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**PHILOSOPHICAL AND LEGAL ANALYSIS ON GENDER  
EQUALITY: A STUDY IN MALAYSIAN CORPORATE SECTOR**



**MASTER OF LAW  
UNIVERSITI UTARA MALAYSIA  
2022**

**PHILOSOPHICAL AND LEGAL ANALYSIS ON GENDER  
EQUALITY: A STUDY IN MALAYSIAN CORPORATE SECTOR**



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**A thesis submitted to the Ghazalie Shafie Graduate School of Government in  
fulfilment of the requirement for the Degree of Master of Law Universiti Utara  
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## ABSTRACT

As much as human rights are concerned, equality was found as the basic element in all international treaties and conventions of human rights including the Universal Declaration of Human Rights 1948. Within the context of gender in Malaysia, the existing gaps between men and women in economic participation is argued as representing the practice of gender inequality, especially among the decision-makers. Literature has suggested the need for a national policy specifically on anti-discrimination at the workplace. The problem is less effort was done in providing a deeper understanding of the concept of gender equality itself. This study thus aims to examine the concept of gender equality rooted in the philosophical and legal perspectives through the study of egalitarianism and feminism theories, as well as the regulations related to gender and employment. It is vital in providing a clear view of gender equality towards combating discrimination and reforming social justice. This study also aims to analyse the practice of gender equality at the Malaysian workplace in highlighting the real picture of the issue and propose the basic guidelines of gender equality at the workplace. A qualitative research design was used by employing two approaches of data collection; the doctrinal library research and interview. The findings show that gender equality in the Malaysian workplaces are hugely affected by the existing culture in the Malaysian society. It was found that there are several principles in considering gender equality at the workplace, including the principles of equal treatment, entitlement, non-discrimination and equal opportunity not perpetuating equal outcome. However, this study only covers respondents from several corporate sectors, hence, a more comprehensive study is needed for future research.

**Keywords:** Gender Equality, Philosophical Perspective, Legal Perspective, Corporate Sector, Malaysian Workplace

## ABSTRAK

Berdasarkan penelitian terhadap hak asasi manusia, kesetaraan telah dikenal pasti sebagai elemen asas dalam semua perjanjian dan konvensyen hak asasi antarabangsa termasuk Deklarasi Hak Asasi Manusia Sejagat 1948. Membawa isu ini ke dalam konteks gender di Malaysia, jurang di antara lelaki dan wanita dalam penyertaan ekonomi dikatakan mewakili amalan ketidaksetaraan gender, terutama di kalangan pembuat keputusan. Kajian telah menyarankan perlunya sebuah dasar nasional khususnya mengenai anti-diskriminasi di tempat kerja. Malangnya, masih sedikit usaha dilakukan dalam memberikan pemahaman yang mendalam mengenai konsep kesetaraan gender itu sendiri. Oleh itu, kajian ini bertujuan untuk mengkaji konsep kesetaraan gender yang berakar pada perspektif falsafah dan undang-undang melalui kajian teori egalitarianisme dan feminisme serta undang-undang yang berkaitan dengan jantina dan pekerjaan. Pandangan yang jelas mengenai kesetaraan gender adalah penting dalam memerangi diskriminasi dan mereformasi keadilan sosial. Kajian ini juga bertujuan untuk menganalisis amalan kesaksamaan gender di tempat kerja di Malaysia bagi mendapatkan gambaran sebenar masalah tersebut sekaligus, mencadangkan garis panduan asas kesetaraan gender di tempat kerja. Reka bentuk penyelidikan kualitatif telah digunakan melalui dua pendekatan pengumpulan data; penyelidikan kepustakaan doktrin dan temubual. Hasil kajian menunjukkan bahawa kesetaraan gender di tempat kerja di Malaysia sangat dipengaruhi oleh budaya yang sedia ada dalam masyarakat Malaysia. Kajian mendapati terdapat beberapa prinsip dalam mempertimbangkan kesetaraan gender di tempat kerja, termasuk prinsip perlakuan yang sama, hak; anti-diskriminasi dan, peluang yang sama tidak semestinya memberikan hasil yang sama. Walau bagaimanapun, kajian ini hanya merangkumi responden dari beberapa sektor korporat sahaja. Oleh itu, kajian yang lebih komprehensif diperlukan untuk penyelidikan masa hadapan.

**Kata Kunci:** Kesetaraan Gender, Perspektif Falsafah, Perspektif Undang-Undang, Sektor Korporat, Tempat Kerja di Malaysia

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# TABLE OF CONTENTS

<b>PERMISSION TO USE</b> .....	i
<b>ABSTRACT</b> .....	ii
<b>ABSTRAK</b> .....	iii
<b>ACKNOWLEDGEMENT</b> .....	iv
<b>LIST OF TABLES</b> .....	x
<b>LIST OF FIGURES</b> .....	xi
<b>LIST OF APPENDICES</b> .....	xii
<b>LIST OF ABBREVIATIONS</b> .....	xiii
<b>CHAPTER ONE : INTRODUCTION</b> .....	1
1.1 Background of the Study.....	1
1.2 Problem Statement .....	4
1.3 Research Questions .....	7
1.4 Research Objectives .....	7
1.5 Significance of the Study .....	7
1.6 Research Methodology.....	9
1.6.1 Theoretical Framework.....	9
1.6.2 Research Design.....	10
1.6.3 Research Scope .....	11
1.6.4 Type of Data .....	13
1.6.5 Data Collection Methods .....	14
1.6.6 Analysis of Data.....	17
1.7 Limitation of the Study .....	18
1.8 Operational Definitions.....	19
1.8.1 Gender Equality .....	19

1.8.2 Corporate Sector .....	21
1.8.3 Top Management .....	21
1.8.4 Philosophical Perspective .....	22
1.8.5 Legal Perspective .....	22
1.9 Literature Review .....	23
1.9.1 Gender Equality in Employment .....	23
1.9.2 Gender Equality at the Malaysia Workplace .....	31
1.9.3 Gender Equality in Corporate Management .....	36
1.10 Conclusion .....	39
<b>CHAPTER TWO : GENDER EQUALITY IN PHILOSOPHICAL VIEW .....</b>	<b>42</b>
2.1 Introduction .....	42
2.2 Philosophical Context of Equality .....	43
2.3 The Development of the Ideas of Philosophers .....	46
2.3.1 Aristotle – Classic period .....	46
2.3.2 Rene Descartes – Modern period .....	48
2.3.3 Mary Wollstonecraft – Enlightenment Period .....	52
2.4 Philosophical Theories of Gender Equality .....	54
2.4.1 Liberal Feminism .....	55
2.4.2 Socialist Feminism .....	59
2.4.3 Marxist Feminism .....	61
2.4.4 Existentialist Feminism .....	63
2.4.5 Radical Feminism .....	64
2.4.6 Psychoanalytic Feminism .....	66
2.4.7 Gender Feminism or Neo-Marxist Feminism .....	68
2.4.8 Feminism in Islam .....	70
2.5 Egalitarianism .....	75

2.6 Equality and Moral Ethics.....	78
2.7 Conclusion .....	81

### **CHAPTER THREE : THE LEGAL FRAMEWORK ON GENDER**

<b>EQUALITY .....</b>	<b>83</b>
3.1 Introduction.....	83
3.2 The Philosophy of Law of Equality .....	85
3.2.1 The Legal Principle of Equality.....	89
3.2.2 Equality and Justice .....	95
3.3 Legal Theories of Gender Equality.....	99
3.4 International Conventions on Gender Equality Principles.....	103
3.4.1 Universal Declaration of Human Rights 1948 (UDHR).....	105
3.4.2 International Labour Organization (ILO) Convention.....	108
3.4.3 Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW).....	111
3.5 Malaysian Legal Framework on Gender Equality in Employment .....	114
3.5.1 Federal Constitution.....	115
3.5.2 Malaysian Labour Law .....	122
3.6 Conclusion .....	129

### **CHAPTER FOUR : GENDER EQUALITY IN MALAYSIA WORKPLACE 132**

4.1 Introduction.....	132
4.2 Experts' View on Gender Equality in Malaysia Workplace.....	133
4.2.1 Overview of Gender Equality in Malaysia Workplace.....	134
4.2.2 The Issues of Gender in Malaysia Workplace .....	138
4.3 Practices of Gender Equality at the Workplace .....	146
4.3.1 Top Management Promotion .....	150
4.4 Factors influencing Women Participation in Top Management .....	154

4.4.1 Gender Accommodating vs. Family Commitment .....	155
4.4.2 Gender Bias vs. Gender Quota/ Gender Mainstreaming.....	159
4.4.3 Social Perception vs. Individual Ability .....	162
4.4.4 Mental Capacity vs. Physical Capability .....	166
4.5 Conclusion .....	168
<b>CHAPTER FIVE : FINDINGS AND DISCUSSION.....</b>	<b>172</b>
5.1 Introduction.....	172
5.2 Philosophical Concept of Gender Equality in Malaysia .....	173
5.3 Elements that Constitute the Concept of Gender Equality in Malaysia Workplace .....	175
5.3.1 Equal and Fair Opportunity .....	176
5.3.2 Gender Treatment .....	177
5.3.3 Gender Equity and Entitlement.....	178
5.3.4 Humanity and Dignity.....	179
5.3.5 Rule of Law.....	180
5.4 A Guide to Gender Equality at the Workplace in Malaysia.....	181
5.5 Conclusion .....	188
<b>CHAPTER SIX : CONCLUSION AND RECOMMENDATION.....</b>	<b>190</b>
6.1 Introduction.....	190
6.2 Summary of the Study.....	191
6.2.1 Gender Equality in Philosophy and Law .....	191
6.2.2 Practice of Gender Equality in the Workplace.....	193
6.2.3 Guides for Gender Equality Practice in Employment.....	194
6.3 Recommendation.....	195
6.4 Recommendation for Future Research.....	197

6.5 Concluding Remarks .....	198
<b>REFERENCE .....</b>	<b>199</b>



## LIST OF TABLES

Table 1.1: The Details of the Respondents .....	17
Table 5.1: Findings of the Study .....	189



## LIST OF FIGURES

Figure 1.1: Economic Participation and Opportunity .....	4
Figure 1.2: Theoretical Framework.....	10
Figure 1.3: The Literature on Gender Equality (researcher's illustration).....	41



## LIST OF APPENDICES

Appendix A: Interview Question (Group A) .....	215
Appendix B: Interview Question (Group B).....	218



## LIST OF ABBREVIATIONS

<b>CDHRI</b>	Cairo Declaration on Human Rights in Islam 1990
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women 1979
<b>ILO</b>	International Labour Organisation
<b>IPHRC</b>	Independent Permanent Human Rights Commission 2011
<b>KPWKM</b>	Ministry of Women, Family and Community Development
<b>MEF</b>	Malaysian Employers Federation
<b>MGGI</b>	Malaysia Gender Gap Index
<b>MTUC</b>	Malaysian Trade Union Commission
<b>OIC</b>	Organisation of Islamic Cooperation
<b>SDGs</b>	Sustainable Development Goals
<b>SUHAKAM</b>	Human Rights Commission of Malaysia
<b>UDHR</b>	Universal Declaration of Human Rights 1948
<b>UN</b>	United Nations
<b>WAO</b>	Women's Aid Organisation



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# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

The ideas of human rights and equality have been established not only at the recent time but since years ago especially in the Western countries such as United Kingdom (UK) and United States (US). Since 1945, when the United Nations (UN) was first established, the world's leaders have codified human rights in most of the universal regimes of treaties, institutions, and norms. In fact, as the result of their collaboration, the Universal Declaration of Human Rights 1948 (UDHR) itself has come into existence as to offer the basic framework of rights for the international community<sup>1</sup>.

Apart from that, in June 2011, among the Muslim nations, the Organisation of Islamic Cooperation (OIC) has established the Independent Permanent Human Rights Commission 2011 (IPHRC) to fulfil their goals for advancing human rights and support the effort of the Member States in compiling the civil, political, economic, social and cultural rights. Besides, the meeting involving Muslim nations that were assembled by OIC has resulted in the Cairo Declaration on Human Rights in Islam 1990 (CDHRI) that covers the Islamic perception of human rights context.

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<sup>1</sup> Azril Mohd Amin, Mohamed Azam, Aidil Khalid, Amran Muhammad, Faidhur Rahman, Zairina Othman. *Human Rights in Malaysia*. Malaysia: Centre for Human Rights Research & Advocacy (CENTHRA), 2016.

Based on all of these laws and declarations, the principle of equality was found as a basic element in reforming social justice and thus, can be regarded as vital especially in discussing the issues of discrimination and standing for human rights. For example, Article 1 of UDHR states that “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*” that emphasizes the need for equality to achieve human rights.

The same thing was stressed in Article 1(a) of CDHRI where it seeks for all men to be equal to one another that simply shows how Islam also concerns equality between individuals. In another sphere, the last sentence of the article that mentions “... *True faith is the guarantee for enhancing such dignity along the path to human perfection*” demonstrates its connection to moral philosophy. In Malaysia context, equality has been specifically affirmed by Article 8 of the Federal Constitution whereby clause (1) generally mentions that “*All persons are equal before the law and entitled to the equal protection of the law.*” This is supported further by clauses (2), (3), (4) and (5) whereby they prohibit specifically any discrimination despite having different gender, faith, and belief, origin, and lineage or in any law or circumstances without any rational basis.

Through these, it can be concluded that equality has become a basic obligation towards human beings in which individuals are not allowed to do injustice or inequality and discriminate against one another without any rational basis. Even so, the issue of equality has been problematic when gender equality, among others, is still being

debated and has become the topic of discussion and discourse. Gender equality has been discussed in the context of employment, leadership, politics and others<sup>2</sup>.

Fui and Lim<sup>3</sup> stated in their study that it has been reported by International Labour Organisation (ILO) on the indication of underutilization of women workers resources in many Asian economies with low participation rates (which Malaysia has been reported as one of the lowest in terms of women participation as labour force). In fact, with the low percentage of women legislators, senior officials and managers, they conclude that “the government’s target of 30.0% women in corporate decision-making positions have yet to be fulfilled” and that Malaysian women are still facing a glass ceiling at the top levels of the workplace which hinder their ways for career development and promotion opportunities<sup>4</sup>. This is the reason for some literature’s claim of the workplace is some sort of ‘fiery pit’ for women since there are multiple discriminations that were done against them that negatively affects their earnings and opportunities as well as causing the dearth of women in leadership. Eventually, women had to take a much longer time in their career progress compared to men<sup>5</sup>. Besides,

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<sup>2</sup> Marta Fraile and Raul Gomez, “Bridging the Enduring Gender Gap in Political Interest in Europe: The Relevance of Promoting Gender Equality,” *European Journal of Political Research* 56, no. 3 (2017): 601–618; Beatrice Fui and Yee Lim, “Malaysia Women Left Behind? Closing the Gender Gap in Malaysia,” *Japan Labor Issues* 3, no. 17 (2019): 22–29; Marie Froehlicher et al., “Gender Equality in the Workplace: Going beyond Women on the Board,” *S&P Global* (2021), <https://www.spglobal.com/esg/csa/yearbook/articles/gender-equality-workplace-going-beyond-women-on-the-board>; Lynne E. Ford, “Two Paths to Equality,” in *Women and Politics: The Pursuing of Equality*, 4th ed. (Taylor & Francis Group, 2017), 148–162; Cailin S. Stamarski and Leanne S. Son Hing, “Gender Inequalities in the Workplace: The Effects of Organizational Structures, Processes, Practices, and Decision Makers’ Sexism,” *Frontiers in Psychology* 6, no. 1400r (2015): 1–20; UN Women, “Facts and Figures: Women’s Leadership and Political Participation | What We Do,” last modified 2021, accessed September 24, 2021, <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>; Shirin M. Rai, Benjamin D. Brown, and Kanchana N. Ruwanpura, “SDG 8: Decent Work and Economic Growth – A Gendered Analysis,” *World Development* 113 (2019): 368–380, <https://doi.org/10.1016/j.worlddev.2018.09.006>.

<sup>3</sup> Fui and Lim, “Malaysia Women Left Behind? Closing the Gender Gap in Malaysia.”

<sup>4</sup> Ibid.

<sup>5</sup> Stamarski and Son Hing, “Gender Inequalities in the Workplace: The Effects of Organizational Structures, Processes, Practices, and Decision Makers’ Sexism.”

studies also have discuss about gender equality and politics where they proved the relationship of gender equality in decreasing the gap in politics<sup>6</sup>.

## 1.2 Problem Statement

Based on the report by the Department of Statistics Malaysia<sup>7</sup>, statistically as according to the official press release on the statistics of Women Empowerment in Selected Domains, Malaysia, 2019 with the base population in 2018, Malaysia Gender Gap Index (MGGI) for the end of 2018 was 0.711. Although there are improvements in gap and ranking compared to previous years, on the factor of economic participation and opportunity measured in MGGI 2018, it was found that there is a huge gap between male and female participation as legislators, senior officials, and managers as shown in figure 1.1.

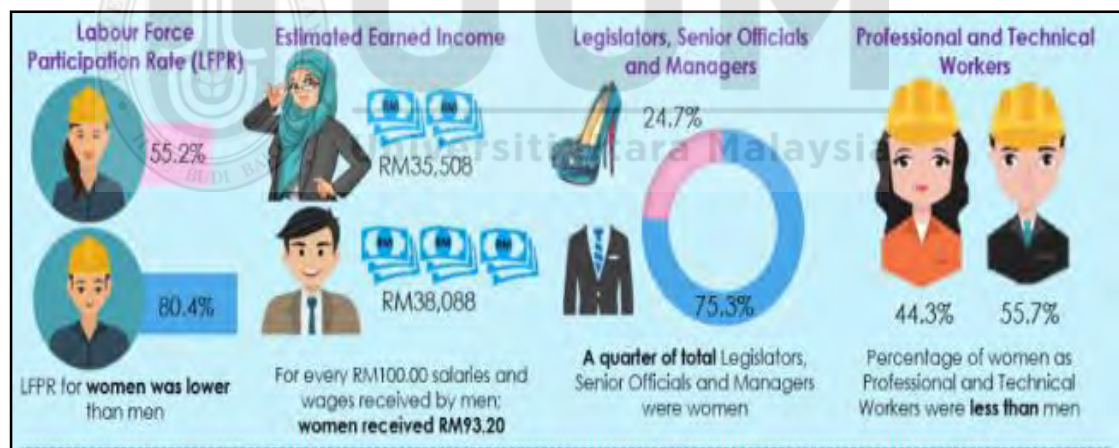


Figure 1.1: Economic Participation and Opportunity<sup>8</sup>

<sup>6</sup> Fraile and Gomez, “Bridging the Enduring Gender Gap in Political Interest in Europe: The Relevance of Promoting Gender Equality”; Ford, “Two Paths to Equality”; Fui and Lim, “Malaysia Women Left Behind ? Closing the Gender Gap in Malaysia.”

<sup>7</sup> Department of Statistics Malaysia, “Statistics on Women Empowerment in Selected Domains, Malaysia, 2019,” *Department of Statistics Malaysia*, last modified 2019, accessed March 11, 2020, <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=U2UvVIIQQIJsbkwclQrdVlnMzJTdz09>.

<sup>8</sup> Ibid.

Along with it, men stay with a higher rate compared to women in all other factors such as Labour Force Participation Rate (LFPR), estimated earned income as well as professional and technical workers<sup>9</sup>. The gap according to the Department of Statistics Malaysia<sup>10</sup>, portrays the gender inequalities where it is most influenced by economic participation and opportunity against women. Eventually, it turns to be an extensive issue mostly concerned by women as proven through a survey done by recruiting experts Hays<sup>11</sup>. Even though the Employment Act 1955 has been practised as employment law in Malaysia to cover all parties which include employment contract that consists of employer-employees relationship<sup>12</sup> but, the existing gaps between gender in the market labour and employment show that the Act alone might not be sufficient to avoid gender discrimination in the workplace. Thus, as suggested by researchers in the area of study, certain provisions and legal policies that provide special clauses specifically in the pre-employment, promotion and other levels in employment that protects from any forms of discrimination are needed for the wellbeing of the workers<sup>13</sup>.

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<sup>9</sup> Ibid.

<sup>10</sup> Department of Statistics Malaysia, "Press Release: Statistics on Women Empowerment in Selected Domains , Malaysia, 2018," Department of Statistics Malaysia, last modified 2018, accessed October 3, 2019,

[https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=444&bul\\_id=SGMzVDh0cVUwK0t6SGN6UzhwN1dmdz09&menu\\_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09](https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=444&bul_id=SGMzVDh0cVUwK0t6SGN6UzhwN1dmdz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09).

<sup>11</sup> According to a survey done by experts Hays, the findings shows that among all of the respondents, the women respondents were more likely to believe that they need improvement in gender equality. Refer Hays, "Men Less Likely to Recognize Gender Inequality as an Issue in the Workplace," last modified 2019, accessed October 7, 2019, [https://www.hays.com.my/press-releases/HAYS\\_2028854](https://www.hays.com.my/press-releases/HAYS_2028854).

<sup>12</sup> Kevin Davasagayam and Alisha, "MTUC Slams Move to Withdraw Proposed Anti- Discrimination Provision," *The Sun Daily*, September 24, 2019, <http://www.mtuc.org.my/mtuc-slams-move-to-withdraw-proposed-anti-discrimination-provision/>.

<sup>13</sup> Anwar Abdul Rahman, Nor Haizan Mehat, and Khatijah Hamzah, "Discrimination Against Women in Workplace: A Case Study on Hotel Dress Code," *Journal of Hospitality and Networks* 1 (2019): 18–22.

The idea of proposing a specified provision as reported by The Daily Sun<sup>14</sup> is even supported by the Malaysian Trade Union Commission (MTUC) Secretary-general, J. Solomon. He, in contrast to the Malaysian Employers Federation (MEF), believed that “*As mature and educated shareholders, we should incorporate any provision that upholds fundamental human rights... a ‘provision against discrimination’ is key to securing this.*” Does this indicate the need for a specific provision and policies on anti-discrimination? Why? This is because there might be insufficiencies in the existing laws and practices of equality at Malaysia workplace that needs further understanding and recognition of the fundamental principles of equality in establishing or constructing a good policy.

In conclusion, despite the imposing of enacted laws related to the workplace like the Industrial Relations Act 1967 and Employment Act 1955, it is important to understand how this issue can be tackled from a legal and philosophical perspective as equality is an interdisciplinary issue that covers in both disciplines<sup>15</sup>. Hence, the practice of gender equality at the workplace can be enhanced especially within the top management of corporations. Last but not least, standing with a theory by Aristotle, “people who are alike should be treated alike,” equality brings us to the matter of morality which is part of philosophical branches<sup>16</sup>. Following Brown<sup>17</sup>, an academician and professor with a specialization in philosophy of law, morality, and social philosophy, equality is conceived as a social relationship in which citizens relate

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<sup>14</sup> Kevin Davasagayam and Alisha, “MTUC Slams Move to Withdraw Proposed Anti-Discrimination Provision.”

<sup>15</sup> William E. O’Brian, “Equality in Law and Philosophy,” *Inquiry* 53, no. 3 (2010): 257–284.

<sup>16</sup> John R. Brownlee and Jamie Dickey Ungerleider, “Decision Making and Ethics,” in *Critical Heart Disease in Infants and Children*, Third Edit. (Elsevier B.V., 2019), 73, <https://doi.org/10.1016/B978-1-4557-0760-7.00009-7>.

<sup>17</sup> Jeffrey M. Brown, “Relational Equality and Disability Injustice,” *Journal of Moral Philosophy* 16, no. 3 (October 2018): 327–357.

to each other as persons of equal moral worth and dignity. Thus, to know the ground of equality that will contribute to the achievement of gender equality, a deep study of the concept of equality (or gender equality in specific) in philosophy and law is necessary.

### **1.3 Research Questions**

- 1) What are the philosophical and legal concepts of gender equality?
- 2) How is the practice of gender equality in the Malaysian workplace?
- 3) How to deal with gender equality in the workplace?

### **1.4 Research Objectives**

- 1) To examine the concept of gender equality in the philosophical and legal context;
- 2) To study the practice of gender equality in the Malaysia corporate sector;
- 3) To propose some guides for gender equality practice at the workplace.

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

This research is significant for both legal practitioners and policy-makers as well as those who are involved in employment and organisation. This research helps the legal practitioners and policy-makers by acting as a tool or guides in establishing the policy for anti-discrimination at the workplace relating to gender bias in employment and promotion for the higher rank position. With regards to the Malaysia adoption of 17 Sustainable Development Goals (SDGs) as a universal call to ensure peace and prosperity for all people by the year 2030, it is important for policy-makers to have a

clear foundation in supporting gender equality as it has been recognized as one of the goals targeted<sup>18</sup>.

On the other hand, for those who are bound under the subject of employment, this research is important in portraying a clear picture of the concept of gender equality and how it should be practised in the workplace so that both employers and employees could stand for their rights. For that purpose, this research will first discuss the concept of gender equality in a philosophical and legal context. A philosophical perspective is important to provide a broader knowledge and understanding of the principle of equality while the legal perspective is necessary with regards to constructing a legal framework and policy-making.

This research also aims to study the practice of gender equality in the corporate sector especially in terms of top management promotion since huge gender gaps were found at this level of employment<sup>19</sup>. The data of this research hence can be used in understanding the status of the issue itself. Despite the imposing of enacted laws related to the workplace such as the Employment Act 1955 and the Industrial Relations Act 1967, it is important to understand how this issue can be tackled from a legal and philosophical perspective. In conclusion, this study will make a huge contribution to the body of knowledge by adding literature as well as for the use of the policy-maker related to the area of the study.

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<sup>18</sup> United Nations Development Programme, "Sustainable Development Goals," *UNDP2020*, last modified 2020, accessed February 15, 2020, <https://www.my.undp.org/content/malaysia/en/home/sustainable-development-goals/goal-5-gender-equality.html>.

<sup>19</sup> Department of Statistics Malaysia, *Press Release: Statistics on Women Empowerment in Selected Domains*, Malaysia, 2018.

## **1.6 Research Methodology**

This part of the research methodology explains the theoretical framework for the whole study, methods complied in the process of data collection, and data analysis for the purpose of answering each of the research objectives. The scope of the study also will be clearly defined in order to draw certain boundaries to the area of the research so that a proper and dependable study can be achieved. It is important to note that although the study is only focusing on certain areas and levels of employment, the outcome for this study might also be extended and applied to other contexts of employment areas whenever it is necessary.

### **1.6.1 Theoretical Framework**

As stated at the outset, this study aims to propose some guides for gender equality practice at the workplace by identifying gender issues, common practice in top management promotion, factors influencing women participation and analysis of the concept of gender equality in employment. While analysis on the concept is done through a combination of two (2) areas of disciplines which are philosophy and law, the practice of gender equality in Malaysian corporate sector is studied in order to see the real picture of gender equality in Malaysian perspectives. In the effort of gathering the data and analysis, the study has gather respondents from various backgrounds to help in achieving reliable results and findings. Given the continuous emphasis on the government initiatives to curb gender inequalities and discrimination as well as the theory by Aristotle that saying “people who are alike should be treated alike,” this study probes into these two (2) disciplines, philosophy and law. Based on these two disciplines, the study identifies the elements that constitute the concept of gender equality which essential for developing guides for the practice of gender equality at

the workplace. The findings are vital for the process of the legal policy establishment on anti-gender discrimination at the workplace. The details of the framework are shown in Figure 1.2 below.

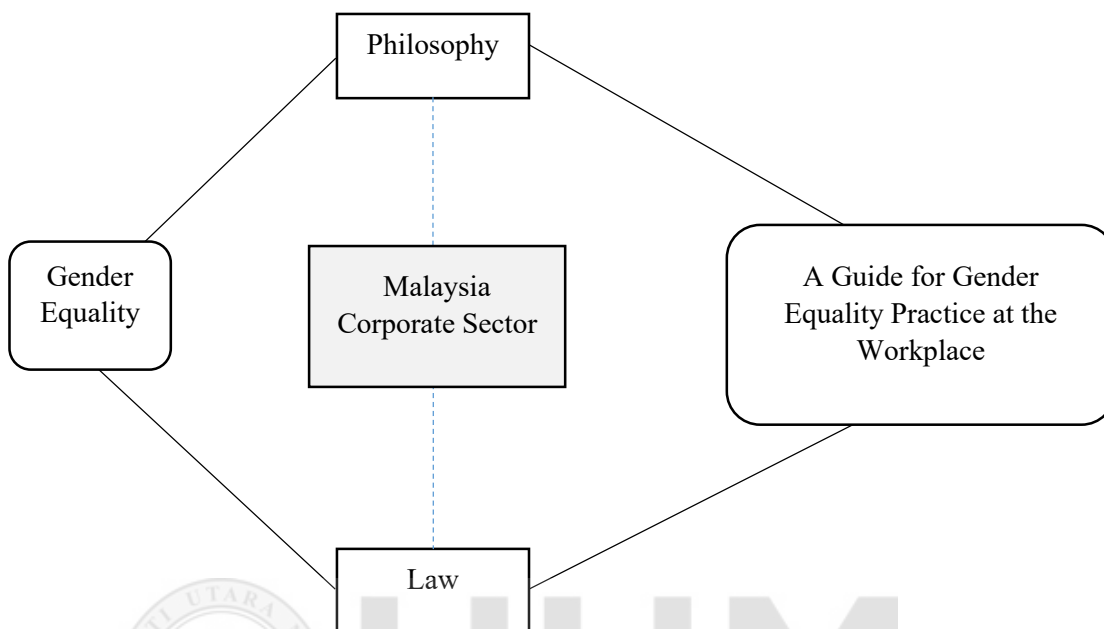


Figure 1.2: Theoretical Framework

### 1.6.2 Research Design

This study applies a qualitative research design. The qualitative method is done through doctrinal legal research or a library-based study approach. The materials, largely secondary sources are gathered from libraries, archives, and other databases. The important point of such research as according to Hutchinson<sup>20</sup> is to have a systematic system in the process of discovery, analysis, and presenting the concepts and the theories, or some related facts, principles, provisions, and certain laws or legal institutions. This approach according to him is basically based on an understanding of the precedent rules between the jurisdiction of the court, the interpretation of statutory

<sup>20</sup> Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law," *Erasmus Law Review* 38, no. 3 (2016).

rules, the tacit discipline knowledge, and various tests of liability, along with the acknowledged reasoning methods, borrowed from philosophy and logic which suits for an interdisciplinary study<sup>21</sup>.

Besides that, the study also conducted interviews with eight (8) respondents from various backgrounds. Since the study aims for understanding the theory and the practice of gender equality in the Malaysia workplace, thus, the respondents are categorised into two groups, A and B. 'Group A' respondents were coded as E1, E2, E3, E4 and E5 while 'Group B' respondents were coded as C1, C2 and C3. The details of the respondents will be explained further under the research data collection method of the study. The interview is conducted using a semi-structured interview in order to gather information and experts' opinions from government and non-governmental bodies as well as academicians with philosophy and law expertise regarding their views upon the Malaysian context of gender equality in philosophical and legal perspectives. On top of that, in regards to the practice of gender equality at the workplace specifically in the Malaysian corporate sector, other interviews are conducted involving respondents from the top management of Malaysian corporate bodies.

### **1.6.3 Research Scope**

The scope of the study is on gender equality and gender-based discrimination between males and females on its nature which excludes transgender. Thus, the discussion on the matter of transgender is not inclusive in this research. This is because the main focus of this research is within the Malaysia region which is also bound by Sharia law

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<sup>21</sup> Ibid.

and that the LGBT or the transgender itself is not legalised and acceptable as a practice<sup>22</sup>. The area of the study involves the cases and gender discriminatory treatment or practice within the realm of employment particularly in the relationship of employer-employee. Another discriminatory action, such as among peers or colleagues is not inclusive.

This study in general aims to analyse the concept of gender equality from philosophical and legal perspectives as its main concern in establishing a guide for gender equality practice at the workplace. Therefore, the views and opinions of two experts from both areas, as well as three representatives from the government and non-government agencies were gathered together.

This study includes some relevant theories for the study of gender equality such as feminist theories from different schools of thought and movements. Besides, considering Islam has been acknowledged as the religion of the Federation that parallel Article 4 of the Federal Constitution, hence the study includes the Islamic perspective in discussing gender equality in theory. This study covers some laws and regulations in Malaysia and international instruments specifically on human rights, equality and employment. Among the statutes that have been analysed in this study are Article 8 of the Federal Constitution, Employment Act 1955, Industrial Relations Act 1967, and Common law.. International instruments like the Universal Declaration on Human Rights 1948 (UDHR), International Labour Organisation (ILO) and Convention on the

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<sup>22</sup> Neela Ghoshal, “‘ The Deceased Can’t Speak for Herself:’ Violence Against LGBT People in Malaysia,” *Human Rights Watch*, June 25, 2019, <https://www.hrw.org/news/2019/06/25/deceased-cant-speak-herself-violence-against-lgbt-people-malaysia>.

Elimination of All Forms of Discrimination against Women 1979 (CEDAW) were also referred throughout the study.

In terms of the analysis on the practice of gender equality at the workplace, the focus of the research has been directed to the top management and high-ranking position promotion. The top management in this study is basically referring to individuals at the highest levels in the organisation who held titles such as members of the Board of Directors like President, Vice president, General Director or Corporate Head as well as top management executives including Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO), Chief Information Officer (CIO). They are the people who are responsible for controlling and reviewing the entire organisation including developing goals, strategic planning, organisational policies, and decision making on the direction of the company besides having the absolute legal responsibility for the actions of the organisation and its subsidiaries, officers, employees, and agents<sup>23</sup>.

#### **1.6.4 Type of Data**

In terms of the data for the study, this study used both primary and secondary sources. The primary source refers to direct sources and first-hand sources of information or data which includes documents of an original nature of legislation or statute or treaties or any other document of similar status, including results and findings from the interviews<sup>24</sup>. For this study, the primary source includes the Federal Constitution,

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<sup>23</sup> FindLaw, "Corporate Structure: From Directors to Shareholders," *Thomson Reuters*, accessed February 20, 2020, <https://smallbusiness.findlaw.com/incorporation-and-legal-structures/corporate-structure-directors-to-shareholders.html>.

<sup>24</sup> Tara Horkoff, "Sources: Choosing the Right Ones," in *Writing for Success 1st Canadian Edition* (BCcampus Open Education, 2019), 1–25, <https://opentextbc.ca/writingforsuccess/chapter/chapter-7-sources-choosing-the-right-ones/>.

labour legislation, and other international instruments related to employment discrimination. Interviews with government departments, agencies and representatives of the corporate bodies are part of the primary sources. Secondary sources are those resources that are not primary in nature. Experts' opinions from books and published articles are among the examples of secondary data sources in which they are all interpreted documents<sup>25</sup>. Hence, published articles from journals, expert opinions, and paper conferences related to the study will be taken into account.

### **1.6.5 Data Collection Methods**

#### **Qualitative Method**

A library-based study approach was conducted by collecting and researching the legal and philosophical articles, journals, books, and other relevant sources such as treaties or jurisdiction of precedent cases from libraries, archives and other databases in order to identify the deficiencies in Malaysia legal context on gender equality in employment. The underlying aim of such research is to gain and present new knowledge and ideas on the matter of discussion. Besides, to achieve the first objective, a comparative method is used in order to compare and understand the concept of gender equality from different scholars either from philosophy or legal areas. Along with it, the application of the principle of equality within the international instrument on human rights such as UDHR has also been analysed. This is important in order to grasp the idea and have a deep understanding of the context that should be applied in the Malaysian context.

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<sup>25</sup> Khadijah Mohamed, "Combining Methods in Legal Research," *The Social Sciences (Pakistan)* 11, no. 21 (2016): 5191–5198.

Other than secondary data, for the purpose of reaching its objectives, primary data also were obtained through interviews with overall eight respondents. This method is applied for the purpose of answering all objectives. By referring to the findings on the principles of equality in Chapters Two and Three, the interview questions were developed. The need to conduct interviews is based on the ideas that those that are affected by the issue of gender equality are better placed to know and present their experience which will speak to or help to prove or disprove what is known theoretically. As mentioned previously, the respondents for interview were divided into two categories which are the respondents to represent experts' opinion (Group A) and the respondents that represents industrial practices (Group B).

For answering the first objectives, the interview was conducted with 'Group A' respondents; two academicians which also professors of public universities, coded as E1 (expert in constitutional law) and E2 (expert of philosophy); three representatives namely E3, E4, and E5 respectively from the Ministry of Women, Family and Community Development (KPWKM), Human Rights Commission of Malaysia (SUHAKAM), and Women's Aid Organisation (WAO). The respondents are regarded as the experts based on their long experience in their field of study respectively, and their positions that practically a representative from institution or organisation that are working actively in the area of gender.

In terms of answering the first objective, the interview has focused on understanding the philosophy of equality itself and the legal concept of equality especially in the Malaysia context. Later on through the interviews also, the idea of the principles of

equality and elements constitute the concept of gender equality were grasped from the respondents in order to answer the third objective. For the purpose of the interview, this study anticipated in having respondents consist of two academicians in philosophy and legal expertise respectively, and also officer from KPWKM, SUHAKAM, and NGO which is the WAO.

On the other hand, an interview was done with a sample of respondents among the top management officers of three different corporate bodies (Group B) to answer the second objective. Three individuals from different occupational backgrounds were chosen as the respondents for the interviews. Throughout this study, the researcher has named/ coded the respondents as C1, C2 and C3 in order to protect the privacy of the respondents. The first respondent, C1 (female), is the Chief Operating Officer (COO) of an organisation with a background of finance. The second respondent, C2 (female), is the Chief Executive Officer (CEO) of an organisation with an accounting background. Lastly, the third respondent, C3 (male), is the General Director of the organisation with a background in engineering and road safety.

The sampling is important to represent the target population and the probability sample is used to ensure the generalizability of the study result<sup>26</sup>. For achieving the second objective, the questions had looked into particular aspects of the participant's action or belief on the discrimination against gender at the workplace and the practice of gender equality as a whole especially in terms of promotion to the top management based on their experiences. Based on the findings for both first and second objectives, the analysis are done to answer the third objective. The data collected are solely

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<sup>26</sup> Anita S Acharya et al., "Sampling: Why and How of It?," *Indian Journal of Medical Specialities* 4, no. 2 (July-December 2013): 330–333.

focused on a demographic background which is on gender. As the target of the study is on the level of decision-makers throughout Malaysia, the interviews thus only involve respondents from the top management. A random and convenience sampling method were utilized in getting participation from the top management of different industries or occupational backgrounds in Malaysia as mentioned in the scope of the study. The details of all respondents are summarized in Table 1.1 below.

Table 1.1: The Details of the Respondents

<b>Group</b>	<b>Respondent</b>	<b>Gender</b>	<b>Position</b>	<b>Working (current organisation)</b>	<b>Period area/</b>
<b>A</b>	E1	Female	Academician (constitutional law)	30 years	
	E2	Male	Academician (Philosophy)	33 years	
	E3	Female	KPWKM officer	<2 years	
	E4	Female	SUHAKAM officer	5 years	
	E5	Female	WAO officer	<1 year	
<b>B</b>	C1	Female	Chief Operating Officer	15 years	
	C2	Female	Chief Executive Officer	<5 years	
	C3	Male	General Director	4 years	

### 1.6.6 Analysis of Data

In this interdisciplinary study, the study will combine some methods of analysis that are commonly used in both philosophical and legal research. First of all, a descriptive analysis is applied in understanding the concepts of gender equality from the data collected through doctrinal-library research and the interview with the experts.

Besides, as this study discusses gender equality within two areas of discipline, a critical analysis of law has been employed. According to Dubber<sup>27</sup>, critical analysis of law is a contextual model of legal studies that embraces interdisciplinary, while at the same time reconceiving and contextualizing it.

A legal analysis of relevant legislation, treaties and cases related to gender equality and discrimination at the workplace were analysed throughout the study. Besides, a systematic content analysis of the interview is used to understand the content of the information given by respondents. As formally defined by Krippendorff<sup>28</sup>, it is a research technique that makes replicable and valid inferences from data gathered into the study context which helps to analyse the verbal discourse, written documents and visual representations. Lastly, a comparative analysis is applied in comparing the concept of gender equality between philosophy and legal perspectives, along with analysis over Malaysian legal doctrines and legislations vis-a-vis the international instruments provided for equality. According to Abdul Qadir<sup>29</sup>, this method helps to foresee the efficiency of the law involved.

