

ELEMENTS AFFECTING GENDER EQUALITY AT WORK

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ABSTRACT

Malaysia ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and adoption of the Sustainable Development Goals (SDGs) has spurred the government's efforts in advancing gender equality and women empowerment in the economy. However, with the existing pandemic and the new norms practising by most companies and businesses, the stagnant effort in upholding women's rights and the lack of definitional clarity of gender-based discrimination especially in the Federal Constitution as the supreme law of the land caused narrow interpretations in its practice on the ground and the judiciary. With government progress towards establishing policies on gender equality, this paper aims to study the concept of gender equality at the workplace from the perspectives of experts from different institutions. The primary data of the study was obtained through interviews conducted on five experts on gender issues in Malaysia while secondary data was obtained through library research and all documented data. Findings from the content analysis of legal documents and interviews indicate that there are several elements that constitute the concept of gender equality and affect its practices in employment namely equality and fairness; gender treatment; gender equity and entitlement; humanity, and; rule of law.

Keywords: gender equality, employment, discrimination, workplace, sustainability.

INTRODUCTION

Malaysia in fulfilling its commitment and obligation as a state party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has made progressions to initiate a series of appropriate measures for the omission of discrimination against women (Ministry of Women Family and Community Development & UNDP, 2007). The adoption of the Sustainable Development Goals (SDGs) that includes a goal for achieving gender equality (Goal 5) itself portrays the government's commitment towards gender equality and elimination of gender-based discrimination. The effort has initially begun with the formulation of the National Policy on Women (NPW) in 1989 that enunciates identified strategies for the effective participation of women in the country's development (Ministry of Women and Family Development, 2003).

Despite the government initiatives to uphold women's rights, the efforts seemed to be stagnant even after 30 years of having the National Policy of Women, especially in the current situation of the pandemic. As Hui (2020) reports in the 'Monitoring Report on Gender Equality in Malaysia', that Women's rights groups have still been advocating the enactment of the Gender Equality Bill and Sexual Harassment Act to implement gender equality mechanisms nationwide which are now still in progress by the government and several related agencies. Besides that, according to the report, the lack of definitional clarity with regards to gender-based discrimination has also given rise to the narrow interpretations of the law by court. This is evidenced in a number of cases such as *Beatrice Fernandez v. Sistem Penerbangan Malaysia and Anor* [2005] 2 C.L.J. 713, *Air Asia Bhd v. Rafizah Shima Mohamed Aris* [2014] MLJU 606, and *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors* [2012] 1 CLJ 769. This issue of contradiction in the court judgment has been supported by literature and reports related to gender issues in Malaysia including the report by the Committee on the Elimination of Discrimination against Women (Committee on the Elimination of Discrimination against Women, 2016; Hui, 2020; Wahab & Mahmud, 2020). In fact, as argued by Musa and Husin (2018), the court had erred in its decision because Article 8 (2) also creates a non-discriminatory obligation for trade, business, profession, or employment. On such account, the non-discriminatory obligations shall therefore be applied equally, not only to the public authorities but to the private entities if the entire provision is to be read conjunctively.

Moreover, gender equality as a term and study has diverse approaches and comes under different contexts. Thus, a comprehensive measure is required to construct its concept within the right focus. In other words, it is necessary to examine the concept of gender equality, especially in employment since it is hugely contributed to the economic development as well as to provide a better understanding of gender-based discrimination. In contemplating the literature and discussion on the concept of gender equality with the analysis from the interview, this paper explains the elements that affect the practice of gender equality at the workplace in Malaysia. The analysis on the elements of gender equality are generally founded on the opinion of the experts during the interview. For the purpose of discussion here, the paper generally commences with the explanation to the gender equality itself together with its context in the employment setting. The elements that found to be affecting gender equality at the workplace are then presented and the paper further ends with a conclusion.

