

Assessing the Anti-Sexual Harassment Act 2022: Progress, Pitfalls, and the Path toward Effective Enforcement

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ABSTRACT

Sexual harassment remains a serious and pervasive issue in Malaysia, with victims frequently encountering obstacles in seeking justice and redress. Despite the introduction of the Anti-Sexual Harassment Act 2022 (ASHA 2022), numerous implementation challenges and legal gaps continue to hinder its effectiveness. This paper critically examines the extent to which ASHA 2022 addresses the existing shortcomings within Malaysia's legal framework on sexual harassment. Employing a doctrinal research methodology, the analysis draws from statutory provisions, case law, policy documents, and academic commentaries to assess both the substantive and procedural aspects of the law. The findings reveal that while ASHA 2022 introduces significant legal reforms such as the establishment of a tribunal to adjudicate sexual harassment claims, it only partially resolves the existing lacunae. Persistent weaknesses remain in enforcement mechanisms, public awareness, victim protection, and coordination among relevant agencies. The study concludes that ASHA 2022 represents a progressive legislative milestone but that meaningful reform requires effective implementation, procedural refinement, and stronger institutional support. Policy recommendations are proposed to enhance enforcement, improve legal literacy, and strengthen protection for victims to ensure accessible and equitable justice.

Keywords: Sexual Harassment, Victim's Protection, Anti-Sexual Harassment Act, Access to Justice

INTRODUCTION

Sexual harassment refers to any unwelcome sexual advances or behavior, often manifested through inappropriate gestures, remarks, or actions. It encompasses a wide spectrum of both active and passive conduct, reflecting the multifaceted nature of such violations. In the post-COVID-19 era, with the rapid acceleration of digital transformation, perpetrators have become increasingly sophisticated in employing virtual means to harass victims. Social media and other online platforms have emerged as common tools facilitating such misconduct.

Empirical evidence supports this concern: according to a report by the All Women's Action Society (AWAM), 41.7 per cent of sexual harassment cases reported during the Movement Control Order period involved elements of sexual cyber harassment (AWAM, 2020). Complementing this, a 2022 survey by the Centre for Governance and Political Studies (Cent-GPS) revealed that 57 per cent of respondents experienced verbal sexual harassment on a daily basis while walking in public spaces (Yusof, 2021).

In Malaysia, the enactment of the Anti-Sexual Harassment Act 2022 (ASHA 2022) signifies a legislative commitment to addressing this pervasive issue. The Act seeks to empower victims with legal recourse, establish a dedicated tribunal to adjudicate sexual harassment cases, and enhance societal awareness regarding the seriousness of such misconduct. Under ASHA 2022, sexual harassment is defined as any unwanted conduct of a sexual nature—verbal, non-verbal, visual, gestural, or physical—directed at an individual in a manner that is reasonably deemed offensive, humiliating, or threatening to their well-being. Importantly, this definition should extend to both physical and virtual contexts, recognizing that harassment can transpire through direct interaction or via online communication. The list of acts constituting sexual harassment remains non-exhaustive, emphasizing that the understanding of such conduct must remain dynamic and adaptable to evolving social and

technological contexts. The scope of this research is limited to the Malaysian context. However, it does not focus on any particular demographic or gender group.

METHODOLOGY

The research employs a doctrinal legal research approach to comprehensively examine Malaysia's Anti-Sexual Harassment Act 2022 in relation to global frameworks. The study involves an in-depth examination of legal propositions, statutory provisions, and relevant literature. It also includes a comprehensive literature review of existing guidelines and international standards regarding sexual harassment laws. The findings from the doctrinal analysis will be synthesized to evaluate the effectiveness of Malaysia's legal measures and propose practical reforms. These reforms will focus on improving enforcement, procedural accessibility, and aligning Malaysia's laws with global standards for better protection and justice for victims of sexual harassment.

LITERATURE REVIEW

Agardh et al. (2022) contend that the underreporting of sexual harassment is often symptomatic of structural inequalities within societies where gender disparity persists and sexual misconduct is normalised. This observation is particularly relevant to Malaysia, where the intersection of cultural taboos, patriarchal attitudes, and limited legal literacy continues to suppress victims' willingness to pursue justice. Victims frequently lack awareness of the available remedies and the procedural distinctions between criminal and civil avenues for redress (Kaur, 2012). This systemic gap not only reflects the failure of legal institutions to disseminate accessible information but also perpetuates a cycle of silence and impunity.