### **1.7 Limitation of the Study**

This study has its own limitations. First, the literature that discusses the theories of gender equality are mostly came from Western scholars that might experience a different culture from Malaysia. Therefore, a broader analysis was done thoroughly to

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<sup>27</sup> Markus D. Dubber, "Critical Analysis of Law: Interdisciplinarity, Contextuality, and the Future of Legal Studies," *SSRN Electronic Journal* 1, no. 1 (February 2014): 1–4, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2385656](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2385656).

<sup>28</sup> Klaus Krippendorff, "Content Analysis," *The International Encyclopedia of Communication*, 1989, [http://repository.upenn.edu/asc\\_papers/226](http://repository.upenn.edu/asc_papers/226).

<sup>29</sup> Aishah Abdul Qadir Zubair, "The Role of Comparative Legal Research in The Development of Law," *Australian Journal of Basic and Applied Sciences* 8, no. (June 2014): 249–256.

understand and look upon what is suits for the Malaysian perspective. The analysis was directed to the literature on the law of equality in Malaysia as provided under the Federal Constitution of Malaysia and experts opinions that were gathered through interviews with academicians in philosophy and constitutional law expertise.

Second, the study only focuses on the top management of several corporate bodies. Thus, there might be slightly different in terms of practice in other organisations especially those with different backgrounds. However, the discussion on the concept of gender equality and the result of this study may be applicable for the use of the whole of Malaysia since it would provide general concepts on gender equality within Malaysian perspectives. Besides that, due to time constraints and the unavailability of the early targeted respondents, the study only managed to conduct the interviews with three respondents from different corporate bodies in Malaysia.

Third, there are some obstacles in arranging the time for a face-to-face interview with the respondents due to their time constraints and busy schedule as well as the outbreak of the COVID-19 pandemic in Malaysia thus, other platforms of the interview has been used which is through 'Webex' online meeting and other online platforms.

## **1.8 Operational Definitions**

### **1.8.1 Gender 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" is a distinguished set of learned expectations, behaviours and attitudes of being a man or

woman through human biological traits, collectively termed human “sex”<sup>30</sup>. On the other hand, “equality” as defined by Cambridge Dictionary refers to the right of different groups of people to access the same social positions and treatments<sup>31</sup>. Thus, gender equality in the prospect of this study refers to an ideal of uniformity where men and women possess the right to equal treatment.

In the context of this study, gender equality is operationally being regarded as gender equality in the economy<sup>32</sup> that implies an equal integration of men and women into the labour market, specifically top management. It is discussed as the equal treatment between or towards different genders where the individuals are men and women on its nature. The concept is measured through gender-based treatment whereby gender-based treatment is defined as the treatments or actions towards men and women according to their differences in gender.

The dependency of the rights and opportunities for women and men on their genders is one of the main concerns in analysing gender equality for the purpose of this study. Gender equality implies the need of being considerate towards both women’s and men’s interests, needs and priorities, besides recognizing diversity and differences. It should not be regarded as a women’s issue only, instead, men should also be considered to be part of it since both genders have the right to contribute to the development of the economy and society.

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<sup>30</sup> Lori A Rolleri, “Understanding Gender and Gender Equality Gender & Sexual Health Part One” (2013).

<sup>31</sup> Cambridge Dictionary, “Equality,” *Cambridge University Press*, last modified 2020, accessed June 29, 2020, <https://dictionary.cambridge.org/dictionary/english/equality>.

<sup>32</sup> Anja-kristin Abendroth, “Gender Equality,” n.d., 2427.

### **1.8.2 Corporate Sector**

The operational definition for the “corporate sector” in this study is basically based to OECD iLibrary provided by the Organisation for Economic Co-operation and Development (OECD) that functioned as expertise in economic and social areas. According to OECD iLibrary<sup>33</sup>, the “corporate sector” may cover both non-financial and financial corporation sectors which may also include all private and public enterprises and quasi-corporation<sup>34</sup> that produce goods and /or provide services to the markets. In the context of this study, it involves the top management of the corporate bodies from different services: finance and banking; accounting and; engineering that specified in road safety. Hereinafter, it is referred to as “organisation” and “corporate body” interchangeably.

### **1.8.3 Top Management**

The top management in this study is basically referring to individuals at the highest levels in an organisation who held titles such as members of Board of Directors like President, Vice president, Director General or Corporate Head of the organisation as well as top management executives including Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operational Officer (COO), Chief Information Officer (CIO). They are the people who are responsible for controlling and reviewing the entire organisation including developing goals, strategic planning, organisational policies,

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<sup>33</sup> The Organisation for Economic Co-operation and Development (OECD), “OECD iLibrary | Corporate Sector,” accessed September 25, 2021, [https://www.oecd-ilibrary.org/economics/corporate-sector/indicator-group/english\\_a68c33e9-en](https://www.oecd-ilibrary.org/economics/corporate-sector/indicator-group/english_a68c33e9-en).

<sup>34</sup> Quasi-corporation refers to “a public or municipal body or organisation (as a county) not specifically incorporated or vested with all the usual powers of a corporation but exercising certain corporate functions and rights in connection with public duties.” See also US Legal Inc., “Quasi Corporation Law and Legal Definition | USLegal, Inc.,” accessed September 25, 2021, <https://definitions.uslegal.com/q/quasi-corporation/>; Merriam-Webster, “Quasi Corporation | Definition of Quasi Corporation,” accessed September 25, 2021, [https://www.merriam-webster.com/dictionary/quasi corporation](https://www.merriam-webster.com/dictionary/quasi%20corporation).

and decision making on the direction of the company besides having the absolute legal responsibility for the actions of the organisation and its subsidiaries, officers, employees, and agents<sup>35</sup>. For this study, the respondents are from the top management of corporate bodies with the position of Chief Executive Officer, Chief Operating Officer and Director-General.

#### **1.8.4 Philosophical Perspective**

The study operates the “philosophical perspective” in terms of the philosophy of equality or egalitarianism whereby as defined by Afolayan (2015), it is a philosophical theory that claims fundamental rights and worth for all human beings towards equality. The essence of such a goal is the ideal of an equal moral worth that demands that all humans are treated equally unless if there is an overriding justification that allows inequalities to take place. Since gender equality is discussed within feminisms theories, thus, the operational definition of philosophical perspective in this study works in the context of feminism, egalitarianism, justice and morality.

#### **1.8.5 Legal Perspective**

The “legal perspective” in this study refers to the analysis of the statutory provisions especially the constitutional law and prevailing judiciary interpretation in regards to gender equality. This study will cover some laws and regulations in Malaysia and the common law in the realm of employment. Among the statutes that will be analysed in this study are Article 8 of the Federal Constitution, Employment Act 1955 and Industrial Relations Act 1967. Besides, considering Islam has been acknowledged as the religion of the Federation that parallel Article 4 of the Federal Constitution, hence

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<sup>35</sup> FindLaw, “Corporate Structure : From Directors to Shareholders.”

the Islamic perspective will also be considered. In addition, this study also refers to the international instruments like the Universal Declaration on Human Rights 1948 (UDHR), International Labour Organisation (ILO) and Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW).

## **1.9 Literature Review**

The pieces of literature are collected to present the general concepts and ideas related to the study of gender equality as well as to provide an overview of the gaps related to this field. This becomes vital to position this research in a proper context within the scope of this study. The thematic method is adopted in presenting the literature. This part of the study seeks to explore and review the work done by previous scholars and other authors related to this study. The review was done mainly focusing on the recent years starting from 2009. However, since most of the works done were referring to scholars' theories and work from the past centuries, thus, works from years and decades ago are still being reviewed in order to bring their original idea on the issues related. As this study aims at the issue of gender equality and/ or inequality in the workplace, the literature and the study itself hence focuses on the researches related to gender equality only especially in terms of top management promotion in the corporate area. However, at some point of discussion, the general study on equality and discrimination will be referred as it is closely related to the issue of gender equality.

### **1.9.1 Gender Equality in Employment**

As much as jobs could bring gains and pull families out of poverty, gender equality is synonym with the world of employment and the workplace. As believed by Kenschaft,

Clark and Ciambrone, Shah<sup>36</sup> in her article emphasized that gender equality stays a multi-dimensional and complicated issue in spite of the progressive development of national policies and affirmative actions of the worldwide countries. According to Article 23 of the Universal Declaration of Human Rights (UDHR), it has been stated that *“Every individual has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”* Apart from that, as provided by the Equal Opportunity Act 2010,

*“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”<sup>37</sup>.*

Hence, one would be regarded as being equally treated in their employment if and only if they were all subjected to the same treatment regardless of their differences including gender.

In line with the United Nations stands, gender equality in employment encompass the equal rights, responsibilities and opportunities of women and men<sup>38</sup> in employment. Ali<sup>39</sup> however then in parallel to United Nations<sup>40</sup> explained that equality does not

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<sup>36</sup> Saeeda Shah, “‘We Are Equals’; Datum or Delusion: Perceptions of Muslim Women Academics in Three Malaysian Universities,” *British Journal of Sociology of Education* 39, no. 3 (June 2017): 1–14.

<sup>37</sup> Victorian Equal Opportunity & Human Rights Commission, “Discrimination - Workplace.”

<sup>38</sup> United Nations Entity for Gender Equality and the Empowerment of Women, “Concepts and Definitions,” *United Nations*, last modified 2019, accessed April 6, 2020, <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>.

<sup>39</sup> Faiza Ali, “Gender Equality in the Workplace,” in *Managing Diversity and Inclusion An International Perspective*, ed. Jawad Syed and Mustafa Özbilgin (SAGE Publications Ltd, 2015).

<sup>40</sup> United Nations Entity for Gender Equality and the Empowerment of Women, “Concepts and Definitions.”

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 the participants' results may neither portray the existence of gender equality nor inequality but equal opportunity itself is what matters.

In contrary, workplace inequality provides an opposite description that associates with the act of discrimination in which as accordance to Kadiresan and Khalid<sup>41</sup>, 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<sup>42</sup> on workplace discrimination and employment suggests 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. Through Ali<sup>43</sup>, which is supported by Othman and Othman<sup>44</sup>, 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

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<sup>41</sup> Vimala Kadiresan and Najwa Khalid Javed, “Discrimination in Employment and Task Delegation at Workplace in the Malaysian Context,” *International Journal of Academic Research in Business and Social Sciences* 5, no. 7 (July 2015): 30.

<sup>42</sup> Gabriele Plickert, “A Life Course Approach to Workplace Discrimination and Employment: Evidence from a US National Sample of Women and Men FaizaLawyers,” in *Gender, Age and Inequality in the Professions* (New York: Routledge, 2019).

<sup>43</sup> Ali, “Gender Equality in the Workplace.”

<sup>44</sup> Zaiton Othman and Nooraini Othman, “A Literatural Review on Work Discrimination among Women Employees,” *Asian Social Science* 11, no. 4 (2015): 26–32.

thorough study on equality itself is needed not only focusing on women but for the whole parties involved in employment.

While analysing gender equality, many researches have directed to discuss about gender inequalities and under-representation of women in leadership. According to Shah, one of the attributes that cause the practice of gender inequality is the cultural and so-called religious belief systems that chose to specify specific roles and practices for each gender. In the Asian context, this can be supported by the previous article on “Asian Women in Top Management: Eight Country Cases” by Cho et al.<sup>45</sup> whereby it was found that there are some ideologies that influence the establishment of patriarchal society and its cultural value system caused gender roles to exist in a society such as Confucianism in Chinese culture where men and women being differed in their roles.

Respective gender is expected to carry specific behaviours such as men are expected to behave in a masculine way where they are required to be dominant, take charge and have more achievement in their career while women are expected to be caring, supportive, and considerate<sup>46</sup>. In Indian culture and society as well, women are expected to be faithful, committed, dedicated and obedient wives, mothers and daughter-in-law. This mentality and social perception somehow according to Hewapathirana<sup>47</sup> affect women’s careers in India where only 14% of the senior management positions being occupied by women. It is also nearly no difference in some Malay-Muslims’ culture when it comes to gender stereotype due to societal beliefs.

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<sup>45</sup> Yonjoo Cho et al., “Asian Women in Top Management: Eight Country Cases,” *Human Resource Development International* 18, no. 4 (September 2015): 409–411.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

Through the researches, it is proved that gender norms due to cultural beliefs have negatively impacted the mind-set of some people and the practice of equality at the workplace. These so-called cultural and traditional beliefs of masculinity and domestic responsibility were found in many parts of industries including health and professional<sup>48</sup>, higher education<sup>49</sup> as well as corporate<sup>50</sup> and legislators<sup>51</sup>. However, only a few pieces of research were done within Malaysia perspective hence, specific research that discusses and analyse the concepts of gender equality especially in legal and philosophical view is needed to cover a deeper understanding of the issue while considering other perspectives including philosophical sociology<sup>52</sup> and theology<sup>53</sup>.

Heilman<sup>54</sup> in her research argues that gender bias in evaluation has been a huge contributor to the scarcity of women participation in higher-level positions in which gender bias was rooted in gender stereotypes. At worst, according to her, gender stereotypes even could disrupt the career progress of aspiring women<sup>55</sup>. However, it seems to be different in a high-status technical sector whereby Mickey<sup>56</sup> stated in his

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<sup>48</sup> Raj et al., "Achieving Gender and Social Equality: More Than Gender Parity Is Needed," 1658-1664.

<sup>49</sup> Pat O Connor, "Policy Reviews in Higher Education Gender Imbalance in Senior Positions in Higher Education : What Is the Problem ? What Can Be Done ?," *Policy Reviews in Higher Education* 3, no. 1 (December 2018): 28–50.

<sup>50</sup> Amy Kroska and Trent C Cason, "The Gender Gap in Business Leadership : Exploring an Affect Control Theory Explanation," *Social Psychology Quarterly* 00, no. 0 (2019): 1–23.

<sup>51</sup> Ali, "Gender Equality in the Workplace."

<sup>52</sup> Philosophical sociology reflects on the intractable centrality of the normative in social life that helps to understand human nature and its norms. Daniel Chernilo, "The Idea of Philosophical History," *British Journal of Sociology* 65, no. 2 (May 2014): 33–50.

<sup>53</sup> A philosophically oriented discipline of religious speculation and apologetics that is traditionally restricted, that includes the study of God and humanity. Refer Andrew Louth and Helmut Thielicke, "Theology," *Encyclopedia Britannica* (Britannica, 2014), <https://www.britannica.com/topic/theology/The-19th-century-to-the-present>.

<sup>54</sup> Madeline E Heilman, "Gender Stereotypes and Workplace Bias," *Research in Organizational Behavior* 32 (November 2012): 113–135.

<sup>55</sup> Ibid.

<sup>56</sup> Ethel L Mickey, "When Gendered Logics Collide: Going Public and Restructuring in a High-Tech Organization," *Gender & Society* 33, no. 4 (March 2019): 509–533.

research that women would still experience job insecurity and a glass ceiling regardless of their networking while men continue to pursue as ideal workers and achieve advancement. The study also found that opposite to gender equality, gender inequality may result in gender discrimination or *vice versa*<sup>57</sup> and would negatively affect one's health. A finding in research by Harnois and Bastos as in Allen<sup>58</sup> showed that workplace gender discrimination has contributed to roughly about 10% of the gender gap in health. Allen<sup>59</sup> thus concludes that we need to have a comprehensive measure of discrimination in order to obtain a plain understanding of the relationship between discrimination and health.

On the other hand, Ottsen<sup>60</sup> in her study of gender segregation in Middle Eastern society believes that the issue being portrayed through the dependency of men over networking and serendipity. The research found out that men in Middle Eastern society tend to believe that there are higher chances for them to achieve leadership positions through serendipity and networking. In contradict with men, women in their society believe that neither people in positions of power or serendipity are able to ease their process in achieving a leadership position. This somehow caused them to be under-represented. A study by Ali<sup>61</sup> that explore and criticises theories of workplace gender segregation and some related ideologies of gender equality have examined how gender equality theories treat both male and female gender, in a society. Through the research that involves Marxist, Radical Feminist and Dual system theories, it was found that

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<sup>57</sup> Starnski and Son Hing, "Gender Inequalities in the Workplace: The Effects of Organizational Structures, Processes, Practices, and Decision Makers' *Sexism*."

<sup>58</sup> Eric Allen, "Perceived Discrimination and Health: Paradigms and Prospects," *Sociology Compass* 13, no. 8 (July 2019): 1–16.

<sup>59</sup> *Ibid.*

<sup>60</sup> Christina Lundsgaard Ottsen, "Lucky to Reach the Top?: Gendered Perspectives on Leadership Acquisition across Qatar and Denmark," *Gender in Management: An International Journal* 34, no. 7 (September 2019): 541–553.

<sup>61</sup> Ali, "Gender Equality in the Workplace."

different gender theory treats gender segregation in a different way. In conclusion, the literature on gender equality shows the interaction with few substances that cause inequality between genders includes of social perception of gender roles, gender stereotypes, bias and segregation as well as the domestic responsibilities, job insecurity and glass-ceiling in certain areas. Gender inequality is also known to be inter-related with gender discrimination where inequality might cause discrimination and *vice versa*<sup>62</sup>.

Gender discrimination as defined by US Equal Rights Advocate refers to the unfair treatment received by a person in which the action is due to its characteristics as particular sex or gender. According to the Advocate, even though the words “sex” and “gender” have slightly different meanings, laws against discrimination at work often use them interchangeably<sup>63</sup>. Gender discrimination is reported so often at the workplace in the United Kingdom alongside other first and third world countries including Malaysia<sup>64</sup>. Results of gender discrimination at work may consist of lack of motivation among the employees, low efficiency, low productivity and others.

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<sup>62</sup> Stamarski and Son Hing, “Gender Inequalities in the Workplace: The Effects of Organizational Structures, Processes, Practices, and Decision Makers’ *Sexism*.”

<sup>63</sup> Equal Rights Advocate, “KNOW YOUR RIGHTS AT WORK: Gender Discrimination at Work,” *Equal Rights Advocate*, last modified 2019, accessed April 13, 2020, <https://www.equalrights.org/issue/economic-workplace-equality/discrimination-at-work/>.

<sup>64</sup> Fatima Batool, “Gender Discrimination At Workplace And Mental Health Of Women: A Systematic Literature Review-Palarch’s,” *Journal Of Archaeology Of Egypt/Egyptology* 17, no. 8 (2020): 622; Rahman, Mehat, and Hamzah, “Discrimination Against Women in Workplace : A Case Study on Hotel Dress Code.”

Gender discrimination or discrimination against gender (or sex)<sup>65</sup> may be a common civil rights violation that takes many forms, including sexual harassment<sup>66</sup>, pregnancy discrimination<sup>67</sup>, and unequal wages for women who did the same jobs as men<sup>68</sup>. Ali<sup>69</sup>, parallel to US Supreme Court as according to MacKinnon<sup>70</sup> has recognized sexual harassment as a sex inequality claim which is known as a commonly implicit and subtle form of discrimination. In contrast, Triana et al.<sup>71</sup> in defining gender discrimination consider it to be distinct from sexual harassment prior to meta-analysis studies. The studies show that there is an inconsistency in the findings of the correlation of sexual harassment with gender discrimination which may be due to the different methodologies. However, in the Malaysian context, sexual harassment can be said as part of gender discrimination since it has been included as one of the critical issues to be raised under the Convention on the Elimination of Discrimination against Women 1979 (CEDAW)<sup>72</sup>.



<sup>65</sup> In defining gender discrimination, US Equal Rights Advocate explained that it is the unfair treatment that a person received which associated with a particular sex or gender. According to them, even though the words “sex” and “gender” have different meanings, laws against discrimination at work often use them interchangeably. See Equal Rights Advocate, “KNOW YOUR RIGHTS AT WORK: Gender Discrimination at Work.”

<sup>66</sup> Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex. See U . S . Equal Employment Opportunity Commission, “Sexual Harassment,” *U . S . Equal Employment Opportunity Commission*, last modified 1964, accessed April 13, 2020, [https://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](https://www.eeoc.gov/laws/types/sexual_harassment.cfm).

<sup>67</sup> As demonstrated in the pregnancy discrimination case of Noorfadilla Ahmad Saikin v Chayed Basirun & Ors, the Malaysia courts have created a precedent of direct application of international treaties to which Malaysia is a party in reaching decisions in fundamental rights cases, where CEDAW has been applied. See Equal Right Trust (ERT), *Washing the Tigers: Addressing Discrimination And Inequality In Malaysia* (London, 2012).

<sup>68</sup> FindLaw, “Gender Discrimination,” *Thomson Reuters*, last modified 1993, accessed January 7, 2020, <https://civilrights.findlaw.com/discrimination/gender-discrimination.html>.

<sup>69</sup> Ali, “Gender Equality in the Workplace.”

<sup>70</sup> Catharine A MacKinnon, “A Reply to Sandra Fredman,” *International Journal of Constitutional Law* 14, no. 3 (2016): 739–746.

<sup>71</sup> Maria del Carmen Triana et al., “Perceived Workplace Gender Discrimination and Employee Consequences: A Meta-Analysis and Complementary Studies Considering Country Context,” *Journal of Management* 45, no. 6 (July 2019): 2419–2447.

<sup>72</sup> Women’s Aid Organisation (WAO) and Joint Action Group for Gender Equality (JAG), *Critical Issues and Questions to Be Raised with the Malaysian Government at the 69 Th CEDAW Pre-Sessional Working Group*, 2017, <http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality->.

## 1.9.2 Gender Equality at the Malaysia Workplace

Subsequently, the government has expressed its commitment to encourage at least 30% of women in top-management and decision-making positions in the corporate sector<sup>73</sup>. According to Raja and Devadason<sup>74</sup> with this admission and recognition, various measures have been taken as the gender mainstreaming for the development process to attain gender equality. 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 broader job creation<sup>75</sup>. However, despite many published authorship expanding the issue of women discrimination, Raj et al.<sup>76</sup> expressed that, women continue to face gender discrimination in recognition and advancement regardless of the decrease in publication bias.

In Malaysia study on gender equality and discrimination, there are also authors that explained about the categories of discrimination. According to the authors<sup>77</sup>, discrimination can be divided into two categories: direct discrimination and; indirect discrimination. Direct discrimination occurs when a party treats another party or

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<sup>73</sup> Nam Institute for the Empowerment of Women, "Women Directors Programme," 2016.

<sup>74</sup> Sivachandralingam Sundara Raja and Evelyn Shyamala Devadason, "Lack of Gender Sensitization in Malaysian Laws and Regulations: Need for a Rights-Based Approach," *SSRN Electronic Journal* 26, no. 2 (2017): 71–83.

<sup>75</sup> World Bank Group, *Gender at Work: A Companion to the World Development Report on Jobs*, World Bank Group Gender & Development, 2014.

<sup>76</sup> Anita Raj et al. "Achieving Gender and Social Equality: More Than Gender Parity is Needed," *Academic medicine : journal of the Association of American Medical Colleges* 94, no. 11 (November 2019): 1659.

<sup>77</sup> Equal Right Trust (ERT), *Washing the Tigers: Addressing Discrimination And Inequality In Malaysia*; Kamal Halili Hassan, "The Dismissal of a Pregnant Stewardess: Still Lawful in Malaysia," *Journal of Gender Studies* 21, no. 2 (2012): 125–132; Harlida Abdul Wahab, "The Legal Context of Employment Discrimination in Malaysia," *International Journal for Studies on Children, Women, Elderly and Disabled* 4, no. April (2018): 119–124; Selvi Narayanan, "A Study on Challenges Faced by Disabled People at Workplace in Malaysia," *International Journal for Studies on Children, Women, Elderly and Disabled* 5, no. Oct (2018): 85–92; Othman and Othman, "A Literatural Review on Work Discrimination among Women Employees."

individuals in a less favourable manner than the others who do not share a specified characteristic<sup>78</sup>. On the other hand, indirect discrimination occurs when a party applies a condition or requirement to all, but it gives an adverse effect on a particular group of persons with certain protected characteristics where they are being put at a disadvantage when compared with those who do not share it<sup>79</sup>. In the case of gender discrimination, the less favourable treatment and the occurrence of discrimination is thus, due to the person's biological sex or gender. In the case of employment, it is reported in Equal Right Trust<sup>80</sup> that employers in Malaysian workplaces tend to have a higher preference for male employees compared to women due to strong stereotypes that believe men could be more reliable workers than women.

Shah<sup>81</sup> in her research has found that even women in response to the emergence of “men with similar qualifications with women tend to move faster towards the top position and occupied almost all positions of power than women” believed that they should accept the reality and hold onto the belief where women should focus more on housework and childcare while men are freed to enjoy their professional life and network. According to her, in their understanding of religious obligations, responsibilities towards family were top priority for women, and if career progression comes into conflict with their domestic responsibilities, then as a ‘good Muslim women’ it is an obligation for them to choose the domestic as their first option and it should be considered as the ‘choice as Muslim women’, rather than a point of inequality.

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<sup>78</sup> Hassan, “The Dismissal of a Pregnant Stewardess: Still Lawful in Malaysia.”

<sup>79</sup> Abdul Wahab, “The Legal Context of Employment Discrimination in Malaysia.”

<sup>80</sup> Equal Right Trust (ERT), *Washing the Tigers: Addressing Discrimination And Inequality In Malaysia*.

<sup>81</sup> Shah, “‘We Are Equals’; Datum or Delusion: Perceptions of Muslim Women Academics in Three Malaysian Universities,” 9.

Ismail, Farhadi and Wye<sup>82</sup> in their study on occupational segregation in Malaysia found that women actual distribution for the top occupational category (i.e. managerial, professional, technical and associate professional) is lower than their expected distribution without discrimination which concludes discrimination against women. It can be supported through the study by Leung, Koppman and Lu<sup>83</sup> whereby compared to men, women are most likely to face a “glass ceiling” and difficulties for career advancement. Women commonly found within the lower levels of the job hierarchy reflect the traditional roles of women and common gender stereotypes in the domestic and sexual spheres. The researches show that the career development for a woman is more likely being affected by the common belief of the existed gender role as if they were born to be that way forever. As in McGrew<sup>84</sup>, it is undeniable that the view of natural differences between men and women especially in skills and masculinity somehow persist the gender segregation in the workplaces. According to him, the segregation remains a problem as social norms continue to restrict occupational choices by women and men. Women, as reported by ILO are typically found in the economy that is care-centred and concentrated within six c’s which are “caring, cashiering, catering, cleaning and clerical occupations”<sup>85</sup>.

According to the report by Equal Right Trust 2012, there are specific challenges that need to be confronted by Muslim women and female workers in the countryside. The application of Sharia law in Malaysia also had caused dual discrimination in few areas

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<sup>82</sup> Rahmah Ismail, Maryam Farhadi, and Chung Khain Wye, “Occupational Segregation and Gender Wage Differentials: Evidence from Malaysia,” *Asian Economic Journal* 31, no. 4 (2017): 381–401.

<sup>83</sup> Ming D Leung, Sharon Koppman, and Richard W. Lu, *The Dilemma of Mobility: The Differential Effects of Women and Men’s Erratic Career Paths in a High Tech Firm*, 2019.

<sup>84</sup> Will McGrew, “Gender Segregation at Work: ‘Separate but Equal’ or ‘Inefficient and Unfair,’” *Washington Center for Equitable Growth*, last modified 2016, accessed January 29, 2020, <https://equitablegrowth.org/gender-segregation-at-work-separate-but-equal-or-inequitable-and-inefficient/>.

<sup>85</sup> Haspels and Majurin, *Work, Income and Gender Equality in East Asia: Action Guide*, 2.

of Muslim women's lives in the form of gender and religious bias. This type of combined discrimination is most seen to affect their marriage and family life's context that are mostly governed by the Islamic family law provisions even though its function was to maintain the position of women in Muslim families<sup>86</sup>.

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. Othman and Othman<sup>87</sup> agreed that in order to achieve business and economic progress, it is necessary to practice women empowerment and provides them with equal rights and opportunities so that they could reach their potential. Therefore, as believed by them that gender parity of participation and opportunities for women workers is important to be provided by the government in fully utilizing the skills and talents of these employees. Thus, they believe that closing or reducing gender gaps is a must for a nation to achieve gender parity. However, as encountered by Raj et al.<sup>88</sup> gender parity by itself could not achieve gender equality.

In terms of sexual harassment in Malaysia employment, a new definition has been incorporated in Section 2 of the Employment Act 1955. Sexual harassment according to Section 2(g) of the Employment (Amendment) Act 2012 was described as

“Any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is

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<sup>86</sup> Equal Right Trust (ERT), *Washing the Tigers: Addressing Discrimination And Inequality In Malaysia*.

<sup>87</sup> Zaiton Othman and Nooraini Othman, “A Literatural Review on Work Discrimination among Women Employees,” *Asian Social Science* 11, no. 4 (January 2015): 27.

<sup>88</sup> Raj et al., “Achieving Gender and Social Equality: More Than Gender Parity Is Needed,” 1658.

offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment.”

The definition as accordance with the judgment in *Mohd Ridzwan Abdul Razak v. Asmah Hj Mohd Nor* [2016] 6 CLJ 346 provides three primary elements of sexual harassment which are “the occurrence of a conduct that is sexual in nature; the conduct being unwanted; and the conduct is perceived as threatening the victim's ability to perform her job”<sup>89</sup>. In general, gender discrimination at the workplace can be understood as any unequal action towards individuals due to the difference in genders through all the processes and levels of employment. The process of employment in accordance with Abdul Wahab<sup>90</sup>, can be said as starting from the process of accessing the job, hiring, performing the job and during termination. The actions include a potential employer asking discriminatory questions based on gender during the interview process as well as the failure of a qualified employee to be hired and promoted, or wrongfully terminated due to their gender.

Other than that, in examining gender discrimination at the workplace, previous studies and national reports such as from International Labour Organisation (ILO) have clearly described the nature and forms of discrimination. Even so, according to Othman and Othman<sup>91</sup>, working women from different parts of the world have to confront different types of discrimination at their workplaces. In their research, promotion, pay equality and training opportunities were found as among the forms of discrimination that are commonly faced by female workers. Based on the research, the lopsided of women at

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<sup>89</sup> Wahiduddin Suhainah, *Mohd Ridzwan Abdul Razak v. Asmah Hj Mohd Nor*, 6 346–367 (2016).

<sup>90</sup> Harlida. "The Legal Context of Employment Discrimination in Malaysia ." 120.

<sup>91</sup> Zaiton Othman and Nooraini Othman, “A Literatural Review on Work Discrimination among Women Employees,” 27.

senior level ranks in Malaysia was perhaps due to discriminatory action over women in term of promotion to higher positions as the “masculine managerial model” still exist as the norms for executive performance<sup>92</sup>.

This concludes that sexual discrimination or gender discrimination at the workplace is patently unfair. It is because the action is a form of inequality towards individuals caused by factors that should not be allowed to influence people's basic rights and welfare. Equal treatment in employment requires opportunities to be open to whoever has the qualifications for the chance offered. All in all, equal opportunity, fairness and gender mainstreaming were seen as positively affect the result of gender equality in the workplace. Yet the extension of fairness itself in the effort of offering equality needs further discussion and analysis. Previous studies basically have discussed a lot on employment equality that covers equality at the workplace due to culture, religion and others including gender. However, most of the researches only touch on the forms of discrimination that occur in the workplace and the importance of establishing and implementing equality or anti-discrimination policy in the workplace but lacking in having a deep conceptual discussion on equality and discrimination itself<sup>93</sup>.

### **1.9.3 Gender Equality in Corporate Management**

The issue of gender equality between men and women in management has been widely debated around the world especially in western countries as conferred in Scholten and

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<sup>92</sup> Ibid.

<sup>93</sup> Harlida Abdul Wahab, “The Legal Context of Employment Discrimination in Malaysia,” *International Journal for Studies on Children, Women, Elderly and Disabled* 4, no. 17 (June 2018): 119–124.

Witmer<sup>94</sup> as well as Kelan and Wratil<sup>95</sup>. However, according to Ely, Ibarra and Kolb in an article by Cho et al.<sup>96</sup>, the research context may vary in the Asian context compared to Western countries where they have already conducted a lot more on the studies of women in leadership than Malaysia. Since most of the researches were coming from Western and European countries, hence it is necessary for us to come out with another research that specifically discussed the application of the concept of gender equality in a Malaysian context.

Through literature, it has been found that in recent years, the Malaysian Government has assured its commitment to developing gender equality within the corporate world in the country<sup>97</sup>. Thus, this effort must be rooted in the practising of gender equality at the workplace within the corporate companies themselves. The top management such as the board of directors according to Jubilee, Khong and Hung<sup>98</sup> play a vital role in enduring the equality between both female and male gender especially in their recruitment and development in career<sup>99</sup>. Besides, as mentioned by Jubilee, according to the Female's Aid Organisation in 2011, after the adoption of the commitment outlined in the Beijing Platform for Action at the UN Fourth World Conference on Female in 1995, more women participation were targeted in the decision-making

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<sup>94</sup> Christina Scholten and Hope Witmer, "The Opaque Gendered Lens – Barriers to Recruitment and Career Development," *Gender in Management* 32, no. 1 (May 2017): 47–65.

<sup>95</sup> Elisabeth K. Kelan and Patricia Wratil, "Post-Heroic Leadership, Tempered Radicalism and Senior Leaders as Change Agents for Gender Equality," *European Management Review* 15, no. 1 (April 2017): 5–18.

<sup>96</sup> Cho et al., "Asian Women in Top Management: Eight Country Cases."

<sup>97</sup> Ribed Vianeca W. Jubilee, Roy W.L. Khong, and Woan Ting Hung, "Would Diversified Corporate Boards Add Value? The Case of Banking Institutions in Malaysia," *Asia-Pacific Journal of Business Administration* 10, no. 2–3 (June 2018): 218–228.

<sup>98</sup> Ibid.

<sup>99</sup> Scholten and Witmer, "The Opaque Gendered Lens – Barriers to Recruitment and Career Development," 47-65.

process<sup>100</sup>. Jubilee, Khong, and Hung<sup>101</sup> elaborate that the board of directors is important in driving the strategic direction of the company and observing its performance. This is parallel to Kotter's in Kelan and Wratil<sup>102</sup> that claims leaders typically lead change in an organisation and following Lyness, there is a high chance for a positive change in the practice of gender equality if the top-level management is supportive towards the effort.

However, there are still various critics being presented by scholars and academicians on the implementation of the commitment practically among corporate sectors. Among the discussion and arguments on this issue, only a few from recent literature has been published in the context of Malaysia<sup>103</sup>. Othman and Hamzah<sup>104</sup> agreed that women need to deal with ominous risks in their effort to secure some achievements in politics and various sectors despite their higher participation in higher education. This, according to them can somehow be related to the theory by Ramli and Hassan<sup>105</sup> in which the resistance for women participation in a higher position of leadership was due to social discrimination, time constraints, cultural and religious arguments, structural constraints and lack of resources in organisational support.

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<sup>100</sup> Jubilee, Khong, and Hung, "Would Diversified Corporate Boards Add Value? The Case of Banking Institutions in Malaysia," 218.

<sup>101</sup> Jubilee, Khong, and Hung, "Would Diversified Corporate Boards Add Value? The Case of Banking Institutions in Malaysia," 218-219.

<sup>102</sup> Kelan and Wratil, "Post-Heroic Leadership, Tempered Radicalism and Senior Leaders as Change Agents for Gender Equality."

<sup>103</sup> See articles from 2015-2019. Cho et al., "Asian Women in Top Management: Eight Country Cases." and Jubilee, Khong, and Hung, "Would Diversified Corporate Boards Add Value? The Case of Banking Institutions in Malaysia."

<sup>104</sup> Cho et al., "Asian Women in Top Management: Eight Country Cases."

<sup>105</sup> Ibid.

According to Kelan and Wratil<sup>106</sup>, there are six practices for senior leaders in driving changes toward gender equality in their organisations which are by developing “accountability, building ownership, communicating, portraying a good example, initiating and driving culture change”. However, in a different sphere, they also claimed that the key problem with the application of those practices and those leaders’ personal support for gender equality was that often, their words were rarely translated into action. Not only that, but this also seems to be more problematic as, through the previous research, Scholten et al.<sup>107</sup> even found the arguments that portray its doubt on the capabilities of female leadership in the top management. Throughout all of these works of literature, the gap in previous recent literature is shown where most of the literature tends to suggest the strict application of the policy on equality and discrimination as in Rahman, Mehat and Hamzah<sup>108</sup>, besides the urge to have a clear interpretation on religious belief over women and men responsibilities in Shah’s but they were all done without a clear explanation on the concept of gender equality itself especially in Malaysia context of employment<sup>109</sup>.

### **1.10 Conclusion**

In conclusion, this chapter explained that the principle of equality is found as the basic element in reforming social justice and human rights. Gender equality however, becomes an issue especially regarding women representation in top management and

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<sup>106</sup> Kelan and Wratil, “Post-Heroic Leadership, Tempered Radicalism and Senior Leaders as Change Agents for Gender Equality.”

<sup>107</sup> Scholten and Witmer, “The Opaque Gendered Lens – Barriers to Recruitment and Career Development,” 60.

<sup>108</sup> Rahman, Mehat, and Hamzah, “Discrimination Against Women in Workplace : A Case Study on Hotel Dress Code.”

<sup>109</sup> See Shah, “‘We Are Equals’; Datum or Delusion: Perceptions of Muslim Women Academics in Three Malaysian Universities”; Scholten and Witmer, “The Opaque Gendered Lens – Barriers to Recruitment and Career Development”; Kelan and Wratil, “Post-Heroic Leadership, Tempered Radicalism and Senior Leaders as Change Agents for Gender Equality.”

decision-makers when it is portrayed that there is huge gaps between men and women in that area through the MGGI statistics in 2019. The gaps as according to the Department of Statistics Malaysia has portrayed the existence of gender inequality in the workplace and economics. In applying a qualitative approach based on library-based study and interviews with experts and top management from corporate sector, this study thus was developed based on three objectives; (1) to examine the concept of gender equality in the philosophical and legal context; (2) to study the practice of gender equality in the Malaysia corporate sector, and; (3) to propose some guides for gender equality practice at the workplace.

This chapter also has reviewed the relevant literature related to gender equality at the workplace moving from the general idea of gender equality in employment, to gender equality in Malaysia workplace and corporate top management. Based on the literature, previous studies have discussed few topics related to this area such as the studies on the forms of gender discrimination, the attributes of gender inequality and the effect of such action towards individuals and nations. Literature also has concluded some issues or factors causing the under-representation of women in top management and decision-makers like the social perception of gender roles, stereotypes, bias and segregation as well as the domestic responsibilities, job insecurity and glass-ceiling in certain areas that show discrimination against gender. As shown in figure 1.3 below, the diagram was drawn to summarize the literature on gender equality.

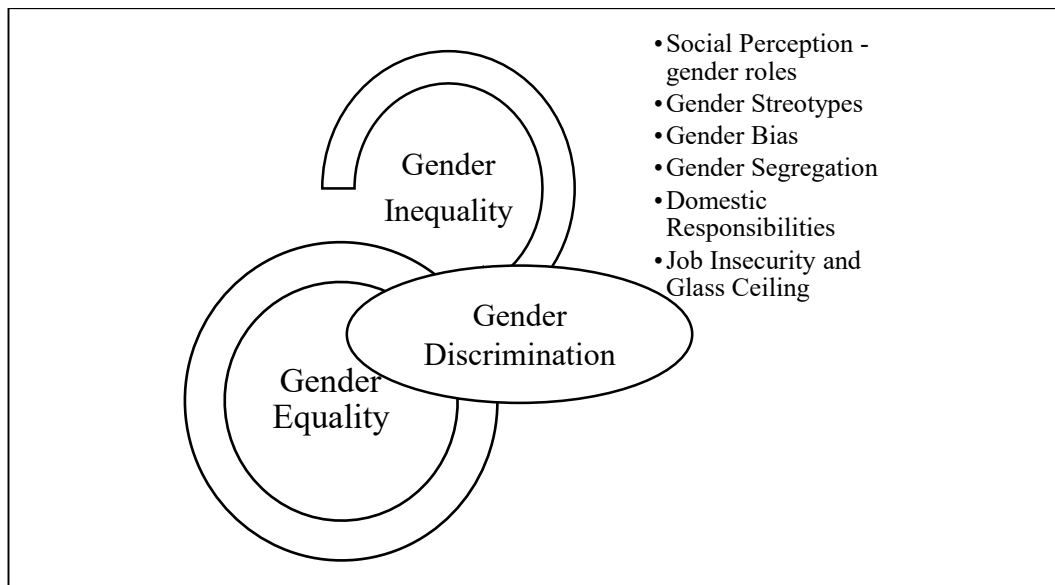


Figure 1.3: The Literature on Gender Equality (researcher's illustration)

Apart from that, many researchers have argued on the importance of top management as the agents for gender equality in corporate management and national policies in controlling the issues besides suggesting policies establishment specifically on anti-discrimination at the workplace. Deeper research on the Malaysian context of equality also was seen as necessary to provide a clear view on the issue of gender gap in Malaysia that tends to be associated with gender inequalities. The literature proved the importance of the issue and the need for a specific legal and philosophical study concerning the concept of equality in the workplace especially in the context of gender. Moreover, most of the previous studies have touched on legal and social studies of gender equality separately especially the ones with a Malaysian base. Hence, this study is made to bridge two important disciplines together in a study consisting of philosophical and legal perspectives to fill the gaps in the literature. It is not only focusing on the law provided for gender equality itself but also to understand the philosophical concept of gender equality.