METHODOLOGY

The primary data of the study was obtained through interviews conducted with five informants/respondents who are identified as experts on gender issue in Malaysia. The secondary data was obtained through library research and all documented data especially form the government reports and journal articles. Five experts with different occupational backgrounds and positions are as follows: academicians, ministry officers, statutory body top management and non-governmental organisation (NGO). They are queried of their opinions regarding gender equality and its practice in the workplace and expected to respond based on their expertise and experiences. Their responses are then concluded as a significant finding that constitute the elements of gender equality. Findings from the content analysis of legal documents and interviews indicate that there are several elements that are affecting gender equality. The authors accordingly propose these as a key guide for gender equality at the workplace in Malaysia.

GENDER EQUALITY AND EMPLOYMENT EQUALITY

Literally, “gender equality” professes an act of treating women and men equally that comes from the combination of the term ‘gender’ and ‘equality.’ The term “gender” according to Roller (2013), is a distinguished set of learned expectations, behaviours and attitudes of being a man or woman through human biological traits, collectively termed human “sex”. On the other hand, “equality” refers to the right of different groups of people to assess the same social positions and treatments (Cambridge Dictionary, 2020). In terms of this study, it refers to the practice of gender equality within all processes and levels of employment including hiring, promotion and dismissal. Thus, the study of gender equality in the prospect of this paper refers to an ideal of uniformity where men and women possess the rights for equal treatment and opportunity in the realm of employment and the workplace.

According to Article 23 of the Universal Declaration of Human Rights (UDHR), “*Every individual has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*” Along with it, Article 24 of UDHR also has provided the right to rest and leisure for individuals including reasonable limitation of working hours and periodic holidays with pay. These rights were also mentioned in Articles 6, 7, and 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) that shows the overall concern on humanity and the social well-being of every individual without any bias and discrimination. Prior to this, many pieces of literature have discussed employment equality that covers equality at the workplace in the form of races, religion, gender and others. However, most of the researches only touch on the forms of discrimination that occur in the workplace and the importance of equality or anti-discrimination policy in the workplace but still lack the conceptual discussion of equality and discrimination itself (Wahab, 2018).

Globally, employment equality may be referred to the provision in the Equal Opportunity Act 2010 that mentions:

“All employees should be protected from discrimination at all stages of employment, including recruitment, the way positions were advertised and interviews being conducted, as well as regarding unfair terms and conditions of employment. Employees should not be denied from training opportunities, promotion, transfers, performance pay or other employment-related benefits including being unfairly dismissed” (Victorian Equal Opportunity & Human Rights Commission, 2010).

Based on this provision, one would specifically be regarded as being equally treated in their employment if they were all subjected to the same treatment regardless of their differences. In contrast, workplace inequality provides an opposite description that associates with the act of discrimination in which as accordance to Kadiresan and Javed (2015), it is “*anything that makes a person feel less appreciated or treated differently based on their features and characteristics which do not reflect on their job*”. On the other hand, research by Plickert (2019) on workplace discrimination and employment suggest that a study on each particular type of discrimination is needed to provide a further understanding of the mechanisms of unfair treatment at work and how these experiences interact with contextual and personal characteristics. Moreover, in terms of the practice at the workplace, many pieces of literature continue to suggest the establishment of anti-discrimination policies at each organisation and standard performance management in evaluating employees as one of the ways to improve women empowerment in an organization (Mohamad et al., 2006; Narayanan & Selvanathan, 2017). This indicates the need for analysis of the elements of gender equality in practical analysis at the workplace since women empowerment is also most likely being categorised as one of the indicators in achieving SDGs. A comprehensive study on the elements of gender equality at the workplace thus is seen as needed to help in constituting a clear vision in the concept of gender equality in employment and its measurement points.

GENDER EQUALITY IN THE WORKPLACE

As much as jobs could bring gains and pull families out of poverty, gender equality is synonymous with the world of employment and the workplace. Most of the previous studies touched on the progressing of gender equality at work, the types of gender discrimination especially facing by women workers and the rights endowed by them. The previous study by the World Bank Group’s Gender and Development Unit has reported that it is a prerequisite for the world to end extreme poverty and improve shared prosperity while working to encourage a broader job creation (World Bank Group, 2014). Gender equality at the workplace play role in the performance of the organisation while in contrast, practices like gender discrimination at the workplace were proved to affect the victim psychologically and led to mental health problems i.e. stress, anxiety, depression especially in women (Batool, 2020).

