. Greenhaus, Nicholas J. Beutell, "Source and Conflict between work and family role". *Academy of Management Review*, 10, (1985): 76-88.

This study focuses on secretaries/clerks. There are a few reasons why these groups are chosen. The first reason is because this study intends to evaluate, the contents and application of the Employment Act³ (herein after known as EA) where relevant. Section 2(1) of the EA has limited the application of EA only to employees earning one thousand five hundred *ringgit* a month (unless exceptions apply). To analyse the application of EA it was thought prudent to select a group of participants who would fall under this group of wage earners, that is persons earning RM1,500 and/or less.

Although this group of employees as well as others (earning more than RM1,500) are also protected by other legislations such as the Industrial Relations Act⁴ (herein after known as the IRA), the concern here is the main employment legislation, the EA. Secretaries/clerks do fall under this category of wage earners, although earning more than RM1,500 is not uncommon either. It is undeniable though, that there are other groups of employees earning RM1,500 and below.

Another reason secretaries/clerks were chosen were because this study intends to focus on the middle income earners as opposed to the higher or the lower income earners. Lower income households are defined as those earning less than RM1,500 per month, middle income households are defined as those earning between RM1,500 and RM3,500 per month and higher income households are those earning higher than RM3,500 per month⁵. These professionals or the upper income earners often have their own professional women groups such as the Association of Women Lawyers and *Kongress Wanita Profesional Melayu*. In fact most of the women groups are set up by women from the higher income groups to help other women such as the Women's Aid Organisation, All Women's Action Society.

³ Employment Act, 1955 (Act 265) & Regulations

⁴ Industrial Relations Act 1967 (Act 177)

⁵ Eight Malaysian Plan, chapter 3 – poverty eradication and restructuring of society, at 3.14 page 60

As far as the lower income groups are concerned, such as the factory workers and the plantations workers, they have attracted much attention due to their poor working conditions. As such various researches have been conducted on these groups⁶.

Clerical related jobs are mainly held by women. This is evident in the Eight Malaysian Plan (2001) as shown in Table 1.1. In the year 2000 women in clerical and related jobs were 17.5% as compared to 7.1% men, this is shown in table 1.1 below.

EIGHT MALAYSIAN PLAN⁷

TABLE 1.1

EMPLOYMENT DISTRIBUTION BY OCCUPATION AND GENDER, 1995 AND 2000 (%)				
<i>Occupation Category</i>	<i>1995</i>		<i>2000</i>	
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
Professional, Technical & Related Workers	8.4	12.7	8.9	13.5
Administrative & Managerial Workers	3.9	1.8	4.7	2.2
Clerical & Related Workers	7.5	17.5	7.1	17.5
Sales & Related	10.5	11.6	11.1	12.1
Service Workers	9.4	14.4	9.5	17.4
Agricultural Workers	21.9	16.6	20.4	14.8
Production & Related Workers	38.3	25.4	38.4	22.6
Total	100.0	100.0	100.0	100.0

⁶ Selvakumar Ramachandran & Bala Shanmugam, "Plight of Plantation Workers in Malaysia: Defeated by Definitions," *Asian Survey*, Vol.35, No.4, (1995):394-407; H.I Chee & K.G., Rampal, Relation between sick leave and selected exposure variables among women semiconductor workers in Malaysia. *Occupational and Environmental Medicine*, 60 (2003):262-270.

⁷ Chapter 20 – Women and Development at table 20.3 page 560

Under the *Data Definitions Manual*⁸ the terms clerk and secretary carry the same definition, which is:

all persons whose assignments typically are associated with clerical activities or are specifically of a secretarial nature. Includes persons who are responsible for internal and external communications recording and retrieval of data (other than computer programmers) and/or information and other paperwork required in the office, such as bookkeepers, stenographers, clerk-typists, office-machine operators, statistical clerks, payroll clerks, sales clerks (bookstores) and library clerks not recognised as librarians.

A comprehensive definition is further provided by the *Dictionary of Occupational Titles*⁹. Secretary (cleric) is defined as:

one who schedules appointments, gives information to callers, takes dictation, and otherwise reads and relieves officials of clerical work and minor administrative and business detail and routes incoming mail. Locates and attaches appropriate file to correspondence to be answered by employer. Takes dictation in shorthand or by machine [STENOPE OPERATOR (clerical)] and transcribes notes on typewriter, or transcribes from voice recordings [TRANSCRIBING-MACHINE OPERATOR (clerical)]. Composes and types routine correspondence. Files correspondence and other records. Answers telephone and gives information to callers or routes call to appropriate official and places outgoing calls. Schedules appointments for employer. Greets visitors, ascertains nature of business, and conducts visitors to employer or appropriate official. May not take dictation. May arrange travel schedule and reservations. May keep personnel records [PERSONNEL CLERK (clerical)]. May record minutes of staff meetings. May make copies of correspondence or other printed matter, using copying or duplicating machine. May prepare outgoing mail, using postage-metering machine. May prepare notes, correspondence, and reports, using word processor or computer terminal.

A clerk, general (clerical) is defined as a person who:

performs any combination of following and similar clerical duties requiring limited knowledge of systems or procedures : Writes, types, or enters information into computer, using keyboard, to prepare correspondence, bills, statements, receipts, checks, or other documents, copying information from one record to another. Proofreads records or forms. Counts, weighs, or measures material. Sorts and files records.