## CHAPTER TWO

### GENDER EQUALITY IN PHILOSOPHICAL VIEW

#### 2.1 Introduction

According to a study by Webb, Karabayeva, and Kuntuova<sup>110</sup> on the role of philosophy in the life of society, philosophy is important in providing scales to evaluate phenomena in which they then form a hierarchy of values and promote reevaluation in a changing world. Philosophy plays an important role in solving global problems where its main function is to form a worldview and concepts that have an indirect influence on the development of practical solutions through the transition to a world of values and theories. As the lifeblood of the discussion on issues revolving around concepts and theories, philosophy should then continue to be explored. Moreover, as correspond to Wolters<sup>111</sup>, the study of concepts is historically significant as it allows the people to understand the root of an important idea and its ideological company since the first time it arose.

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<sup>110</sup> Mark O. Webb, A.G. Karabayeva, and I.M. Kuntuova, "The Role of Philosophy in the Life of a Student of a Technical University," *Procedia - Social and Behavioral Sciences* 174 (2015): 3847–3852.

<sup>111</sup> A. M. Wolters, "On the Idea of Worldview and Its Relation to Philosophy," in *Stained Glass: Worldviews and Social Science*, ed. Marshall et al., vol. 25, 1983, 14–25.

Therefore, this chapter will reveal and unravel the discussion on the concept of gender equality through a philosophical angle where it begins with the philosophical context of equality itself as the general idea leading to the discussion on the theories of gender equality. Next, the discussion will continue by looking at the theory of egalitarianism which is the root of the philosophical study of equality and its moral relationship which is the parent in the philosophical issues presented.

## 2.2 Philosophical Context of Equality

The study of equality begins with the philosophical discussion by Plato and Aristotle. Literally, they are the first in proclaiming that “*likes should be treated alike*”. Through their works and theories, scholars started to develop the idea of equality as a basic moral and legal right for every individual. Aristotle, while building on the work of Plato, said two things about equality that eventually dominated Western thought which is the equality in morals that means “*things that are alike should be treated alike, while things that are unlike should be treated unlike in proportion to their unlikeness*”<sup>112</sup> as well as equality and justice that are synonymous as “*to be just is to be equal and to be unjust is to be unequal*”<sup>113</sup>.

In some way, according to Heller<sup>114</sup>, equality was bound together with freedom in order to reduce inequality. As he mentioned in his writing, Isaiah Berlin, a British philosopher, historian, and also political theorist even regards the opposition between

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<sup>112</sup> Ben Johnson and Richard Jordan, “Should Like Cases Be Decided Alike?: A Formal Analysis of Four Theories of Justice,” *SSRN Electronic Journal* (2018): 1–33; Aristotle, *Nicomachean Ethics*, ed. W.D. Ross, *Nicomachean Ethics*, 2017; Adeshina Lanre Afolayan, “Egalitarianism,” *Encyclopedia of Global Bioethics*, 2015.

<sup>113</sup> W. von Leyden, “Aristotle on Equality and Justice,” *Aristotle on Equality and Justice* (1985); Gellera and Thompson, “Nicomachean Ethics”; Peter Westen, “The Empty Idea of Equality Author ( s ): Peter Westen Published by : The Harvard Law Review Association Stable.

<sup>114</sup> Nathan Heller, “The Philosopher Redefining Equality,” *The New Yorker*, no. 7 January (2019): 1–23.

equality and freedom as an “*intrinsic, irremovable element in human life.*” He believes that bargaining towards the balance between equality and freedom is naturally human fate as a society. Therefore, he argues that both equality and freedom have arrived together as an ideal combination throughout history. Besides that, through the study by Westen in ‘*The Empty Idea of Equality*’, equality also perceived to be discussed in relation to the ideal of rights and liberties.

According to Westen<sup>115</sup>, both equality and rights are at times, were said to be more important than one another which makes rights often believed to be the source of equality, while equality is the root or source of all rights. In the proposition of law and morals, by “equality” thence, it means “people who are alike should be treated alike” and is correlative to that, it would be “people who are unlike should be treated unlike” which is corresponding to the theory by Aristotle as stated earlier. Equality thus means that for one person to be treated in a way that is equal to another person is that he must be “like” or “equal to” or “similar to” or “identical to” or “the same as” that one person who receives such treatment. ‘Rights’ by contrast, means all claims that can justly be made by or on behalf of an individual or group of individuals to some condition or power.

Equality according to Westen<sup>116</sup> is a formula that can encompass a descriptive relationship as well as a prescriptive relationship. Descriptively, equality is empty because they contain variable terms that must be filled in to give them descriptive content. However, according to Leibniz laws, to claim that two persons or things are

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<sup>115</sup> Westen stated in his work on ‘The Empty Idea of Equality’ that “Equality is sometimes said to be flourishing at the expense of rights, just as rights are sometimes said to be flourishing at the expense of equality.” See Westen, “The Empty Idea of Equality,” pg.539.

<sup>116</sup> Peter Westen, “On ‘Confusing Ideas’: Reply,” *The Yale Law Journal* 91, no. 6 (1982): 1153.

descriptively equal simply means that they are descriptively identical in every respect is impossible, because there is no such thing of an exact uniformity or identicality of two persons or things in every respect<sup>117</sup>.

This has been supported by Nathan<sup>118</sup> by claiming that it is unnecessary for descriptive equality that the two individuals are equal in every respect. This phenomenon is impossible as it is against the practical reality since no one can ever correctly say that two physical objects are descriptively equal. As explained by the author, even two perfect replicas of a painting could differ at least in respect of the space that they occupy. Therefore, in order to make a claim about the equality of two things, the reference shall be made to some aspect in which they are equal. So, for the two individuals to be descriptively equal, they have to be identical in some respect but not necessarily in all respects<sup>119</sup>.

On the other hand, according to Westen, prescriptive equality is the relationship of relevant identity that obtained between two or more persons or things by reference to a given standard of measurement<sup>120</sup>. Nathan then clarifies that the claims of equality can be prescriptive as we sometimes say that two persons ought to receive the same treatment, and by this, it means that those parties should be treated equally<sup>121</sup> based on a standard of measurement that common to the parties. Both of them conclude that prescriptive equality consists both of an idea of descriptive equality and a claim that there needs to be some principle that refers to that description.

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<sup>117</sup> Peter Forrest, "Stanford Encyclopedia of Philosophy The Identity of Indiscernibles," *Stanford Encyclopedia of Philosophy* 9 (2011).

<sup>118</sup> Christopher Nathan, "What Is Basic Equality," *Etica e Politica* 15, no. 1 (2013): 583–605.

<sup>119</sup> Ibid.

<sup>120</sup> Westen, "On 'Confusing Ideas': Reply."

<sup>121</sup> Ibid.

## 2.3 The Development of the Ideas of Philosophers

The ideas of equality and gender equality have been developed by many philosophers since Greek time. Through the expansions of the idea that started in the Classic period where Aristotle was known as among the most prominent philosophers, the view of women has been drawn and encountered some evolution as it moves to the Enlightenment era. Rene Descartes during the modern period was synonym with his idea of ‘Cogito Ergo Sum’ that summons human beings to see the importance of reason in the definition of a human being thereby using it as the criterion for equality before feminist scholars such as Mary Wollstonecraft took it up and began their movement for women emancipation.

### 2.3.1 Aristotle – Classic period

Aristotle in his thoughts on gender has been seen as an apologist to slavery and male supremacy which somehow has made his work becomes a combination of both conservatives and radical<sup>122</sup>. However, according to some authors, the substance views of Aristotle towards women and their political or social roles are still unclear since there were different interpretations regarding the matter. In addition, according to Mulgan<sup>123</sup>, the brief and imprecise explanation of Aristotle in his references to women partly has contributed to the continuity of the disagreement in scholars’ study on his ideas besides the differences of the interpretive method itself.

Through his work in *Politics*<sup>124</sup>, Aristotle expressed his opinion on the superiority of men against women where he claims it is natural for men to be superior and the one

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<sup>122</sup> Francis Sparshott, “The Open Repository @ Binghamton ( The ORB ) Aristotle on Women” (1983).

<sup>123</sup> R. Mulgan, “Aristotle and the Political Role of Women,” *History of Political Thought*, 1994.

<sup>124</sup> Aristotle, *Politics: A Treatise on Government*, ed. A.M. William Ellis (J M Dent & Sons Ltd. & In New York By E. P. Dutton & Co, 1912).

that govern while women is inferior and become the one to be governed<sup>125</sup>. In fact, just as the government has its ruler and its citizen, Aristotle tries to equate it with the relationship between husband and wife where the wife is likened to a citizen unless there is an overridden course of nature such as the elder. Not only that, he with some other scholars even expanded his biological-philosophical concepts of male and female into cosmic distinctions where they see maleness as an active and spiritual being while femaleness as a passive and material being. He even tries to justify the superiority of the male and the inferiority of the female through his theory of reproduction:

*“... as the first efficient or moving cause, to which belong the definition and the form, is better and more divine in its nature than the material on which it works, it is better that the superior principle should be separated from the inferior. Therefore, wherever it is possible and so far as it is possible, the male is separated from the female. For the first principle of the movement, or efficient cause, whereby that which comes into being is male, is better and more divine than the material whereby it is female.”*<sup>126</sup>

According to Horowitz<sup>127</sup>, as much as Aristotle’s biological sexism has influenced the people’s perceptions of human offspring, his political sexism has as well impacted people’s beliefs in the proper distribution of societal roles. Formerly of Aristotle’s ideas, it eventually made the medieval thinkers dismiss Plato’s theory of the common education of women and men for military, intellectual, and political leadership by mocking the female community<sup>128</sup>.

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<sup>125</sup> Ibid.

<sup>126</sup> Maryanne Cline Horowitz, “Aristotle and Woman,” *Journal of the History of Biology* 9, no. 2 (2013): 183–213.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

Apart from that, Aristotle in explaining the idea of equality between men and women believes that there should be a distinction between them in forms, expressions, and honours. Furthermore, according to Aristotle man and woman are different either in their attitudes, courage, or justice which is contrary to Socrates, as he believes that the courage of the man consists in commanding while the woman is obeying<sup>129</sup>. Thus, as explained by Horowitz, justice in accordance with Aristotle is known to be a “proportionate justice” where justice is applied proportionately to the person’s worth, judged practically based on their position in natural and societal hierarchies which Horowitz believes has justified the prevailing discrimination policy in Western countries against women. In other words, through Aristotle’s ideas in *Politics*, he was indirectly legitimizing the system of patriarchy as a proper form of government for the family<sup>130</sup>.

### 2.3.2 Rene Descartes – Modern period

Moving to the modern era of philosophy, Rene Descartes was famous for his idea which developed into Cartesian philosophy with his profound idea of “Cogito Ergo Sum”<sup>131</sup>. Upon his research on the fundamentals of knowledge, Descartes developed his idea of scepticism using reason and doubt. Descartes was known as a proponent of deductive methods which have been used widely by philosophers in his time and even throughout the modern period. He strictly affirmed that for a piece of knowledge to be true or objective, it needs to follow certain standards within a set of principles before

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<sup>129</sup> Aristotle, *Politics: A Treatise on Government*.

<sup>130</sup> Horowitz, “Aristotle and Woman.”

<sup>131</sup> Nicholas Humphrey, “Introduction : Descartes,” no. April (2015); Caden Sumner, “René Descartes and the Cogito: Our Foundation of Philosophical Knowledge,” *ResearchGate*, no. October (2015).

formulating an 'objective reality'. Parallel to an explanation by Sumner<sup>132</sup>, Descartes's method of acquiring knowledge is basically grounded with certain characteristics.

First of all, one should never blindly accept an idea as true unless it has been tested and justified to be clear and true at all possibilities of doubt. Then, for every complex question, it needs to be divided into simple ones before ascending his thoughts from the simplest one to the most complex. Lastly, the series of inferences should be reviewed at the last stage of the process in order to make sure there are no breaks or false links in the chain. His methods and principles adhered to the importance of reason and thoughts where he then began to formulate the power of the mind in accessing knowledge. Similar to other philosophers, his ideas were also opposed by some scholars.

He denies all knowledge and the existence of everything including all human beings. Then, in solitude, it came to him the thought that he knew nothing but his own mind, thence, he concluded his thought;

*"... there is only one thing that cannot be denied: I am thinking. This alone proves to me my existence"*<sup>133</sup>.

This is where he started to bring the idea of "Cogito Ergo Sum" that has widely impacted the thought of philosophers in various areas around the world including modern feminists. The phrase "Cogito Ergo Sum" that brings the meaning of "I think, therefore I am," professes the idea of self-validation. According to Sumner<sup>134</sup>, the idea is that one would not exist if there is no question to be asked regarding its existence.

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<sup>132</sup> Sumner, "René Descartes and the Cogito: Our Foundation of Philosophical Knowledge."

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

As suggested by Broad<sup>135</sup>, based on the scholarly literature of the past to present, Descartes's method of doubt undeniably inspires the early modern feminists where he encourages for every belief to be doubted as much as it could possibly be doubted before ascertaining its reliability of truth.

Moreover, his insight was believed to have yielded the criterion of "clarity and distinctness" in reforming a knowledge that is very convincing and eventually influenced the feminist movements in the early modern period. Ruth Perry, as in Broad, believes that the method allows them to question the prejudices against females in terms of their moral and intellectual inferiority. Through this method also, they raise their doubt towards previous knowledge and critically examine the oppression and gender stereotypes that were thrown at them. This eventually became a "powerful and revolutionary" mechanism that would help women gain their freedom and liberation<sup>136</sup>.

Furthermore, as being claimed by some scholars, Descartes's philosophy of mind has become a pillar of the idea of "the mind has no sex"<sup>137</sup>. As conferred by Descartes<sup>138</sup>, the mind is essentially a thinking substance. Through his work in the '*Discourse on the Method*,' he asserts that the mind itself would verify the existence of the body as it starts thinking since the essence of a being is to think and reason.

*"Then I looked carefully into what I was. I saw that while I could pretend that I had no body and that there was no world and no place*

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<sup>135</sup> Jacqueline Broad, "The Routledge Companion to Feminist Philosophy," *The Routledge Companion to Feminist Philosophy*, no. October (2017).

<sup>136</sup> Ibid.

<sup>137</sup> Erica Harth, "Cartesian Women," *Yale French Studies*, no. 80 (1991): 146–164; Broad, "Routledge Companion to Fem. Philos."

<sup>138</sup> Rene Descartes, "Discourse on the Method of Rightly Conducting the Reason, and Seeking Truth in the Sciences," *Annals of Neurosciences* 16, no. 2 (2009): 57–61.

*for me to be in, I still couldn't pretend that I didn't exist. I saw on the contrary that from the mere fact that I thought about doubting the truth of other things, it followed quite evidently and certainly that I existed; whereas if I had merely stopped thinking altogether, even if everything else I had ever imagined had been true, I would have had no reason to believe that I existed. This taught me that I was a substance whose whole essence or nature is simply to think and which doesn't need any place, or depend on any material thing, in order to exist.”<sup>139</sup>*

He then continues validating the proposition saying that;

*“I knew it was true and certain, I thought that I ought also to know what this certainty consists in. I observed that the proposition ‘I am thinking, therefore I exist’ has nothing about it to assure me that I am speaking the truth when I assert it except that I see very clearly that in order to think it is necessary to exist.”<sup>140</sup>*

At this stage, as mind has been separated and elevated from body, nothing can be argued physically and that women's reproduction capacity cannot be held against them since all minds are equal in its form which makes every person to be equal in its virtue and value<sup>141</sup>. Catharine Gallagher likewise points out that Descartes' dualism has inspired many of the 17th century women in their work to assert the equal capacity of men and women in term of their intellectual capacity and as Descartes pointed out, mind has no extension so does it also has no such thing like gender or sex<sup>142</sup>.

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<sup>139</sup> Sumner, “René Descartes and the Cogito: Our Foundation of Philosophical Knowledge.”

<sup>140</sup> Descartes, “Discourse on the Method of Rightly Conducting the Reason, and Seeking Truth in the Sciences.”

<sup>141</sup> Broad, “Routledge Companion to Fem. Philos.”

<sup>142</sup> Harth, “Cartesian Women”; Broad, “Routledge Companion to Fem. Philos.”

### 2.3.3 Mary Wollstonecraft – Enlightenment Period

Through the attribution in the study on women, Mary Wollstonecraft has been recognized as one of the first woman philosophers that contributed important ideas in the era of modern feminism<sup>143</sup>. She was known best for her passion as the advocate of educational and social equality for women<sup>144</sup>. According to Duman<sup>145</sup> and Frazer<sup>146</sup>, Wollstonecraft's political theory and ideology of feminism and women's movement were portrayed in her major work and writing, '*A Vindication of the Rights of Women.*' Besides, she also explains her disappointment with the way women were positioned and oppressed during that time and how it has affected their minds. The worse is that according to Wollstonecraft<sup>147</sup>, the oppression towards women is happening due to the false system of education.

In terms of fighting for women's rights and feminism, Mary Wollstonecraft has a unique position on its own that has influenced many thinkers around feminist political thoughts that developed in the twentieth century. Although she seemingly always agrees with the liberalist in human rights, she really does have her own place and name among the prominent philosophers in feminism. She believes that most of the thinkers who try to defend the new and liberal ideas brought by Enlightenment would end up associated with their opposition whenever the case involved was women. Feminist

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<sup>143</sup> Janet M. Todd, "The Biographies of Mary Wollstonecraft," *Signs: Journal of Women in Culture and Society* 1, no. 3, Part 1 (1976): 721–734; Fatih Duman, "The Roots of Modern Feminism: Mary Wollstonecraft and the French Revolution," *International Journal of Humanities and Social Science* 2, no. 9 (2012): 75–89; Pennsylvania Press, "Mary Wollstonecraft: Eighteenth-Century Commonwealthwoman Author (s): G. J. Barker-Benfield Published by: University of Pennsylvania Press 50, no. 1 (1989): 95–115.

<sup>144</sup> Adam Augustyn; Adam Zeidan; Alicja Zelazko; Alison Eldridge; Amy McKenna; Amy Tikkanen; Ann Gadzikowski; Barbara A. Schreiber; Brian Duignan, "Mary Wollstonecraft," *Encyclopaedia Britannica* (Encyclopaedia Britannica, Inc, 2020), accessed November 15, 2020, <https://www.britannica.com/biography/Mary-Wollstonecraft>.

<sup>145</sup> Duman, "The Roots of Modern Feminism: Mary Wollstonecraft and the French Revolution."

<sup>146</sup> Elizabeth Frazer, "Mary Wollstonecraft's Political Theory," *Review of Politics* 82, no. 1 (2020): 25–48.

<sup>147</sup> Mary Wollstonecraft, *A Vindication of the Rights of Woman*, 1792.

thinkers during her time argue that there is a kind of “masculinity” hidden in modernism despite its look that seems to be natural and asexual.

Wollstonecraft moved up her idea of thinking based on the principles of “reason”, “science” and “development” that revolved around the era of Enlightenment. Humanity then began to gradually progress towards a society that put the “mind” in a dominant position<sup>148</sup>. They believed that an equal and liberal society would be possible only if the reason is made to be dominant in handling social and political issues. In regards to the family matter, Wollstonecraft regards them as a union of volunteers of equality and a model for a society where according to her, justice, charity, and genuine society can only be obtained among equal individuals.

Therefore, it is impossible to establish a real society except by making women who are part of that society have the same rights and freedoms as men. Terms such as reason, natural rights, and social contracts should be expanded in a way that encompasses women and should also be applied to all. Otherwise, the hierarchical and unfair social or political structure of the old and traditional societies will continue to rise and dominate the nation. Wollstonecraft throughout her time never denies the attention to reason and education that the Enlightenment has brought about. She believes that men and women can transform into good human beings and citizens through education, which will tackle the fundamental issues of the public. A new and equal society will be conceived if the education strategies for them were depending on some sensible standards. For Wollstonecraft, the state ought to perform its obligation appropriately. Ensuring good protection towards the poor ought to end the disparities

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<sup>148</sup> Duman, “The Roots of Modern Feminism : Mary Wollstonecraft and the French Revolution.”

besides taking initiatives to improve the welfare of the people. Wollstonecraft adopted the idea of political certainty while advocating the interventionist state. In any case, this mediation should be given a unique substance for oppressed and abused women in a broad sense.

As a whole, Mary Wollstonecraft portrays the authenticity of her idea in her thoughts on reason, natural rights, and social contract as a medium in challenging the patriarchal system and traditional family structure. Her main idea was to bring an equal education for all (men and women) since reason was believed as an important element of a human being. Her efforts were expanded into the private sphere, family, and women which draw the fundamental basis in modern feminism. Not only that, but she also produced some works and writings that discuss the integration of family roles, gender roles, and private relations with the concepts of the political sphere<sup>149</sup>. Her contribution in the world of political philosophy and genders has not only influenced some streams of scholars but as well colour the academic discussion to date.

#### **2.4 Philosophical Theories of Gender Equality**

Along with the development of political thoughts and ideologies, the school of thought on feminism has become diverse. Among the feminist discourse, there are about seven strands of thoughts that have dominated the world which are Liberal Feminism, Socialist Feminism, Marxist Feminism, Existentialist Feminism, Radical Feminism, Psychoanalytic Feminism, and Gender Feminism or Neo-Marxist Feminism<sup>150</sup>.

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<sup>149</sup> Ibid.

<sup>150</sup> Zeenath Kausar, *Modern Western Political Ideologies: An Islamic Critique* (Malaysia: Pearson Malaysia Sdn. Bhd., 2005).

### 2.4.1 Liberal Feminism

Generally, liberal feminism has been developed upon the establishment of feminist philosophy under the theoretical tradition of liberalism. It came through the political theory that emphasized the significance of rationality and liberty of man<sup>151</sup> with the view that men and women are equal in their human worth as its foundation<sup>152</sup>. The first compelling effort in bringing gender justice can be traced back to the year 1792 through the publication of English author and social reformer Mary Wollstonecraft's book, '*A Vindication of the Rights of Women*'<sup>153</sup>. Through this book, she spoke out for the liberation of women from the patriarchal system that prevented them from gaining a better future, besides their right to education and choosing their own way of life. The liberal legacy built by Wollstonecraft was eventually demonstrated in the movement of women's liberation and the feminist ideology that flourished in the twentieth century.

Historically, the liberal conception of equality emerged in Europe due to the destruction of the traditional hierarchy rooted in the Middle Ages, and eventually, with the growth of capitalism, the liberal political philosophy started to rise. To be precise, the dispute between capitalism, feudalism, and increased demands for democracy and political liberties were among the features that have been recognized in underlying the theory of liberalism. Coleman and James<sup>154</sup> in explaining the theory of liberalism said

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<sup>151</sup> Ibid.; Elizabeth Ann Bartlett, "Liberty, Equality, Sorority: Contradiction and Integrity in Feminist Thought and Practice," *Women's Studies International Forum* 9, no. 5–6 (1986): 521–529.

<sup>152</sup> B.A. Ackerly, "Feminist Theory: Liberal," *International Encyclopedia of the Social & Behavioral Sciences*, 2001.

<sup>153</sup> Engela Pretorius, "Men's Role in the Quest for Gender Justice: A Historical Overview of Antifeminism and Profeminism," *Tydskrif vir Geesteswetenskappe* 58, no. 4 (2018): 887–904.

<sup>154</sup> By- Coleman and S James, "The Concept of Equality of Education" (1967): 13–47.

that liberalism perceives human beings as essentially rational agents for liberals while assuming that rationality is a “mental” capacity.

Liberal feminists during the eighteenth, nineteenth, and early twentieth centuries contended for women’s right and ability to engage in public life including the rights to vote, examining marriage institution as well as divorce and property law frameworks besides opposing the practices of denying women access to the same quality of education and profession as men. While upholding the value of equality and individual freedom as the liberalist tradition, they asserted the unnecessary for the sex of birth to be legitimated for the act of discrimination against person<sup>155</sup>.

In the nineteenth century, way before women started to courageously fight for their social status and rights for an equal position with men in society, women were technically being treated as mere slaves especially to their husbands. According to Reiner<sup>156</sup>, women during that era had to face inequalities not only at the workplace or society but also in the legal institution of marriage. John Stuart Mill, a liberalist in his effort to prescribe changes in the society argues that there are two steps that should be taken in order to achieve equality in the position of men and women in society which are (i) equal legal rights between marital partners in family and (ii) the admission of women in all area of ‘functions and occupations’ that has been dominated by men. Moreover, as parallel to what has been said in a study by Reiner<sup>157</sup>, custom, as a part of the social control system, somehow becomes part of the reasons that cause the subjugation of women. For him, the only solution for the issue is through education

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<sup>155</sup> Ackerly, “Feminist Theory: Liberal.”

<sup>156</sup> Toby Reiner, “The Philosophical Foundations of Gender Equality in Liberalism and Marxism: A Study of Mill and Marx,” *Twenty-First Century Society* 3, no. 1 (2008): 13–30.

<sup>157</sup> Ibid.

that laid the basis for women to gain economic independence and equality of opportunity.

Later on, with the extension of the theories of liberal feminism in the later twentieth century, the arguments on the equal access of women for education, professions, and treatment as autonomous individuals by the law became more inclusive where they started to include labour laws and social issues. Among the issues raised were the issues of human rights, education, international development, economic resources distribution<sup>158</sup> as well as balance assimilation of women into the workplace and men into the family<sup>159</sup>.

Apart from that, John Rawls, an American political philosopher that was renowned in the study of liberal tradition also has been recognized as one of the prominent philosophers in inspiring the liberal feminist with his idea of the theory of justice<sup>160</sup>. This can be seen especially in the work of Susan Moller Okin, a leading liberal feminist political philosopher who revised the theories of liberal political philosophy besides addressing the issues of global justice, especially those concerning the condition of women. One of her fascinating works is her project involving an attempt to amend and extend a Rawlsian framework that affects a certain contemporary liberal egalitarian framework which is to challenge the gender-structured character of

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<sup>158</sup> Ackerly, "Feminist Theory: Liberal."

<sup>159</sup> Kausar, *Modern Western Political Ideologies: An Islamic Critique*.

<sup>160</sup> Elizabeth Brake, "Rawls and Feminism: What Should Feminists Make of Liberal Neutrality?," *Journal of Moral Philosophy* 1, no. 3 (2004): 293–309; Blain Neufeld and Chad van Schoelandt, "Political Liberalism, Ethos Justice, and Gender Equality," *Law and Philosophy* 33, no. 1 (2014): 75–104; J S Russell, "Okin 's Rawlsian Feminism? Justice in the Family and Another Liberalism," *Social Theory and Practice* 21, no. 3 (1995): 397–426; Political Liberalism and Political Liberalism, "Notre Dame Philosophical Reviews Feminist Interpretations of John Rawls" (2014).

modern societies. Through this work, she extends Rawls' principles of justice to be applied in the relations of men and women in the family.

Many feminist argues that in order to create a social environment that will properly support the values of a just society, the standard of justice must be extended within the members of the family. As for Okin, she believes that justice requires the adoption of principles and policies that would facilitate the creation of a 'genderless family' whereby the marriage and parenting responsibilities, as well as burdens, will be shared equally between men and women. According to her, it is necessary in order to overcome the relations of dominance and submission which eventually would be characterised by a truly non-sexist or a 'humanist' conception of justice. In addition, Okin also defended Rawls' device of the 'original position' as the central feature of the social contract account of justice that counts "*justice as fairness*"<sup>161</sup>.

Next, move forward to the twenty-first century, the liberal feminists move to protest over fundamental values, practices, and norms of the society. According to MacKinnon as in Ackerly<sup>162</sup>, the liberal conception of equality is based on the historical tradition since Aristotle's time who claims that treating people equally simply means treating likes alike and unlike differently. Nonetheless, MacKinnon argues that this perspective is still being sustained up to this contemporary time by liberals. However, Ackerly<sup>163</sup> claims that while equality is seen as an important foundation for liberal theory as per the definition provided by Aristotle, it should not be a sufficient basis to challenge exploitative inequality where such inequality is the

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<sup>161</sup> Russell, "Okin 's Rawlsian Feminism ? Justice in the Family and Another Liberalism."

<sup>162</sup> Ackerly, "Feminist Theory: Liberal."

<sup>163</sup> Ibid.

result of differences deemed justified or destined by God. Hence, MacKinnon as described in Ackerly's study, suggests an alternative conception of equality through the absence of hierarchy which allows the 'unlike' to demand equality.

#### **2.4.2 Socialist Feminism**

Another theory of feminism that has a huge contribution to the world of philosophy is socialist feminism. Socialist feminism holds that it is impossible for women to gain their liberation if they keep letting themselves be economically dependent on men. Generally, as according to Mills, Durepos and Wiebe<sup>164</sup>, the term socialist feminism was at times used in a descriptive sense in order to refer to any feminist that comes since the nineteenth century and onwards where their ideas have been influenced by the work of Karl Marx and Friedrich Engels that emphasizes on the issues of class, economics, and labour as the main component of women's oppression as well as the key to their liberation.

It is, therefore, often being confused with the movement of Marxist feminism and being used interchangeably with it even though it is actually another set of feminism theories that was set in opposition to that approach. These perspectives are based on the assumption that women's oppression is caused by the social, political, and economic structures in which they live, not that of their individual situation. However, considering women's lives, socialist feminists have broadened the typical theory of Marxist on the realm of production to that of reproduction through scrutinizing the

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<sup>164</sup> Albert Mills, Gabrielle Durepos, and Elden Wiebe, "Socialist Feminism," *Encyclopedia of Case Study Research*, 2012.

way women being oppressed in their roles in the family which are as mothers, wives, and caretakers as well as how their sexuality is commoditised<sup>165</sup>.

Socialist feminists believe that patriarchy and capitalism are the main reason for the suppression and oppression of women thus need to be expelled<sup>166</sup>. According to Ali<sup>167</sup>, it makes some scholars argue that Marxist and radical feminism alone is not capable of explaining the status of women in employment. Historically, in the early 1900s, socialist feminists demanded a better explanation of how reproduction is categorized as women's work and criticized the strict separation between private (family or home) and public structure (workplace) due to the dual system established by Marxism. Their focus is to synthesize the feminist analysis on gender inequality, social reproduction, and economic reproduction while enlarging the view of women's economic, social reproductive role and the oppression of gender as reciprocal contributions towards women's suppression<sup>168</sup>. One of the efforts by the socialist feminists in the early 20th century is in bridging the paid productive work and unpaid reproductive labour (which covers childcare and maternity before it expands to parental support). This is because they believe that the social wage is capable of giving the material value to reproductive labour (mother or wife).

Started in the early 1970s then, some feminists began to use the term socialist feminism as a radical critique of Marxist feminism's gender-neutral concept of class and criticize Marxist feminism for relying solely on Marx's analysis of capitalism till it losing ways

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<sup>165</sup> Ibid.

<sup>166</sup> Kausar, *Modern Western Political Ideologies: An Islamic Critique*.

<sup>167</sup> Ali, "Gender Equality in the Workplace."

<sup>168</sup> Elisabeth Armstrong, "Marxist and Socialist Feminism.," *Study of Women and Gender* (2020).

of finding that women's exploitation resulted from multiple forms of oppression<sup>169</sup>. Socialist feminists in their attempt to solve the issue of women's oppression argue that abolishing capitalism is necessary in order to gain women's liberation and freedom. In conclusion, the socialist feminism framework is basically bolstered beyond a dual-systems approach and has taken up the unitary or integrated approach to include multiple perspectives, including psychoanalytic, anti-heterosexist, antiracist, global, and transnational feminisms<sup>170</sup> in its analysis of patriarchy and capitalism<sup>171</sup>.

### 2.4.3 Marxist Feminism

Marxist feminism is basically a school of thought that was established prior to the Marxism school of thought and its ideas against capitalism. The main focus of Marxist feminism is on analysing the exploitation of women through capitalism and the individual ownership of private property. Historically, around the 1840s and 1880s, Karl Marx and his closest collaborator, Friedrich Engels, have developed insight into social relations as a historical character of reproduction. In '*The Origin of the Family, Private Property and the State*,' Engels explained the growth of social relations in production and reproduction<sup>172</sup>. Besides, he even argued that household management has lost its public structure. Instead, it becomes a private service where women are being excluded from all participation in social production.

Marx, as the founder of this movement, claims that the relationship between men and women is reflecting a broader social tendency in which the 'unique pattern' of such relations has a 'systematic significance'. This system can be used as a model for human

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<sup>169</sup> Ibid.; Mills, Durepos, and Wiebe, "Socialist Feminism."

<sup>170</sup> Mills, Durepos, and Wiebe, "Socialist Feminism."

<sup>171</sup> Armstrong, "Marxist and Socialist Feminism."

<sup>172</sup> Ibid.

relations in a socialist society where people are inevitably mutually dependent on each other. While some scholars argue for the abolishing of marriage to counter the oppression towards women, Marx was against the idea as for him, it simply would result in the ‘universal prostitution’ of women just as much as abolishing private property would result in ‘universal prostitution with the community.’ Where marriage here was seen as private property, he argues that its abolition is not possible to end the alienation of labour because the need for private property would stay within the society<sup>173</sup>. Marx described marriage as a form of ‘exclusive private property.’ Marriage and sexual relations that being proportionate with the moral relationship resulted from mutual dependency, not of control. Otherwise, it will be turned into treating the other person as an object instead of as partner<sup>174</sup>.

In conclusion, an ethical ideal is basically an immediate natural and necessary relationship of a human being to another human being which pervades the act of humanity out of reciprocal consent and value. Marxist feminist, in summary, portrays an ideal relationship between men and women as to be identical with human relationships in which individuals fulfill their natural function and be interdependence to one another. In terms of public relations and workplace aspects, Marxist feminism assumed that the sexual division of labour could not be abolished. However, it could be transformed into a better structure so it did not divide people and cause competition.

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<sup>173</sup> Reiner, “The Philosophical Foundations of Gender Equality in Liberalism and Marxism: A Study of Mill and Marx.”

<sup>174</sup> Ibid.

#### 2.4.4 Existentialist Feminism

Existentialist feminist takes as its point of departure the notions that firstly, a woman is the product of social and cultural construction and secondly, a woman is 'the other' or the 'second sex'<sup>175</sup>. Existentialist feminists argue that men tend to put women into insignificant and inessential positions. Marriage was seen as taking away the liberation of women while their roles in childbearing and childrearing became the primary sources of oppression towards them. Instead of seeing marriage to be the companion for men and women, existentialist feminists believe that women are capable of overcoming the problems and live independently without men throughout their lives<sup>176</sup>.

Existentialist feminism is critically discussed in '*The Second Sex*' by Simone de Beauvoir. De Beauvoir claims that women are consigned to the category of 'the other' simply because they are the females of the species and that there is no other category that could be possibly fulfilled by them except for growing to be a woman<sup>177</sup>. One of de Beauvoir's main arguments is that women cannot be defined through their nature. Physically, women should be seen as far more valuable than to be placed within an inferior position in society.

According to de Beauvoir and other existentialists, liberation is only found in transcendence (the opposite of which is immanence and alienation). In the case of women, they must continue to go beyond the limits of their material situation so that

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<sup>175</sup> Kausar, *Modern Western Political Ideologies: An Islamic Critique*.

<sup>176</sup> Ibid.

<sup>177</sup> Joseph Mahon, *Existentialism, Feminism and Simone de Beauvoir*, ed. Jo Campling, First edit. (New York: ST. MARTIN'S PRESS, INC, 1997).

they are able to achieve new freedoms<sup>178</sup>. This means that every relationship and connection gives value to individuals throughout their lives. The existence of another person gives way to gain self-knowledge, but only through freedom and liberation of all persons each person would get his or her own freedom. In short, every human being is necessary to every life and has its own value. Although it sometimes brings benefits, it is also could someday cause a trouble, and these are all just the aspects of human existence<sup>179</sup>. This is somehow true because every being that a person encounters in his life in any part has its own function and value. For instance, when encountering the teachers in school or the mechanics at the workshop. These people benefit either in the form of sharing knowledge in academics or help with the tools or machines respectively in a different way.

#### 2.4.5 Radical Feminism

Another philosophical theory of gender equality is radical feminism that enhances the patriarchy system as the root cause for inequalities between men and women<sup>180</sup> as well as the sorority of women<sup>181</sup>. Literally, patriarchy is known as “a system that constructs rights, structures, and practices in ways that privilege men”<sup>182</sup> while sorority within this school of thought encompasses the idea of self-affirmation, bonding, and identity of women<sup>183</sup>.

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<sup>178</sup> Christine L. Quinan, “Feminism, Existential,” *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies* (2016): 1–3.

<sup>179</sup> Ibid.

<sup>180</sup> Julia Elizabeth Bickley, “The Relationship between Second-Wave Feminist Philosophy and Interpretation of Biblical Gender Roles by Entering Seminary Students,” 2011.

<sup>181</sup> Bartlett, “Liberty, Equality, Sorority: Contradiction and Integrity in Feminist Thought and Practice.”

<sup>182</sup> Jane Pollard, *Feminism and Work, International Encyclopedia of Human Geography*, Second Edi., vol. 5 (Elsevier, 2020), <http://dx.doi.org/10.1016/B978-0-08-102295-5.10179-9>.

<sup>183</sup> Bartlett, “Liberty, Equality, Sorority: Contradiction and Integrity in Feminist Thought and Practice.”

Historically, radical feminism began with the assumption that sexes are always opposite to each other, women being overpowered by men, and that society and its various social relationships could be well understood through their relationship according to circumstances. Primarily, radical feminists hold that the existing system of patriarchal relations creates every forms of oppression including those that happened in the workplace<sup>184</sup>. They regard gender segregation as a core concept in discussing gender equality and oppression. As women tend to be dominated in doing the household chores, men were regarded as benefitting in the family and eventually develop a division of work between genders. This division of gender work hence becomes fundamental in the patriarchal social relations that eventually give more advantage to men to participate in employment compared to women. Radical feminists argue that patriarchy forces the status of women to be inferior socially and economically<sup>185</sup>.

Mackay<sup>186</sup> summarizes the discussion of radical feminism in his interpretation of radical feminism by stating four criteria in its definition namely acceptance of patriarchal existence in the community as well as a commitment to end it; the use and promotion of women's specialized space as a method of organizing; focus on all forms of male violence against women and their role as the backbone of widespread oppression of women; and finally, the expansion of the analysis of male violence against women to include pornographic institutions and prostitution.

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<sup>184</sup> Ali, "Gender Equality in the Workplace."

<sup>185</sup> Ibid.

<sup>186</sup> Finn Mackay, "Radical Feminism," *Theory, Culture & Society* 32, no. 7 (2015): 332–336.

Radical feminism as a whole was said by Pretorius<sup>187</sup> rejected men's support of the women's movement since they believe that men would benefit from gender oppression. This belief and movement were often being criticized for being too historic. According to Robinson<sup>188</sup>, there are times that radical feminism is being misinterpreted not only by outsiders but also by those among feminist theory. Radical feminists are often being accused of acting historically, universally, and holding essentialist ideas such as the belief of femininity and masculinity as innate traits. Individual radical feminists are also at times, used to represent and create a general radical feminist point of view. An important objective of radical feminism is to show that radical feminist theories have been involved with the relationship of race, class, and (hetero) sexism<sup>189</sup>.

#### **2.4.6 Psychoanalytic Feminism**

Psychoanalytic feminism is a theory of oppression, which asserts that men have an inherent psychological need to enslave women. The cause of men's compulsion to dominate women and women's minimum resistance to conquest lies deep in the human soul. This branch of feminism aims to gain insight into how human psychic lives evolve to better understand and change the oppression of women. They continuously address different forms of issues related to gender in society and pay their attention to explanations as to why men continue to repress women<sup>190</sup>.