In spite of the increasing numbers of published authorship on the issue of women or gender discrimination, Raj et al. (2019) expressed that, women continue to face gender discrimination specifically in job recognition and advancement. In line with the United Nations Entity for Gender Equality and the Empowerment of Women (2019) stands, gender equality at the workplace should encompass the equal rights, responsibilities and opportunities of women and men in employment. Ali (2015) however then in parallel to the United Nations (2019) explained that equality does not perpetuate that there will be an actual sameness between women and men but that women's and men's rights, responsibilities and opportunities should not depend on their gender. While recognizing the range of various groups of women and men, gender equality took the interests, needs and priorities of both gender either women or men into consideration. This means that the number of men and women participating in the workplace may neither portray the existence of gender equality nor inequality but equal opportunity itself is what matters. Equality between women and men is viewed as an offer of human rights and a prerequisite for, and indicator of, sustainable people-centred development. Through Ali (2015), which is supported by Othman and Othman (2015), gender inequalities were analysed as could be found in a situation where one sex may be inadequate compared to other sex in which it usually involves women in an organisation. However, one cannot deny the rights that were also possessed by men at their workplace and the employer himself. Thus, a thorough study on gender equality itself is needed by not only focusing on women but the whole parties involved in employment.

Discussing the issue of equality and discrimination as well as establishing related laws and policies need not be engaged with the legal perspectives only but it has to consider other perspectives especially on economic and business. Nevertheless, Othman and Othman (2015), agreed that it is necessary to practice women empowerment in order to achieve business and economic progress. Besides, providing them with equal rights and opportunities would also help them to reach their possible potential. Therefore, it is necessary for the government to provide equal opportunity for women in the economy so that the skills and talents of these employees can be fully utilized. They believe that closing or reducing gender gaps is a must for a nation to achieve gender parity which according to them is important in achieving gender equality (Othman & Othman, 2015). However, as encountered by Raj et al. (2019), gender parity by itself could not achieve gender equality. The inconsistency in the findings from the previous literature shows the need for the issue to be redressed. Therefore, the study on the concept of gender equality is necessary so that the root cause of the gender problems can be assessed.

ELEMENTS AFFECTING GENDER EQUALITY IN THE WORKPLACE

Through the conducted interviews, some questions were asked to the respondents for the purpose of acquiring the objective of this study. Two academicians with expertise in philosophy and constitutional law respectively and three officers from the Ministry of Women, Family and Community Development (KPWKM); Human Rights Commission of Malaysia (SUHAKAM), and Women's Aid Organisation (WAO) respectively, have been chosen as the respondents to explain their ideas or opinions about the concept of gender equality in the workplace. The answers are gathered and based on the analysis, there are five elements that affect gender equality at the workplace in Malaysia: equal rights and fairness; gender treatment; gender equity and entitlement; humanity and; rule of law.

EQUAL RIGHTS AND FAIRNESS

First of all, as presented by the word "gender equality" itself, it portrays the quality of being equal. But the studies are made to discuss the ways it could possibly be expressed in a practical way. Throughout the study on gender equality at the workplace or simply in employment, the study found that the focus of equality should be directed to the equal rights for treatment, opportunity and protection of both genders from any discrimination in employment where the equal opportunity of men and women is given the biggest concern. This corresponds with the concept of gender equality explained by both respondents in legal and philosophical areas during the interview. R1, the expert from the legal area, when asked about the concept of gender equality in a legal context, referred to gender equality as equal treatment and equal protection, and equal opportunity. She argues that everyone should be given the same treatment, protection and opportunity despite the difference in gender.

On the other hand, R2 as the respondent from philosophical expertise, while explaining the concept of gender equality from his view as an expert in philosophy, expresses that he personally prefers to regard gender equality as fairness and according to him, when talking about gender equality, the concern of the issue should be given to the issue of equal opportunity. He also argues that the opportunity should not only be applied during the job application but throughout the process of employment including the actual explicit rules like during the job advertisement. Therefore, the study concludes that as much as people are concerned about 'being equal' towards men and women regardless of their gender, their actions have to be portrayed in a fair manner at every process. As long as fairness is distributed along the process of employment, justice thus will be able to prevail on every individual with equal rights.