Moreover, the profound psychological and physiological impact of sexual harassment—manifesting in anxiety, diminished self-worth, and dependency-related disorders (Abd Latib et al., 2021) demands greater sensitivity and responsiveness from law enforcement authorities. Yet, the current investigative processes often neglect trauma-informed approaches, thereby exacerbating victims' suffering and deterring future reporting.

FINDINGS & DISCUSSION

Despite the legislative progress made through the enactment of the Anti-Sexual Harassment Act 2022, victims of sexual harassment in Malaysia continue to face multiple obstacles that hinder effective access to justice. These challenges stem not only from the inadequacies of the legal framework but also from deep-seated socio-cultural norms, limited legal literacy, institutional weaknesses, and educational taboos. The following subsections analyse these obstacles in detail.

Obstacles Faced by the Victims

A. Victim-Blaming Culture

A pervasive culture of victim-blaming remains one of the most significant barriers to justice for sexual harassment survivors in Malaysia. This phenomenon occurs when society implicitly or explicitly attributes blame to victims for their attire, conduct, or demeanour, rather than focusing on the perpetrator's culpability (Farid et al., 2021). Victims are often told that their physical appearance, friendliness, or social behaviour invited unwanted sexual attention, thereby normalising harassment as a consequence of their own actions (Farid et al., 2021). In addition, victims' refusal to lodge any police reports post to being sexually harassed stems from the assumption that the harassment incident is insignificant and they are afraid of being blamed for being harassed. This is further supported by the premise that some part of the community tends to blame the victims by implicating that the victims were harassed because of their dressing styles instead of focusing on the harassment issue itself (Today, 2022).

A 2019 survey revealed that 93.7% of 28,852 respondents stated they would refrain from lodging a police report due to fear of being shamed or because they anticipated a lack of evidence (Today, 2022). This reflects a broader societal assumption that sexual harassment is either trivial or self-inflicted. Disturbingly, such perceptions are not limited to the general public; instances have been reported where law enforcement officers themselves have

made disparaging remarks towards victims. For example, a victim who attempted to lodge a report against an alleged offender was criticised by a police officer for her attire. Similarly, another victim was told by a male officer that she was “at fault for playing along with the predator” (Chow, 2016). The perpetuation of such attitudes at the institutional level undermines victims’ trust in the justice system. Such narratives not only trivialise the offence but also discourage victims from seeking legal recourse.

B. Low Legal Literacy

Legal education remains an exclusive domain of knowledge imparted primarily to those who choose to pursue a law degree or legal-related courses at the tertiary level. Consequently, not everyone is aware of their specific legal rights and the corresponding parameters when confronted with distressing situations involving violations of those rights. In fact, some victims of sexual crimes are unaware of the available remedies and legal forums accessible to them. Apart from lacking the courage to take the initial step of lodging a police report, insufficient awareness and limited legal knowledge are among the main factors contributing to victims’ reluctance to pursue legal action following incidents of harassment.

This is supported by the findings of a 2019 survey, which revealed that only 6.3 per cent of 28,852 respondents indicated they would lodge a police report in the event of a sexual harassment incident. There are also instances in which victims are unaware that they have been sexually harassed, as they lack the necessary understanding of what constitutes sexual harassment and the elements that define such conduct. Furthermore, some victims face difficulties identifying the appropriate procedures and channels for seeking legal redress, including determining the suitable course of action and the proper forum for filing their cases (criminal courts versus civil courts) (Kaur, 2012).

Not all sexual harassment cases can be treated in the same manner. For example, a case involving an employer as the perpetrator and an employee as the victim must be addressed through different forums and procedures compared to a case involving a child victim and an adult offender.

C. Inadequate Training and Lack of Expertise among Law Enforcement Officers

Sexual assaults inflict enduring and excruciating trauma upon victims. It is common for survivors to experience severe psychological and physical repercussions (Abd Latib et al., 2021). The physical and psychological harm resulting from sexual harassment must therefore be adequately recognised by law enforcement officers and other authorities involved in the investigative process. Victims of sexual harassment often require considerable time to process the traumatic incident and to formulate appropriate responses in its aftermath. Studies indicate that a substantial proportion of sexual harassment survivors suffer from anxiety, low self-esteem, and dependency issues as a consequence of the assault (Abd Latib et al., 2021), which may, in turn, deter them from seeking help. Given the highly sensitive nature of sexual harassment cases, it is imperative that the authorities engaged in investigation and litigation particularly the police are equipped with specialised practical skills to provide effective and empathetic assistance to victims.