As for psychoanalytic feminists, they believe that the integration of patterns of oppression into society creates and sustains the practice of a patriarchal system.

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<sup>187</sup> Pretorius, "Men's Role in the Quest for Gender Justice: A Historical Overview of Antifeminism and Profeminism."

<sup>188</sup> Victoria Robinson, "Radical Revisionings?: The Theorizing of Masculinity and (Radical) Feminist Theory," *Women's Studies International Forum* 26, no. 2 (2003): 129–137.

<sup>189</sup> Ibid.

<sup>190</sup> Kristina Wolff, "Psychoanalytic Feminism," *The Blackwell Encyclopedia of Sociology* (2007).

However, while studying the differences between men and women and the way gender is constructed through the application of psychoanalytic techniques, they found that there are possibilities for the social pattern to be restructured during the early stages of human life. Psychoanalytic feminism throughout its movement was trying to analyse the differences between sexes in order to understand women's position within society therefore, the study on early childhood development became its main concern.

They examine the construction of gender and its practice within society, family, and as individuals. Theoretically, in accordance with Wolff<sup>191</sup>, the understanding of the evolution of the individual conscious aspect of personality during an early stage of the person's life, able to provide a comprehensive understanding of his or her formation in their identity and gender roles. Their focus were divided into two main sections; examining the differences between women and men, particularly on women's psychology as well as the environment in which the personality of a child develops including the learning and formation process of the children, their relationship with their parents, and their early sexuality traits besides scrutinizing the establishment of femininity and masculinity as well as their relationship with identity and personality as well as; probing the process of gender construction.

The application of psychoanalytic techniques also is utilized in the study of economic and employment, science and knowledge as well as arts and language<sup>192</sup>. Benjamin<sup>193</sup> in her study about women's desire has explained that the critical feminist psychoanalytic theory upholds a belief that individuality contains a balanced form of

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<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Jessica Benjamin, "A Desire of One's Own: Psychoanalytic Feminism and Intersubjective Space," in *Feminist Studies/Critical Studies*, 1986, 78–101.

separation and connectedness, of the capacities for agency and relatedness. A further explanation can be found in an article by Kristina Wolff. Wolff<sup>194</sup> elaborates that as for women, the role of mother is actually representing a dual identity (as the mother and as a child who was raised by a mother) which cause differences in her relationship with her daughter and her son. Theoretically, the circumstances cause the girls to have less individuality hence, they develop more flexible egos and only feel a sense of completeness when closely connected to another person while boys build more individuality and a sense of completeness through achievement and competition<sup>195</sup>. These larger structures and social systems of organizing society, hence created a patriarchal system that serves to oppress and dominate women<sup>196</sup>.

Since children tend to witness the household practice of their parents, hence, there should be some alteration within the practice of the family and quash any power imbalance between parents. This shift will significantly change the structure of masculinity and femininity that underlies the sexual division of jobs. In addition, it would practically cause changes in the construction of gender, abolishing the dominance of men towards women as well as rise up the independence of women from men along with men's relatedness to the other persons<sup>197</sup>.

#### **2.4.7 Gender Feminism or Neo-Marxist Feminism**

Generally, referring to a book by Kausar<sup>198</sup>, '*Modern Western Political Ideologies, an Islamic Critique*', gender feminism or also known as Neo-Marxist Feminism is a new

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<sup>194</sup> Wolff, "Psychoanalytic Feminism."

<sup>195</sup> Ibid.

<sup>196</sup> Benjamin, "A Desire of One's Own: Psychoanalytic Feminism and Intersubjective Space"; Wolff, "Psychoanalytic Feminism."

<sup>197</sup> Wolff, "Psychoanalytic Feminism."

<sup>198</sup> Kausar, *Modern Western Political Ideologies: An Islamic Critique*.

term in the feminist discourse conceived through Christina Hoff Sommer's work in *'Who Stole Feminism?'* According to Sommer, gender feminism is a gender war against all patriarchal oppressive systems that can be drawn back to the Marxist interpretation of history as a struggle between the bourgeoisie and the proletariat, the two economic classes in the economic war<sup>199</sup>. Gender feminists see history as full of struggles between men and women as two different classes of sexes and similar to radical feminists, they seek for the abolition of the biological and reproductive families. This is due to their belief that it is a form of oppression especially towards women.

Besides, they also encourage that all forms of deviant sexuality including homosexual, lesbian, and transsexual are to be accepted in society as well as all artificial ways of reproduction and all forms of families. Gender feminists uphold that heterosexuality and women's role as a wife and mother were all socially constructed therefore, they argue for the liberalization of sexuality in marriage and child abortion for women whenever they found it necessary for themselves. They even argue for gender to be differentiated from sex which is more biological. For them, the independence of gender would help women to liberalize themselves from gender roles constructed by society hence, the suppression and oppression against women can be ended.

Bella Abzug and Nancy Chodorow, in their support of the gender feminism movement, explained that the sexual difference between men and women is being exaggerated purposely to reduce the status of women in society while heterosexual marriage and reproduction formulate gender differences and inequalities. In conclusion, gender

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<sup>199</sup> Ibid.; Musa Yusof Owoyemi, *A Brief Historical Examination of the Diversity of the Feminist Discourse*, n.d.

feminism, which is among the modern feminism theory committed to the politicization of sex the familial institutions. Sexuality being conceived as a system of government while women and men being categorized under opposite and conflicting classes that are politically oriented and socially constructed<sup>200</sup>.

#### **2.4.8 Feminism in Islam**

Islam as a set of religious practices that provides a complete system of life also cannot miss the discourse on feminism and gender equality. However, in accordance with Hesová<sup>201</sup>, the idea of 'Islamic feminism' remains shrouded in a series of questions and doubts despite the constant demand of gender equality in Muslim society for over a century, and the confrontation of feminist activism at many of recent social movements in Muslim society. The term itself has raised numerous questions and doubts on the relationship of feminism with religious authorities, references, and tradition as it always seems to normalize and justify the inequalities between genders. Moreover, being known as a discriminatory religion also has somehow increased the existing tension within the term 'Islamic feminism'.

In general, Islamic feminism corresponds to women's fighting over equality of gender within the religious tradition. However, since feminism was renowned with liberal movement, it then has been used as an example of a 'reformed' Islam which caused them to indeed carry stereotypes of practicing oppression within the religion. Not only is that but the existing Western origins of feminism are also somehow pulling down the confidence of the Muslims in the legitimacy of Muslim women activists within

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<sup>200</sup> Kausar, *Modern Western Political Ideologies: An Islamic Critique*.

<sup>201</sup> Zora Hesová, "Secular, Islamic or Muslim Feminism? The Place of Religion in Women's Perspectives on Equality in Islam," *Gender a Vyzkum / Gender and Research* 20, no. 2 (2019): 26–46.

their own society. This is because of the thoughts that it connects the activists with the foreign colonial projects. Such perceptions eventually caused people to be scared of women's emancipation that according to them could lead to moral decline and loss of social identity.

Previously, there were two modes of women-centered activism in the Middle East which were Islamic feminism and secular feminism. While explaining Islamic and secular feminism, Badran argues that the theory of Islamic feminism enunciates a discourse that relies on, "*a single, or paramount, religiously-grounded discourse taking the Qur'an as its central text*" while secular feminism theory "*draws upon and is constituted by multiple discourses, including secular nationalist, Islamic modernist, humanitarian or human rights and democratic*" ideas<sup>202</sup>. According to Badran, secular feminism is the first feminism that revolves around Egypt in the early twentieth century before Islamic feminism emerged as a phenomenon identified at the end of the twentieth century<sup>203</sup>. However, she believed that both secular and Islamic are not meant to be necessarily in opposition to each other. In her distinction between the two feminisms, the difference only falls onto the strategies used by the women activists in both movements, instead of their intellectual references. Secular feminism seeks to achieve civic equality in the sphere of education, workplace, politics, and personal self-determination while Islamic feminism works towards an egalitarian theology<sup>204</sup>. Historically, during the first generation of Muslim scholars who engaged with the movement of feminism, solicit a modernist Islamic discourse in order to seek for a

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<sup>202</sup> Sherine Hafez, "Feminism in Islam: Secular and Religious Convergences by Margot Badran," *Journal of Middle East Women's Studies* 7, no. 2 (2011): 114–117.

<sup>203</sup> Hesová, "Secular, Islamic or Muslim Feminism? The Place of Religion in Women's Perspectives on Equality in Islam."

<sup>204</sup> Ibid.

reformation on the patriarchal system in family and call for a more egalitarian status law especially in regards to the abusive unilateral divorce and polygamy<sup>205</sup>. In the 1990s, Islamic feminism began to emerge and was identified by Western scholars as a discourse and practice that evolved within an Islamic paradigm. This theory that aims for upholding rights and justice for both women and men in the totality of their existence employs its understanding from the Qur'an and becomes an intellectual endeavor.

In the effort of standing for equality of all people, Islamic feminism has extended its demand for equality to the private sphere of social life and bridging the religious institution with family relations. While doing so, some feminists also questioned the dominance of men over the functioning of Islam and demanded access to the positions of judges and muftis. Besides, Islamic feminists even had to construct arguments that go beyond the thinking of early Islamic modernists in order to find equality within the private sphere. They believed that the role of asymmetric gender, with men having all the powers, is rooted in the concept of complementary gender governed by sharia rules and religious customs.

Islamic feminists also sought to question the basic text of religion and rearrange the history of the conquest of women in the Islamic legal tradition. In doing so, Islamic feminists have indirectly overturned the relationship between the public and private spheres besides concealing more radical human equations across tribes, classes,

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<sup>205</sup> Hafez, "Feminism in Islam: Secular and Religious Convergences by Margot Badran "; Hesová, "Secular, Islamic or Muslim Feminism? The Place of Religion in Women's Perspectives on Equality in Islam."

nations, and genders. According to Hesova<sup>206</sup>, the traditional conception of gender issues such as misogyny, patriarchy, the distinction between biological sex and socially constructed gender roles, gender language, gender bias, politics, justice, and gender parity are fundamental to the critical views of Islamic feminism. In any case, the modern interpretative disciplines and methods like hermeneutics, intertextuality, and historicity that are often referred to by Islamic feminists are also important elements in their discursive debate on the rights for both men and women<sup>207</sup>.

On the other hand, in discussing Islamic critiques towards the Western school of thoughts in the feminism discourse, Kausar<sup>208</sup> in her book, began with the explanation of man's intellectual faculty in understanding nature and the environment. She emphasized that Islam has made it clear on the need for man to use his intellect and sense perception before jumping to any conclusion and knowledge including the scientific method.

However, the method used and reasoning portrayed together with observation in acquiring knowledge should be directed through the Revelation, Qur'an, and the Sunnah. It is important to realise the purpose of human's creation in this world. In Islam, there is nothing about the separation of private and public life. As Islam refers to a complete system of life, hence Allah has revealed the basic and broad guidance that covers all aspects of life either private or public. Therefore, all issues and doubts concerning men and women must be referred to the Qur'an and the Sunnah.

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<sup>206</sup> Hesová, "Secular, Islamic or Muslim Feminism? The Place of Religion in Women's Perspectives on Equality in Islam."

<sup>207</sup> Ibid.

<sup>208</sup> Kausar, *Modern Western Political Ideologies: An Islamic Critique*.

As Islam considered everything to be accountable to Allah s.w.t. for all their concepts and deeds<sup>209</sup>, no one should be perceived from a one-sided material perspective but with its internal connection with Islamic injunctions. Every human being including women should possess the rights to education, and participation in economics and politics. But Islam also demands women to enjoy the rights while following Islamic injunctions in terms of dressing and social interaction without abandoning their prominent and dynamic role in the family<sup>210</sup>. After all, it implies that no one should jeopardize their role in the family because family is the basic unit of civilization for each society. In Islam, mothers were accorded a respectful position and a blessing for mankind. Marriage also should not be seen as the enslavement of women because Islam also condemns whoever tries to dominate his or her partner. Instead, Islam emphasizes consultation hence, there is no such thing that can be called patriarchal or matriarchal<sup>211</sup>.

Although men are overall in charge of the members of the family since they are entrusted with the financial responsibility of their family and undeniably physically stronger than women, it does not mean that they are allowed to dominate women<sup>212</sup>. Apart from that, in encountering the issue of reproduction, Islam is never against the use of technological devices for reproduction as long as it is between the legal husband and wife. Islam strictly prohibits adultery and surrogate parenting since it would cause legal and moral issues while abortion is allowed whenever it becomes a threat to the

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<sup>209</sup> Azizur Rehman, Muhammad Ishaq, and Syed Bacha Agha, "Grief and Shock , Discernment and Dificulties , Their Reasons and Motives in The Light of the Teachings of the Holy Prophet ( PBUH )," *Rahat-ul-Quloob* 3, no. 2 (2019): 23–26; Mujibullah, "The Metaphysical Understanding The Concept of Allah," *EPRA International Journal of Multidisciplinary Research (IJMR)-Peer Reviewed Journal* 6, no. 9 (2020): 7–11.

<sup>210</sup> Kausar, *Modern Western Political Ideologies: An Islamic Critique*.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

mother's life. Regarding the issue of homosexuality, lesbianism, and trans-sexuality, Islam perceives it to be a vulgar practice of ignorant people and forbidden.

Last but not least, as explained by many Muslim scholars, there is no doubt that Islam too calls for equality between men and women. However, Islam also does not deny that men and women are not identical and that there should be a distinction between the issue of equality and identity. Every person was created from a single soul and given the same mission of life as well as an equal right to acquire knowledge but the fact that both men and women are biologically different cannot be ignored. Therefore, there are certain responsibilities that are legally binding to certain genders such as childbearing and childbirth that can only be assigned to women<sup>213</sup>. Despite the differences, every man and woman should always complement one another without emulating either party. In conclusion, women and men in Islam are capable to attain equality in life but at the same time maintain their differences in identity.

## **2.5 Egalitarianism**

Taking the subject of gender equality in the form of a grown tree, this study looked into various theories and movements of gender equality where it can be regarded as the branches. Now, it is time to look back to the roots where the subject belongs. Technically, the problem on the issue of gender equality came from the issue of "equality" itself. Hence, it is best to include the philosophical discussion of gender equality within the discussion of equality as its root. In philosophy, the discussion of equality is commonly made through the theory of egalitarianism where the idea of

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<sup>213</sup> Ibid.

equality is found to be its central idea<sup>214</sup>. One thing to note is that egalitarianism was not only being pursued in the sphere of workplace or political rights but also within the private domain such as family and at home. According to Afolayan<sup>215</sup>, egalitarianism is known as “a philosophical theory that rests on the claim that human beings have some sort of fundamental worth and hence should all be treated as equal.” In general, Heller<sup>216</sup> classified equality as the basis for a free society.

Baker et al.<sup>217</sup> in their study on the dimensions of equality, provide the general idea of equality where they believe that it involves some kind of relationship of something either between two people or more regarding some aspect<sup>218</sup> of their lives. In any case, equality should be seen within three questions which are ‘equality between whom?’; ‘equality of what?’ and; ‘what type of relationship?’ Baker et al. throughout their writing that after all, for all egalitarian thinking, basic equality is somehow known to be its keystone where the idea is that human beings at its basic have equal worth and importance hence everyone is equally worthy of concern and respect<sup>219</sup>.

In another research, Coons and Brennan<sup>220</sup> connote that if there is anything significant about human equality, it needs to be something beyond possession which they called ‘double equality’. They believe that individuals should not possess the same good and power only but also in the degree of their enjoyment. However, it is problematic since

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<sup>214</sup> Afolayan, “Egalitarianism.”

<sup>215</sup> Ibid.

<sup>216</sup> Heller, “The Philosopher Redefining Equality.”

<sup>217</sup> John Baker et al., *Equality From Theory to Action*, Second Edi. (Dublin, 2009).

<sup>218</sup> Oppenheim in a study where he expressed the definition of the term of “equality” said that it should be predicated on either the characteristics of the person or the distribution to be made. See Felix E. Oppenheim, “Egalitarianism as a Descriptive Concept,” *American Philosophical Quarterly* 7, no. 2 (1970): 143–152.

<sup>219</sup> Baker et al., *Equality From Theory to Action*.

<sup>220</sup> John E. Coons and Patrick M. Brennan, “Nature and Human Equality,” *The American Journal of Jurisprudence* 40, no. 1 (1995): 287–334.

humans sometimes differ in their level of satisfaction or enjoyment. It is the same as the freedom of human will where it would be unprovable but plausible. The authors resemble it with human equality and so, it implies another characteristic that is often known as “human dignity”. Anderson<sup>221</sup> in her study elaborated the objectives of egalitarianism in two conceptions. The first one is “the proper negative aim of egalitarian justice” which is not for the purpose of eliminating the luck effect of human affairs, but rather, to end oppression with social order. On the other hand, the second one is the “proper positive aims” that ensure every person gets what he or she morally deserves while standing for equality towards others.

The first conception that is also known as ‘luck egalitarianism’ has then become the most prominent theories of distributive justice which its main idea provides an acceptable condition for a person to enjoy benefits from inequalities that were derived from the choices that others have voluntarily made. But in contrast, it will be regarded as unjust if the inequalities were derived from unchosen features from other’s unfortunate circumstances. It overlaps with but at the same time diverges from the prevailing political morality in most liberal societies where it holds that the majority of the intentional discriminations are based on unchosen factors including gender they are born with. Since it is unjust, thus, the distributive inequalities resulting from such discrimination are unjust as well<sup>222</sup>. As emphasized by Scheffler<sup>223</sup>, a person or individual should be subjected to equal access or opportunity to the social positions for which they are qualified despite their differences in social classes.

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<sup>221</sup> Elizabeth S. Anderson, “What Is the Point of Equality?,” *Ethics* 109, no. 2 (1999): 287–337.

<sup>222</sup> Samuel Scheffler, “What Is Egalitarianism?,” *Philosophy and Public Affairs* 31, no. 1 (2003): 5–39.

<sup>223</sup> *Ibid.*

On the other hand, as denoted by Brown<sup>224</sup>, for the relational egalitarian theory of justice, they believe that if a person's action is violating the rights pertaining to equality towards one another that all individuals are subjected to, then it can be regarded as a social inequality that is undeniably unjust. In relational egalitarianism, the theory focused on the way individuals relate to each other as the democratic citizens. They were against the development of social hierarchies on the basis of group membership. Instead, they prefer relations of social equality that are grounded in each person's fundamental rights to moral equality<sup>225</sup>.

In terms of gender equality, the theory hence proposes that individuals should express a proper attitude towards men and women while offering them adequate and equal structural protection against unjust treatment by others. Just as much as the author emphasizes morality in life, equality is conceived as a social relationship in which a person should relate to each other as persons of equal moral worth and dignity. This is parallel to the five dimensions of equality that has been pointed out by Baker et al. where they regard respect and recognition; resources; love, care, and solidarity; power; as well as working and learning as the key factors that affect the well-being of a person or the quality of life<sup>226</sup>.

## **2.6 Equality and Moral Ethics**

In understanding equality from the philosophical perspective, it is important to look at the view of morality that draws the ethical value of a society. Moral equality as according to Pollock<sup>227</sup> is basically a conception that comprises utilitarianism, social

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<sup>224</sup> Brown, "Relational Equality and Disability Injustice."

<sup>225</sup> Ibid.

<sup>226</sup> Baker et al., *Equality From Theory to Action*.

<sup>227</sup> Lansing Pollock, "Moral Equality," *Public Affairs Quarterly* 15, no. 3 (2001): 241–260.

equality, relational equality, contractualism, and democratic equality concepts. Henry Sidgwick, as according to Mackenzie<sup>228</sup> explains the utilitarian conception of equality that for it is sometimes said to resolve all virtue into universal and impartial benevolence. For utilitarianism, however, equality does not prescribe that people should love all men equally, but that people should aim at happiness generally as the ultimate end, and so consider the happiness of an individual as equally important with the happiness of any other as an element of this total besides distributing the kindness so as to make this total as great as possible, in whatever way the result may be attained.

Next, in term of social equality or also called as social egalitarian, Nagel<sup>229</sup> and Pollock<sup>230</sup> emphasize that it tends to compare the relative standing for the members of a society according to dimensions such as income, wealth, opportunity, and power. Whatever dimension is chosen, a social egalitarian supports the effort of bringing equality to people<sup>231</sup>. Pollock in his article mentioned this as an obvious point because those who object to social inequalities for not supporting in making people equal tend to claim themselves as an egalitarian. Nagel, for example, considers making incomes equal, and he concludes that doing what would be necessary would have too high a price in terms of freedom and efficiency<sup>232</sup>.

On the other hand, the third conception of moral equality is concerned with relationships between individuals which means that two individuals should treat each

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<sup>228</sup> J. S. Mackenzie, "The Methods of Ethics. Henry Sidgwick," *The International Journal of Ethics* 4, no. 4 (1894): 512–514.

<sup>229</sup> Thomas Nagel, *What Does It All Mean? A Very Short Introduction to Philosophy*, Oxford University Press (New York: Oxford University Press, 1987).

<sup>230</sup> Pollock, "Moral Equality."

<sup>231</sup> Ibid.

<sup>232</sup> Thomas Nagel, *What Does It All Mean? A Very Short Introduction to Philosophy*, *Philosophical Books*, vol. 30, 1989.

other as moral equals which is relational equality<sup>233</sup>. In most cases, this means that interactions between both parties should be based on mutual consent. If a person gets the other one to do what he wants by using coercion or deception, he is considered as not treating the other one as a moral equal. In this case, this person has violated the mutual-consent requirement that is supposed to be performed mutually towards the other party. In any case where this violation happens either physically or mentally, there is an exception to the egalitarian imperative.

The fourth conception is contractual morality where individuals are willingly to modify their private demands in order to make sure that their goals meet the other person's goals out of respect. As in Pollock<sup>234</sup>, Scanlon, an American philosopher believes that to properly respond to the value of human beings as a rational being is by treating them within a justifiable treatment as the result of our respect towards each other. The action should be in a form of mutual governance where we could foresee that the person we are encountering himself would not reject.

The last conception is democratic equality. Navin<sup>235</sup> in defining democratic equality says that it is an "idea that one requirement of treating persons as equals is that all citizens ought to be treated as equal citizens. If social and political inequalities undermine relations of equal citizenship, then such inequalities are unjust according to democratic equality." As he emphasizes, every person requires certain capacities for moral and political freedom within the society and so does in the economy too. An early philosopher who advocated democratic equality, Jean Jacques Rousseau upholds

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<sup>233</sup> Pollock, "Moral Equality."

<sup>234</sup> Ibid.

<sup>235</sup> Mark C. Navin, "Democratic Equality," *Encyclopedia of Global Justice*, 2011.

that citizens can achieve moral equality and have a common good legislative deliberation only when inequalities of wealth are kept within limits<sup>236</sup>.

## **2.7 Conclusion**

Through the discussions on the philosophical perspective of gender equality, this research concludes that the main issue that can be regarded as the keystone of the establishment of the feminist movement is the culture that was rooted in the traditional society. The 'culture' in the sense of this study is then being regarded as the patriarchal system that puts women in an inferior position compared to men within the family. Unfortunately, this is the midpoint of all the problems in regards to the issue of gender equality. It does not matter how much people try to disagree with this, they should not abandon the fact that cultures are relatively different from one nation to another, from one country to another. Every culture plays a part in advancing gender inequality as most natives or cultures in nature. However, the level of inequality differs from culture to culture based on how well education and other factors have helped to emancipate women in each culture.

Hence, this study concludes that there are some factors that undeniably have affected the relativism of gender equality theories. The first one is, as mentioned before, the culture of the society. Where there are differences in cultures between societies such as between Indians and Americans where they have a huge difference in their practices of culture and lifestyle, it is unfair to claim a certain interpretation of equality or inequalities to be represented in both societies. Second, as much as culture influences the practices of gender equality, religion as well can be regarded as a huge contributing

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<sup>236</sup> Ibid.

factor to it. This can be seen through the differences between the Western and Islamic views on feminism as discussed above.

Other factors that might influence the relativism of the theories are the women's access to education where at some points, it cannot be denied that women with higher education tend to open up their views into larger scales that make them more eager towards achieving the same thing as men normally achieve. In this sense, it is hard to clarify which is the most appropriate theory of gender equality. Besides, egalitarianism, as explained before, involves a fundamental concern with the dignity and moral equality of individuals, while underlying its interests in the well-being of each person.

Egalitarian motivation is something that comes from the valuable nature of some kind of relationship between moral agents, where equality is preserved for all parties. This preoccupation with equality between men and women requires a strong concern for distributive equality, especially in the economy because economic inequality can result in power relations and dominance between the parties<sup>237</sup>. Therefore, in order to conclude the whole discussion of this chapter, this research agrees that in describing gender equality, there are certain factors that need to be taken into considerations which are the culture of the society, religion, nature of women and men as well as the economic distribution along with its inclination towards individual moral worth and values.

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<sup>237</sup> Brennen Kenneth Leon Harwood, "Equality and Global Justice: Tracing the Scope and Grounds of Egalitarianism," 2014.

## CHAPTER THREE

### THE LEGAL FRAMEWORK ON GENDER EQUALITY

#### 3.1 Introduction

The previous chapter has touched on the philosophical views of gender equality. In this chapter, a discussion is made from the legal perspective of gender equality. It is important to discuss gender equality from a legal perspective because the law itself is very important and useful in controlling situations and issues, especially regarding violence or discrimination against individuals. This chapter discusses and analyses the concept of gender equality from a legal perspective through the data collected from article journals, judiciary reviews, and legal documents as well as the experts' opinions from the conducted interview.

The discussion in this chapter begins by exploring the jurisprudence of equality which discusses the philosophy of equality from the perspective of law. The understanding of the jurisprudence of equality or in other words, the philosophy of law of equality would help in providing an overview of the legal framework established in regards to the subject of equality. Then, it is followed with the discussion on the principles of equality which consist of the principle of entitlement, the principle of universal entitlement, the principle of equal distribution in conflict and, the principle of non-discrimination. The discussion continues with the elaboration on the categories of equality that are divided into formal, substantive, distributive and, relational equality.

Since gender equality in the legal view also is interrelated to the theories of feminism, four main streams of feminism in law will be explained in order to observe its correlation with the philosophical views and discussions on gender equality theories as explained in the previous chapter. The chapter then continues with discussion and analysis on the international conventions related to equality and discrimination in employment. In this section, the elements of equality adopted in the Universal Declaration of Human Rights 1948 (UDHR) are studied before it proceeds with discussions about the International Labour Organisation (ILO) that provides the labour standards in employment and Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW) as renowned international convention against gender discrimination.

The study then narrowed down to the section where the researcher starts to analyse the Malaysian legal framework of equality. The study included the analysis on the concept on gender equality according to Malaysian Federal Constitution. Besides that, this chapter also draws upon the doctrinal studies on employment-related laws in Malaysia in order to provide clarity in terms of the application of the law in Malaysia workplace due to the differences in the administration between the public and private sectors in Malaysia. Technically, the main laws on employment in Malaysia are the Employment Act 1955 (EA) and the Industrial Relations Act 1967 (IRA) which primarily provide protection for the relationship between employer and employee in Malaysia workplace, especially for the private sectors. However, a different case applies to employees in the public sector. The following discussions provide the analysis on the legal rights for employees and employers, respectively, according to common law and

the Malaysian laws. Finally, the conclusion summarizes the whole discussions and analysis of this chapter according to the researcher's views and analysis.

### **3.2 The Philosophy of Law of Equality**

In a general view, the law is theoretically and practically a relational phenomenon where the analysis on its application of legal principles should not only be used to adhere to the state's issues but also to individuals in society. It is necessary for society to experience changes throughout time and according to Matnuh<sup>238</sup>, there will be the occurrence of social engineering or social change following the advancement of cultures in society. Naturally, human beings are known as the creatures that live with desires and reason that seek and strive to meet their needs. Thus, the knowledge of the law is necessary to govern the society so that there will be peace, security and justice in life. Based on researches done by Matnuh<sup>239</sup> and Podgorecki<sup>240</sup>, the law may function as a tool for social engineering. Matnuh explained that law in the process of social engineering can serve as a tool of social engineering (which is active) or as a place of change (which is passive) that changes accordingly to the changes in society.

According to Kumar<sup>241</sup>, Roscoe Pound, a sociologist in the study of sociological jurisprudence believes that social engineering means to balance the competing interests in society and he observes that law as a large part of social engineering plays a vital role, more than just a body of rules. He mentions that "It has conceptions and

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<sup>238</sup> Harpani Matnuh, "Law as a Tool of Social Engineering," *Advances in Social Science, Education and Humanities Research (ASSEHR)* 147, no. Icsse 2017 (2018): 118–120.

<sup>239</sup> Ibid.

<sup>240</sup> Adam Podgorecki, "Law and Social Engineering," *Human Organization* 21, no. 3 (1962): 177–181.

<sup>241</sup> Naresh Kumar, "Social Engineering by the Roscoe Pound," *Lawnotes4u*, last modified 2020, accessed September 20, 2021, <https://www.lawnotes4u.in/social-engineering-by-the-roscoe-pound-sociological-school/>.

standards for conduct and for the decision, but it has also doctrines and modes of professional thought and professional rules of art by which the precepts for conduct and decision are applied and given effect. Like an engineer's formulae, they represent experience, scientific formulations of experience and logical development of the formulations, but also inventive skill in conceiving new devices and formulating their requirements by means of a developed technique."<sup>242</sup> Thus, a law in its function has to protect three areas of interest which are the individual interests, public interest and social interest<sup>243</sup>.

In terms of the application of the law in a society that is built with changes and cultural differences, the legislative bodies and courts play an important role in leading a systematic social society. The understanding of a separate party that has powers such as courts and judges over social phenomena as well as their ability to form mental constructs act as the existential grounds for legal decision<sup>244</sup>. Thus, in the context of the law of equality, Graham<sup>245</sup> believes that it has to be determined according to the mode of its usage. He also explained that in the view of logical systems, equality is used to assess the identity of two propositions where the factors that identify equality are characterised as objective and determinate.

However, since the legal study is delicate under political discourse that deals with human action which is a core factor of legal decisions, it thus needs to be differentiated

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<sup>242</sup> Ibid.; Sai Abhipsa Gochhayat, "'Social Engineering by Roscoe Pound': Issues in Legal and Political Philosophy," *SSRN Electronic Journal* (2010): 1–9.

<sup>243</sup> Gochhayat, "'Social Engineering by Roscoe Pound': Issues in Legal and Political Philosophy."

<sup>244</sup> Stewart Graham, "A Jurisprudence of Equality: The Fourteenth Amendment and School Desegregation," *Akron Law Review* 11, no. 2 (1978): 203–224.

<sup>245</sup> Ibid.

from a common logical system<sup>246</sup>. The reason is that human actions have the ability to go beyond the present reality. It means that equality cannot be treated the same way as any of the scientific discourses that have a formal logical system instead, there are some different principles that had to be taken into considerations in deciding its legal framework. Moreover, human beings act and behave differently according to their cultures and the passage of time. This is parallel to the study by Fredman<sup>247</sup> in her book, *'Discrimination Law'*, where she claims that equality as an idea can be seen as a relatively modern construct since its principle was hardly found among the classical and medieval societies. Instead of recognizing a person's virtue and moral worth, society during that time was organized into a hierarchy according to their birth and status.

Indeed, as discussed in the previous chapter, the classical thinkers such as Aristotle, did not see it as a problem to justify the subordination of women and slaves towards men. This is because they believe that it is due to women's inherent inferiority, lack of rationality, and need for guidance<sup>248</sup>. In contrast, John Locke who is one of the influential modern philosophers in politics, perceives human beings to be all equal and independent from one another. Locke in his work titled *'Two Treatises of Government'* wrote,

*"Men being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent"*<sup>249</sup>.

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<sup>246</sup> Ibid.

<sup>247</sup> Sandra Fredman, "Equality: Concept and Controversies," in *Discrimination Law* (Great Britain: Oxford University Press, 2002), 1–26.

<sup>248</sup> Aristotle, *Politics: A Treatise on Government*.

<sup>249</sup> John Locke, *Two Treatises of Government*, 1823.

This statement has indirectly manifested the freedom of contract for individuals. Through the context brought by Locke, every person is allowed to form abstract contractual equality or the so-called social contract where each party was treated equally.

The objective is as described by Chand<sup>250</sup>, to protect the natural rights of a human being. In fact, his idea of the equality of men as a basic right for individuals has been embodied in many national constitutions<sup>251</sup>. Unfortunately, there are still lots of further manipulations that have been made by the societies especially in regards to women's rationality and emotions which resulted in them being excluded from the equal rights for rational beings. Women are expected to behave like 'women', but unfortunately, women's behaviour is often seen as contrary to the ability of the desired leader. For example, when talking about communication styles that are considered as the most important leadership competencies, the surrounding conditions that are mixed with norms and social stereotypes make it seem as feminine communication to be more indirect and emotional, while masculine communication is seen to be more direct and instrumental. This style of women's communication was later considered to be inappropriate for leadership, as women's linguistic style was considered uncertain, and lack of authority<sup>252</sup>.

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<sup>250</sup> Hari Chand, *Modern Jurisprudence* (Kuala Lumpur: International Law Book Services, 2001): 24.

<sup>251</sup> In Chand's writing in his book, 'Modern Jurisprudence', he summarizes some of Locke's ideas that have been adapted into most constitutions and given guarantees to individuals. Among the ideas is "Equality of men: All people are equal hence no one has right to injure another in life, health, liberty or possession."

<sup>252</sup> Mónica Segovia-Pérez, Pilar Laguna-Sánchez, and Concepción de la Fuente-Cabrero, "Education for Sustainable Leadership: Fostering Women's Empowerment at the University Level," *Sustainability (Switzerland)* 11, no. 20 (2019).

However, Coons and Brennan<sup>253</sup> in characterising equality, presents that equality might as well be seen as a relational reality that is similar to the characteristic of law that is already known to be relative. Therefore, it has to be based upon something (which they called ‘host property’) that were possessed by each of two or more individuals. The right to equality should not be decided bluntly based on a single perspective. The ground needs to be one that is primarily important to self-identity since it leads to the capacity to achieve moral self-perfection. Although freedom was given to each individual in choosing his or her commitment towards other people, it still seeks for all rational persons to enjoy the same amount of equality whenever it is being upheld. As supported by O’Brian<sup>254</sup>, equality is essential for a community where no one should be treated partially than the others. He even described equality as the “sovereign virtue” of the government where they are required to treat their people fairly and justly while giving all the citizens the right to equal attention and respect.

### 3.2.1 The Legal Principle of Equality

‘Principles’ in accordance with Raz<sup>255</sup> commonly have a prima facie force. In his study on the principle of equality in which according to him is a welfare principle, he has provided some important points that he regards as the principles of equality which are the principle of entitlement, the principle of universal entitlement, the principle of equal distribution in conflict and principle of non-discrimination. First of all, he directed the discussion to the principle of entitlement that falls onto the positive and negative forms which in general are as follows;

- (a) Positive : All Bs are entitled to E

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<sup>253</sup> Coons and Brennan, “Nature and Human Equality.”

<sup>254</sup> O’Brian, “Equality in Law and Philosophy”; Christopher John Marshall, “Bringing About Equality,” 2017.

<sup>255</sup> J. Raz, “Principles of Equality,” *Mind* 87, no. 3 (1978): 321–342.

(b) Negative : Being or not being a B is irrelevant to one's entitlement to E

The difference between these two propositions is basically the weight of equality alone. For example, when we talk about the entitlement of human beings for employment, the propositions would turn into these;

(a) Those who are equally human are **entitled to equal** employment.

(b) Those who are equally human are **equally entitled to** employment.

However, since the focus of this research is not on the linguistic problem, thus, this research is not going to discuss the subject matter and its kinds of entitlement. But, the main point to jot down from Raz's theory here on this principle is that equality is given according to the entitlement received by a person. Next, the principle of universal entitlement. According to him, in virtue of their generality, all principles should be applied equally to all classes of people.

Unfortunately, there are situations that transform into scarcity that give rise to conflicts of reasons; thus, the principle of equal distribution in conflict will be used where each who has equal entitlement is entitled to an equal share. For example, when there are two candidates for a position of employment. Although the general principle is "All men (human beings) are entitled to employment" but in a situation where it opted for a person only, other considerations or quality of the candidates (other than the fact that they are human beings) need to be observed. But all in all, as referring to Raz's principle of equality, the most important principle is the principles of non-discrimination that are sensitive to the existing inequalities between members of the relevant group with respect to the relevant benefit<sup>256</sup>.

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<sup>256</sup> Ibid.

According to Grimson and Grimson<sup>257</sup>, one of the reasons gender equality has a great interest in society including the workplace area is due to the principle that there should be a prevailing environment guaranteeing social justice and human rights for all individuals. Based on literature from scholars in the area of equality and justice, equality can be categorized into few perspectives which are formal equality, substantive equality, distributive equality, and relational equality. Formal equality, in general, can be summarized as a system that promotes individual justice to be the foundation of a moral claim to virtue. It relies upon the proposition that fairness is the moral virtue that requires consistent and equal treatment. According to an article by 'Equal Right Trust'<sup>258</sup>, formal equality has an important role in the law and policy of many countries with advanced equality and non-discrimination provisions. For instance, it forms the conceptual basis of the term "direct discrimination" utilized in the United Kingdom.

The formal approach to equality and non-discrimination supports the position that a person's individual physical or personal characteristics should be viewed as irrelevant in determining whether they have a right to some social benefit or gain. Besides, McCrudden<sup>259</sup> also affirms that the liberal argument sets out that formal equality is necessary if the principle of merit is to be maintained in a democratic society. Libertarians further defend formal equality by arguing that it disfavours arbitrary decision-making processes as when policies or people selectively disadvantage others

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<sup>257</sup> Jane Grimson and William Grimson, "Eliminating Gender Inequality in Engineering , Industry , and Academia" (2019): 315–339.

<sup>258</sup> Equal Right Trust, "The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality," *Equal Rights Trust*, last modified 2007, accessed November 19, 2019, <https://www.equalrightstrust.org/content/ideas-equality-and-non-discrimination-formal-and-substantive-equality>.

<sup>259</sup> Christopher McCrudden, "Merit Principles" 20, no. 3 (2015): 675–699.

due to a particular irrelevant trait. The value of formal equality is its ability to protect against defects being introduced into the decision-making process, and ensuring that irrational and unfair decisions based on arbitrary criteria are kept out<sup>260</sup>.

Different from formal equality, substantive equality brings equality to different contexts. According to Fredman<sup>261</sup>, substantive equality should be stipulated into four dimensions which are first, the right to redress disadvantage. Second, it is to counter prejudice, stigma, stereotyping, humiliation, and violence based on a protected characteristic. Third, enhancing voice and participation, countering both political and social exclusion, and finally, the fourth is to accommodate differences and achieve structural change. Ahmad and Fredman emphasize that substantive equality is basically focused on the group which has suffered disadvantages<sup>262</sup> and bridges the gap between the traditional sphere of anti-discrimination law and distributive equality, which the latter, as seen, has been regarded as falling within the terrain of policy rather than human rights law<sup>263</sup>.

Fredman<sup>264</sup> believes that substantive equality is capable of reconciling affirmative action with the right to equality. In other words, rather than the universal, abstract individual of formal equality, substantive equality recognizes that individuals are

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<sup>260</sup> Equal Right Trust, "The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality."

<sup>261</sup> Sandra Fredman, "Substantive Equality Revisited," *International Journal of Constitutional Law* 14, no. 3 (2016): 712–738.

<sup>262</sup> Salbiah Ahmad, "Gender Equality Under Article 8: Human Rights, Islam and 'Feminisms,'" *The Malaysian Bar*, last modified 2005, accessed November 19, 2019, [http://www.malaysianbar.org.my/gender\\_issues/gender\\_equality\\_under\\_article\\_8\\_human\\_rights\\_islam\\_and\\_feminisms\\_by\\_salbiah\\_ahmad.html](http://www.malaysianbar.org.my/gender_issues/gender_equality_under_article_8_human_rights_islam_and_feminisms_by_salbiah_ahmad.html); Fredman, "Substantive Equality Revisited."

<sup>263</sup> Fredman, "Substantive Equality Revisited." Michael Allingham, "Distributive Justice," *Internet Encyclopedia of Philosophy* (Internet Encyclopedia of Philosophy and its Authors, 2013), <https://philpapers.org/archive/ALLDJ.pdf>.