GENDER TREATMENT

Forwarding the discussion and findings on the context of gender equality, it can be said that equal and fair treatment is significant to gender equality. So, as gender equality concerns the way men and women are given the same opportunity, hence the differences in terms of the treatment of both genders at the workplace may definitely affect one's view on its support for gender equality especially when it comes to employment issues. However, encountering the issue of gender at the workplace is not something that can be guessed with a 'shut eyes'. Looking at a bigger picture on the practice of gender equality as discussed earlier, it has definitely been affected by many external factors. External factors here by means include culture, religion, historical factors, the competency of individuals and the law that protects disadvantages.

One of the biggest external factors, according to R2, the expert in philosophy, is the historical factor that influences the imbalance of men and women participation in employment. According to him, the misplaced conception about gender equality is that the imbalance between genders is commonly regarded due to deliberate discrimination while it is supposedly due to the historical factor where traditionally practising patriarchy. Throughout generations, men commonly act as the breadwinner of the family while women are doing the house chores and look after the children. This sort of social arrangement according to him has always been there traditionally and is accepted without considering as discriminatory. Eventually, it affects the numbers in statistics as there are more men than women in employment and as mentioned by R3 during the interview, it might also cause job segregation.

Parallel to this, R1, the legal expert, also agrees that the lack of women in certain areas is reflected from the social norms of Malaysian that have been flowing as a natural circumstance for many years. The culture that was created by religious and societal beliefs at some point has made people put their own barriers on things including employment, and because of this, according to R1, it is hard to overcome the issues of gender. This is also agreed by R3, R4 and R5 where according to them, religion is significant to the practice of gender equality in Malaysia since Malaysian culture is most likely influenced by their religious beliefs.

Besides, the nature of the job and the law provided to protect women itself have to be taken into consideration. R1, while arguing the need for the same treatment between men and women at the workplace, also added that it is a must to consider the suitability of the job which was also agreed by R2 and R4. They believe that equality in the workplace context should consider extensive views of the job scope and its requirements. This concludes that despite the need for equal treatment to be given to all employees either men or women, it cannot be expected to have the exact sameness of all things for both genders. In employment and the workplace, the ability to fulfil the job scope will always be the main priority for every employer and organisation.

GENDER EQUITY AND ENTITLEMENT

As for R1, justice and gender equality at the workplace should never be about equality for women only instead, equity among genders must be put into the main concern as well. Bridging the legal context of gender equality in employment and Islamic teaching, she argues that providing justice means putting the right things at the right time in the right place. Thus, according to her, the basic philosophy of gender equality at the workplace should be equity where every person is entitled to what suits them. R1 in explaining the concept of gender equality at the workplace says that when it comes to employment, it should not be purely gender equality but one should also consider the equity among gender. The application of the law itself, apart from focusing on the provision of the constitution, should make the realization and implementation of other laws such as the labour law to ensure not only women equality but women equity at the workplace. Besides, proper and continuous training on the understanding of the rights of women according to law should be maintained and no one should take advantage of the weaknesses of the women over the passing situation that women have to go through.

Even in Islam, as added by R1, in the matters of gender equality and justice, the thing that actually matters the most is providing equity that focusing on getting everybody entitled to whatever is suitable for them. The question that can be raised now is on what way a person can be regarded as an entitled person. There are some requirements that are taken into consideration in deciding individuals for positions in employment. Among the requirements considered are the merits, skills, capabilities to fulfil job requirements and experience that qualified for the particular job or position. As for R2, he believes that the competency of a person is far more valuable than anything else in deciding the person for a job. Rather than caring for balance in numbers of men and women in employment, the productivity and competency of the worker should be prioritized. This shows that gender equality in employment and the workplace has to move along gender equity and the principle of entitlement in order to provide justice, not only to the employees but the employer of the organisation as well.