Within the Royal Malaysia Police (PDRM), the Sexual, Women and Children’s Investigations Division (D11) operates under the Crime Investigation Department (CID) at Bukit Aman. The division’s primary mandate is to provide support and assistance to victims and witnesses of criminal cases, including those involving sexual crimes. Officers in the division are responsible for assisting individuals in lodging police reports, conducting counselling sessions, providing crisis intervention at homes or hospitals, and serving as Victim Care Officers (VCO). Additionally, the division offers psychological support to victims placed in the Victim Care Centre (VCC). However, the limited number of specially trained officers to manage sexual harassment cases which are inherently complex and sensitive poses a significant challenge, potentially compromising both the quality of investigations and the level of support extended to victims. Nevertheless, concerted efforts have been initiated to address and mitigate this issue.

D. Absence of Comprehensive Sex Education Due to Strong Cultural Taboos

Introducing sexual education into the national public-school curriculum remains a complex and sensitive endeavour. Resistance often arises from certain groups of parents who perceive the subject as culturally inappropriate or morally questionable (Ismawi, 2018). Some parents hold the misconception that sex education encourages children to engage in sexual activities by teaching them methods to avoid pregnancy. Despite such myths, empirical evidence consistently supports that comprehensive sex education serves as one of the most effective tools in preventing and addressing sexual harassment and abuse.

Currently, primary school students in Malaysia are introduced to the concepts of safe and unsafe physical contact through the Physical Education (Pendidikan Jasmani dan Kesihatan, PJK) subject (Ram, 2020). Additionally, the Ministry of Education's efforts since 2011 to integrate sex education through the Reproductive and Social Health Education (Pendidikan Kesihatan Reproduksi dan Sosial, PEERS) programme deserve recognition as progressive initiatives.

The introduction of a comprehensive sex education curriculum in public schools offers several critical benefits. First, it enables children to correctly identify and name private body parts, which is essential in empowering potential victims to communicate clearly and testify accurately should abuse occur. Second, comprehensive education on sexuality fosters respect, both self-respect and respect toward others by discouraging inappropriate gestures or behaviours. Third, and most importantly, the concept of consent should form a core component of the curriculum. Children must be taught that consent for any sexual interaction must be given freely by an individual who is conscious and of legal age, and that consent may be withdrawn at any time. This understanding acts as a preventive measure, cultivating awareness among young people not to infringe upon another person's dignity or autonomy in any form, including through sexual gestures or verbal misconduct.

Sexual Harassment Act 2022: An Ultimate Solution for the Victims?

A. Objectives and Preventive Dimensions of the Anti-Sexual Harassment Act 2022

The preamble of the Act articulates, among other objectives, the intention to provide a right of redress for any person who has been subjected to sexual harassment, to establish a Tribunal for Anti-Sexual Harassment, and to promote awareness regarding issues of sexual misconduct. Accordingly, the Act applies to all victims of sexual harassment, irrespective of gender or age, distinguishing it from the offence of rape under the Penal Code, which remains gender-specific.

Furthermore, the Act underscores its preventive dimension, aiming to combat sexual harassment through awareness and education initiatives. Section 25(1) of the Act outlines extensive functions encompassing policy formulation, the development of guidelines, implementation of awareness and prevention programmes, and other relevant functions essential for the effective enforcement of the legislation. Indeed, the adage "an ounce of prevention is worth a pound of cure" aptly encapsulates the rationale behind these measures. Awareness campaigns and the inclusion of comprehensive sexual education within public discourse are indispensable tools for dismantling entrenched taboos, stigma, and victim-blaming attitudes that persist within society.

Effective implementation of such preventive initiatives is anticipated to foster greater understanding among individuals and corporate entities regarding the legal and psychological dimensions of sexual harassment. This heightened awareness would, in turn, cultivate a culture of mutual respect, where inappropriate jokes and unsolicited sexual advances become socially unacceptable. Simultaneously, victims—empowered by greater awareness of their rights and the available legal remedies—are more likely to find the courage to speak out against perpetrators and seek justice under the law.