<sup>264</sup> Fredman, "Substantive Equality Revisited."

essentially social. Substantive equality tends to fix the environment so that it could accommodate the needs of the minorities rather than making them conform to the dominant norm. In parallel with this conception, substantive equality as in accordance with the definition by the Equal Opportunity Commission under the Government of Western Australia simply means achieving equitable outcomes as well as equal opportunity, and at certain times, treat people differently in order to achieve equal results<sup>265</sup>. Hence, it was believed as being more suited to maintaining a real state of effective equality and discard any discrimination<sup>266</sup>.

On the other hand, distributive theorists seek to directly assess the fairness of distributions, while relational theorists argue that the assessment of distributions must be guided by a broader concern of relational equality<sup>267</sup>. Schemmel<sup>268</sup> while doing a comparative study between distributive and relational equality explains that there are three principles of equality being upheld within the distributive equality theories. The first principle is the abstract principle of a person's equal moral worth. Second, the entitlement of a person to equal concern by the social and political institution in assigning good and burdens while the third principle is concerning the form of equality in the distribution of certain currency like resources or opportunity for welfare<sup>269</sup>.

It is usually discussed by liberal theorists that distributive equality considers the process, or outcome, of individuals' free actions to be with just except in the

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<sup>265</sup> Equal Opportunity Commission, "What Is Substantive Equality?," *Government of Western Australia*.

<sup>266</sup> Salbiah Ahmad, "Gender Equality Under Article 8: Human Rights, Islam and 'Feminisms'"; Fredman, "Substantive Equality Revisited."

<sup>267</sup> Kristin Voigt, "Distributive Equality, Relational Equality and Preferences about Higher Education," *Theory and Research in Education* 15, no. 2 (2017): 109–128.

<sup>268</sup> Christian Schemmel, "Distributive and Relational Equality," *Politics, Philosophy and Economics* 11, no. 2 (2012): 123–148.

<sup>269</sup> Ibid.

circumstances that emerge due to some factors, in the form of personal characteristics, which are considered to be morally arbitrary in which in the present context, according to Allingham<sup>270</sup>, these factors may be the individuals' preferences, their abilities, and their holdings of land. Distributive equality thus basically deals with the equal opportunities of welfare. As far as welfare was concerned, the term 'welfare' according to Arneson<sup>271</sup> means to be preferred satisfaction. The more an individual's preferences are satisfied, as weighted by their importance to that very individual, the higher their welfare will be.

Besides that, Arneson also believes an equal allocation of opportunity, costs, and burden were required for all parties even if it would result in inequalities. These were supported by the claims made by Rawlsian conception of distributive equality as equal shares of primary goods and a Dworkinian conception of equality of resources with the norm of equality of opportunity for welfare<sup>272</sup>. In simpler words, distributive conceptions as regards by scholars such as Arneson and Cohen as in Voigt<sup>273</sup>, it draws attention to differences in outcomes such as welfare or opportunities and examines when inequalities in such outcomes are fair or unfair. One of the most prominent versions of distributive theory is arguably luck egalitarianism, which considers inequalities in the relevant metric unfair unless they can be justified with reference to choices that individuals should be held responsible for.

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<sup>270</sup> Allingham, "Distributive Justice."

<sup>271</sup> Richard J. Arneson, "Equality and Equal Opportunity for Welfare," *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 56, no. 1 (1989): 77–93.

<sup>272</sup> Ibid.

<sup>273</sup> Voigt, "Distributive Equality, Relational Equality and Preferences about Higher Education."

On the other hand, relational equality has challenged the focus on distributive outcomes, which according to Voigt<sup>274</sup> and Brown<sup>275</sup>, it has emphasized that what really matters from the perspective of equality is the relationship of the individuals, particularly in their capacity as democratic citizens. According to Winter<sup>276</sup>, in the perspective of relational equality, an event is made out of the persons' interpersonal relationships, and a broad societal structuring of relationships. It encourages the people to look at the process and nature of their relationship as well as the extent to which it could provide equality<sup>277</sup>. In contrary to distributive equality, according to Anderson as in Winter<sup>278</sup>, relational equality does not simply refer to the way the people share things but somehow it is more concerning to the way individuals treat one another and the structuring process of societal relationships.

### 3.2.2 Equality and Justice

As been mentioned before, equality and justice are synonymous with each other. This is because as according to Westen<sup>279</sup>, for one to be just, it has to be equal and for one to be unjust, it has to be unequal. In the studies of gender equality, some scholars have indeed included the discussion of justice. Applying the theory of justice by John Rawls, Okin<sup>280</sup> has challenged the gender system of the society in her time where later on her effort has been recognized by Neufeld and Schoelandt<sup>281</sup> as promoting both

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<sup>274</sup> Ibid.

<sup>275</sup> Brown, "Relational Equality and Disability Injustice."

<sup>276</sup> Laura Anne Winter, "Relational Equality in Education: What, How, and Why?," *Oxford Review of Education* 44, no. 3 (2017): 338–352, <http://doi.org/10.1080/03054985.2017.1391761>.

<sup>277</sup> Ibid.

<sup>278</sup> Ibid.

<sup>279</sup> Westen, "The Empty Idea of Equality."

<sup>280</sup> Susan Moller Okin, "Justice and Gender," *Philosophy & Public Affairs* 16, no. 1 (1987): 42–72.

<sup>281</sup> Neufeld and Schoelandt wrote, "We conclude that a political liberal feminist is committed to promoting both legitimacy justice and ethos justice with respect to gender, but recognizes that the appropriate means for doing so must differ, given the constraints on the legitimate exercise of coercive political power in pluralist societies." See Blain Neufeld and Chad van Schoelandt, "Political Liberalism, Ethos Justice, and Gender Equality," *Law and Philosophy* 33, no. 1 (2014): 4.

legitimacy justice and ethos justice. Through the '*Theory of Justice*', John Rawls described justice as fairness where its principles were chosen beyond the veil of ignorance<sup>282</sup> in which for him it is a virtue of social institutions<sup>283</sup>.

Rawls' idea of justice was focused on social justice which is closely related to the basic institutions of society such as the constitution, political system as well as economic and social plans<sup>284</sup>. He holds that the principles of social justice are necessary to form rational choices. This is because the basic institutions mentioned above are able to act as a mechanism that forms and determines the basic rights and duties of each member of the society thus influencing their lives through economic and social status classes which at the same time will create significant inequality. The reason behind it is that because it has affected one's opportunities without justification of needs and merits.

Rawls' basic idea is simple by describing a hypothetical situation in which the people of the society are in their 'original position' without knowing his place in society, his class position or his social status, or even about his wealth in the distribution of his natural assets and abilities, intelligence, strength, and whatnot. Based on this theory as well, Rawls estimates that the parties do not know their concept of virtues or psychological tendencies before choosing the principle of justice behind the veil of

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<sup>282</sup> '*Veil of ignorance*' is a state when people do not know anything about themselves or their situations, and accordingly are equal. The intention is that as the parties to the contract have no information about themselves they necessarily act impartially, and thus as justice as fairness requires. As no one knows his circumstances, no one can try to impose principles of justice that favour his particular condition. Refer Allingham, "Distributive Justice."

<sup>283</sup> See John Rawls, "A Theory of Justice," in *Economic Justice in Perspective* (The Belknap Press of Harvard University Press, 1971), 207–221, <https://www.csus.edu/indiv/c/chalmersk/econ184sp09/johnrawls.pdf>; Okin, "Justice and Gender"; Golam Azam, "Rawls' Theory of Distributive Justice and the Role of Informal Institutions to Get People Access to Health Care in Bangladesh," *Philosophy and Progress* (2007): 151–167; Neufeld and van Schoelandt, "Political Liberalism, Ethos Justice, and Gender Equality."

<sup>284</sup> Chand, *Modern Jurisprudence*; Badariah Sahamid, "Teori-Teori Keadilan," in *Jurisprudens Dan Teori Undang-Undang Dalam Konteks Malaysia*, 2005, 177–190.

ignorance<sup>285</sup>. This is important to ensure that there is no benefit or disadvantage in choosing principles with the result of natural opportunities or possible social conditions. Since each individual was put in the same situation, it can prevent them from choosing the principles according to their self-interest as no one can devise a principle to support his or her specific situation. Eventually, as the result of such a situation, the principle of justice can be possessed from a fair agreement and bargaining.

Basically, there are two different principles brought by Rawls in his theory of justice. The first principle requires for each person to have an equal right to the basic liberty that was shared by others as well. On the other hand, the second principle holds that social and economic inequalities are to be arranged so that they are both reasonably expected to result in giving benefits to those who are less advantaged and equal opportunity to the people fairly<sup>286</sup>. In this sense, inequalities were seeming to be tolerated when it comes to which that can contribute to the improvement of the worst off. Pojman<sup>287</sup> in his analysis on the theories of equality describes Rawls' '*Theory of Justice*' as able to motivate the disadvantages to cooperate within the social scheme provided knowing that everything possible was being done to improve their positions.

Through the extensions of Rawls' theory by Susan Moller Okin, Neufeld and Schoelandt<sup>288</sup> then intend to formulate the account of justice on the feminism theory of political liberalist by separating justice into two categories which known as

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<sup>285</sup> Rawls, "A Theory of Justice"; Sahamid, "Teori-Teori Keadilan"; Chand, *Modern Jurisprudence*.

<sup>286</sup> Rawls, "A Theory of Justice."

<sup>287</sup> Louis Pojman, "Theories of Equality: A Critical Analysis," *Behavior and Philosophy* 23, no. 2 (1995): 1–27.

<sup>288</sup> Neufeld and van Schoelandt, "Political Liberalism, Ethos Justice, and Gender Equality."

legitimacy justice and ethos justice. The first concept of justice called legitimacy justice is basically applied to the ‘legally coercive structure of justice’ consisting of both institutions that use coercive political power, and institutions, unions, and practices that are directly subject to the coercive exercise of political power. The principle of legitimacy justice applies to fundamental structures that are being upheld against all citizens<sup>289</sup>.

The second type of justice that has been identified is called ‘ethos justice’. The concept of ethos justice involves aspects of social life that are not part of an institution that uses coercive political power or is directly regulated or limited by coercive political power. However, both conceptions of legitimacy justice and ethos justice were understood as consisting of the principles that specify notions of ‘fairness’ or ‘reciprocity’ in persons’ mutual relationship<sup>290</sup>. Within this context, the interconnection of both justice and equality becomes vital in the construction of the legal framework of gender equality.

On the other hand, Aristotle differentiates justice into two separate theories. The first one is universal justice which is known to be a whole known concept that covers the compliance of rules while the second one is known as a particular justice which is a virtue that contains the value of equality and justice<sup>291</sup>. This particular justice can be divided into two which are distributive justice and corrective or restitutive justice. Distributive justice in general applies proportionate equality to individuals with the same cases. In this context, it is suited the formal type of equality where alike should

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<sup>289</sup> Ibid.

<sup>290</sup> Ibid.

<sup>291</sup> Sahamid, “Teori-Teori Keadilan.”

be treated alike and unlike should be treated unlike proportionate to its unlikeness as well as the substantive and distributive equality.

Different from distributive justice, corrective justice aims to return a situation to its original state with the intention of restoring the situation. Corrective justice as presented by Aristotle<sup>292</sup> is a distinctive principle that provides for the rectification of offences committed by one individual that cause harm to another<sup>293</sup>. Every individual who is harmed by the moral wrongs committed by others has the right to rectifications, regardless of the distributive merits. The main purpose of corrective justice is to repair the damage caused by moral misconduct in a particular transaction, and all individuals have a full claim against such damages, regardless of the claimant's eligibility for distribution and whether the claimant's holdings are appropriate<sup>294</sup>. Therefore, the main question in the application of corrective justice is basically the identification of transactional moral offences that form the basis of such claims. The demand for a fair trial is bipolar and is therefore very suitable for judicial settlement.

### **3.3 Legal Theories of Gender Equality**

Next, similar to philosophical views, gender equality in law also has its connection with feminism. The interconnection between these two is due to the feminist movements towards women's issues in various areas like social, politics, economics, and law as an aspect of human lives. Feminist Legal Theory (FLT) was first appeared around the 1960s to the 1970s, coinciding with the growth of the Critical Legal Studies (CLS) movement in the United States of America. As a school of thought that seeks to

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<sup>292</sup> See Aristotle, *Nicomachean Ethics*.

<sup>293</sup> Martin H. Malin, "The Distributive and Corrective Justice Concerns in the Debate over Employment At-Will : Some Preliminary Thoughts," *Chicago-Kent Law Review* 68, no. 1 (1992): 117–146.

<sup>294</sup> *Ibid.*

make a breakthrough in the application of law to women and the discrimination that women receive from the law, the mainstream of feminist legal theory can be said to have similarities with CLS. In its correlation to law, feminist studies is ought to fight justice for the oppressed women, and according to Setiawan et al.<sup>295</sup>, the law should not only apply the principle of certainty in its studies but more importantly is the principle of justice.

Similar to CLS, the feminist legal theory also questions the fundamental principles of the doctrine of law, as well as doubts the nature of the law which is supposedly logical, objective, and impartial. However, its jurisprudence does not has a single way of thought while building up its approach and perspective. This statement can be supported through the study by Shalahudin<sup>296</sup> when he agrees that there are differences of opinion among feminists on the nature of justice in general and on the nature of sexism in particular, including differences regarding the groups that should be the main focus for feminist efforts. But as explained by Sahamid<sup>297</sup>, in her book regarding feminist jurisprudence and legal theory, there is one feature that unites all the theories of feminism, which is the belief that society and its legal system are patriarchal. This is because they believe that the laws tend to give priority only to men regardless of anything whether it is in terms of privilege, rights, social rank, and power while it puts women in a “subservient” position.

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<sup>295</sup> Heri Setiawan, Steven Ouddy, and Mutiara Girindra Pratiwi, “Isu Kesetaraan Gender Dalam Optik Feminist Jurisprudence Dan Implementasinya Di Indonesia,” *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah dan Hukum* 5, no. 2 (2018): 121.

<sup>296</sup> Henri Shalahudin, “Wacana Kesetaraan Gender Dalam Pemikiran Islam Di Institusi Pengajian Tinggi Islam Negeri Di Indonesia: Kajian Kes Di Universitas Islam Negeri Sunan Kalijaga Yogyakarta” (Universiti Malaya, 2016).

<sup>297</sup> Badariah Sahamid, “Teori Undang-Undang Feminisme,” in *Jurisprudens Dan Teori Undang-Undang Dalam Konteks Malaysia* (Sweet & Maxwell Asia, 2005), 165–175.

With regard to the diversity in legal feminism approaches, there are four different streams in the theory of feminist law namely liberal feminism, cultural feminism, radical feminism, and postmodern feminism<sup>298</sup>. Since most of these feminist movements have been explained in the previous chapter, hence this part is going to be discussed thoroughly while inserting the legal discussion. So, in a simpler way, as mentioned before, the foundation for liberal feminism is to uphold for equal rights of both men and women in various aspects including vote rights, professions, employment opportunities, and equal wages for equal jobs.

Liberal feminism insists that women and men have the equal ability for rational thought and action, and therefore any status-based discrimination made on the assumption that women are less capable or irrational than men, is biased discrimination and unjust<sup>299</sup>. Among the success of the liberal feminist movement can be seen in the case of *Reed v. Reed* (1971) 404 US 71 where courts have invalidated the provision that requires the selection of men over women to be estate administrators when both have the same qualifications. However, liberal feminism was being challenged of their stance because they urge to use men as a standard or norm that should be followed when equalizing the rights of men and women but seeks for the rights and achievements of women to be evaluated separately without referring to the rights and achievements of men<sup>300</sup>.

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<sup>298</sup> Ibid.; Ganiat Olatokun, Rusniah Ahmad, and Harlida Abdul Wahab, "Feminism and the Rights of the Unborn: A Critical Analysis," in *Philosophy and Theory of Law*, ed. Asmah Laili Yeon and Yuhanif Yusof, First Edit. (UUM Press, 2015), 155–170.

<sup>299</sup> Margaret Davies, "Unity and Diversity in Feminist Legal Theory," *Philosophy Compass* 2, no. 4 (2007): 650–664.

<sup>300</sup> Sahamid, "Teori Undang-Undang Feminisme."

Next, cultural feminism, or can be called 'difference feminism' highlights the differences between men and women. As it is inspired by the work of Carol Gilligan, a psychologist who has studied the difference in men's and women's responses towards the hypothesis of a moral dilemma, it concludes that each gender views things from a different perspective<sup>301</sup>. While men only focus on a clear application of rules, women divert their minds and ideas into something else without having to disregard ethical care and value.

Radical feminism on the other hand was said to have a broader and possibly fundamental analysis of the relationship between power and gender. Radical feminists see the source of oppression of women not just as the unfair discrimination perpetrated by some individuals against other individuals, but as institutional and systemic<sup>302</sup>. Radical feminists as a whole insist that the differences in culture, social, economic, and legal between men and women was due to the men's domination in those areas which eventually resulted in gender inequality. For them, gender becomes the question of power hence, they choose to go against the creation of legal categories that promise equal opportunity and fair treatment<sup>303</sup>. Not only that, but radical feminism also questions the need for women to oblige certain roles on their biology and shown its contribution in the legal definition of 'sex' for the rape crime. As mentioned by Sahamid<sup>304</sup> in her book, in the case of *R v. R* [1991] 3 WLR 767; [1992] 1 AC 599, the court has accepted the concept of rape in marriage.

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<sup>301</sup> Ibid.; Davies, "Unity and Diversity in Feminist Legal Theory."

<sup>302</sup> Davies, "Unity and Diversity in Feminist Legal Theory."

<sup>303</sup> Olatokun, Ahmad, and Abdul Wahab, "Feminism and the Rights of the Unborn: A Critical Analysis."

<sup>304</sup> Sahamid, "Teori Undang-Undang Feminisme."

Last but not least, Post Modern feminism. This movement and legal theory of feminism apprehend the idea that women are not uniform and discard the rigid understanding of gender<sup>305</sup>. Among the issues considered are related to different discrimination facing by women according to their colour and race. Besides, there are some feminists in this era who shift their focus on the issues related to employment with regards to women's positions in certain professions. Furthermore, as explained by Rosenbury<sup>306</sup>, postmodern feminist legal theory tends to react to the legal issues by examining the role of law in producing a logical gender position, thus challenging the legal role in constructing the male and female binaries while acknowledging that the gender will continue to exist but to limit first the qualifications of a human being is what matters.

### **3.4 International Conventions on Gender Equality Principles**

Equality in Malaysian legal provisions has been recognized through the supreme law of Malaysia which is the Federal Constitution. Article 8 of the Federal Constitution seeks equality before the law and equal protection of the law for all people. Supported with clause (2) of the Article, any discrimination on the grounds of religion, race, descent, place of birth, and gender are prohibited in any laws, disposition of any property, or even in the establishment of any trade or business, profession, employment, and others. Since the federal constitution is the main provision of Malaysia, every individual is bound to respect the provision for not discriminating against others including in the area of employment.

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<sup>305</sup> Laura A Rosenbury, "Postmodern Feminist Legal Theory : A Contingent , Contextual Account," in *Feminist Legal Theory in the United States and Asia: A Dialogue* (Cynthia Grant Bowman, Ed., 2016 Forthcoming) (University of Florida Levin College of Law Research Paper No. 16-39, 2016), 1–14; Sahamid, "Teori Undang-Undang Feminisme."

<sup>306</sup> Rosenbury, "Postmodern Feminist Legal Theory : A Contingent , Contextual Account."

According to Wahab<sup>307</sup>, discrimination deprives people of their rights and full participation in the workplace whenever they are denied employment, restricted to certain jobs, offered low pay, and barred from promotion due to demographic factors regardless of their ability to perform the job. According to the Equal Right Trust (ERT) which is a foundation that works on promoting legal reform of equality and non-discrimination in Malaysia, the preliminary jurisprudence of the Malaysian courts on Article 8 of the Federal Constitution is heavily influenced by case-law in other countries' jurisdictions and national constitutions such as the United States and India in which the Malaysian Constitution had drawn inspiration. The constitution of the USA for example had guaranteed the "equal protection of the laws" through its Fourteenth Amendment since 1868, while India guaranteed "equality before the law [and] the equal protection of the laws" through Article 14 of its Constitution<sup>308</sup>.

Frankly, equality, in theory, is seemingly to be simpler than its practicality. The court while doing its judgment for the case of *Datuk Haji Harun Bin Haji Idris v Public Prosecutors* expressed that the concept of equality was practically hard to apply due to the inequality that exists in society with a number of examples where the law treats different groups differently with minimal differences of opinion<sup>309</sup>. The Federal Court in accepting its lack of jurisprudential experience in the right to equality states:

*"This is not surprising because while we are all familiar with the idealistic concept of equality, Indian — and Malaysian judges — are not familiar with it as a legal concept, having been introduced in India only in 1949 and in Malaysia in 1957. As a legal concept it is easy to state, but difficult to apply — because, first, equality can only*

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<sup>307</sup> Harlida Abdul Wahab, "The Constitutional Context of Employment Discrimination," in *Philosophy and Theory of Law*, ed. Asmah Laili Yeon; and Yuhanif Yusof (UUM Press, 2015), 224–241.

<sup>308</sup> Equal Right Trust (ERT), *Washing the Tigers: Addressing Discrimination And Inequality In Malaysia*.

<sup>309</sup> *Ibid.*

*apply among equals and in real life there is little equality and, secondly, while the concept of equality is a fine and noble one it cannot be applied wholesale without regard to the realities of life.”<sup>310</sup>*

Apart from that, in regards to the workplace area, gender discrimination is known as part of the issues that contribute to gender inequality. Discrimination in this context involves several factors that make an individual secluded from a particular job or position where in reality the observed factors are not necessary for the job performance<sup>311</sup>. This issue of unfair treatment in employment would deny one’s rights and should not be neglected at all as it is contrary to human rights besides causing injustice to the person involved. Moreover, the idea of equality has long been accepted and acknowledged through the United Nations Declaration of Human Rights (UDHR). Besides that, the International Labour Organization (ILO) which is an agency that concern with social and economic justice also has supports the equality rights of employees through its international labour standard on the elimination of discrimination in employment.

### **3.4.1 Universal Declaration of Human Rights 1948 (UDHR)**

Resulting from the proclamation of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948, the conception of human rights and equality began to gain much global attention across countries. Basically, UDHR is a declaration that contains thirty provisions on human rights that cover civil and political rights, as well as economic, social, and cultural rights.

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<sup>310</sup> Suffian, *Datuk Haji Harun Bin Haji Idris v. Public Prosecutor*, 2 MLJ 155 (1977).

<sup>311</sup> Abdul Wahab, “The Constitutional Context of Employment Discrimination.”

The Universal Declaration of Human Rights (UDHR) that sets out a list of thirty specific human rights that countries should respect and protect was said to concern more towards the minority and group rights. With this in mind, it centres the ideas of equal rights for disadvantaged groups which according to Olatokun<sup>312</sup>, women is regarded as one of such disadvantaged groups. Concern for the equal rights of the disadvantaged group is a long-standing interest of the human rights movement. Human rights instruments have always provided that all people are the same before the law, and that everyone including women has the same basic rights and should be able to enjoy them without discrimination. It goes the same for the articles in the UDHR as mentioned in Article 1 of the UDHR;

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”<sup>313</sup>

Supported with Article 2, the entitlement for the rights covers every human being regardless of their gender and other differences.

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, **without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.** Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”<sup>314</sup>

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<sup>312</sup> Ganiat Mobolaji Olatokun, “An Analysis of the Concept of the Right To Choose in Relation To Abortion in Nigeria : A Case Study of the Convention on the Elimination of All Forms of Discrimination Against Women,” 2014.

<sup>313</sup> United Nations, *Universal Declaration of Human Rights* (United Nations, 2015), <http://library1.nida.ac.th/termpaper6/sd/2554/19755.pdf>.

<sup>314</sup> Ibid.

From this assertion, the principle that can be found within the construction of UDHR is the universal entitlement. Equality in this sense provides entitlement to every human being for the same rights without any discrimination. Parallel to Raz<sup>315</sup>, some philosophers have stated that the principle of equality is the principle of universal entitlement and those held by them. At a whole glance, all principles apply equality to the class of people but then, the people within the same way had distinguished according to the qualifications and conditions of application that somehow lead the principles to be less universal. Eventually, at the end of the day, equality for all people has to depend on the normative consequences they set without excluding a thing<sup>316</sup>.

Next, Articles 6 and 7 of UDHR that give the right to be recognized as a person before the law and equal protection of the law against any discrimination and violation of the declaration respectively shall allow both women and men to be recognized in terms of their values at the workplace area. This research observes that equality thence is connected to the principle of entitlement, where for an organisation to uphold the practice of gender equality, it has to recognize everyone and each of its members or employees, especially in the remuneration and promotions. According to Shapiro, the rule of recognition is conferred as a normative question that can be resolved without having to deliberate, negotiate or persuade as it could direct the parties to the authoritative rules<sup>317</sup>. This means that every individual either men or women have the right to be recognized its ability for a job without deliberating it with unnecessary things that are irrelevant to job performance.

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<sup>315</sup> Raz, "Principles of Equality."

<sup>316</sup> Ibid.

<sup>317</sup> Scott J Shapiro, *What Is the Rule of Recognition (and Does It Exist)?*, 2009.

In support of this, Article 22 stated;

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”<sup>318</sup>

Every person, including women, should be free from any stereotypes, traditional segregation systems, or anything that could prevent them from developing their career and personality to achieve the desired position in their life. Their rights for social security should be respected besides allowing them to grow and participate in the economy. Parallel to Article 23, every individual has the right to work and enjoy free choice of employment with just and favourable conditions of work. A person should be protected from unemployment enjoy the right to equal pay of equal work without any discrimination. Not only that, their dignity as human beings also should be taken into account<sup>319</sup>.

### **3.4.2 International Labour Organization (ILO) Convention**

In the employment and labour area, the International Labour Organization (ILO) is known to be a prominent agency that gathers the governments, employers, and workers of the UN member States to construct the labour standards, develop policies and devise programs that promote decent work for all men and women<sup>320</sup>. ILO is devoted to promoting social justice which for them is the essence of universal peace. ILO works

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<sup>318</sup> United Nations, *Universal Declaration of Human Rights*.

<sup>319</sup> Ibid.

<sup>320</sup> International Labour Organization (ILO), “About the ILO,” *International Labour Organization (ILO)*, last modified 2012, accessed February 28, 2021, <http://www.ilo.org/global/about-the-ilo/lang-en/index.htm>.

internationally by recognizing the value of human and labour rights. There are four strategic objectives that have been set as the foundation of its Decent Work agenda which are to set and promote standards and fundamental principles and rights at work; create greater opportunities for women and men to decent employment and income; enhance the coverage and effectiveness of social protection for all and; strengthen tripartism and social dialogue<sup>321</sup>.

Besides that, ILO also works on few issues related to women in the workplace such as the exploitation of women, equal opportunities for job training, employment promotion, organisation, and decision making, as well as ensuring equal conditions of remuneration and benefits of social security<sup>322</sup>. In terms of gender equality in the workplace, ILO works on three components which are on the development of gender equality policies and programs, promotion for equal representation of both men and women in the workplace including decision-making process, and ensuring greater gender equality in employment as a whole<sup>323</sup>. It has formulated the international labour standards through conventions and recommendations for the world countries as part of the realistic approaches for labour legislation<sup>324</sup>.

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<sup>321</sup> International Labour Organization (ILO), "Mission and Impact of the ILO," *International Labour Organization (ILO)*, accessed March 6, 2021, <https://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>.

<sup>322</sup> Candy Florencio Thomé and Rodrigo Garcia Schwarz, "The Principle of Gender Equality and the Fundamental Rights and Guarantees of Participation of Women in Union Organizations in Brazil," *Revista Quaestio Iuris* 10, no. 2 (2017): 1–31.

<sup>323</sup> Tracy F. H. Chang, "Book Review: Gender Equality and Decent Work: Good Practices at the Workplace. By ILO Bureau for Gender Equality. Geneva, Switzerland: International Labour Organization, 2005. 194 Pp. Free Download from ILO," *Labor Studies Journal* 32, no. 2 (2007): 217–218.

<sup>324</sup> Eric Gravel, Tomi Kohiyama, and Katerina Tsotroudi, "A Legal Perspective on the Role of International Labour Standards in Rebalancing Globalization," *Revue Interventions économiques*, no. 49 (2014): 0–20.

One of the conventions that are considered as ‘fundamental’ by the ILO and recommended for all countries to ratify is the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Based on the convention, “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” can be considered as discrimination and thus provides general interpretation on discrimination at the workplace which may be referred for further protection. Malaysia however is not yet ratify the convention No. 111 but the Government has indicated that it is already under its consideration<sup>325</sup>.

Technically, Malaysia has ratified eighteen ILO conventions throughout its membership since 1957. The ratified conventions have included five out of eight fundamental ILO conventions that cover the convention on forced labour, right to organize and collective bargaining, equal remuneration, minimum age, and child labour<sup>326</sup>. Despite the absence of direct policy on equal treatment of men and women in employment, according to the ILO report<sup>327</sup> on the elimination of discrimination of employment and occupation, equal treatment in Malaysia has been accorded to all workers either men or women with an equal value of jobs. Technically, the provisions provided under the Employment Act 1955 concerning statutory benefits and labour

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<sup>325</sup> International Labour Organization (ILO), *The Elimination of Discrimination in Respect of Employment and Occupation, International Labour Organizations (ILO)*, 2000, accessed April 13, 2020, <https://www.ilo.org/public/english/standards/re/m/gb/docs/gb277/pdf/d2-discr.pdf>.

<sup>326</sup> ILO, “Ratifications for Malaysia,” *International Labour Organization*, last modified 2016, accessed August 20, 2021, [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102960](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960).

<sup>327</sup> International Labour Organization (ILO), *The Elimination of Discrimination in Respect of Employment and Occupation*.

protection are applicable to all workers irrespective of sex, religion, and national extraction<sup>328</sup>.

Unfortunately, there are slight differences in law enforcement between the public and private sectors in Malaysia. According to Charlton<sup>329</sup>, although the ILO has urged the consultation rights for the public sector in Malaysia, as expressed by the Congress of Employee in the Public Sector and Civil Services (CUEPACS), unions in the public sector do not have the bargaining power like private sector's unions that were bind under the Trade Union Act. Wherein the private sector has its prerogative rights in management, the public sector commonly receives and practices top-down communication from the government as its largest employer.

### **3.4.3 Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)**

Other than UDHR 1948, the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW) is among the major human rights conventions that have been ratified by Malaysia. CEDAW is an international human rights treaty that concerns the rights of women. It takes an important role in bringing the female as part of humanity into the focus of human rights concerns. The essence of this convention is that discrimination towards women is a form of violation of the principles of equal rights and respect for human dignity<sup>330</sup>. Under the Convention, there are 16 articles provided respectively on the following matters: (1) Definition of discrimination (2) Law on Elimination of discrimination (3) Promotion of equality (4)

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<sup>328</sup> Ibid.

<sup>329</sup> Jacqueline H. Charlton, "Employee Participation in the Public Sector: A Review," *Journal of General Management* 8, no. 3 (1983): 62–78.

<sup>330</sup> United Nations Entity for Gender Equality and the Empowerment of Women, "Convention on the Elimination of All Forms of Discrimination against Women," *UN Women*, accessed December 25, 2020, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro>.

Temporary special measurement (5) Gender stereotypes and discriminatory customs and practices (6) Women trafficking (7) Participation in public life and decision-making (8) Participation at the international level (9) Citizenship (10) Education (11) Employment (12) Health (13) Social and economic rights (14) Rural women (15) Equality before the law, and (16) Marriage and family relations.

Practically, CEDAW was ratified by Malaysia in August 1995 with its reservations to several Articles which are Article 2(f), 5(a), 7(b), 9, and 16. However, it then has withdrawn its reservations to Articles 2(f), 9(1), 16(1)(b), 16(1)(d), 16(1)(e), and 16(1)(h) in February 1998, following by Article 5(a), 7(b) and Article 16(2) in 2010 while maintaining the reservation of Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g) on the consideration that these Articles were in conflict with the Federal Constitution and Islamic Law (Sharia)<sup>331</sup>. The withdrawal of these reservations has gained so much attention since it was believed as against the sole objectives of the Convention as a whole. Syed<sup>332</sup> in his article asserts that discrimination against women should not be tolerated even though it is conflicting with the existing system of the State. This is because the religious interpretation was historically and commonly known to be a male-centric system that biased against women.

With the ratification of CEDAW, the principle of gender equality and non-discrimination against women as the essential conception of the convention was incorporated in Malaysia Federal Constitution under Article 8(2) that serves as an overriding framework in regards to discrimination against gender. It functions as a

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<sup>331</sup> Human Rights Commission of Malaysia, *An Independent Report to the Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 2017.

<sup>332</sup> Sharifah Syahirah Syed Sheikh, "The Implementation of CEDAW in Malaysia: A Human Rights-Based Analysis," *Sarjana* 25, no. 3 (2010): 55–72.

necessary guarantee related to the issue of elimination of discrimination against women in all areas and is continuously being observed as a supreme law in Malaysia. According to a report received by the Committee on the Elimination of Discrimination against Women on Malaysia commitment to the implementation of the CEDAW Convention, although Malaysia does not express any definite definition of the “discrimination against women” in the Federal Constitution or any legislation, the incorporation of such principles is still considered in line with the requirements under Article 1 of the CEDAW<sup>333</sup>.

Based on Article 1 of CEDAW, the term “discrimination against women” was defined as follows:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”<sup>334</sup>.

This definition has been accepted by the court during the held for the case of *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors* and continues to be intact in the cases related to gender discrimination against women<sup>335</sup>. In terms of employment, Article 11 of the CEDAW provides the requirement for the states parties to take all appropriate measures in the effort of eliminating discrimination against

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<sup>333</sup> Human Rights Commission of Malaysia, *An Independent Report to the Committee on the Convention on the Elimination of All Forms of Discrimination against Women ( CEDAW )*; Syed Sheikh, “The Implementation of CEDAW in Malaysia : A Human Rights-Based Analysis.”

<sup>334</sup> United Nations Entity for Gender Equality and the Empowerment of Women, “Convention on the Elimination of All Forms of Discrimination against Women.”

<sup>335</sup> Women’s Aid Organisation (WAO) and Joint Action Group for Gender Equality (JAG), *Critical Issues and Questions to Be Raised with the Malaysian Government at the 69 Th CEDAW Pre-Sessional Working Group*.

women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: the right for equal opportunity, free choice of employment, promotion, training and enjoy the same benefits provided for other employees. Along with it, in order to ensure their effective right to work and prevent discrimination against women on the grounds of marriage or maternity the States Parties seek to take acceptable measures including prohibition for dismissal on the grounds of pregnancy or of maternity leave and/or marital status. It also encourage the provision of the necessary supporting social services such as promoting the establishment and development of a network of child-care facilities; as well as providing special protection to pregnant workers from any kinds of work that proved to be harmful to them.

### **3.5 Malaysian Legal Framework on Gender Equality in Employment**

In Malaysia, the laws related to employment are covered through few legislations and statutes such as the Malaysia Federal Constitution, Employment Act 1955, Industrial Relations Act 1967, Trade Union Act 1959, Employees' Provident Fund Act 1991, Employees' Social Security Act 1969, Employment Insurance System Act 2017, Occupational Safety and Health Act 1994, Minimum Wages Order 2018, Minimum Retirement Age Act 2012, and Personal Data Protection Act 2010. Through these laws, employees are given and assured of certain rights at work and protected from any violation of rights by their employers. Among all these, the two main laws in clarifying the position of gender equality in Malaysia besides the Federal Constitution are the Employment Act 1955 and the Industrial Relations Act 1967 which are often debated in court especially when it comes to the issues of equality and discrimination.

According to Yow<sup>336</sup>, employment in Malaysia can be divided into three categories which are the private sector; public sector, and; hybrid of those two categories. These three categories of employment were protected by certain laws accordingly. In the cases of employment, the private sector is commonly involved with a contractual relationship involves in the employment contract that regulates the rights and responsibilities of both employer and employee where they live under the protection of Employment Act 1955, Industrial Relations Act 1967, and other general laws such as Contract law. On the other hand, for those who hold public offices, besides other laws, are specially protected under Article 135 of the Federal Constitution. Last but not least, employees under hybrid relationships refer to those who are employed under the statutory authorities like statutory body corporate or a local council. Since these bodies are not provided under the definition of public service in Article 132 of the Federal Constitution, hence, they cannot be claimed directly as public servants under the Federal Constitution but at the same time, they as well, cannot be claimed as private-sector employees because they play the ‘public’ function under the statutory bodies<sup>337</sup>.

### **3.5.1 Federal Constitution**

Article 8(2) of the Federal Constitution has incorporated a specific prohibition for any discrimination against individuals in regards to their gender without any rational basis. This is basically to comply with the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW). Taking into account Article 2 of CEDAW, Malaysia as a member state of the convention has embodied the principle of

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<sup>336</sup> Jack Yow, “Malaysia,” in *Employment Law Review*, 11th editi. (The Law Review, 2020), 369–382, <https://thelawreviews.co.uk/edition/the-employment-law-review-edition-11/1216113/malaysia>.

<sup>337</sup> Ibid.

equality of men and women in its national constitution. Apart from that, Malaysia retains its reservations to Articles 9(2) and 16(1) (a), (c), (f), and (g) of the Convention on the ground that the provisions were seemingly not aligned with the Federal Constitution, Islamic law and the national policies of Malaysia<sup>338</sup>. In addition, according to Musa and Husin<sup>339</sup>, the federal structure of Malaysia has given effect on the governance of women affairs. Through the Ninth Schedule of the Federal Constitution, the ‘protection of women’ has been included in the Concurrent List which implies the legislative and executive power of the federal and state government in regards to women affairs.

Apart from that, with the ratification of several human rights treaties especially CEDAW that provides the basis for realizing equality between women and men, Malaysia as a state party has agreed to take all appropriate measures, including legislation and temporary special measures, to ensure the human rights and fundamental freedoms for women in term of their political life, health, education, and economics<sup>340</sup>. However, through the judgment in *Air Asia Bhd v. Rafizah Shima Mohamed Aris* [2015] 2 CLJ 511, the court emphasized that CEDAW does not have the force of law in Malaysia since it is not enacted into any local legislation which restricts it from prevailing with full effect.

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<sup>338</sup> Family and Community Development Ministry of Women, “Malaysia Successfully Presented Reports on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),” *Ministry of Women, Family and Community Development* (Putrajaya, February 22, 2018).

<sup>339</sup> Nurhafilah Musa and Asmak Husin, “Towards Gender Equality in Malaysia: Legal and Policy Perspectives,” 2018, 313–325.

<sup>340</sup> UN Women, “Overview of the Convention on the Elimination of All Forms of Discrimination against Women,” *United Nations Entity for Gender Equality and the Empowerment of Women*, last modified 2007, accessed June 13, 2020, <https://www.un.org/womenwatch/daw/cedaw/>.

In this case, the respondent, which is Rafizah Shima is an employee of the appellant. She has been chosen to undergo an Engineering Training Program and executed an agreement known as 'Training Agreement and Bond'. One of the material terms in the agreement was that the respondent must not get pregnant during the duration of the training period, which was approximately four years from the date the respondent first attended the training course. However, the respondent has got pregnant and with it, she furnished the medical report confirming her pregnancy which causes the agreement as well as the employment of the respondent to be terminated. The appellant then filed a civil suit at the Sessions Court against the respondent for breaching the agreement and a summary judgment was entered against the respondent.

As the respondent was dissatisfied with it, she has appealed against the decision at the High Court. Meanwhile, the respondent filed an originating summons ('OS') in the High Court, seeking that the agreement was illegal, null, and void as the said clause had the effect of discriminating against the respondent's rights as a married woman and contravened Article 8 of the Federal Constitution as well as the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW). The High Court has accepted the respondent's OS and rejected the appellant's application to revoke the OS. The appellant, therefore, appealed against both decisions. However, at the beginning of the trial, a second appeal, relating to the termination of the appellant's application to cancel the respondent's OS, was triggered.

