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INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
يُؤْتِيهِمْ سِتْرًا لِيَسْلَمُوا مِنْ أَهْلِ الْكُفْرِ وَهُمْ لَا يُجْنِبُونَ
مِلَّةَ آبَائِهِمْ الَّذِينَ كَفَرُوا وَاللَّهُ يُؤْتِي مَا يَشَاءُ لِمَنْ يَشَاءُ

SEXUAL HARASSMENT IN THE WORKPLACE:
THE LAW AND PRACTICE IN MALAYSIA

BY

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the degree of Doctor of Philosophy

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ABSTRACT

Sexual harassment is a hazard encountered in the workplace across the world. It reduces the quality of working life, jeopardizes the well-being of both men and women, and imposes costs on firms and organizations. For these reasons, sexual harassment in the workplace has been prohibited in many countries under different branches of laws like sexual harassment law, equality and sex discrimination law, human rights law, labour law, tort law, and the criminal law. In Malaysia, the issue of sexual harassment in the workplace has become a matter of national concern. Despite the existing legal avenues under the labour and criminal law, the Malaysian government had issued codes of practice on sexual harassment in the workplace known as “Code of practice on the Prevention and Eradication of Sexual Harassment in the Workplace”. The Code provides guidelines for the employers mainly in private sectors to set up in-house mechanism to regulate, investigate, and penalize incidents of sexual harassment in the workplace. Many quarters in society welcomed the Code, as it was an indication of the government’s recognition of the serious issue of sexual harassment in the workplace. However, due to the complex and sensitive characteristics of the cases of sexual harassment in the workplace, the victims complaints may not necessarily been properly and adequately handled under the existing laws and practice. Therefore, this research will identify and examine the effectiveness the existing laws and practice to combat sexual harassment in the workplace in the country as well as to search for an easy and meaningful way for the victims of sexual harassment in the workplace to seek legal remedy. The research will also focus on what is being done to prevent and combat sexual harassment in the workplace at the international level and in countries across the world by reviewing the international standards, existing legislation in several countries, the activities of governments, employer’s and worker’s organizations, non-governmental organizations, and workplace policies and programmes. However, this research does not provide an exhaustive account of these measures, but instead attempts to identify the main approaches taken, to highlight the dominant trends and to single out the best practice for us to learn and take into consideration. It can be concluded that, sexual harassment in the workplace is a complex and difficult social problem that has become an increasingly troublesome legal problem. Lawmakers need to regulate it, but they need to do so carefully. As sexual harassment in the workplace claims increase, courts and agencies, as well as employers and workers, will realize the need for logical, cohesive, and authoritative rules addressing the problem. Sexual harassment in the workplace is an important issue that must be addressed by legislature because: it is demeaning conduct that deserves censure; the complexity of the issues necessitates a well-reasoned solution; and sexual harassment in the workplace continues to grow in social and legal importance.

ملخص البحث

التحرش الجنسي خطر يواجهه الرجل والمرأة في العمل حول العالم مما يخفض نوعية الحياة العملية، وحالة الرجل والمرأة ويفرض التكاليف على الشركات والمنظمات. ولهذه الأسباب فقد منعت عدة دول التحرش الجنسي في العمل تحت مظلة عدة قوانين، كقانون التحرش الجنسي وقانون المساواة والتمييز الجنسي وقانون حقوق الإنسان، وقانون العمل والقانون الجنائي. وفي ماليزيا فقد أصبح موضوع التحرش الجنسي أمراً ذا اهتمام وطني. وعلى الرغم من القوانين كقانون العمل وقانون الجنائيات، فإن الحكومة الماليزية أصدرت تشريعات حول التحرش الجنسي في العمل باسم "تشريعات منع وإزالة التحرش الجنسي في العمل". وتعطي هذه التشريعات قواعد عمل لأرباب الوظيفة وخصوصاً في القطاع الخاص لوضع آليات داخلية لتنظيم والتحقق من ومعاينة التحرش الجنسي في العمل. وعلى الرغم من هذا ونظراً لطبيعة وحساسية قضايا التحرش الجنسي فإن شكاوى الضحايا لا تصل بالضرورة بشكل ملائم في ظل القوانين الحالية. ولهذا فإن هذا البحث يتفحص فعالية القوانين الحالية لمكافحة التحرش الجنسي في ماليزيا، كما يبحث عن مخرج سهل وإيجابي لضحايا التحرش الجنسي كي يتمكنوا من إيجاد حل قانوني. ويركز البحث أيضاً على ما يتم فعله لمنع هذا التحرش على المستوى الدولي في مختلف أنحاء العالم بمراجعة المعايير الدولية والقوانين في تلك البلدان ونشاطات حكوماتها ومنظماتها الحكومية والغير حكومية وسياسات العمل فيها. ولكن هذا البحث لا يوفر مراجعة شاملة لهذه المعايير بل يحاول التعرف على المناهج الرئيسية والاتجاهات الأساسية لمعرفة الطريق الأفضل لحل هذه المسائل. ويمكن أن نستنتج أن التحرش الجنسي في العمل مشكلة اجتماعية معقدة وقد أصبح مشكلة قانونية ذات شجون متزايدة. ومع ازدياد دعاوى التحرش الجنسي فإن الوكالات والمحاكم بالإضافة لأرباب العمل والموظفين سيدركون الحاجة إلى قوانين منطقية ومتناسقة وصارمة لمعالجة هذه القضية. إن التحرش الجنسي في العمل قضية هامة تجب معالجتها في التشريعات لأنها سلوك مهين يستحق المنع، وتحتم صعوبة الموضوع حلاً منطقياً ملائماً إذ لا تزال قضية التحرش الجنسي في العمل تكتسب اهتماماً قانونياً اجتماعياً متزايداً.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation 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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