B. Criminal vs. Civil Recourse

In Malaysia, it is interesting to note that the person who initiates the proceeding before the Tribunal is referred to as the Complainant. Whereas, the perpetrator is referred to as the Respondent. This indicates that the proceedings conducted by the Tribunal do not include any elements of criminal litigation and does not implicate them with any form of crime as opposed to criminal proceedings. The Act does not explicitly categorize sexual

harassment as a criminal offense, nor does it impose penalties on the offender (Hamin et al., 2022). Instead, it primarily provides civil remedies through a tribunal system, focusing on victim redress and institutional accountability rather than criminal prosecution. This contrasts with frameworks in other countries such as Sweden where sexual harassment can lead to criminal penalties for offenders. Cases in Sweden are often handled through civil courts, such as labor courts, with criminal prosecution available in more severe cases.

C. Composition and Expertise of the Tribunal

The Tribunal is composed of a dynamic panel of members appointed by the Minister. The positions of President and Deputy President must be occupied by individuals drawn from the Judicial and Legal Services. The remaining members of the bench are to include individuals from the Judicial and Legal Services, practising lawyers with a minimum of seven years of experience, and persons possessing relevant knowledge or practical experience in matters relating to sexual harassment.

It is further proposed that experts such as healthcare professionals particularly doctors and psychiatrists with experience in handling victims of sexual crimes be considered for appointment to the Tribunal. Their practical understanding of the physical and psychological conditions of complainants would provide valuable insights during the adjudication process. As previously discussed, cases of sexual harassment are inherently delicate and sensitive, often involving complex and subjective issues such as consent and reasonableness. Therefore, the inclusion of multidisciplinary experts within the Tribunal would significantly enhance the quality and efficiency of the hearing process, ensuring that decisions are informed by both legal acumen and specialised expertise, ultimately serving the broader interests of justice and the public.

D. Exclusion of Jurisdiction of Court

It is paramount to note that a complainant who has filed a sexual harassment complaint before the Tribunal is barred from instituting the same action involving the same parties before the courts of law. Nevertheless, Clause 8 of the Anti-Sexual Harassment Act 2022 provides three practical exceptions to this rule, as stipulated under sub-clauses (a), (b), and (c).

Section 8(a) of the Act states that a potential Complainant who has initiated an ongoing legal action at the court of law before referring his case to the Tribunal is eligible to seek for legal redress from the Tribunal. However, sexual harassment shall not be subject matter of the ongoing trial for this exception to be applicable.

Generally, victims in criminal proceedings are not entitled to monetary compensation from the accused, as such relief is typically awarded through civil litigation to plaintiffs who successfully establish the defendant's liability. However, this statutory provision offers victims an additional avenue to obtain compensation through the Tribunal. Section 8(b) further stipulates that a complaint may be made to the Tribunal if the alleged sexual harassment also constitutes an offence under any written law. For example, certain acts of sexual harassment may amount to criminal offences such as Outrage of Modesty and Insult of Modesty under Sections 354 and 509 of the Penal Code, respectively. In such circumstances, the complainant is permitted to lodge a complaint before the Tribunal even when criminal proceedings are concurrently instituted against the perpetrator.

Section 8(c) provides that a complainant may subsequently refer the case to the court if the Tribunal has withdrawn or struck out the complaint. This indicates that proceedings before the Tribunal function as a supplementary or alternative recourse for complainants, particularly where legal action before the courts is unavailable or unable to proceed.

E. Employer Responsibilities

In other country specifically Sweden, the Discrimination Act requires employers to take active steps to prevent and address sexual harassment. Employers are expected to implement policies, conduct risk assessments, and provide training programs to ensure a safe workplace (Mawe, 2018). This proactive approach emphasizes prevention. Malaysia's Anti-Sexual Harassment Act 2022, however, also requires employers to take steps to prevent such harassment and handle complaints, but it is relatively new and developing in its implementation. Even though the framework is provided, there is an absence of requirement to establish reporting channels for

sexual harassment by the employers in Malaysia. Apart from that, the new Act does not hold employers accountable for their employee's conduct during the course of employment (Hamin et al., 2023).