The appellant submitted that the trial judge was mistaken for failing to apply the principles in *Beatrice AT Fernandez v. Malaysia & Anor Aviation System* [2005] 3 MLJ 681 ('Beatrice case') to the respondent OS. It is the opinion of the appellant that

the parties in the respondent OS are private parties and thus the provisions in the Constitution do not have applications towards this case. The appellant also submitted that the trial judge had misjudged the case of *Noorfadilla Ahmad Saikin v. Chayed Basirun & Ors* [2012] 1 MLJ 832 ('Noorfadilla case'). The reason is that the constitution does not contain any express provision with regards to the status of international law and that Malaysia has subscribed to the principle of dualism where international law is not incorporated directly into the municipal law<sup>341</sup>. The fact that the treaty is not domesticated resulted in the ratification alone could not make the provisions of the treaties to be applicable for the binding effect<sup>342</sup>.

United Nations defines gender equality to be “*equal visibility, empowerment and participation of women and men in all spheres of public and private life.*” It is known as an intrinsic component of human rights that targets promoting the full participation of women and men in society<sup>343</sup>. Parallel to that, Article 8(1) of the Federal Constitution generally declares “*all persons are equal before the law and entitled to the equal protection of the law*” which according to Faruqi, it contains a great ideal of equality that covers equal treatment, equal protection and prohibition against discrimination. However, by following Article 8(2), even though there is a specific prohibition on any discrimination on the ground of gender (and others), equality provision in Article 8(1) is said to be not absolute<sup>344</sup>. This is because there is an exception for the obligation as it reads as follow;

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<sup>341</sup> Farid Sufian Shuaib, “Administration of Islamic Law and Human Rights: The Basis and Its Trajectory in Malaysia,” *Al-Jami'ah* 56, no. 2 (2018): 281–304.

<sup>342</sup> S Barathi, *Airasia Bhd v. Rafizah Shima Mohamed Aris*, 2 510–524 (2015).

<sup>343</sup> Unifem, *Advancing Gender Equality Using CEDAW and UN Security Council Resolution 1325: Training Module for Gender Equality Advocates*, 2007.

<sup>344</sup> Harlida Abdul Wahab, Azhar Alias, and Haslinda Mohd Anuar, “Equality Vis-À-Vis Affirmative Action From Different Equality Vis-À-Vis Affirmative Action From,” *International Journal of Law, Government and Communication* 2, no. 6 (2017): 31–45.

“Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”

Ahmad<sup>345</sup> from the Malaysian Bar in defining gender equality claims that it has a global jurisprudence to indicate both “sameness” and “difference”, notions included in a substantive equality standard that put equality of opportunity and outcomes as its priority. According to her, the underlying aim of the principle of gender equality (when it references women) is “*the eradication of the disabilities that are imposed on women based on cultural definitions of her role in society and not merely discrimination based on her biological-reproductive capacity or other biological traits.*”

The ability for women in exercising their rights were also shaped through other factors other than social construction by sex differences like class, race, ethnicity, the government’s gender ideologies, and relations of power<sup>346</sup>. Based on the constitution, “equality” can be regarded as corresponding to “non-discrimination” and in defining discrimination, it needs to include both direct and indirect discrimination. As defined in Article 1 of CEDAW, discrimination is understood as “any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field”<sup>347</sup>.

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<sup>345</sup> Salbiah Ahmad, “Gender Equality Under Article 8: Human Rights, Islam and ‘Feminisms.’”

<sup>346</sup> Ibid.

<sup>347</sup> Unifem, *Advancing Gender Equality Using CEDAW and UN Security Council Resolution 1325; Training Module for Gender Equality Advocates.*

Direct discrimination occurs when a party treats another party or individuals in a less favourable manner than the others who do not share a specified characteristic<sup>348</sup>. On the other hand, indirect discrimination occurs when a party applies a condition or requirement to all, but it gives an adverse effect on a particular group of persons with certain protected characteristics where they are being put at a disadvantage when compared with those who do not share it<sup>349</sup>. In the case of gender inequality, the less favourable treatment and the occurrence of discrimination is thus, due to the person's biological sex<sup>350</sup>.

Through the landmark case, *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors*, [2012] 1 MLJ 832, discrimination on the basis of pregnancy also has been found as a form of gender discrimination because the basic biological fact only gives the capacity to become pregnant towards women which perpetuates an action against gender equality. In that case, Noorfadilla was pregnant while searching for a job. She applied to the local education office in Malaysia to become a temporary teacher and later has successfully accepted an offer for the job. After accepting the offer, she attended an initial briefing and was given a position at a local school. However, before going to report herself, she was suddenly asked if she was pregnant, and she answered yes. To her consternation, her employment was immediately being revoked on the spot. Apparently, the education office does not hire pregnant women as relief teachers which caused her to bring the case to the court due to the unfair treatment received. This case has given the highlight Malaysia commitments towards gender equality as during the

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<sup>348</sup> Hassan, "The Dismissal of a Pregnant Stewardess: Still Lawful in Malaysia."

<sup>349</sup> Harlida Abdul Wahab and Nik Ahmad Kamal Nik Mahmud, "Defining Employment Discrimination in Malaysian Legal Context," *Pertanika Journal of Social Sciences and Humanities* 28, no. 1 (2020): 379–395.

<sup>350</sup> Nurhafilah Musa and Asmak Husin, "Towards Gender Equality in Malaysia: Legal and Policy Perspectives."

held at the High Court, it has ruled that the revocation of an offer of employment as a temporary teacher made to a woman on the grounds of her pregnancy was unconstitutional and breached Malaysia's commitment and obligations as a State Party to CEDAW.

However, according to these precedent cases, this research argues that such cases and decisions somehow reflected the inconsistencies of the courts in dealing with cases related to gender discrimination. This will indirectly portray the immaturity of Malaysia in dealing with issues related to gender equality, especially in the workplace. Whereas in general knowledge, Malaysia is one of the members of the international organisations that fight for the rights and equality of the sexes, Malaysia should have a clearer guideline in deciding relevant cases so that the rights of every citizen are better protected. This can be supported through a claim expressed by *The Equal Right Trust* in the '*Declaration of Principles on Equality*' that adoption of specific and comprehensive equality laws and policies are needed in order to realise the equality rights of the state so that it could encompass a different form and manifestation of discriminations<sup>351</sup>. Besides that, Article 135 of the Federal Constitution has direct power and protection over public servants under Article 132 of the Federal Constitution, protects the public servants from unreasonable and unlawful dismissal or reduced in rank. On the other hand, Article 136 promised impartial treatment of all federal employees which required all individuals to be treated with fair and equal treatment<sup>352</sup>.

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<sup>351</sup> The Equal Right Trust, "Declaration of Principles on Equality," *The Equal Right Trust*, last modified 2008, accessed December 26, 2020, [https://www.equalrightstrust.org/ertdocumentbank/Pages/Declaration\\_perfect\\_principle.pdf](https://www.equalrightstrust.org/ertdocumentbank/Pages/Declaration_perfect_principle.pdf).

<sup>352</sup> Malaysia The Commissioner of Law Revision, *Federal Constitution*, 2010.

### 3.5.2 Malaysian Labour Law

Generally, there is no specific legislation or labour law on gender equality or gender discrimination. However, there are some gendered-provisions provided to protect employees from certain kinds of discrimination such as sexual harassment and maternity discrimination. For instance, Section 42 of the employment Act 1955 has provided a restriction for any employer to dismiss its female employees after the eligible period due to pregnancy-related issues. Primarily, employment law in Malaysia is mainly governed by the Employment Act 1955 that asserts certain minimum benefits to applicable employees. Thus, any clause in an employment contract that purports to offer less favourable benefits than those set out in the Employment Act, shall be void and replaced with the minimum benefits in the Employment Act. The Employment Act 1955 in any case provides the main law of employment for the private sector in Malaysia around Peninsular Malaysia and the Federal Territory of Labuan while there is a different set of employment laws in the public sector that governs the civil servant under the purview of the Public Service Commission<sup>353</sup>.

Despite that the Employment Act 1955 is the main law for employment in Malaysia, it still could not reach the level where it can cover every area of employment. The fact is that it does not apply to all employees and only covers certain categories of employees. Among those who were covered under the Employment Act 1955 are the employees whose monthly salary does not exceed RM 2,000; employees with any amount of salary that are engaged in manual labour; employees engaged in the

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<sup>353</sup> Chia Swee Yik, "Basic Guide to Employment Law in Malaysia," *Chia, Lee & Associates*, last modified 2019, accessed December 27, 2020, <https://chiale.com.my/knowledge-hub/basic-guide-to-employment-law-in-malaysia>.

operation or maintenance of mechanically propelled vehicles; employees who supervise or oversee other employees engaged in manual labour; as well as the employees that engaged in any capacity on a vessel which subjects to certain other conditions<sup>354</sup>.

Besides the Employment Act 1955, Industrial Relations Act 1967 has come into context in dealing with the issues of employment especially when it comes to the fulfilment of remedy that is not available in the Employment Act 1955. Through the Industrial Relations Act 1967, a court named industrial court was established to attend cases of employment that fall under its jurisdiction. The industrial courts also were allowed to order specific performance of an employment contract including the power to order reinstatement, grant back wages, and grant compensation in lieu of reinstatement<sup>355</sup>.

In regards to the issue of discrimination the Act only provides prohibition on discrimination on the matters related to trade union. Section 4 of the Act for instance provides the rights for employers and employees in terms of the formation, participation, administration and other things related to trade unions without any interference or restriction from either party. Thus, in parallel to it, Section 5 prescribe the prohibition of inclusion on any condition under the employment contract that restricts the employees from joining a trade union or deny their employment due to that reason. In addition, sections 5 and 7 of the Industrial Relation act 1967 have listed out several unfair labour practices such as intimidation, dismissal or threat of

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<sup>354</sup> Government of Malaysia, *Employment Act 1955*, 2012, <http://jtksm.mohr.gov.my/index.php/my/akta-dan-peraturan-perburuhan>.

<sup>355</sup> Yow, "Malaysia."

dismissal, injure or threat to injure a person or his employment and position for joining a trade union or becoming a member or officer. The sections also prohibit discrimination against a union member in regard to employment, promotion, condition of employment and working conditions<sup>356</sup>.

Apart from that, in regards to the power of Industrial courts in the hearing of the disputes, the high court as well exercises a supervisory function over the process of disputes where it has the power to hear judicial review applications to put down the decision by the industrial courts<sup>357</sup>. As a major subject in an employment relationship, an employee has been given certain types of legal protection. Among the issues that often occur in the workplace is unfair dismissal which can be regarded as employment discrimination. Based on Section 20 of the Industrial Act 1967, the Malaysia government has provided a remedy to employees who facing dismissal of employment without just cause which was written as follow;

“Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director-General to be reinstated in his former employment; the representations may be filed at the office of the Director-General nearest to the place of employment from which the workman was dismissed.”<sup>358</sup>

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<sup>356</sup> V. Anantaraman, “Malaysian Industrial Relations System : Its Congruence with the International Labor Code A Background Paper on the Seminar,” *Persidangan Perwakilan MTUC* 30 (2010): 28–29.

<sup>357</sup> Yow, “Malaysia.”

<sup>358</sup> *Industrial Relations Act 1967*, 2010.

This section provides a legal right for an employee for reinstatement for any unfair dismissal such as the termination of service or contract due to biological characteristics like gender or sex<sup>359</sup>.

However, whenever there is a complaint on that matter, the court has to investigate the issue and justify whether or not the dismissal was really due to unjust cause or if it is actually due to the misconduct of the employee itself. This can be referred to in the precedent jurisdiction and principle of the Federal Court case of *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd. & Anor [1995] CLJ 344*. During the case held, the judge says that:-

*“On the authorities, we were of the view that the main and only function of the Industrial Court is dealing with a reference under section 20 of the Act (unless otherwise lawfully provided by the terms of the reference), is to determine whether the misconduct or irregularities complained of by the Management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause or excuse for the dismissal.”*<sup>360</sup>

Therefore, for any cases that were issued to court, the judge has the right to decide whether or not the action complained is unfair based on its thorough justifications.

Aside from the rights for employees in employment, Malaysia as consistent with the Common Law jurisdiction has provided the managerial prerogative rights to the employer. Shahrilnizam, Balakrishnan, and Murshamsul<sup>361</sup> through their study on the concept of managerial prerogative and Industrial Relation Act 1967 explained that the

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<sup>359</sup> Suharne Ismail, “Unfair Dismissal or Unlawful Termination : A Review of Section 20, Industrial Relation Act 1967,” *Journal of Law & Governance* 1, no. 1 (2018): 15–24.

<sup>360</sup> Sumathi Murugiah, *Norhapizah Khairani v. Bank Muamalat Malaysia Berhad*, 199 1–20 (2018).

<sup>361</sup> M. Shahrilnizam, P. Balakrishnan, and M. K. Murshamsul, “Employer’s Managerial Prerogative Right: An Evaluation of Its Relevancy to the Employer-Employee Relationship,” *Pertanika Journal of Social Sciences and Humanities* 23, no. SpecialIssue11 (2015): 227–238.

Malaysian Government in interpreting managerial prerogative rights in the Malaysian employment laws framework has employed Bergen's interpretation. According to Bergen (as in Shahrilnizam, Balakrishnan, and Murshamsul), through these rights, the employer has an absolute right of management in choosing, transfer, promote, demote, lay off, reemploy, or discharge employees on any grounds besides deciding on the pay rates or determine job scopes or standards, duties, and responsibilities as well as asking for the cooperation of employees in any undertaken plans of operation<sup>362</sup>.

Prior to Malaysia independence in 1956, the English common law principle has been applied in many of the court decisions and in the development of Malaysian laws especially when there is an absence in the domestic law. The common law system as according to the Malaysian Bar is certainly one of the greatest and most respected legal systems in the world that becomes the basis of public international law<sup>363</sup>. In terms of employment, English common law recognizes that the relationship between an employer and its employees is contractual in nature and is therefore made by a judicial authority similar to common contractual relationship<sup>364</sup>.

The implication of common law in employment law can be seen in how it took place in balancing the arguments for both employers and employees through the application of implied terms into the employment contracts<sup>365</sup>. Under Common law, there are duties and responsibilities that need to be obliged by the employer and employees

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<sup>362</sup> Ibid.

<sup>363</sup> Ambiga Sreenevasan, "PRESS RELEASE: Common Law - The Malaysian Bar," *The Malaysian Bar*, last modified 2007, accessed September 27, 2021, <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-common-law>.

<sup>364</sup> Shahrilnizam, Balakrishnan, and Murshamsul, "Employer's Managerial Prerogative Right: An Evaluation of Its Relevancy to the Employer-Employee Relationship."

<sup>365</sup> Weng Marc Lim, "A Comparative Review of Workplace Relations Law in Australia, UK and Malaysia," *International Journal of Public Law and Policy* 3, no. 1 (2013): 104–112.

involved in a contract of employment. These duties are called ‘implied terms’ where it may not be in a written form of contract but it is the obligations that one has to fulfil and be responsible for. The implied terms by law consist of rights and duties for employers and employees. The ‘rights’ are commonly applied for employees whereas ‘duties’ are commonly for employers. However, there are also joint duties for employees that need to be performed interchanging to the employer.

One of the duties provided is the duty to respect/trust and confidence. The principle of implied mutual trust and confidence requires both employer and employee as the contractual parties to conduct their actions in a manner that upholds mutual benefit and respect for each other’s rights<sup>366</sup>. By fulfilling this duty, it means that there shall be an honest and open relationship between both parties. The duty focuses on how the employers and employees conduct themselves throughout their business and widened the scope of their actions by implying acceptable conduct at work. Whenever there is an occurrence of any incidents, there must be a chain through various other incidents that prove the mutual trust and confidence has been damaged<sup>367</sup>.

This duty is more likely to give an advantage to the employees where the court may recognise the breach for implied duty of ‘trust and confidence’ in any circumstances that show bias towards them from the employer. However, the infringement of such implied term depends on the court to determine its fact<sup>368</sup>. This principle is significant

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<sup>366</sup> Shahrilnizam, Balakrishnan, and Murshamsul, “Employer’s Managerial Prerogative Right: An Evaluation of Its Relevancy to the Employer-Employee Relationship”; J.R. Carby-Hall, “The Sources of the Contract of Employment — Implied Terms at Common Law — the Employer’s Duties,” *Managerial Law* 26, no. 1 (1984): i–14.

<sup>367</sup> Lim, “A Comparative Review of Workplace Relations Law in Australia, UK and Malaysia.”

<sup>368</sup> Ashgar Ali and Ali Mohamed, “Remedies for Dismissal: The Common Law and Statutory Law Approach with Reference to Selected Countries,” *The Journal of the Malaysian Bar* 33, no. 2 (2004): 39–74.

in ensuring both parties are obliged to be bound by their offers as stated in the employment contract with mutual tolerance, understanding, confidence, trust and consideration to enable the efficiency in performing the contract of employment<sup>369</sup>. It also prevents any unreasonable conduct that may damage the relationship and industrial harmony.

The duty of mutual trust and confidence, according to Lim<sup>370</sup>, would foster a better working environment with respect and trust between both employers and employees. The consistency of both employers' and employees' rights and duties thus, expresses a desirable development of joint duties and responsibilities in employment law. Other than that, there is also the duty of care that has been directed by the common law to ensure a good and safe working environment for employees where there will be minimization of accidents and the costs of indemnifying employees<sup>371</sup>. The implication of implied terms in employment law can be seen in the case of *Sitt Tatt Berhad v. Flora Gnanapragasa & Anor* [2006] 1 MLJ 497 where the claimant was a Personnel Executive in the Human Resource Department.

In that case, the claimant claimed in her statement that she was forced to resign because she was sexually harassed by her immediate superior. There was no action was done to penalise the perpetrator despite her complaints to upper management; rather, she had received a cold and dismissive response that she could no longer handle the humiliation and thus, was triggered to resign from her post. After applying the contract test, the court has found that the incidents of harassment and annoyance, as well as the

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<sup>369</sup> Carby-Hall, "The Sources of the Contract of Employment — Implied Terms at Common Law — the Employer's Duties."

<sup>370</sup> Lim, "A Comparative Review of Workplace Relations Law in Australia, UK and Malaysia."

<sup>371</sup> Ibid.

non-action on the part of the higher management of the company in response to the complaints by the claimant, were a breach of implied and /or express term of the contract of employment that supposed to provide a safe and healthy surrounding.

### **3.6 Conclusion**

In conclusion, there is no specific provisions provided for gender equality or discrimination in the workplace. However, general prohibition on gender discrimination and certain protection in terms of maternity, unfair dismissal, sexual harassment and discrimination related to trade union were provided separately in the Federal constitution, the Employment Act 1955 and the Industrial Relations Act 1967 with the support of common law. There are also differences in terms of laws applied to the private and public sector in Malaysia where the Employment Act 1955 and the Industrial Relations Act 1967 are known as the main employment laws for private sector in Malaysia while the Federal Constitution is the main law that protects public servants. In terms of the contractual relationship, it can be seen that the implied terms provided under common law such as duty of trust and confidence, and duty of care play important roles in ensuring healthy relationship between both employers and employees.

In terms of the legal perspective of gender equality, it has demonstrated a different yet related angle of equality from a philosophical perspective. While philosophy constructs the discussion more likely towards the intrinsic nature of human beings, legal perspective is seemingly to move the discussions towards the action of the beings and its consequences to the framework of equality law in a state. However, the interrelation of these two perspectives can be seen through the composition of the

principles of equality. According to the discussion and analysis above, this study can conclude that there are some principles that contribute to the development of the concept of gender equality where it stems from the principle of equality itself.

Among the principles of equality are the principles of entitlement, distribution, moral worth, and non-discrimination. Under these principles, equality has been divided into a few types and principles such as formal equality, substantive equality, distributive equality, and relational equality which deal with the fairness of justice. However, among all, formal equality commonly plays a vital role in the formation of equality law in general in most countries that practice democracy including Malaysia. However, when it comes to the issue of gender equality, substantive equality is more likely being used as the guideline of the case since it recognizes the differences between men and women besides focusing its concern on equal opportunity and outcomes. However, in any case, the opinion and decision of the judge or court will be paramount in resolving issues related to equality as its provisions are contained in the constitution.

On the other hand, similar to philosophy, the theory on gender equality in law as well is grounded in the theory of feminism. But its division is simpler and less because according to the literature, there are only four major theories of feminism in law which are liberal feminism, cultural feminism, radical feminism, and postmodern feminism. Based on the analysis of those theories while considering the previous discussion in the previous chapter, this research can consummate that liberal feminism and radical feminism have a major impact on the structure of gender equality, especially in politics and economics. However, as previously mentioned, cultures and religion are the main

factors that contribute to the relativism of gender equality theories. Hence, considering the culture of Malaysia and Islam as the formal religion of Malaysia that has been constituted under Article 3 of the Federal Constitution, the Malaysian concept of gender equality cannot solely be subjected to liberal feminism or radical feminism.

This study also found that the most important element which also falls under the principle of equality is the principle of non-discrimination. In whatever theories established in prolonging the issue of gender equality, discrimination is always considered as a major factor that causes inequality between genders, especially in the workplace area. Last but not least, this research concludes and believes that in upholding the law for gender equality, the government of Malaysia and the courts should return to the basic theory of equality in the law of formal equality but its description and understanding should be made more deeply and clearly. “Like should be treated alike and unlike should be treated unlike (proportionate to their unlikeness)”. If this statement is refined, the principle of entitlement can actually be highlighted without discriminating against one party or equating all circumstances. This is because this statement itself has actually stated that such unequal subjects cannot be equated with other subjects that contain different criteria. Then, in this situation, other matters can be taken into account where there are better circumstances or outcomes. In the previous discussion, scholars have named it as substantive equality, distributive equality, and relational equality.

## **CHAPTER FOUR**

### **GENDER EQUALITY IN MALAYSIA WORKPLACE**

#### **4.1 Introduction**

This chapter continues to provide insights on the views regarding gender equality in Malaysia's workplace and its practice where the researcher presents the results from the interview with respondents from the corporate bodies, academicians, and experts in related areas. The details of the respondents have been explained in chapter one under the subheading methodology. For this chapter, the findings are obtained from interviews with experts and academicians in philosophical and legal areas; Ministry of Women, Family and Community Development (KPWKM); Human Rights Commission of Malaysia (SUHAKAM), and Women's Aid Organisation (WAO) as well as top-management officers from three different corporate bodies. The respondents' details were summarized in Table 1.1: The Details of the Respondents. The findings captured from the interview data with the experts in gender equality practice and the respondents from the corporate bodies show the complexity of the issues of gender in Malaysia.

It is important to note that the interviews were done with two objectives in mind: (1) to understand the view of gender equality (Group A respondents) and; (2) to analyse the practice of gender equality (Group B respondents); where both are focusing in Malaysia employment especially among the top-management of the corporate sector.

First of all, the opinion of the experts (Group A) is technically analysed from the reports received by their organisations as well as their personal opinion through research and observation. The researcher also analyses the practice of gender equality in Malaysian corporate management through the experiences of top management from three different corporate bodies in order to understand how far gender equality is practised in the workplace especially at the level of top management. Several common themes have emerged from the data analysis where the researcher then has separated the themes into few categories which are the overview of gender equality and issues of gender in Malaysia workplace; practice of gender equality in Malaysian workplace and; the factors influencing women participation in the top management.

#### **4.2 Experts' View on Gender Equality in Malaysia Workplace**

Practically, gender equality is necessary in the workplace in Malaysia to develop a healthy and sustainable environment for all individuals. In this section, the view of gender equality in the Malaysia workplace is analysed based on the data from the interviews with the experts. First of all, the researcher analyses the views of the experts from different areas and expertise in order to have an overview of the theory of gender equality and gender issues in the Malaysian workplace. Since the main objective of the study is to understand the philosophical and legal concept of gender equality specifically in the context of the Malaysia workplace, hence, it is also important to analyse the views of the experts within the area of the study theoretically and practically regarding the issues and status of gender equality in Malaysia workplace. During the interview, the opinion of five respondents regarding the practice of gender equality in the Malaysian workplace have been asked in order to examine the issues that commonly occur in the Malaysian workplace.

For the purpose of the interview, the researcher chooses two professors respectively from philosophy (E2) and law (E1) backgrounds as the respondents from academicians in order to analyse their opinion based on their theoretical views and expertise on gender equality in the Malaysia workplace. Besides that, three officers respectively from the KPWKM (E3), SUHAKAM (E4) and WAO (E5) were chosen to analyse their views practically based on the data or reports received by their organisation as well as their experience as part of the frontlines in managing the issues of genders in Malaysia.

#### **4.2.1 Overview of Gender Equality in Malaysia Workplace**

E1, while explaining about gender equality in Malaysia workplace, says that the gap between genders might happen due to inequality however, in the public sector and organisation, it rarely happens. This is supported by E2's claims when he says that there are not many issues of gender in Malaysia since it has been covered under the equality before the law as provided by the Federal Constitution but he did not deny that there is an imbalance between genders in employment where men are dominating some sectors and positions.

*“The first thing about gender equality, first is about equality. Umm now, equality, especially also related in the case of Malaysia, to me, is the equality before the law, if it was to take the falls at all. Because if it was just a gender philosophical concept, without any legal force, then it cannot really be enforced in the society unless we have the legal provisions to ensure that equality is actually practised socially. And as far as a notion of equality before the law is concerned, I think it implies to all social groups regardless of race, religion or even gender. So, in that sense, frankly speaking, from the outside, I would*

*say that I don't see much of the issue because it's already covered under the equality before the law.” (E2)*

On the other hand, E5, a representative from the Women's Aid Organisation (WAO) believes that the issue of gender in the Malaysian workplace is somehow critical and obvious in some ways but hidden in some other way especially when it comes to the issue of the gender pay gap. This is because according to her, the topic of one's salary or pays commonly became one of the sensitive issues among peers.

Apparently, E3, who is an officer and representative from the Ministry of Women as well, agreed that gender issues in Malaysia are somehow obvious. It has been discussed openly and critically especially with the ratification of international laws and conventions such as CEDAW. According to E3, since Malaysia has to give its commitment to achieving gender equality as one of its goals, the issue of gender is no longer seen as something small, but the problem occurs when there are certain ministries or groups who think that it is not their duty to perform or commit towards the goals. She added that similar to what has been shown and stated in the data by the Department of Statistics Malaysia (DOSM) (which also be referred by this study in Chapter One), the element of participation of men and women in employment as well as at the decision making levels are being studied to observe the gender gap.

E4, an officer from SUHAKAM concludes based on the reports received by the organisation in general, gender discrimination do exist in the Malaysian workplace either directly or indirectly even though the numbers of complaints received are not much. According to her, the small number of complaints received is perhaps due to various factors and it cannot be denied that the issues presented by people from social

media somehow prove the occurrence of gender issues in the Malaysian workplace. However, for equality for all in the workplace context, she believes that it needs to have an extensive study in terms of the job scope and requirements. This is parallel to the response by E2 that views the influence of historical factor in the inequality of genders in employment participation. According to E2:

*“...perhaps the agenda of gender equality is misplaced in the sense that it’s based on the misplaced conception that the imbalance is due to some sort of deliberate discrimination. But as far as I can see, it is basically due to the historical factors...and what I mean by the historical factor is that traditionally, our society is a patriarchal society...that sort of social arrangement has been there traditionally and is accepted and is not considered as discriminatory. So, because of that historical factor and the social norms that go with it, you find that when you look at the statistics, there are more men than women in employment.”* (E2)

In terms of the practice of gender equality in the Malaysia workplace, the study finds that similar to culture, religion is also one of the main contributors to the way gender equality is practised. Five respondents from different expertise were asked for their views on gender equality and religion in Malaysia especially Islam. Generally, all five respondents agree that religion is pertinent to the practice of gender equality in Malaysia since Malaysian culture is most likely influenced by their religious beliefs. E4 and E5, when asked about the relationship of gender equality and religion, answer in general that both are intertwined with one another. As for E5, she thinks that society’s perception of gender is heavily influenced by their perception of religion and analogically regards religion as something big or strong that can easily influence its followers’ mindset, just like social media significantly influences societal perception on issues. E5, however, did not discuss further how religion influences gender equality

and refused to comment more on any specific religion or culture since she is not an expert on the matter. E4 on the other hand, when asked about religion, says that there are cases of gender that are associated with religion reported to them such as women workers being refrained from wearing *hijabs* at their workplace which can also be regarded as gender discrimination.

For E1, she always associates religion with culture since the practice and the culture of the society indicates the understanding of their religion. For instance, on the issue of restricting women to be appointed as judges. Practically, religion never denies that women can be a judge but in terms of the interpretation and suitability of the time, some jurists, as has been said by E1, may say that women may not be appointed as a judge. But recently, the situation has changed. Malaysia society is ready to accept women as judges, especially in the sharia court. However, according to E1, it is yet to be known widely and the perception of women as incapable of doing their job as good as the male judge is still alive. Nonetheless, in terms of the legal fraternity, women can always be lawyers and nowadays, no one is questioning about women being lawyers whether in sharia courts or conventional courts. The key point of religion and culture as according to E1 is that the perception may sometimes be different based on the difference in its interpretations.

*“Religion is of course always important in terms of for us to determine what is right and what is not right for us to do or to carry out at the time when we are running our lives. However, religion’s interpretation may be different from the pure meaning and practices of the religion.” (E1)*

E1 then concludes that since religion is important in determining the practice of gender bias and gender equality, therefore, gender equality must always perform to the

understanding of the religion or the perception of the religion itself. People might achieve gender equality but it is still subjective where people might as well be having gender bias and it is subjective to religion.

#### **4.2.2 The Issues of Gender in Malaysia Workplace**

In general, based on the answers given, majority of the respondents believe that gender issue exists in Malaysia workplaces and different kinds of issues have been given highlight or attention such as the opportunity between men and women, imbalance participation of gender, sexual harassment and others. Overall, based on the interviews, there are some themes on the issue related to genders at the workplace in Malaysia. Based on the findings, the workplaces in Malaysia are commonly facing a gender gap caused by imbalance in participation at the top management of Malaysia workplace; differential treatment between genders; issues of pregnancy; sexual harassment; and the lack of opportunity that synonyms to women workers.

##### **a. Gender Gap**

Practically, based on the data presented in the early chapter of the study, there is an imbalance between genders' participation in economic participation. As stated before, E2 also did mention that it cannot be denied that there are sorts of gender imbalances in the Malaysian workplace. This statement correlates with the findings from the interview with E3 from KPWKM, when she also says that the imbalance of genders in employment has been proved through the statistics of Malaysia Gender Gap Index 2019<sup>372</sup> by the Department of Statistics Malaysia which has also been used as a

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<sup>372</sup> Department of Statistics Malaysia, "Statistics on Women Empowerment in Selected Domains, Malaysia, 2019."

reference by the researcher in Chapter One; where the huge gap can be seen at the top-level management or decision-makers.

As for E1, she has been giving more focus on the opportunity of men and women in employment. She believes that there are still gaps between men and women in terms of opportunity and promotion. She shares that through her observation, religious departments and Islamic agencies are those that commonly have an obvious gap between men and women where men are seen to dominate the top positions. In contrast, education departments like higher education institutions and schools are less likely to have gaps and differences between men and women. According to her, the opportunity is given fairly in these departments or sectors. The less representative of women in leadership positions in religious departments as stated by E1 is perhaps due to the acceptance that *“women may not be able to carry out duties or may not be able to carry out responsibilities as same as men.”*

However, as agreed by all respondents, it needs to have an extensive study to examine whether or not this is due to discrimination or other factors. Although gender gap is seen to be closely linked to gender inequality, this cannot be inferred directly from gender discrimination or bias in the workplace. Various other factors are believed to be likely to cause gap between genders in the workplace, especially at the highest levels. This matter will be discussed further in the next subtopic which focuses on the discussions and analysis related to women's participation in top management and the promotion process in Malaysia corporate sectors.

E5 points out that in this case, one of the main contributors to the occurrence of imbalance between genders in employment or position is because there is a division of labour being practised on the basis of gender. E5 added in her answers during the interview that among the important questions that need to be asked to ourselves is the extent to which it is important to restrain the status quo in society and the extent to which this gender role can determine the position of a person. This is because she believes that women are the ones that often face gender inequality in the workplace.

*“I think gender inequality is often faced by women in the workplace or this proportionately faced by a woman whether in an explicit sense or through seemingly smaller things.” (E5)*

Certainly, statements from the experts support the notion that gender gap and imbalance does exist in Malaysia workplaces where women seem to be the one that is always at a disadvantage. However, a point that can be concluded from the answers by the respondents is that the gap that should be observed in the study of gender equality should not be subjected to the numbers between men and women in that particular area only but other kinds of “imbalance” should also be counted such as in terms of the treatment and opportunity.

#### **b. Differential Treatment**

Other than the imbalance between genders that can obviously be seen through numbers in statistics, one of the common practices that are synonymous with gender equality at the workplace is the treatment of men and women employees. Women and men in the workplace are seen to commonly facing different treatments such as the differential standards that were applied to male and female employees which stem from a specific

organisational strategy<sup>373</sup>. This kind of practice would at times benefit both parties or destroy a party. According to E1, the probability for different treatments are perhaps higher in the private sector in which she thinks that the government sectors could be safer. However, she also believes in the existence of situations that need gender complementing.

Besides that, E1 also expresses her view on Islamic teaching about gender equality. According to her, women and men in Islam do not compete with each other instead, it complementing one another. The discussion of gender equality in Islam is more likely focused on the concept of justice where equality or equal treatment is compared between the same genders rather than between two different genders (men and women).

*“When we talk about Islam and gender equality, gender equality as ‘mussawaid’ is not the main keyword. Not the main keyword in Islamic teaching. The keyword is ‘Al-a’dalah’ or justice. So, when we talk about man and woman, male and female, we talk about males being treated equally among men and women being treated equally among women. There’s no competition with men and women, men and women are complementing each other rather than competing. So, the very basic philosophy of the question on the issue of equality is very important um before we can decide whether Islam treats males differently or whether Islam treats females differently.” (E1)*

When talking about the different treatment between genders in Islam, E1 clarifies that Islam does treat men and women differently according to the nature of the creature either male or female since there are always differences between male and female. She

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<sup>373</sup> Starnski and Son Hing, “Gender Inequalities in the Workplace: The Effects of Organizational Structures, Processes, Practices, and Decision Makers’ Sexism.”

explains that equality in Islam may not directly means that it is justice but justice may sometimes be achieved through equality.

As for E3, the different treatment starts with the common stereotypes that exist among Malaysian culture which eventually also cause the segregation of jobs. E3 believes that this problem started from the practice in the family even from the littlest thing such as the separation of colours for boys and girls where boys are synonymous with blue colour while pink is synonymous for girls although nobody claims that it is illegal for boys to wear pink. While home education is important for growing children<sup>374</sup>, the respondent questioned the necessity for such practices as it could cause a tendency for the existence of gender roles and different treatment between men and women in future. In addition, she added that if this culture is able to be restrained from the beginning, issues like putting a specific responsibility on a man or woman can be addressed.

### **c. Pregnancy and Sexual Harassment**

On the other hand, two out of five experts when being asked about the practice of gender equality at the workplace have touched on the issues related to pregnancies. According to E5 and E4, among the issues that have been 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. Although it is seemingly small and biased towards women only, the truth is it involves men as well. For instance, as explained by E5, there are cases of unpaid maternity and paternity leave. In addition, in some cases, paternity leave is not even given to the fathers despite the need for them

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<sup>374</sup> Kiyoyasu Marui, "The Role of the Parents in the Education of Children," *Psychiatry and Clinical Neurosciences* 6, no. 3 (1952): 221–230.

to create bonds and take care of their new-born. According to E5, this practice is somehow showing the reality of gender norms in Malaysia.

*“...gender norms and expectations of society that woman is the one that supposed to get the maternity leave and men don't get paternity leave.” (E5)*

This is aligned with the recommendation reported in the NGO Shadow Report for the Malaysian Government's Review by the CEDAW Committee, at the 69th CEDAW Session in February 2018. In that report, 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 and that an adequate paternity leave for the fathers can be adopted for both public and private sectors<sup>375</sup> which shows that Malaysia is still lacking in giving paternity leave for its men employees.

Besides that, the issues related to the dismissal of pregnant women are also happening in Malaysia. E4 explains that among the issues that were reported to them during their round-table discussion is about the case of dismissal from employment due to pregnancy in which according to her, it is a common case at the workplace. In the reported case, the woman has been offered a position in a company. However, the offer then, being withdrawn after the result of her medical check-up shows that she is pregnant. As for E4, this practice is also a part of discrimination towards women and it is an aspect that should be given extra attention in order to provide justice for every person especially women.

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<sup>375</sup> Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG), *The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia*, 2018.

On the other hand, as for E2, the issues that should be given more attention is the issues related to sexual harassment. E2 argues that;

*“...another thing that is sometimes ignored and not given sufficient attention is the treatment of women in the offices and working environment. So, I think that is also another issue. How women are treated. Not just in terms of you know, career opportunity and promotion, but issues like sexual harassment and so on. Ya, I think that is important and here, Islam is quite clear and firm on this. That Islam does not tolerate the submission of women to men for the purpose of sexual fulfilment and so on outside marriage. So, when you find sexual harassment and so on, I think there is no conflict here between what Islam says and what the law says. And I think this aspect should be given more attention ya, that women are not subjected to sexual harassment whether openly or covertly.” (E2)*

Approximately to E2, E3 also believes that sexual harassment is one of the issues that are synonyms to women in the workplace. According to her, women in employment are exposing to situations that may allow them to be the victim which includes sexual harassment. E3 added that due to this issue also, the CEDAW committee has urged Malaysia for their effort to establish the Gender Equality Bill and table the Sexual Harassment Act which has been put under the field of work of the Ministry of Women, Family and Community Development. According to her, the ministry has started its drafting process for the Sexual Harassment Act and is still in progress. These show that sexual harassment also is one of the main concerns in the Malaysian workplace.

**d. Lack of Opportunity**

While equal opportunity is important in assessing gender equality at the workplace either in recruitment, promotion and training or other processes, some factors have caused the lack of opportunity for women in certain positions, especially in the higher

positions. E3, while explaining the difference between gender biases and giving the right person for the right position said that the current issue that exists in the workplace at this moment is that there are women who are qualified for certain positions, but do not get the opportunity to be appointed for the said positions. Given that those issues arise in the workplace, E3 repeatedly urges all ministries to investigate within their business codes and functions to observe whether the opportunity has been provided fairly to all genders. During the interview, E2 also has stated how he viewed equal opportunity as an indication of gender equality.

*“As far as gender equality is concerned as an issue, then I would look into the equality of opportunity. Right, equality of opportunity. Whether the job opportunities that are open to men are the same as that which is open for women. And if there is an equality of opportunity then, I would say that the purpose of gender equality has been served” (E2)*

He also explains that the opportunity should not only be focused during the job application but throughout the process of employment.

*“I think equality of opportunity...not only opportunity in terms of giving fair opportunity for applicants to apply regardless of gender but also in terms of the means to employment. The means to employment meaning to say that the training that you need before you can apply for the job. I suppose in the employment sectors, maybe there is not so much equal opportunity in the sense that in terms of practice but not in terms of actual explicit rules like for example when there is a job advertisement.” (E2)*

Besides that, as for E5, when she was asked about her view on the practice of promotion to the higher positions in the workplace, E5 said that the incorrect belief of women are inherently not valuable as men in the workforce which persists throughout

one's lifetime is one of the main factors that resulted to the lack of opportunity given to women. This is somehow parallel to the statement quoted in Baker et al.<sup>376</sup> that claims the masculine domination to be constructed in the material and a symbolic world where the symbols, rituals and practices would possibly mark senior positions as appropriate for men but not women. In conclusion, this study believes that the lack of opportunity for women in the workplace probably has its relation with the existing stereotypes about women in positions that require 'masculine' leadership qualities. However, further analysis on this issue and its practice in the industry are going to be elaborated throughout the analysis in this chapter.

### **4.3 Practices of Gender Equality at the Workplace**

As shown in the statistics of the Malaysian Gender Gap Index (MGGI) 2019 that have been referred to in Chapter One, gender gap participation was clearly seen in the decision-maker positions such as managers, senior officials and legislators. The discussion on the issue of under-representation of women at the decision makers' level also, as mentioned earlier in Chapter One, continues to be extended in many other pieces of research<sup>377</sup>. The question is that whether or not the gap and the under-representation of women as decision-makers were influenced by the practice of inequalities and discrimination of gender in the workplace. This section explores gender equality practices in Malaysian corporate sectors based on the experience of the top management officers from different industrial backgrounds.

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<sup>376</sup> Baker et al., *Equality From Theory to Action*.

<sup>377</sup> Cho et al., "Asian Women in Top Management: Eight Country Cases."