⁸ Data Definitions Manual, fifth edition, <http://www.sshechan.edu/data%20definitions.htm> (accessed 10 June 2003).

⁹ Dictionary of Occupational Titles, US Department of Labour.

Receives money from customers and deposits money in bank. Addresses envelopes or packages by hand or with typewriter or addressograph machine. Stuffs envelopes and runs errands. Stamps, sorts, and distributes mail. Stamps or numbers forms by hand or machine. Photocopies documents, using photocopier.

The above definitions provided by the *Data Definition Manual* and the *Dictionary of Occupational Titles* show that secretaries and clerks generally perform the same duties. It is submitted that, the difference between a secretary and a clerk is often reflected only by its hierarchal positioning of employees. Therefore secretaries and clerks are grouped together for the purpose of this study.

Women have for ages fought for their rights in every aspect of life such as in family matters, property rights and employment rights. It is submitted that women's rights can best be protected by legislations. There are a number of laws that protect women and confer rights upon them. In Malaysia, the Federal Constitution recognises and guarantees women's rights, namely Article 8 which prohibits discrimination on grounds of *inter-alia*, gender in the appointment to any office or employment.

Women's employment rights are mentioned under the EA. However they are not sufficient. For instance, the act provides for maternity benefits, such as maternity leave of only 60 days, which falls far below the requirement set by the convention of the International Labor Organisation¹⁰ which requires member states to provide at least 14 weeks of maternity leave. There are no mentions of nursing allowance, care or facilities for nursing mothers in the EA.

Under the Workmen's Compensation Act¹¹ if the workman (who contributed to the Workmen's Compensation Fund) dies at work and if the compensation is to be paid to a woman, a minor or a disabled, the money must be deposited with a

¹⁰ C183 Maternity Protection Convention, 2000.

¹¹ Workmen's Compensation Act, 1953 (revised 1982) (Act 273)

commissioner who has the discretion to decide how to deal with the money for the benefit of the dependents.

As for sexual harassment at workplace, women's movements have submitted a Sexual Harassment Bill which is yet to be approved by the legislature.

With the rise in women entering employment, the necessity of adjustments in catering to the needs of women is of paramount concern. This is so because the working environment has traditionally catered to the needs of men as the workplace was primarily their domain. Thus, the issues of this study are inequality of wages, inequality of employment opportunity, lack of maternity benefits, lack of child care facilities and the presence of sexual harassment.

It has been said over and over that the reason why women are still struggling to be at par with men in the workforce is because of the traditional roles conferred upon husbands and wives as being the breadwinner and homemaker respectively. In fact this breadwinner/homemaker framework appeared across a range of areas of legal regulations in the first half of the 20th century. In *Ex parte HV MacKay*¹² the court had to decide whether wage rates paid by the manufacturer to unskilled labourers were 'fair and reasonable' for the purposes of a statutory entitlement of tariff protection. The court determined that a fair and reasonable minimum wage for such a labourer would be one which would support the 'labourer's home of about five persons'. The assumption here was that the worker was the sole wage earner for himself, his wife and two or three children; and his wife was a full-time homemaker. The reason the worker would maintain full-time work outside his home was because the housework and the children were attended by his full-time homemaker wife, which brought to the assumption that the breadwinner had no responsibility to actually do the caring and

¹² *Ex parte HV MacKay* [1907]2CAR 1

domestic work because this was taken care of by the homemaker (his spouse)¹³. With these assumptions in the workforce, women faced heavy challenges when they stepped into the ‘breadwinner’ domain without leaving the ‘homemaker’ duties. Therefore, women report experiencing rising levels of stress, resentment, guilt, erosion in intimate relationships, and a loss of quality time with children and other family members¹⁴.

The existence of certain work patterns are unavoidable, for instance many people work long hours for reasons such as financial necessity, fear of job loss if they do not work the long hours or personal commitment to an entrenched corporate culture¹⁵. The consequences of increased hours at work is that it reduces hours spent away from work; nurture family relationships and parent activity; provide non-financial support to extended family members; and engage in voluntary community activities¹⁶.

Sometimes one aspect of a job condition leads to the other, such as work overload might be responsible for the long work hours in the first place¹⁷. Report from the National Study in Australia¹⁸ indicated that in 2005, 67% of employees said they did not have enough time with their children, 63% did not have enough time with their spouse and 55% did not have enough time for themselves. Long working hours

¹³ Sandra Berns, *Women Going Backwards: Law and Change in a Family Unfriendly Society*. Aldershot, Ashgate, 2002.

¹⁴ Barbara Pocock, *The Work/Life Collision: What Work Is Doing to Australians and What To Do About It*, Federation Press, Sydney, 2003.

¹⁵ Ivan La Valle, Sue Arthur, Christine Millward, James Scott & Marion Clayden, *Happy Families? Atypical Work and Its Influence on Family Life*, Joseph Rowntree Foundation publication, Prepared by National Centre for Social Research, London, 2002.

¹⁶ Ruth Weston, Matthew Gray, Li Xia Qu, David Stanton, “Long work hours and the well-being of fathers and their families, Australia Institute of Family Studies,” (Research Paper No. 35, 2004).

¹⁷ Weston et al., (2004).

¹⁸ James Bond, Ellen Galinsky, Jeffery Hill, “When Work Works,” (Families and Work Institute Research, prepared and published with funding from IBM. 2005).