F. Access to Legal Representation and Its Limitations

It is pertinent to note that the general rule is that no party shall be represented by an advocate and solicitor throughout the hearing before the Tribunal unless the question involves complex issues of law. There is a narrow exception whereby a complainant who is under the age of eighteen or disable may be represented by his next of friend or guardian ad litem. Aside from that, Section 20(3) of the Act state that the Tribunal may dismiss a complaint of sexual harassment that the Tribunal deems to be frivolous or vexatious. It is not clear how a layman Respondent is capable to argue before the Tribunal that a complaint which is filed is frivolous or vexatious in the absence of any legal knowledge or representation by a legal counsel.

G. Tribunal's Authority to Proceed in the Absence of Parties

The Tribunal is granted with the capacity to hear and determine a complaint of sexual harassment in the absence of any party to the proceeding if the Tribunal is satisfied that a notice of hearing has been duly served on the absent party. This creates flexibility and prevents the hearing from being prolonged by avoiding unnecessary adjournment due to the absence of the parties.

H. Facilitation of Amicable Settlement before the Tribunal

Hearing before a tribunal opens the possibility of an amicable settlement to be reached between the parties. Section 16 of the Act states that the Tribunal is at liberty to determine whether it is appropriate for the Tribunal to help the parties to negotiate an agreed settlement in relation to the complaint lodged by the Complainant. Factors that will affect the parties' ability to negotiate an agreed settlement will be accounted for by the Tribunal in making such decisions.

I. Referral of Questions of Law to the High Court

The Tribunal is also allocated with the discretionary power to refer a question of law to a Judge of the High Court and the award made by the Tribunal shall comply with the decision of the Judge. As a matter of fact, a Federal Counsel is authorised to appear on behalf of the Tribunal before the Judge of High Court in referring such matters. This mechanism acts like a check and balance procedure in the event if the Members of the Tribunal are of the opinion that a question of law shall be verified and decided by the High Court.

J. Expeditious Disposal and Written Reasons by the Tribunal

Time is of the essence in terms of awards granted by the Tribunal. The Tribunal is compelled to make its award in a speedy manner as opposed to litigations that are conducted in courts which is usually more time-consuming. It is mandatory for the Tribunal to make its award without delay and if it is practicable, such award shall be made within sixty days from the first day the hearing has started. This is beneficial to the party as it can save cost and time where the Tribunal is not allowed to make unnecessary delay in granting its award post the hearing process. In terms of reasoning given to award the Complainant or dismiss the complaint, the Tribunal shall specify in writing its reasons for the said decision. On top of that, any recommendations and finding of facts shall also be reduced in writing in the reasoning.

K. Scope of Remedies and Orders Granted by the Tribunal

There is a limitation in terms of monetary awards that can be granted by the Tribunal. The Tribunal is only authorised to order the Respondent to compensate the Complainant for the maximum amount of two hundred and fifty thousand Ringgit Malaysia. By having an exact monetary limitation to be granted by the Tribunal, any potential Complainant who thinks that he has suffered beyond the monetary amount due to aggravated loss of income may refrain from filing their case with the Tribunal.

There is also a room for the Tribunal to order for an apology to be made by the Respondent. Apology is linked firmly to important interactive and communicative aspects of restorative justice (Joanna Shapland, 2016). Section 20(1)(a) and (b) of the Act stipulates that the Tribunal may order the Respondent to issue a statement of apology to the Complainant in manners specified in the order and in the event if the Respondent has harassed the Complainant in the public, the Respondent may be ordered to publish a statement of apology on any manner specified in such order.

Section 20(1)(d) states that the Tribunal may also order the Respondent to attend any programs as it deems necessary. Via this provision, repetitive harassers may be ordered to undergo psychological treatments and/or counselling programs to put a stop from similar incidents in future.

CONCLUSIONS

In summation, the enactment of the Anti-Sexual Harassment Act 2022 is an admirable development in Malaysian law that demonstrates the country's dedication to respecting gender equality and human decency. As a legal policy, the Act protects vulnerable groups, especially women and children, and acts as a standard and guide for dealing with sexual harassment.

However, widespread, methodical, and ongoing socialization of the legislation is necessary to guarantee that its existence results in significant protection. To ensure that all societal levels are aware of its provisions, methods, and repercussions, a systematic dissemination strategy involving education, institutional training, and public campaigns is essential. The Act can only effectively prevent, address, and deter sexual crimes with such widespread understanding.

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