Three respondents from three different corporate bodies were interviewed on their thoughts about the practice on promotion in the Malaysian workplace. The researcher is using pseudonyms to represent the respondents and named them C1 (female); C2 (female) and; C3 (male). As presented in the subheading of methodology in Chapter One, all three respondents are the officers that hold top management positions in the corporate bodies and are involved in the decision making process for their organisation. During the interview, the respondents were asked about the issues of gender facing by them throughout their experience and their organisational practice specifically in top management promotion.

C1, the Chief Operating Officer (COO) of an organisation in finance and banking industry, comments that there were no issues on gender in the promotion of individuals to higher positions throughout her experiences working in corporate bodies. According to her:

*“I’ve been in terms of promotion into limited partnership and also acquitted partnership. In my experiences in the organisations that I’ve been in, there has been no issue I feel with women getting into top management.” (C1)*

It goes the same with C2, the Chief Executive Officer (CEO) of an organisation in the accounting industry upon her claim that her organisation always practices gender equality where there is no such thing as gender bias. According to her, every applicant is evaluated based on their merit.

Despite the huge gap in men and women representation on the top management in Malaysia economics the respondents from the corporate bodies believe that the selection of individuals for the higher position in their organisation is done through

some reasonable justification. As agreed by all three respondents from the Malaysian corporate bodies, one of the justifications that are commonly being taken into account in the process of selection and promotion is the individual ability to contribute to organisational performance.

Hence, for an individual to be promoted to the senior and top-level of management, the person must go through some processes where the performance and competency will be evaluated based on the merits as well as the skill-set needed for the applied position. C3, the Director-General (DG) of organisation in the technical industry (engineering and road safety) explains that the selection for individuals to fill up the higher position in his organisation is done based on the person's expertise including their intellectual and physical capabilities that are in line with the job scope and specifications for that particular position. Besides that, based on the interview, the process of promotion of employees to the higher level in the corporate bodies are done in a righteous manner in which it is fair to all individuals. An equal and fair opportunity was given to both men and women who qualified to hold the positions. This includes their intellectual capabilities and mental ability to perform the leadership's roles in heading the organisation towards its goals.

As for C3, when he was asked about the selection of individuals to be promoted or hold the higher position in his organisation, he replied that his organisation gives equal opportunity to those who intend to apply for the promotion as long as they have the ability and qualified for the position. He strongly believes that it is inappropriate to appoint someone who has no desire to hold the position besides they are very open to any qualified men or women to hold the position in the organisation such as Director-

General. C3 even shared his experience that it was hard to obtain an application for the highest position from women which, according to him, led to the out-number of women in top management. Therefore, C3 refused the issue of gender biases or discrimination in the case of promotion at his organisation. This is according to him that led to the out-number of women in top management.

Another respondent, C1 also believes that there is no issue with gender in the career progression of her organisation. In fact, according to her, the current chairman of their board is a woman and even females have occupied most of the top positions in the organisation including herself.

*“My experience may be largely in law firms and the statutory bodies that I’ve been in. So, my personal experience is that it has been merit-based. I don’t see things as a problem in my experiences. So I have explained to you where I’ve been. In the law firm, I don’t think there’s ever really been an issue about gender in the law firm. I’ve been in terms of promotion into a limited partnership and also acquitted partnership. In my experiences in the organisations that I’ve been in, there has been no issue I feel with women getting into top management. In my current organisation, 4 out of 5 board members are female. It is a very large proportion and it is only 4 or 5 recently.” (C1)*

As for C2, in her statement, while answering the question on the issue of gender bias and opportunity in her organisation, mentions that in the context of her organisation and its profession, gender equality is being practised without any bias since they are being evaluated based on merits and the capability to perform the task.

*“First of all, we need to look at this skill set and a merit-based skill set. So the skill set needs to be commensurate with the job okay. And therefore upon looking at the decision in terms of performance, we*

*need to look at how the work fulfilment or the job scope is being fulfilled.” (C2)*

Based on the respondents' responses, the study concludes that there is no issue of gender when it comes to the promotion to the top management in the corporate bodies. However, further analysis will be done below to understand the process that took place in the top management promotion.

#### **4.3.1 Top Management Promotion**

Since the study has directed its focus towards the top management and decision-makers in Malaysia workplace and industry, hence, the practice of gender equality in the process of employees' promotion to the top positions was studied. The purpose is to understand the common practices among the top management in Malaysia workplaces. During the interview, the respondents from the top management in the corporate bodies have been asked about the process of their appointment for the current position. Based on the analysis of their answers during the interviews, there are two themes that are known to be the main criteria for the promotion to the top-level management in the Malaysian corporate bodies. Both criteria involved are basically, the merit and the skill set that they had as an individual as well as the job scope of the positions or the organisation with their working experience within the organisation or specified sector.

This subtopic basically focuses on the experiences of the respondents from the corporate bodies in order to gather practical information and evidence on the process of employees' promotion to a higher position in an organisation. Therefore, a deep analysis was done on the respondents' background and personal experience. First of

all, in order to understand the background of the respondents from the corporate bodies, the researcher has asked the respondent's educational background and their working experience. The data from the interview shows that all three respondents graduated at the tertiary level of education as their highest academic qualification where two of them graduated with a PhD (C2 and C3) while the other one graduated with a bachelor's degree and special courses that related to her area (C1). In terms of their working period at their current organisations, C1 was the longest (with 15 years of working period) compared to the other two where both are less than 5 years. So, roughly this study can conclude that there is significantly positive relationship between the level of education and the promotion to the higher level.

**a. Merit-based and Skill-set**

One of the main answers gotten through the interview is the selection on the basis of merit and skill set. To be among the top management in an organisation, C2 admits that there are some challenges that need to be overcome. In her sharing, she stressed some skill-set that is vital for the leadership's role including the importance of courage to take risk; knowledge on interpersonal relationships, stakeholders and network management; focus and discipline; composing; as well as problem solving and analytical skills. According to her, top management requires a person to perform and solve variety of jobs and problem thus, these skills are important to ensure the smoothness of the tasks' performance.

As for C1, in the process of her promotion to her current position, she has to go through a four-dimension assessment that is run by the external examiner to observe their overall credibility to lead the organisation. First of all, the candidates' capabilities and approach to problem-solving will be examined. Second, the examiner will assess the

candidates' experience and third, the candidate's ability to learn. Lastly, the candidates' traits and motivations will be observed. According to C1, traits are something that would show a person's tendency to behave in every situation while motivations are the thing that drives the action. The purpose is to determine the suitability of a person to be groomed for a leadership post.

On the other hand, C3 shares that his organisation highly depends on the expertise to work in different areas therefore, there is no such thing as gender bias. C3 stressed that they do not hesitate to accept anyone even if they are led by women as long as those selected have the expertise in the required field of work for their organisation. As for his appointment as the Director-General of the organisation, he explains that it is based on the nomination by the board of directors after making an assessment on several merits. An official appointment was announced once the selection is approved by the board. According to him, he was the first internal employee to be appointed as the Director-General. As for his subordinates, C3 explained that applications will be open to all employees who want to apply for positions in the organisation's top management and an interview with the candidates will be held to ensure a fair selection is possible. Based on these findings, it can be said that merit and skills are vital to verify the qualifications of individuals to be promoted to the top management position.

#### **b. Job Scope Fulfilments and Working Experience**

As much as the merit and the skill set of the individuals are important in reaching the top or simply in the process of promotion to the higher level, the fulfilments of the job scope and individual's working experience also are among the fundamental criterion to be considered in order to measure their competency. As clarified by C1, the

competency of a person can be seen through his or her understanding of the organisation along with the experience which makes them know how things work. However, in assessing the leadership abilities of the person, their behaviour in some situations need to be observed in order to know their speciality against the others. She explains;

*“The competency is obviously your understanding of the organisation. Sorry, experience on how much you know how things work and all the rest but they also look at how you would behave in situations. Umm, so they can access your leadership abilities. So, mainly, that was when going into the top management position because they assume that you have enough knowledge about the organisation before they put you in the position.” (C1)*

Different from C1 and C3, C2 was chosen by the president of her organisation itself to be the successor of the previous CEO. However, as claimed by C2, it is her experience within the organisation and her understanding of the job scope that help her to be clear and chosen for that position. When was asked about her appointment, C2 answers;

*“I probably just share in terms of my appointment. So, I was headhunted by the \*\*\*\*\* president of \*\*\* or you know, to take over as a successor to the CEO who was retiring at that time. So I was interviewed and we went through a lot of discussion between me and the president \*\*\*\*\* and I understand the job scope. I actually got information on what are the requirements of the job and one thing at that time, I actually was involved with the Institute for many years as a volunteer so I do know what the Institute is all about and I do know many matters about the Institute. Before that, I was a Councilmember. So that gives me a lot of knowledge and I... I know very well what I'm taking on. So I came in first as a deputy CEO and after a year the CEO there retired and I took over where I was appointed as the CEO. That was in 2016 and I came in as deputy*

*CEO in 2015 and in 2016 the CEO retired so I took over the CEO.  
So, that is my process” (C2)*

The overall answers conclude that the ability to fulfil the job scope of position in the workplace is one of the basic requirements for individuals to be chosen especially in the top management positions. Besides that, the ability to understand the job requirements and having the right amount of experience and expertise in related areas also help in advancing the individuals' job progression and development.

#### **4.4 Factors influencing Women Participation in Top Management**

In this part, the findings were concluded based on the views of both Group A and Group B respondents. Majority of the respondents when being asked of their view regarding the saying that the figure of the gender gap in top management is a form of gender inequality, answer that it can only be regarded as one of the possible reasons but it cannot be taken as one exact factor. The experts and other respondents from industry (specifically corporate bodies) believe that although the existence of gender inequality cannot be denied, there are also other factors that influence the under-representation of women in the top management in Malaysia. Based on the findings from the interview, there are five themes that have been found as the factors that influence women participation in top management which are the gender accommodating vs. family commitment; gender bias vs. gender quota; individual ability vs. social perception, and; mental capacity vs. physical capability.

#### 4.4.1 Gender Accommodating vs. Family Commitment

As a multicultural nation that tightly holds on to the traditional culture and social norms, the family has a huge impact on individuals' lives especially women<sup>378</sup>. The majority of the respondents agreed that women commonly face a conflict between the commitment for family and career especially when they want to enter a senior or top management position. For C2, the social norms that allocate commitment of women in family and men in career have lived as an ecosystem. Thus, in the context of the Malaysian ecosystem, we probably can see such allocation of tasks in the family whereby family tends to probably provide the role for men to be the breadwinner and for a woman to take care of the household. However, she also shares that she has encountered families that have tolerance between the partners where both the husband and wife are working. They share a similar amount of responsibilities and tolerate in terms of household duties.

Similar to C3, C2 also believes that the culture is somehow changing from time to time with the impact of technology and the ecosystem. Nowadays, there are more women at work. For C1, it is a terrible shame that women were restricted to develop their careers just because they have to commit to their partner and family although they have a bright future in their career journey. In contrast, E2 feels that it is more likely the woman's choice to commit more to family rather than their career progression. This is because most of the top positions require individuals to travel a lot for a longer time

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<sup>378</sup> Charles Hirschman, "Gender, the Status of Women, and Family Structure in Malaysia," *Malaysian Journal of Economic Studies* 53, no. 1 (2016): 33–50; Thomé and Schwarz, "The Principle of Gender Equality and the Fundamental Rights and Guarantees of Participation of Women in Union Organizations in Brazil"; Connor, "Policy Reviews in Higher Education Gender Imbalance in Senior Positions in Higher Education : What Is the Problem ? What Can Be Done ?"

and there are women who are not willing to do so because of the sacrifice that they had to make.

*“Some women might not want to risk their family just because they want to have a top position. So, sometimes the choice could be due to the woman herself that she might, after having discussions with the family, might not want to take up certain positions because of the sacrifices that she has to make for the family. Having to leave the family for a long period of time and not being able to spend time with the family more.” (E2)*

During the interview also, E2 explains that in some situations, family commitment becomes the reason for women to work where they have to be the support system for the family’s income.

*“Yes, I would say that we need women in the employment sector, especially those who are able to contribute productively. Yes...because nowadays if you look at families, there are mostly 2 income families. So, even for men, they would prefer their wife to be working to support the family as a whole, especially those who are living in the high-cost areas... So, woman not only needs to contribute to the nation economically but to the family.” (E2)*

So, it depends on individuals. Although there are certain women who choose to leave their careers for the sake of their families and children, it should neither be simply characterised as an act of oppression nor discrimination. Unfortunately, due to the choice as well, some regard women as less ambitious than men even though according to E5, there is nothing wrong with it.

*“Whoever wants to be a stay at home parent, it’s up to the family because every family is different. Like the insurance matters, who is the housewife, who is the househusband kind of thing. The point is that we should rethink domestic work and what it means for our*

*economy and for our society. I think it's both men's and women's rights..." (E5)*

But, whichever decision or choice is made, as for E3, she prefers the organisation to provide an enabling environment to support men's and women's commitment for the family at the workplace such as building a nursery for kids at the company or nearby it. Hence, parents would not have to worry about their children while at work. Based on all of these comments and answers, it indirectly shows how family commitments are vital in influencing the participation of women in the workplace.

Besides, motivation is important in moving a person towards his goals and desires<sup>379</sup>. First of all, being different from one another is natural amongst men and women. As both genders are born differently in nature, it is believed that accommodating the differences of both is important at work to ensure the smoothest process of task and job as it allows both parties to feel appreciated and motivated. E1 asserts that as much as gender equality is important, gender complementing is also important.

*"Most important thing...the conception of equality, it should not only be considered as equality of one to one or one to two but it's about humanity. Therefore, philosophically, I would say that although we want to have equal treatment, there must be a situation where we complement both men and women. Complementing both genders."*  
(E1)

Since most of the time, family is the concern of the employees, therefore, a good facility to support the commitment of family is needed at the workplace. With the existing gender norms and practices in Malaysian society that put women as the main

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<sup>379</sup> Ottsen, "Lucky to Reach the Top? : Gendered Perspectives on Leadership Acquisition across Qatar and Denmark."

caregiver for the children, facilities for mothers are necessary to assist them and helps them for their career development.

E1 then added in her answer an example that commonly occurs which is when there is a situation of a vulnerable child being sick and mothers will be the ones who usually take the first step to take leave in order to give attention and look after the children. According to her, only after the situation becomes worse, the father will also apply for leave. In this sense then E1 questions the probability for exactly equal treatment and opportunity can be given to the mothers and women especially to develop their careers and contribute to the nation economically.

*“...if there’s no supportive system for women, then they will not be good for the nation because women are expected to contribute to the nation, women are expected to work constructively as men but there’s no facilities to assist them.” (E1)*

Parallel to this, E3 when asked about her view regarding the under-representation or the lack of women in the top management explains some factors in her thinking that contribute to the current situation and one of them is because of the absence or the lack of enabling environment for women. This ‘enabling environment’ is very important in providing career motivation for these people and accommodate them with their circumstances. Similar to what has been explained by E1, E3 also agrees that Malaysian society is very familiar with the practice of women being stereotyped with the care duties and parenting without the environment that can enable them to go higher in their career progression especially when there are issues and cases that occur in the workplace involving the safety of women such as sexual harassment.

#### **4.4.2 Gender Bias vs. Gender Quota/ Gender Mainstreaming**

Gender bias in any way is very dangerous for the progression of a multicultural nation. E5 personally believes that the recruiters of each organisation and management should be aware of gender biases that they hold either consciously or unconsciously which impact the reason for choosing one candidate over the other. The majority of the respondents also believe that gender bias is one of a kind that could affect women participation in the top management in corporations. As for C2, when being asked about the practice of gender bias at the workplace especially in the promotion of an employee to the higher level, urges for the evaluation process to be done based on merit in performing the job and encourage the practice of gender blind to all organisations as what has been practised in her organisation.

One of the common practices that people are doing without realizing that it is a kind of bias towards gender is asking unnecessary questions such as the marital status or the employees' plan for having children. E5 from WAO after expressing her supports for policy establishments specifically on discrimination at the workplace shares her opinion on how she thinks it is ridiculous for an employer to ask questions about one's marital status and family plan. Based on her tone in describing her observation for that kind of case also shows a strong sense of rejection over the practice. She believes that it is unnecessary to ask such private questions because it does not relate to job matters. On the other hand, E2, an academician in philosophy thinks that perhaps, because women have biological differences from men in which they will be pregnant and need maternity leave and so on thus, makes the employer reluctant to offer a position for them.

As such, as stated by E5 during the interview, there is an argument that equalising up both genders by creating more opportunities for women at the workplace through the implementation of gender quota such as ensuring women to make to at least half of the staff or implementing a 70:30 quota in the top management. E5 states that gender quotas as gender mainstreaming are important for improving gender equality at the workplace especially in the position of higher powers such as CEO of multinational companies since many women are not being provided with the work at this level of position. The findings clearly see that the encouragement from the government through its policy implementation would result in better practices of gender equality and increase women participation at the top management of corporate companies in Malaysia.

Based on the data from the interview, five out of eight respondents touch on the concept of gender mainstreaming through application of gender quota in the top management as one of the government's efforts to strive for gender equality. Generally, all of the respondents agree that gender quota somehow really helps to encourage women participation as a decision-maker especially in the private sector and corporate body. However, according to E3, from the Ministry of Women, in the efforts of bringing women to the top as decision-makers, it should not be on the basis of fulfilling the quota only instead, focussing on 'meaningful participation'. The context of 'meaningful participation' here means the selection of a person is must be based on its expertise. E3 continues to explain that it would not be a problem when there is a position to be occupied and it is a man that was chosen if that man is specializing in the field that is required for that particular position compared to the women candidate who specializes in another field. But according to her, there is

another issue of why organisations cannot produce more women to specialize in the required field. According to E3, this is the substantive equality that they are trying to address.

Despite the importance of having women in the top management, E3 and other respondents such as E1, E2, and C3 agree that it is also inappropriate for an organisation to hire women as the top management just because they have to fill up the quota. Hence, the disparity found in the data from the statistics or workplace should not be directly regarded as gender inequality or bias and should be investigated deeper on the aspects or factors that contribute to such situations. E3 also stresses that the opportunity and discriminatory practices should be studied in order to better understand the issues.

As for E2, he strongly believes that in terms of the legal framework, it is always fair and not discriminate but the problem is within the practice. However, he personally does not really agree to have 'gender quota' kind of system even though he agrees that in any way, it is very helpful.

*“Well, as far as employment is concerned, and whether the law discriminates against women, I don't think there is such a thing. I don't think the law says women cannot occupy certain positions and so on. So, in terms of the legal framework, I don't think you need to have an amendment. I think the problem is in terms of practice ya. Unless of course, some see there is a need for some sort of quota. But again, I'm not too comfortable with the quota system because it goes against meritocracy.” (E2)*

According to the respondent, it is because there are jobs that women themselves do not intent to apply. However, based on his overall answer, he seems to be open to

gender quotas being campaigned by the government and activists even though he is a little bit uncomfortable. After all, according to him, organisations should not let their organisation be led by less-competent people since their aim is to maximise profits and if setting up quotas would go against maximising their performance then, it is also disadvantageous to the country as a whole. Similar to C3, he is also open to having the 70:30 quota since he is used to the culture of being led by women because of his educational background and overseas' experiences. According to C3, women as well can be great leaders but it all depends on the individuals themselves.

*“There are so many opportunities to become greater. So, whenever you are greater, you can always be the leader. For me, it’s about the individual itself. Each individual has to play their roles right. As we know, some women in the job just wanted to make a salary only. She doesn't have a great vision, she doesn't really want to be a boss. As long as every month, she can bring back the salary. So, how do you want to raise this person higher? She herself doesn't want to be a leader so it's hard.” (C3)*

Indeed, as added by the respondent, perhaps till there is woman at the highest position who can lead the entire organisation or economics, it is probably going to be difficult to achieve the targeted 30% quota of women at top management.

#### **4.4.3 Social Perception vs. Individual Ability**

While the quality in performing job is subsequent to individuals' ability, gender norms in society construct men's and women's career progression at different levels of society<sup>380</sup>. The finding from the interviews also reveals that social perception that creates gender norms affect the representation of women at the top management of

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<sup>380</sup> Sreytouch Vong et al., “Why Are Fewer Women Rising to the Top? A Life History Gender Analysis of Cambodia's Health Workforce,” *BMC Health Services Research* 19, no. 1 (2019): 1–9.

organisations in Malaysia. E1 and E2 as the experts' respondents in this research believe that the existing gender norms and social perception affect the presentation of women in the top management. As for E1, she believes that in certain sectors, women are still seen as lacking in skills. Women are being perceived as incapable of doing things or carrying out their duty as good as men. On the other hand, for E2, the gender norms faced by society are traditionally existing and in fact, it is not considered as discrimination for some people.

According to E2, this sort of historical factor and social norms, it resulted in what can be seen in the statistics where more men are seen in employment as compared to women. However, there are changes over time and women started to fill up positions in the workplace. But again, E2 believes that because of their late start, thus, it is natural to see more numbers of men in the statistics presented.

*“... after Merdeka, there is an educational opportunity given to all, both men and women. You find that women are also educated and qualified to fill the jobs that are in the market and that is when women started going into the job market based on their qualifications and so on. And then, because of the late start of women, you'll find naturally that in terms of the statistics, their numbers are behind the men.” (E2)*

Technically, women are expected to take more responsibility for family and home matters while men are expected to work. Due to this mentality, the practice of biases in the workplace started to emerge and cause inequality, not only to women but instead, to men as well, especially in terms of maternity and paternity leave. This occurs when both genders are supposed to hold the same amount of responsibility for parenting, but instead of doing so, they are being disparate in their roles. Nevertheless, this practice

also as according to E5 could result in the incorrect belief that women are inherently just not as valuable as men in the workforce and women will always be questioned about their place in society economically.

*“The other seemingly external factor which is not really the external but very interlinks obviously like men’s perception and societal perception of where women belong. The answer is actually women belong to where they decided to belong.” (E5)*

According to E5 also, this kind of perception might as well cause the gap of gender wages because women are then more likely to be involved in the non-standards of employment which are often considered as low to semi-skilled work. However, E5, when asked for her personal view, thinks that women’s choices should not be an issue as long as those are the things that they really want to do or as long as it is enough to support their family. The problem is that there are studies that have found that a woman's career development that is supposed to occur along with her age declines when reaching a certain age due to possible factors of commitment to the family that create anxiety. E5 during the interview shares a fact:

*“... Women presents at the workplace hits 40 plus percent in their 20’s and drops to 30% after 55 years old. So this is really dangerous, right? Because it looks like as the older you get, the higher the ladder you climb which also you know women participation in the workforce decreases with age. Then obviously, like yeah I mean when you look at the data, roughly 80% of the senior official, legislators and executives are held by men and even though this is proportionate given the number of percentage of women in the workforce to begin with, it also says something about the opportunity that is created for women and taken away from women due to the societal expectations as far as you ages.” (E5)*

As for C3, when he was asked for his opinion about the gap of gender in the top management in Malaysia workplace, believes that it is most likely because of the culture and the perception of the society. It is because, in terms of qualification, especially in academics, women were proven to be better than men either in their intelligence level or academic status. But C3 also did not deny that there is definitely an improvement in terms of numbers of women holding the higher position and believe that it would be better in future even though it is currently quite slow and still not exceed the numbers of men.

Other than C3, C1 also believes that socially, these kinds of gender norms are changing with the passing of time but the expectation for women to hold the biggest role in the domestic and household chores still exist depending on the level of the society.

*“I think there may be other factors where I would go back to tradition and culture. I think there is still an expectation generally and I think it’s changing. But I think there is still an expectation that the women place, you know, the domestic household roles. Not everyone because I think it depends on what level of society you are but there would be people who go to study abroad and when they come back, they still...they are a little bit less inclined to take on ‘husband go to work and wife stay at home’ kind of roles.”(C1)*

She added that the numbers of women enter the workforce has increase by times although it cannot be denied that there are still conservative thoughts exist among the society that creates social perception. Men are still perceived to be the breadwinner of the house and women expected to take the bigger roles and shares in domestic administration. But there are also women with high ambitious and seek for career progression even though it is not necessarily large in number. All in all, the existence of gender norms and society perception regarding the roles of men and women in either

way would definitely make things become worse. Its continuous practices cause a lot of disparity and gender bias in the workplace which eventually affects women participation in the top-level of management despite the abilities hold by them individually.

#### **4.4.4 Mental Capacity vs. Physical Capability**

Besides that, when talking about gender equality and the factors that influence it, the issue of safety and physical capability becomes one of the things that makes women being disparate from some sectors especially in the technical and engineering sector which requires more tough work as mentioned by E2 during the interview. However, the truth is the mental capacity also play roles in women participation at the top management of organisations. As mentioned in the previous subtopic, there are some inevitable challenges in a woman's quest to reach the highest level of their career that were shared by C2 based on her experience. In order to get through all the challenges, according to her, one must have a strong mental ability to encounter every obstacle. This mental ability associates with their responsibility and duty as a leader.

E2, when asked how to assure men's and women's rights be upheld fairly, explains that it depends on the individuals themselves in which it would not be a problem if the person can prove their capability. This includes one's mental and intellectual capacities where they could show their competency in performing the duty such as in technical sectors like engineering.

*"I think being on site is not that physically demanding. Only that maybe you need to travel a little bit more or maybe you need to deal more with the construction workers and so on. Then, you need to be tough because you know, to give commands to other men, it's not*

*really easy especially if you're dealing with rough people and workers in construction and so on. But I suppose if the woman has the competency and the intellectual capabilities so, yes because engineering is not only the matter of the body but also the matter of the mind..." (E2)*

He believes that as long as the woman is good at her field and knows well about the building structure, construction and everything related to it as well as the mental capacity which even men need to consult her on the methods, surely the woman as well can coop to reach the higher position. E2 then added that the least that the organisation can do for her is provide and assure the safety of the women while at the construction site from any harassment or anything related. E2 also strongly believes that the other colleagues will also help her out due to her contribution to the organisation because according to E2, it is more likely about humanity than gender.

On the other hand, for C3, he clarifies that they have been with different leaderships where out of five of its director generals, two of them were women. The organisation basically let the position of its top management as an open post including general director where everyone can apply for promotion to these positions once every two years. C3 stresses repeatedly in his answers during the interview that his organisation does not bother having men or women as the leaders as long as he or she is qualified for the job. As long as the person fulfils all the qualifications needed and has a vision, the person can apply for the position and the best one will be chosen out of all candidates who applied for the job. According to C3, the qualifications for the position must include their expertise and title which involve their mental ability such as Dr. (PhD) and seniority before going through the process of the interview in order to ensure a fair appointment. Unfortunately, despite the fact that women are mostly better

than men in terms of academic qualification, C3 while laughing says that there is a lack of application from women and sometimes zero application from women in which he, himself, is not really sure about the basis of such situations.

Perhaps, it is because of the resistance from their partner or family. This can be supported by a story shared by C1 based on her experience that she has come across. C1 shares that she has seen a very bright woman with a lot of potential have to leave the workforce because of the demand of the other half in which she thinks is very unfair and sad.

*“I thought it is very unfair and umm very sad because she’s very bright from the experiences that I have. You see... very bright. Very...very bright. Very quick umm well-educated women who come into the workforce but they have expectations to perform certain duties in Malaysian to their other half right, which take them out of the workforce because it’s either too much pressure or because they cannot perform at the level where they are expected as in the organisation. And also this is across the boat but I have seen it happen in which it is a terrible shame.” (C1)*

Based on C1’s answer, it can be seen that it requires lots of mental capabilities either in sort of mental resilience or intelligence in order for women to be part of the top management. Therefore, only those who have a strong body and mind are able to make it to the top.

#### **4.5 Conclusion**

Based on the findings, theoretically referring to the discussion in Chapter Two and Three regarding the philosophical and legal theories of gender equality as well as the findings from the interview with the experts on their view of gender equality in the

Malaysia workplace as presented in this chapter, the study concludes that gender equality in Malaysia at a glance is corresponding to the theory of radical and liberal feminisms. Through the collected data, gender equality in Malaysia is found to be greatly influenced by the culture and religious practices of the society which caused men domination in employment, segregation and resulted in inequality. But the liberation of women in economy is nowadays has a greater place among Malaysian that associated with liberal feminism.

Due to that reason, it is hard to say that Malaysia specifically practising radical feminism in its practice of gender equality. In fact, there are some other situations that are in line with other movements and beliefs like socialist feminism, and Islamic feminism. For instance, the study sees that the issue of imbalance between gender and different treatment that were raised by the experts are synonyms to the radical and Islamic beliefs but the issues of pregnancy and maternity or paternity leave are seemingly associates with the effort of socialist feminism. On top of that, while talking about career motivation as well, it nearly seems as socialist belief where the issue of gender equality exist due to the beliefs that women are facing oppression because of existing stereotype where women are being scrutinized with family roles such as reproduction and caretakers of the family rather than involving in the economy. However, considering the whole practices and the rule of law applied in Malaysia, the study concludes that Malaysia as a whole is most suited/associated with liberal, radical and Islamic feminisms.

In terms of the findings on the practice of gender equality in the Malaysian workplace, surprisingly, the findings from the interviews show that there are differences in the

thoughts of gender equality in the Malaysian workplace. Compared to responses by the respondents from the corporate bodies, the findings are a little bit different when the question about the practice of gender equality in the Malaysian workplace was asked to the academicians and experts on gender issues in Malaysia. While the majority of the experts believe that there are issues of gender in Malaysia workplace, all three respondents from corporate bodies believe that they have not experienced any kind of gender discrimination or gender issues throughout their appointment and service in their organisation respectively. However, the case might be different in the private sector or other bodies in different fields or sectors than the one among this study's respondents.

Despite such disagreements from the respondents on the practice of gender inequality and discrimination at their workplace, experts from different areas of expertise believe that there are gender issues in the Malaysia workplace such as gender gap, differential treatment between genders, issues of pregnancies that involve maternity or paternity leave and sexual harassment as well as the lack of opportunity that rooting from the gender stereotype in society. Besides that, the study has concluded that two main themes on the criterion that qualified a person to be part of the top management in an organisation in Malaysia are that the selections are based on experience, merits and skills as well as their ability to fulfil the job scopes. Thus, the under-representation of women in the top management of Malaysia workplace is believed to be influenced by few factors. Among the biggest contributors is the gender accommodating to support women to develop their careers that comes from different angles especially their environment besides the gender norms and social perception that have existed in Malaysian culture.

The study also found that bias against gender has reduced women participation in the top management while gender quotas as part of gender mainstreaming programme help to increase the numbers. However, as agreed by most of the respondents, it would not be the best solution for the nation if the selection of women is solely to fulfil the required quotas since it would affect the quality of the organisational performance as a whole. In fact, the mental capacity of women also influences them to participate as the top management besides physical capabilities to perform the required job. Hence, it is concluded as relational to every case and it all definitely depends on the individuals themselves. Besides that, upon the recognition of Islam as the federal religion, the views of gender equality in Malaysia from the Islamic view have also been studied in which the outcome shows that Islam never denies the practice of fairness and equality between genders. However, the focus is given to the equitable practice of gender and justice where the right things should be put to the right place at the right time. Religion also is concluded as pertinent to gender equality in Malaysia.

## **CHAPTER FIVE**

### **FINDINGS AND DISCUSSION**

#### **5.1 Introduction**

Moving forward from all of the previous chapters, this chapter aims to analyse the overall results that have been presented previously in Chapters Two, Three and Four. This chapter begins with the discussion of the findings for objectives (1) and (2) before provides the outcomes for the third (3) objective of the study, which is to determine some guides of gender equality practices at the workplace. Based on the analysis on the philosophical and legal discussion on gender equality as well as the results from the interviews that capture the practice of gender equality in the Malaysian workplace, the study comes out with the elements that constitute the concept of gender equality in the Malaysian workplace. Continues from the findings of both objectives, the study comes out with the answer for the third objective through four guiding rules in practising gender equality at the workplace based on principles of gender equality. Four basic processes of questioning/ interrogation were used to come up with the findings which consist of the questions of ‘what’, ‘who’, ‘how’ and ‘where’. The philosophy of using this process or concept is to ensure the bigger picture of gender equality at the workplace can be seen in a holistic and comprehensive manner<sup>381</sup>.

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<sup>381</sup> High-Value Detainee Interrogation Group, *Interrogation: A Review of the Science*, 2016.

Since gender equality came from many approaches with different contexts, a comprehensive measure needs to be done to build its concept into the right focus. Asking the question of ‘what’ is necessary for understanding the basic ground of gender equality at the workplace such as its focus and coverage. Then, it is followed by ‘who’. Knowing what to be covered or protected only is not enough but who should be given the rights is important as well. After all, the right thing should be given to the right person. The third angle is ‘how’. How should the practice of gender equality at the workplace be done? Lastly, ‘where’. Knowing the place for rights helps the people to understand the whole concept of gender equality at the workplace especially in terms of the promotion of men and women to top management and decision-makers.

## **5.2 Philosophical Concept of Gender Equality in Malaysia**

In the purview of gender equality in Malaysia, theoretically, Malaysia has a complex version of feminism theory. This is parallel to what has been discussed by Maznah et al.<sup>382</sup> in their work of ‘*Feminism and the Women's Movement in Malaysia*’. Through their study, they contend that Malaysia manifested variants of feminism throughout its history. According to them, the society within the same historical background can indeed embrace it in different ways. Moreover, even though the common feminism theories as discussed earlier are all useful at their movements, according to Maznah et al., they have not yet addressed the multicultural context and problems as faced by many countries in the South. In a multi-ethnic country like Malaysia, that placed within the globalized economy and driven by an authoritarian state, the women’s movement

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<sup>382</sup> Maznah Mohamad, Cecilia Ng, and Tan Hui, *Feminism and the Women's Movement in Malaysia\_ An Unsung (R)Evolution* (Routledge, ed. Mohammed Hazim Shah, Shamsul A.B., and Terence Gomez (Routledge Taylor & Francis Group, 2006).

must carve itself out to prove its worth and be seen as a driver of the democratization process<sup>383</sup>.

Although it seems to be impossible to unite all women at all times on the common ground, it is at the very least could be portrayed as an ideology that opposes power, ranging from colonial systems to the order of patriarchal culture and state rule. To be exact, based on the analysis of the philosophical and legal theories of gender equality, this study argues that Malaysia in some ways can be seen as best suits with the combination of several theories together that includes liberal feminism, radical feminism, and Islamic feminism at its most. Malaysia in a way has followed a little step of liberal feminism especially in the context of employment where it seeks equal opportunity for women in the admission to all areas of function and occupations that are normally dominated by men.

In fact, based on the philosophy and law experts' opinion (E1 and E2) during the interview which then proved by the practice of gender equality in the corporate sector, equal opportunity is found as the indication to show that gender equality has been served in the workplace. In line with liberal feminism, Malaysia through its law and international conventions was concerned with upholding equal rights between men and women in terms of suffrage, employment opportunities, and equal wages for equal employment. Besides, the conception of gender equality shall not only be considered as a relationship between two parties but humanity as a whole that is equal in moral worth and dignity. Besides, since Malaysia is practising Sharia laws and Islamic jurisprudence, there shall be some exceptions and limitations in its practice thus, it

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<sup>383</sup> Ibid.

cannot be regarded as liberals as a whole. Since Islam has been institutionalizing in Malaysia, this study believes that it is just right to say that it shall be within Islamic feminism. Indeed, Islam also has never supported the subjugation of women and encourages a fair practice in daily life.

Apart from that, Malaysia is seemingly synonymous with radical feminism where inequality between genders was believed to be rooted in the patriarchal system that was historically practised by Malaysian society. This can be supported by the claim of most of the respondents of this study as discussed before, that the practice of gender equality in Malaysia has a historical factor that moves together along with its reformation. Malaysia, in terms of gender equality practice in employment, was greatly influenced by the existing culture for a long time which hindered the participation of women in certain fields. This situation hence influenced Malaysia commitments to achieve gender equality in social and economic life. Therefore, effective changes are embodied to create gender equality and close the paradigm that has long led to the oppression of gender in society and the economy.

### **5.3 Elements that Constitute the Concept of Gender Equality in Malaysia Workplace**

Through the conducted interviews, some questions were asked to the respondents for the purpose of acquiring answers to achieve the objectives of this study. Two academicians with expertise in a philosophy and constitutional law respectively have been chosen as the main respondents to explain their ideas or opinions about the concept of gender equality from philosophical and legal perspective specifically while the other six respondents' views and responses were analyse to understand the practice

of gender equality at the workplace in Malaysia. Based on the analysis, there are five elements that constitute the concept of gender equality at the workplace in Malaysia.

### **5.3.1 Equal and Fair Opportunity**

First thing first, 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 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. E1, the expert from the legal area, when asked about the concept of gender equality in legal context urges that it should be referred to equal treatment protection, and opportunity. An equal treatment, protection and opportunity shall be given to individuals despite differences in genders.

On the other hand, E2 as the respondent from philosophical expertise, while explaining on 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 throughout the process of employment. This is parallel to what has been provided by the laws of equality either in the expression of the provision in the Federal Constitution or the universal conventions such as the UDHR as explained in Chapter Three. In fact, other respondents also when asked about their

organisational practised, claim that they have no issue on gender since opportunities are always be given fairly. Therefore, the study concludes that as much as people are concerned about 'being equal' towards men and women, 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.

### **5.3.2 Gender Treatment**

Extending from the previous analysis and findings on the context of gender equality, it can be said that an 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. 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, historical factors, the competency of individuals and the law that protects disadvantages.

Parallel to this, respondents also agree 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 at some point has made people put their own barriers on things including employment, and because of this, it is hard to overcome the issues of gender. Besides, the nature of the job and the law provided to protect women itself have to be taken into consideration. In fact, E1 as an expert in law also

strongly affirms her principle that the practice shall as well corresponds to the law provided under the existing labour law and the suitability of the job. In short, the study 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 always be the main priority for every organisation and that it should be an ‘equal treatment’ of genders instead of ‘similar treatment’ of genders.

### **5.3.3 Gender Equity and Entitlement**

Next, when it comes to justice and gender equality at the workplace, it 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, providing justice means putting the right things at the right time in the right place. Thus, the basic philosophy of gender equality at the workplace should be equity where every person is entitled to what suits them. Apart from the provision of the constitution and realization or implementation of other laws, it is important to ensure not only women equality but women equity at the workplace. Even in Islam, as concluded from the respondents, and philosophy of equality as discussed earlier in Chapters Two and Three, in the matters of gender equality and justice, the thing that actually matters the most is providing equity.

The question that can be raised now is on what way a person can be regarded as an entitled person. So, as explained in Chapter Four, 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. The competency of a person is seen as far more valuable than anything else when promoting a 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 prioritised. It is corresponding to the practice in the corporate sector whereas shared by other respondents from industries (Group B), two main qualities are always under consideration and were required for the promotion to top management; merit-based and skill set, as well as; job scope fulfilments and working experience. Moreover, it will contribute to the productivity and the performance of the organisation. 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.

#### **5.3.4 Humanity and Dignity**

Besides that, one of the findings that the researcher finds most intriguing is the idea that connects equality with a kind of humanity and dignity. Connecting to the idea of Rene Descartes which has been discussed earlier in Chapter Two that views all humans as a rational being that act with reason; E1 as a legal expert also supports that equality is not only considered as a relationship between two parties but it is about humanity as a whole. She urges that besides treating men and women with equal treatment, it is more important to be complemented to both genders. Furthermore, complementing both men and women is seen would help to accommodate the differences between individuals. Whereas there are differences between genders or individuals themselves, it should be taken as an opportunity for betterment rather than a hindrance.

Based on the analysis on the provisions provided by the laws and regulations on equality including UDHR and other conventions as stated in Chapter Three, as well as the idea of equality in philosophical in Chapter Two, this study does agree that gender equality in a broad view can be said as concerns with the act of being humane or simply said as humanity<sup>384</sup> between persons. As much as equality concerns the person's moral worth and dignity, gender equality shall make both men and women treated in accordance with their moral worth and dignity that no one shall be partial to one another. Indeed, 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.