HUMANITY

Besides that, one of the findings that the researcher finds most intriguing is the idea that connects equality with a kind of humanity. Connecting to the idea of Rene Descartes that views all humans as a rational being that act with reason; R1 as a legal expert also supports that equality is not only considered as a relationship between persons but it is about humanity as a whole. R1 in concluding her answers during the interview says that in order to achieve equal treatment, there must be a situation where we complement both men and women. On the other hand, for R3, she argues that it is important for the organisation to provide an enabling environment to support men's and women's commitment to the family at the workplace such as building a nursery for kids at the company. Hence, parents would be able to perform their job at ease without worrying about their children.

Based on the analysis on the provisions provided by the laws and regulations on equality including UDHR and other conventions on equality, as well as the experts' opinion, this study agrees that gender equality in a broad view can be said as concerns with the act of being humane or simply said as humanity between persons (Coupland, 2003). The reason is that treating others equally and fairly requires commitment and goodwill of oneself without any bias on his own preference. In addition, since humans are philosophically regarded as a rational being, hence, their action has to be in line with conscience and reasonable base either legally or morally besides recognizing each person's moral worth and dignity.

According to R4 and R5, among the issues that were received and reported to their organisations are the unfair dismissal of pregnant women as well as the lack of maternity and paternity leave provided for employees. Both respondents claim that this issue would affect both men and women psychologically since it is the climax period for the parents to create bonding with their newborn and take care of the new life. In fact, this issue also has been highlighted in the NGO Shadow Report for the Malaysian

Government's Review by the CEDAW Committee, at the 69th CEDAW Session in February 2018 where the committee urged for the amendment of the government rhetoric and policy to focus on encouraging employers to adopt flexible work arrangements for both parents (Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG), 2018).

RULE OF LAW

Last but not least, rule of law is the mother of all equality including the equality of genders. According to R2, the first thing about gender equality is equality itself. In the case of Malaysia, it should be rule of law because for him, if it was just a gender philosophical concept without any legal force, then it cannot really be enforced in the society. R2 explains that in terms of the law in employment, it helps to ensure that there will be no discrimination regardless of race, religion or even gender. So, as for him, once rule of law is adhered to and enforced in the society, it will be the starting point to achieve the full conception of the notion of gender equality.

This is supported through the statement of R1 when she agrees that the sufficient law would help to protect the genders. She also commented about the provision in the Federal Constitution which according to her, it has a thorough idea about equality:

"...as far as the Constitution is concerned, it is a quite composite and comprehensive idea about equality. There's also an amendment to Article 8 clause 2, there will be no discrimination on the ground of gender. So, at least in terms of the law, on the law, we do have a clear and strong foundation." (R1)

Therefore, the study concludes that achieving gender equality at the workplace starts with the concept of rule of law. Law as the basis for a systematic society in any way has to be enforced equally among its people without bias on any classes regardless of their gender or positions in the country. This should be seen as aligned with the concept of equality before the law itself when the Constitution itself warrants equal treatment to all.

CONCLUSION

In conclusion, with the ratification of CEDAW and the use of other international instruments such as the UDHR, ICESCR, and SDGs to create a stable nation and economy, an understanding of the concept of gender equality should be a priority, especially to ensure stability in workplace practices and data released on gender and economic issues. This is because it will affect the work process of policymakers and the implementation of national laws. As much as the world offers employment equality to individuals, gender equality in the workplace is necessary for men and women without any discrimination. However, there are several elements in shaping the concept of gender equality in the field of employment. Based on the data collected through interviews with experts, there were five elements found as the key findings on the concept of gender equality in the workplace namely equal rights and fairness; gender treatment; gender equity and entitlement; humanity, and; equality before the law. In addition, it can also be concluded from the study that gender equality in the workplace is more likely to prioritize opportunities for both genders either to participate in employment or develop their careers in possible potential without irrational bias. Overall, the ability to meet the scope of employment and the suitability of the individual for employment or legal requirements should always be considered in viewing action as equality or *vice versa*. The study also recommends that along with the establishment of specific legal or enforcement policies on gender discrimination in the Malaysian workplace, the implementation of victim-friendly online applications to submit reports should be undertaken. With modern technological features, the victims may report any acts of discrimination against them in sound and safe conditions.

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