### **5.3.5 Rule of Law**

Last but not least, the rule of law is vital in constituting the concept of gender equality, especially in employment. As provided by the Federal Constitution and most of the international conventions on equality, every person is bound to be "equal before the law". The legal binding through the rule of law explains how every person should be treated and equality of genders can be implemented as a whole. As explained in Chapter Three, the law as a tool for social engineering plays a role to improve the life of society. Indeed, as also mentioned by respondents in Chapter Four, a concept without legal force would not help in imposing equality in society and economics. Therefore, aside from understanding the practice of gender equality, the rule of law by

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<sup>384</sup> Humanity as according to Coupland, can be defined as an attitude, a morality, or sentiment of good will toward fellow humans which deal with morality or sentiment that has long been associated with moral philosophy that requires commitment of all individuals. See, Robin M. Coupland, "The Humanity of Humans: Philosophy, Science, Health, or Rights?," *Health and Human Rights* 7, no. 1 (2003): 159.

the parliament as the legislative body and the courts as judiciary bodies shall be effectively embedded in provisions and implement as the guidance for the public.

E2 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 equality before the law is obtained and enforced in the society, hence, it will be the starting point to achieve the full conception of the notion of gender equality. It can be supported through the statement by E1 as she also agrees that sufficient law would help to protect both genders. As far as the law in Malaysia is concerned, the Federal Constitution has provided the foundation for equality and discrimination among genders. However, it is also necessary to have a clear interpretation of the provisions either through amendment or other specific laws on anti-discrimination in employment. Therefore, the study concludes that achieving gender equality at the workplace starts with the concept of equality before the 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.

#### **5.4 A Guide to Gender Equality at the Workplace in Malaysia**

Based on the elements gathered from the thorough discussion and interviews, four guiding rules based on principles of gender equality have been discovered throughout the study on the concept of gender equality at the workplace and its practices in the corporate sector. The principles are important in describing gender equality at the workplace and thus, should be regarded as the guides in practising gender equality at the workplace in Malaysia. These principles are presented according to four basic processes of questioning which are ‘what’; ‘who’; ‘how’ and; ‘where’. The principles

are referred to as the principle of equal treatment; entitlement; non-discrimination, and finally; an equal opportunity (not perpetuating equal outcome). These four basic principles of gender equality in the workplace will be explained below.

**a. Principle of Equal Treatment (What)**

First of all, in order to understand the concept of gender equality at the workplace, the question of ‘what’ is used to know what was covered, concerned or done in ensuring equality between genders. The findings from the study conclude that equality between genders is hugely concerned with the equal treatment between men and women. Taking gender equality into account, it seeks sameness, balance and fairness in the way men and women are treated in the workplace. As explained previously in the perspective of equality in a philosophical context (refer to Chapter Two), Aristotle has claimed that equality refers to “*likes should be **treated** alike*” where the treatment of alike cases has been treated the same. However, as expressed by Nathan, the claims of equality can be prescriptive where the two parties that ought to receive the same treatment should be treated equally<sup>385</sup> according to a standard of measurement within the things that are common between both parties. The ‘measurement’ here could be in the form of either the academic qualification of the individual or the quality that a person has in performing the duty. The details of this point will be explained further in the next subsection.

As mentioned earlier in Chapter Two, it is impossible to have the exact sameness between both parties since humans are always different from one another either in a way or many ways. Hence, gender equality should be portrayed as seeking equal

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<sup>385</sup> Westen, “On ‘Confusing Ideas’: Reply.”

treatment between genders but at the same time recognise their natural differences. These differences, however, should be aligned in ways that could complement each other (men and women). This point actually has also been stressed by one of the respondents, named E1 repeatedly. The argument is that men and women as proven by researches are psychologically and biologically different hence, it is practically almost impossible for both genders to be exactly the same either in their abilities or techniques of working<sup>386</sup>.

Moreover, according to Afolayan<sup>387</sup>, egalitarianism which is the philosophy of equality has claimed that “*human beings have some sort of fundamental worth and hence should all be treated as equal.*” Parallel to this, Bakers et al. throughout their writing concludes that basic equality is known to be the keystone of the practice where the idea is that human beings at its basic have equal moral worth and importance hence, everyone is equally worthy of concern and respect<sup>388</sup>. Parallel to this is the concept of ‘equality before the law’ that is practically constituted under Article 8(1) of the Federal Constitution which is also common in other provisions on equality<sup>389</sup>.

#### **b. Principle of Entitlement (Who)**

Following the question of ‘what’, now, it is important to know to whom the rights (i.e. employment) shall be given. Applying the question of ‘who,’ the second principle of gender equality is an entitlement (accompanied by the principle of equal distribution in conflict). As explained in Chapter Three under the subtopic of the legal principle of

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<sup>386</sup> Yanna J. Weisberg, Colin G. De Young, and Jacob B. Hirsh, “Gender Differences in Personality across the Ten Aspects of the Big Five,” *Frontiers in Psychology* 2, no. 178 (2011): 1–11.

<sup>387</sup> Afolayan, “Egalitarianism.”

<sup>388</sup> Baker et al., *Equality From Theory to Action*.

<sup>389</sup> Refer Malaysia The Commissioner of Law Revision, *Federal Constitution*, 2010; United Nations, *Universal Declaration of Human Rights* (United Nations, 2015).

equality, equality is given based on the entitlement of individuals accordingly. In this sense, the rights for employment, or in the perspective of promotion to the higher position, the positions need to be distributed or occupied by those who are 'entitled' to the job. This means that it has to be someone who is qualified enough to fill in a specific position. Based on the findings from the study, there are few key points to be referred to when regards someone as being qualified is the job scope, skills set and mental ability. The majority of the respondents agree that in the area of employment, one's skills and ability to perform the job are very important especially in the selection of individuals to occupy the top-management position such as the Chief Executives, Directors and anything in line with it.

In fact, as expressed by E1, following the definition of justice, religions like Islam also emphasizes the importance to put things at their 'place' and get every person (men and women) things they are entitled to without denying the natural differences between men and women. In employment, profit and excellent performance are recognised as the end goals for every organisation and the workers are considered as the key players in achieving the target. Thus, employing a good worker with related expertise and skills who are entitled to the offered position is important for the organisation as a whole. Therefore, the study reached its conclusion that the principle of entitlement is one of the important principles in describing the practice of gender equality at the workplace.

### **c. Principle of Non-Discrimination (How)**

'How' should these rights being applied and expressed? So, the third principle is the principle of non-discrimination. Gender inequality does not necessarily mean that

there are gender discriminations but to achieve gender equality, there must not be any discrimination against gender either male or female. As mentioned by some of the respondents in the interviews, gender equality is not only about women. It is the right for both men and women. Concluding from the answers from the interview, in the context of gender, 'no discrimination' here includes any action that would cause a party (either man or woman) to be unfairly at the disadvantage including gender bias, harassment and other forms of action that discriminate men or women that causing harm physically or mentally.

Whereas in the context of employment, it involves denying individuals to participate for the promotion to a higher level due to gender stereotypes such as women are not capable to lead; the typical culture and gender norms that prevent women or men from practising their rights to choose the job that they ought to choose and; any other forms of action that purposely bring disadvantageous to any party. Come again to Article 6 and 7 of the UDHR as explained in the previous chapter (Chapter Three), every individual is ought for equal protection of the law and against any discrimination and all men and women shall be recognised in terms of their values at the workplace respectively. Everyone should be recognised in terms of their rights and be freed from any stereotypes or traditional segregation system so that they could grow and participate in the economy to develop their career.

In terms of employment in Islam also, according to E2 as experts in philosophy, Islam does not practice discrimination. For him, the relationship between Prophet Muhammad p.b.u.h and his wife, Siti Khadijah is one of the good examples to express how Islam views gender equality. Technically, Khadijah was known to be an

entrepreneur in which in today's context, her position is equivalent to the Chief Executive Officer (CEO) of her company while Prophet Muhammad is just one of her workers. Through this example, E2 tries to show that women being a leader at the workplace has been practised by Muslims ever since the time of Muhammad p.b.u.h. and Islam never discriminate against women in employment. Different case from employment, Islam has outlined the relationship between men (husbands) and women (wives) in a family where the husband is the head of the family and the wife has to follow him. But this does not mean that discrimination is allowed against women.

This is also supported by E3 from the Ministry of Women, through the sharing of their discussion with JAKIM related to gender. Similar to E2, E3 also agrees that in terms of women leadership, it has been experienced since the time of Muhammad p.b.u.h. Back then, since the time of Prophet Muhammad p.b.u.h, there were many events that elevate women and their greatness. According to E3, this is a part of gender equality's reflections but the reason women were given more focus is not because gender equality is solely for women instead, it is more likely because women are a bit left behind. For that reason, people raise a lot of stories about why women should be empowered and be pulled up at first.

#### **d. Principle of Equal Opportunity (Where)**

Since people are already clear about the rights in gender equality at the workplace, it is only right to know the exact place for it to be fully expressed. Therefore, lastly, it is the principle of equal opportunity. All in all, the equal treatment without discrimination should be applied through the opportunity given to men and women at the workplace. Since every individual is a human being with moral worth and dignity, and equal

opportunity should be ensured in terms of employment and promotion to the higher position. While talking about equal opportunity in employment and promotion, it needs to apply for every process in employment including hiring, training, promotion and termination. However, one should note that equal opportunity does not necessarily mean equal outcomes. As agreed by most of the respondents from the interviews, in the process of selection to promote individuals to the top management positions, it is definitely important to provide an equal and fair opportunity to all employees either men or women, to apply or participate in the process. But, only those who are qualified for the position, according to their expertise, skills and other requirements should be given the chance to hold that particular position.

This is where the researcher has explained the entitlement before. The reason is that the performance of the organisation needs to be prioritised over the other. In fact, when discussing the issues of gender quotas, respondents also believe that the system should not be used bluntly without taking the individual's qualifications into account. Nevertheless, they also do not deny the importance of such a system to be practised for at least to empower women to bring themselves upfront. So, to conclude from the findings, it could be said that the element of equal opportunity for both men and women is necessarily associated with gender equality at the workplace in Malaysia, but the outcome or results should not be expected to be equally the same or balanced at all times. Instead of looking at the outcome to regard an act of equality or inequality, one should analyse the process of doing so.

## 5.5 Conclusion

First of all, this chapter has concluded the findings gathered during the interviews with the academicians in philosophy and law regarding the concept of gender equality in the Malaysian context and other respondents including those from corporate sector. Based on the findings, Malaysia has complex version of the philosophical theory of gender equality which it best suits liberal, radical and Islamic feminisms. Based on the study, there are five elements that have been discovered in constituting the concept of gender equality in the Malaysian workplace which are equal and fair opportunity; gender treatment; gender equity and entitlement; humanity and dignity, as well as; the rule of law. Based on these elements and analysis in previous chapters then, the researcher has come out with a guide to gender equality at the workplace in Malaysia whereby its principles were arranged into the concept of what (principle of equal treatment); who (principle of entitlement); how (principle of non-discrimination) and; where (principle of equal opportunity). This study concludes that gender equality concerns very much about the treatment between genders where equal and fair treatment should be given to all and the positions or the rights in employment should be granted to those who is entitled to it without any discrimination. Last but not least, the focus is more likely towards the equality of opportunity instead of the outcome. This is because the process is what matters the most. It is important to understand that equal opportunity is not perpetuating equal outcomes hence, it is inaccurate to regard gender inequality based on numbers and imbalances between genders alone. Instead, an extensive view is needed in understanding the issues in specific. It is important to understand that the inequality or imbalance of men and women representation in certain areas or employment may cause by different kinds of factors, and not necessarily due to gender discrimination.

Table 5.1: Findings of the Study

Findings of the Study

Research Objective	Research Question	Findings
<b>To examine the concept of gender equality in the philosophical and legal context</b>	What are the philosophical and legal concepts of gender equality?	<ul style="list-style-type: none"> <li>• Malaysia theory of gender equality is very complex due to multicultural nation.</li> <li>• However, since Malaysia has a strong influence of culture and religion, hence, it can be most suited to relate it with the theory of liberal and radical feminism that seeks for liberation of women from patriarchal system especially when regards to the employment context. Besides that, with Islam as the federal religion hence, the theory of feminism in Islam may as well influence its practice in some ways.</li> <li>• Gender equality concerns relationship between men and women with mutual respect and consent –human beings are equal in moral worth and dignity.</li> <li>• “Likes should be treated alike”- Formal equality plays vital role in the formation of formal law while substantive equality is referred for cases involving biological differences between genders (i.e. pregnancy)</li> </ul>
<b>To study the practice of gender equality in the Malaysia corporate sector</b>	How is the practice of gender equality in the Malaysian workplace?	<p><u>Elements that Constitute the Concept of Gender Equality in Malaysia Workplace</u></p> <ul style="list-style-type: none"> <li>• Equal and fair opportunity</li> <li>• Gender treatment</li> <li>• Gender equity and entitlement</li> <li>• Humanity and dignity</li> <li>• Rule of law</li> </ul>
<b>To propose some guides for gender equality practice at the workplace</b>	How to deal with gender equality in the workplace?	<p><u>Guides for Gender Equality Practice in Employment</u></p> <ol style="list-style-type: none"> <li>a. Principle of Equal Treatment (What)</li> <li>b. Principle of Entitlement (Who)</li> <li>c. Principle of Non-discrimination (How)</li> <li>d. Principle of Equal Opportunity (Where)</li> </ol>

## **CHAPTER SIX**

### **CONCLUSION AND RECOMMENDATION**

#### **6.1 Introduction**

This chapter re-highlights the findings of this research and summarises the overall study. The findings from the library-based study approach and interviews with the experts like academicians and officers in different organisations concerning gender equality in Malaysia are summarised to present the conclusion on the concept of gender equality at the workplace. Following the theoretical findings, the chapter summarises the results and findings from the practice of gender equality in Malaysia workplace through the interviews with the people from industries, specifically the top management of the corporate bodies in order to provide the empirical findings and support the theoretical findings. Towards the end of the chapter, the recommendations are given in overcoming the issues of gender in Malaysia workplace and finally, the suggestion on the direction for future research is presented.

## **6.2 Summary of the Study**

As equality is known as the main principle in achieving human rights, gender equality also became one of the prominent issues among society and nations. In terms of employment also, the issue has continued to be raised since the data showed that there are existing gaps between men and women participation in economics especially in the level of decision makers as shown in Chapter One. While researches suggested for the establishment for specific policy that protects workers at the workplace from any kinds of discrimination towards men and women, gender equality as the main concern in employment needs an extensive analysis in its philosophical and legal perspectives. Therefore, this study was made and aimed for three objectives. The first objective of the study intended to examine the concept of gender equality in a philosophical and legal context. Second, it aims for analysing the practice of gender equality in the Malaysia corporate sector and finally, the third objective is to propose the basic guidelines of gender equality at the workplace.

### **6.2.1 Gender Equality in Philosophy and Law**

First of all, the study focuses on theoretical studies on gender equality through literature from philosophy and law which were discussed in Chapter Two and Chapter Three of the thesis. The theoretical discussion regarding the philosophical concept of gender equality revealed that the multiplicity of cultures in Malaysia and its strong influence on the social practice makes the theory of gender equality in Malaysia becomes complex and varied depending on the circumstances. Theoretically, the study of gender equality associates with feminism theories and movements. In the study of philosophy, there are eight theories of gender equality namely liberal feminism; socialist feminism; Marxist feminism; existentialist feminism; radical feminism;

psychoanalytic feminism; gender feminism or new-Marxist feminism and; Islamic feminism. On the other hand, in legal studies, the theories of gender equality have been emphasised within four main theories only which are the liberal feminism; radical feminism; cultural feminism and: postmodern feminism. The purpose of the analysis on gender equality in theoretical studies is basically to find the possible principles of gender equality that could be adopted in its practice at the workplace and for the researcher to work on the guides of gender equality in Malaysia workplace.

Throughout the theoretical study, the researcher has taken the subject as a grown tree where the theories of feminism movements are its branches and “equality” stays as its roots. Chapter Two has explained that philosophically, the study of equality is discussed under the theory of egalitarianism. The theory claims that human beings have some sorts of fundamental worth and all are subjected to equal treatment with moral worth and dignity. In philosophical perspective, equality was discussed a lot in its relationship with moral ethics whereby moral equality is the main concern. In moral equality, five concepts of equality have been comprised together which are the utilitarianism that focus on happiness as its ultimate end; social equality that work for equality by comparing the relativity of society members according to social dimensions such as income; relational equality that place equality within mutual consent of involved parties; contractualism that modified a person’s private demand to connect both parties’ goals; and democratic equality that emphasised equality among all citizens and the needs for moral and political freedom.

The study also explained that the principles of equality deal with some other principles such as the principles of entitlement, distribution, moral worth and non-discrimination.

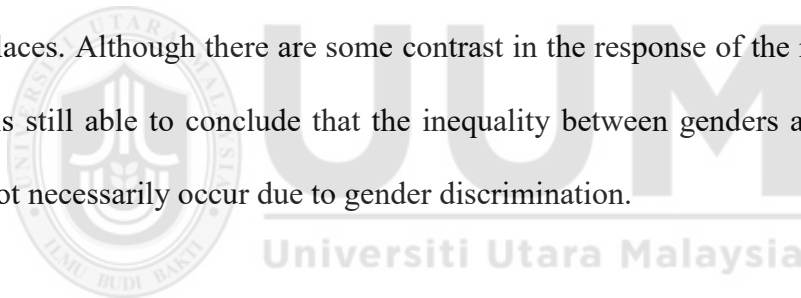
Prolonging the discussion of gender equality in Chapter Two, Chapter Three of the study focuses on the legal perspective of gender equality. Based on the legal studies, there are few categories of equality; formal, substantive, distributive and relational equality that deal with the fairness of justice. Among these, formal equality is known as playing a vital role in the formation of the main law of equality in many countries that practice democracy including Malaysia. In terms of gender equality however, substantive equality is referred especially in cases related to discrimination on pregnant women since it recognised differences between genders. In the end of the chapter, the study also emphasised its findings where legally, the principles of non-discrimination is the most important in any laws related to equality and entitlement shall be given without discrimination.

### **6.2.2 Practice of Gender Equality in the Workplace**

The analysis on gender equality in practice then was done to support the presented theories. Chapter Four of the study provides the insights on the views regarding gender equality in Malaysia workplace and its practice where the researcher presents the results from the interview with respondents from experts and academicians in philosophical and legal areas; Ministry of Women, Family and Community Development (KPWKM); Human Rights Commission of Malaysia (SUHAKAM) and Women's Aid Organisation (WAO) as well as top-management officers from three different corporate bodies.

Based on the analysis and findings in Chapter Four, the study concludes that the practice of gender equality in Malaysia has a great influence from the existing culture and religions of Malaysian society. This finding is eventually connected to the theory

of radical feminism as presented in Chapter Two and Three. However, it is impossible to regard Malaysia as practicing radical feminism as a whole since there are some situations that associate other movements and beliefs such as liberal feminism, and Islamic feminism especially in regards to employment. Concerning the idea of gender equality at the workplace, it seeks for liberation of women in economic so that equal opportunity will be opened for women as well. Indeed, Islam in its teaching as well does not deny women access to economics and leadership although it asked for men to be leaders in families. In terms of the practice of gender equality at Malaysia workplace especially in the promotion of top management and decision-makers, the study found that there are no issues among corporate bodies. But the majority of the experts and academicians believe that issues on gender equality still exist in Malaysia workplaces. Although there are some contrast in the response of the respondents, the study is still able to conclude that the inequality between genders at the workplace does not necessarily occur due to gender discrimination.



### **6.2.3 Guides for Gender Equality Practice in Employment**

Lastly, Chapter Five of the study presented the findings and discussion of the overall study. Based on the findings, five elements have been found in constituting the concept of gender equality in Malaysia workplace which are equal and fair opportunity; gender treatment; gender equity and entitlement; humanity and dignity, and; rule of law. Based on these elements, some guides on gender equality practice have been presented in Chapter Five where the concept of what, who, how and where were used. There are four principles need to be taken into consideration which are the principle of equal treatment; entitlement; non-discrimination and; equal opportunity not perpetuating equal outcome. The study concludes that gender equality concerns the treatment

between genders where an equal and fair treatment should be given to every person without bias to gender. In terms of employment, the positions or the rights in employment should be granted to those who is entitled based on the principle of entitlement without any discrimination. In this case, the job scope, merits and skills are among the important things that need to be considered. Last but not least, equality should concern more on the opportunity given instead of the outcomes. This is because equal opportunity does not always turn into equal outcomes and there are many external factors that would affect the end result.

### **6.3 Recommendation**

In this section, the study has come out with some recommendations that shall be considered for the improvement of gender equality in Malaysian workplace. As far as the issue of gender equality is concerned, there are some actions that need to be taken into consideration where every individual is accountable and not only the government. It is the responsibility of every person, society and government to ensure the practice of gender equality in Malaysia workplaces. Thus, for the first and foremost, an awareness and understanding of gender equality must be given widely to all parties including employees and employers of organisations. A proper and continuous training on the rights of women for accordance with the law must be propagated among the employers to prevent them from taking advantage against the weaknesses of the women over the situation and for the employees to strongly stand for their rights.

Besides that, it is also important to educate the top management of organisations about gender lens which views the differences in needs between genders as a responsibility for them to be addressed through the provision of special facilities in the workplace. The reason is that, as discussed earlier under the literature reviews in Chapter One,

they are the agents of gender equality at the workplace. In fact, the findings from the interview with respondents from the corporate bodies also proved that a good practice of gender equality in an organisation started with a good leader that appreciates both genders fairly, and enshrouded their practice with the support of the code of ethics that upholds equality and fairness in the treatment and opportunity against all employees without bias.

Along with this, on behalf of the government, a proper and scheduled courses for employers should be conducted by the government to ensure that it will be articulated to everyone, not only among the public sector but also the private sectors either in the urban area or countryside areas. Through a proper understanding of the concept of gender equality, this study believes that there are a lot more good practices that can be incarnated. However, the realisation of the empowerment of men also must not be forgotten along with the efforts of empowering women at the workplace. This is because gender equality is not only concerned about women but human beings as a whole which includes men.

Second, the study suggests and supports the establishment of gender equality bill along with specific provisions and policy on anti-discrimination at the workplace. Besides that, an amendment and extension in the application of the Employment Act and other laws related to employment is needed. Apart from the dependency on the provision of the constitution, Malaysia should enhance its realization and implementation of other laws to ensure not only the gender equality at the workplace but also the equity of gender at the workplace. These laws and policies must include the customisation that commensurate the differences in the needs of both genders. It means that relevant

support and employee benefits are given proportionately to men and women workers. Perhaps, with this arrangement, it helps in encouraging both men and women to achieve higher quality in their job performance while government and NGOs encourage women to prove their capabilities at work without solely depending on quotas provided.

Last but not least, perhaps in the part of the government experts, an extensive research and analysis on the statistics on the structure of employment in terms of gender of every organisation can be done. Based on the findings then, some appropriate action may be endorsed to the organisation with terribly huge gaps between genders and a systematic auditing process is done to examine its exact reasons behind practice. The reason is to ensure that the gap and inequality pertaining to gender is not due to bias or discrimination on any gender.

#### **6.4 Recommendation for Future Research**

In terms of the future research, this study encourages a deeper analysis on the practice of gender equality in the private sectors with different types of industries. Since this study only gathered respondents from the corporate bodies of several industries (accounting, finance and engineering/ road safety), the result thus may be different than what has been portrayed and practised in other sectors that are likely to have a bigger focus on achieving profits in business. The research is important in order to connect the theory and application of gender equality at Malaysia workplace to the ground. Besides that, the study also may focus on employees at the middle management since they are the one who is in the process of developing their career to the top and probably facing real life issues.

## 6.5 Concluding Remarks

To conclude the whole discussion, the study emphasizes that the concept of gender equality is one of complex theories where it is relative to cultures and conditions. In the context of employment, the view of gender equality is concerning the whole process that one is going through in employment and the workplace. Gender equality professes an equal treatment and opportunity for men and women without promising an equal outcome. This is because, there are many factors that are taken into consideration especially in assigning people to their skill set that should not be a problem of gender. In addition, the differences between genders also must be acknowledged and the study suggests that instead of viewing the differences between genders as something negative, it should be focused on complementing each other. This is why it is also important to include the equity of gender in considering gender equality.

The inclusivity of all spheres in the workplace should be practiced where people from various backgrounds, skills, and knowledge come together and act like a puzzle. With every unique experience and skill set, individuals are expected to fit in the puzzle in order to create a better performance and culture that could be brought up in the workplace. In regarding the practice of gender equality, there are some guidelines that should be referred which has been presented by the study in Chapter Five where four principles of gender equality need to be fulfilled which are the principles of equal treatment; principles of entitlement; principles of non-discrimination and; principles of equal opportunity not perpetuating equal outcome.

## REFERENCE

- Abdul Qadir Zubair, Aishah. "The Role of Comparative Legal Research in The Development of Law." *Australian Journal of Basic and Applied Sciences* 8, no. June (2014): 249–256.
- Abdul Wahab, Harlida. "The Constitutional Context of Employment Discrimination." In *Philosophy and Theory of Law*, edited by Asmah Laili Yeon; and Yuhanif Yusof, 224–241. UUM Press, 2015.
- . "The Legal Context of Employment Discrimination in Malaysia." *International Journal for Studies on Children, Women, Elderly and Disabled* 4, no. April (2018): 119–124.
- . "The Legal Context of Employment Discrimination in Malaysia." *International Journal for Studies on Children, Women, Elderly and Disabled* 4, no. 17 (2018): 119–124. [https://www.ijcwed.com/wp-content/uploads/2018/03/IJCWED4\\_062.pdf](https://www.ijcwed.com/wp-content/uploads/2018/03/IJCWED4_062.pdf).
- Abendroth, Anja-kristin. "Gender Equality." 2427, n.d.
- Acharya, Anita S, Anupam Prakash, Pikee Saxena, and Aruna Nigam. "Sampling: Why and How of It?" *Indian Journal of Medical Specialities* 4, no. 2 (2013): 330–333.
- Ackerly, B.A. "Feminist Theory: Liberal." *International Encyclopedia of the Social & Behavioral Sciences*, 2001.
- Afolayan, Adeshina Lanre. "Egalitarianism." *Encyclopedia of Global Bioethics*, 2015.
- Ali, Ashgar, and Ali Mohamed. "Remedies for Dismissal: The Common Law and Statutory Law Approach with Reference to Selected Countries." *The Journal of the Malaysian Bar* 33, no. 2 (2004): 39–74.
- Ali, Faiza. "Gender Equality in the Workplace." In *Managing Diversity and Inclusion An International Perspective*, edited by Jawad Syed and Mustafa Özbilgin. SAGE Publications Ltd, 2015.
- Allen, Eric. "Perceived Discrimination and Health : Paradigms and Prospects." *Sociology Compass* 13, no. 8 (2019): 1–16.
- Allingham, Michael. "Distributive Justice." *Internet Encyclopedia of Philosophy*. Internet Encyclopedia of Philosophy and its Authors, 2013. <https://philpapers.org/archive/ALLDJ.pdf>.
- Anantaraman, V. "Malaysian Industrial Relations System : Its Congruence with the International Labor Code A Background Paper on the Seminar." *Persidangan Perwakilan MTUC* 30 (2010): 28–29.
- Anderson, Elizabeth S. "What Is the Point of Equality?" *Ethics* 109, no. 2 (1999):

287–337.

- Anne Winter, Laura. “Relational Equality in Education: What, How, and Why?” *Oxford Review of Education* 44, no. 3 (2017): 338–352.  
<http://doi.org/10.1080/03054985.2017.1391761>.
- Aristotle. *Nicomachean Ethics*. Edited by W.D. Ross. *Nicomachean Ethics*, 2017.
- . *Politics: A Treatise on Government*. Edited by A.M. William Ellis. J M Dent & Sons Ltd. & In New York By E. P. Dutton & Co, 1912.
- Armstrong, Elisabeth. “Marxist and Socialist Feminism.” *Study of Women and Gender* (2020).
- Arneson, Richard J. “Equality and Equal Opportunity for Welfare.” *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 56, no. 1 (1989): 77–93.
- Azam, Golam. “Rawls’ Theory of Distributive Justice and the Role of Informal Institutions to Get People Access to Health Care in Bangladesh.” *Philosophy and Progress* (2007): 151–167.
- Baker, John, Kathleen Lynch, Sara Cantillon, and Judy Walsh. *Equality From Theory to Action*. Second Edi. Dublin, 2009.
- Barathi, S. *Airasia Bhd v. Rafizah Shima Mohamed Aris*, 2 510–524 (2015).
- Bartlett, Elizabeth Ann. “Liberty, Equality, Sorority: Contradiction and Integrity in Feminist Thought and Practice.” *Women’s Studies International Forum* 9, no. 5–6 (1986): 521–529.
- Batool, Fatima. “Gender Discrimination At Workplace And Mental Health Of Women: A Systematic Literature Review-Palarch’s.” *Journal Of Archaeology Of Egypt/Egyptology* 17, no. 8 (2020): 622.
- Benfield, Barker. “Mary Wollstonecraft : Eighteenth-Century Commonwealthwoman.” *Journal of the History of Ideas* 50, no. 1 (1989): 95–115.
- Benjamin, Jessica. “A Desire of One’s Own: Psychoanalytic Feminism and Intersubjective Space.” In *Feminist Studies/Critical Studies*, 78–101, 1986.
- Bickley, Julia Elizabeth. “The Relationship between Second-Wave Feminist Philosophy and Interpretation of Biblical Gender Roles by Entering Seminary Students,” 2011.  
<http://dx.doi.org/10.1016/j.jsames.2011.03.003>  
<https://doi.org/10.1016/j.gr.2017.08.001>  
<http://dx.doi.org/10.1016/j.precamres.2014.12.018>  
<http://dx.doi.org/10.1016/j.precamres.2011.08.005>  
<http://dx.doi.org/10.1080/00206814.2014.902757>  
<http://dx.doi.org/10.1016/j.jsames.2011.03.003>
- Brake, Elizabeth. “Rawls and Feminism: What Should Feminists Make of Liberal Neutrality?” *Journal of Moral Philosophy* 1, no. 3 (2004): 293–309.

- Broad, Jacqueline. "The Routledge Companion to Feminist Philosophy." *The Routledge Companion to Feminist Philosophy*, no. October (2017).
- Brown, Jeffrey M. "Relational Equality and Disability Injustice." *Journal of Moral Philosophy* 16, no. 3 (2018): 327–357.
- Brownlee, John R., and Jamie Dickey Ungerleider. "Decision Making and Ethics." In *Critical Heart Disease in Infants and Children*, 73. Third Edit. Elsevier B.V., 2019. <https://doi.org/10.1016/B978-1-4557-0760-7.00009-7>.
- Cambridge Dictionary. "Equality." *Cambridge University Press*. Last modified 2020. Accessed June 29, 2020. <https://dictionary.cambridge.org/dictionary/english/equality>.
- Carby-Hall, J.R. "The Sources of the Contract of Employment — Implied Terms at Common Law — the Employer's Duties." *Managerial Law* 26, no. 1 (1984): i–14.
- Chand, Hari. *Modern Jurisprudence*. Kuala Lumpur: International Law Book Services, 2001.
- Chang, Tracy F. H. "Book Review: Gender Equality and Decent Work: Good Practices at the Workplace. By ILO Bureau for Gender Equality. Geneva, Switzerland: International Labour Organization, 2005. 194 Pp. Free Download from ILO." *Labor Studies Journal* 32, no. 2 (2007): 217–218.
- Charlton, Jacqueline H. "Employee Participation in the Public Sector: A Review." *Journal of General Management* 8, no. 3 (1983): 62–78.
- Chernilo, Daniel. "The Idea of Philosophical History." *British Journal of Sociology* 65, no. 2 (2014): 33–50.
- Cho, Yonjoo, Gary N. McLean, Iratrachar Amornpipat, Wei Wen Chang, Gertrude I. Hewapathirana, Mayuko Horimoto, Mimi Miyoung Lee, et al. "Asian Women in Top Management: Eight Country Cases." *Human Resource Development International* 18, no. 4 (2015): 407–428.
- Coleman, By-, and S James. "The Concept of Equality of Education" (1967): 13–47.
- Connor, Pat O. "Policy Reviews in Higher Education Gender Imbalance in Senior Positions in Higher Education : What Is the Problem ? What Can Be Done ?" *Policy Reviews in Higher Education* 3, no. 1 (2018): 28–50.
- Coons, John E., and Patrick M. Brennan. "Nature and Human Equality." *The American Journal of Jurisprudence* 40, no. 1 (1995): 287–334. <https://doi.org/10.1093/ajj/40.1.287>.
- Coupland, Robin M. "The Humanity of Humans: Philosophy, Science, Health, or Rights?" *Health and Human Rights* 7, no. 1 (2003): 159.
- Davies, Margaret. "Unity and Diversity in Feminist Legal Theory." *Philosophy Compass* 2, no. 4 (2007): 650–664.

- Department of Statistics Malaysia. *Press Release: Statistics on Women Empowerment in Selected Domains , Malaysia, 2018. Department of Statistics Malaysia, 2018. Accessed October 3, 2019.*  
[https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=444&bu1\\_id=SGMzVDh0cVUwK0t6SGN6UzhwN1dmdz09&menu\\_id=L0pheU43NWJwRWVVSZklWdzQ4TlhUUT09](https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=444&bu1_id=SGMzVDh0cVUwK0t6SGN6UzhwN1dmdz09&menu_id=L0pheU43NWJwRWVVSZklWdzQ4TlhUUT09).
- . “Statistics on Women Empowerment in Selected Domains, Malaysia, 2019.” *Department of Statistics Malaysia*. Last modified 2019. Accessed March 11, 2020.  
<https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=U2UvVIIQQIJsbzkwclQrdVlnMzJTdz09>.
- Descartes, Rene. “Discourse on the Method of Rightly Conducting the Reason, and Seeking Truth in the Sciences.” *Annals of Neurosciences* 16, no. 2 (2009): 57–61.
- Dubber, Markus D. “Critical Analysis of Law: Interdisciplinarity, Contextuality, and the Future of Legal Studies.” *SSRN Electronic Journal* 1, no. 1 (2014): 1–4.  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2385656](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2385656).
- Duignan, Adam Augustyn; Adam Zeidan; Alicja Zelazko; Alison Eldridge; Amy McKenna; Amy Tikkanen; Ann Gadzikowski; Barbara A. Schreiber; Brian. “Mary Wollstonecraft.” *Encyclopaedia Britannica*. Encyclopaedia Britannica, Inc, 2020. Accessed November 15, 2020.  
<https://www.britannica.com/biography/Mary-Wollstonecraft>.
- Duman, Fatih. “The Roots of Modern Feminism : Mary Wollstonecraft and the French Revolution.” *International Journal of Humanities and Social Science* 2, no. 9 (2012): 75–89.
- Equal Opportunity Commission. “What Is Substantive Equality ?” *Government of Western Australia*.
- Equal Right Trust. “The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality.” *Equal Rights Trust*. Last modified 2007. Accessed November 19, 2019. <https://www.equalrightstrust.org/content/ideas-equality-and-non-discrimination-formal-and-substantive-equality>.
- Equal Right Trust (ERT). *Washing the Tigers: Addressing Discrimination And Inequality In Malaysia*. London, 2012.
- Equal Rights Advocate. “KNOW YOUR RIGHTS AT WORK: Gender Discrimination at Work.” *Equal Rights Advocate*. Last modified 2019. Accessed April 13, 2020. <https://www.equalrights.org/issue/economic-workplace-equality/discrimination-at-work/>.
- FindLaw. “Corporate Structure : From Directors to Shareholders.” *Thomson Reuters*. Accessed February 20, 2020. <https://smallbusiness.findlaw.com/incorporation-and-legal-structures/corporate-structure-directors-to-shareholders.html>.
- . “Gender Discrimination.” *Thomson Reuters*. Last modified 1993. Accessed

January 7, 2020. <https://civilrights.findlaw.com/discrimination/gender-discrimination.html>.

Ford, Lynne E. "Two Paths to Equality." In *Women and Politics: The Pursuing of Equality*, 148–162. Fourth Edi. Taylor & Francis Group, 2017.

Forrest, Peter. "Stanford Encyclopedia of Philosophy The Identity of Indiscernibles." *Stanford Encyclopedia of Philosophy* 9 (2011).

Fraile, Marta, and Raul Gomez. "Bridging the Enduring Gender Gap in Political Interest in Europe: The Relevance of Promoting Gender Equality." *European Journal of Political Research* 56, no. 3 (2017): 601–618.

Frazer, Elizabeth. "Mary Wollstonecraft's Political Political Theory." *Review of Politics* 82, no. 1 (2020): 25–48.

Fredman, Sandra. "Equality: Concept and Controversies." In *Discrimination Law*, 1–26. Great Britain: Oxford University Press, 2002.

———. "Substantive Equality Revisited." *International Journal of Constitutional Law* 14, no. 3 (2016): 712–738.

Froehlicher, Marie, Lotte Knuckles Griek, Azadeh Nematzadeh, Lindsey Hall, and Nathan Stovall. "Gender Equality in the Workplace: Going beyond Women on the Board." *S&P Global* (2021).  
<https://www.spglobal.com/esg/csa/yearbook/articles/gender-equality-workplace-going-beyond-women-on-the-board>.

Fui, Beatrice, and Yee Lim. "Malaysia Women Left Behind ? Closing the Gender Gap in Malaysia." *Japan Labor Issues* 3, no. 17 (2019): 22–29.

Ghoshal, Neela. "'The Deceased Can't Speak for Herself': Violence Against LGBT People in Malaysia." *Human Rights Watch*, June 25, 2019.  
<https://www.hrw.org/news/2019/06/25/deceased-cant-speak-herself-violence-against-lgbt-people-malaysia>.

Gochhayat, Sai Abhipsa. "'Social Engineering by Roscoe Pound': Issues in Legal and Political Philosophy." *SSRN Electronic Journal* (2010): 1–9.

Government of Malaysia. *Employment Act 1955*, 2012.  
<http://jtksm.mohr.gov.my/index.php/my/akta-dan-peraturan-perburuhan>.

Graham, Stewart. "A Jurisprudence of Equality : The Fourteenth Amendment and School Desegregation." *Akron Law Review* 11, no. 2 (1978): 203–224.

Gravel, Eric, Tomi Kohiyama, and Katerina Tsotroudi. "A Legal Perspective on the Role of International Labour Standards in Rebalancing Globalization." *Revue Interventions économiques*, no. 49 (2014): 0–20.

Grimson, Jane, and William Grimson. "Eliminating Gender Inequality in Engineering , Industry , and Academia" (2019): 315–339.

- Hafez, Sherine. "Feminism in Islam: Secular and Religious Convergences by Margot Badran ." *Journal of Middle East Women's Studies* 7, no. 2 (2011): 114–117.
- Harth, Erica. "Cartesian Women." *Yale French Studies*, no. 80 (1991): 146–164.  
<http://www.jstor.org/stable/2930265>.
- Harwood, Brennen Kenneth Leon. "Equality and Global Justice: Tracing the Scope and Grounds of Egalitarianism," 2014.
- Haspels, Nelien, and Eva Majurin. *Work , Income and Gender Equality in East Asia : Action Guide*. First edit. Bangkok: International Labour Office, 2008.
- Hassan, Kamal Halili. "The Dismissal of a Pregnant Stewardess: Still Lawful in Malaysia." *Journal of Gender Studies* 21, no. 2 (2012): 125–132.
- Hays. "Men Less Likely to Recognize Gender Inequality as an Issue in the Workplace." Last modified 2019. Accessed October 7, 2019.  
[https://www.hays.com.my/press-releases/HAYS\\_2028854](https://www.hays.com.my/press-releases/HAYS_2028854).
- Heilman, Madeline E. "Gender Stereotypes and Workplace Bias." *Research in Organizational Behavior* 32 (2012): 113–135.  
<http://dx.doi.org/10.1016/j.riob.2012.11.003>.
- Heller, Nathan. "The Philosopher Redefining Equality." *The New Yorker*, no. 7 January (2019): 1–23. <https://www.newyorker.com/magazine/2019/01/07/the-philosopher-redefining-equality>.
- Hesová, Zora. "Secular, Islamic or Muslim Feminism? The Place of Religion in Women's Perspectives on Equality in Islam." *Gender a Vyzkum / Gender and Research* 20, no. 2 (2019): 26–46.
- High-Value Detainee Interrogation Group. *Interrogation: A Review of the Science*, 2016.
- Hirschman, Charles. "Gender, the Status of Women, and Family Structure in Malaysia." *Malaysian Journal of Economic Studies* 53, no. 1 (2016): 33–50.
- Horkoff, Tara. "SOURCES: CHOOSING THE RIGHT ONES." In *Writing for Success 1st Canadian Edition*, 1–25. BCcampus Open Education, 2019.  
<https://opentextbc.ca/writingforsuccess/chapter/chapter-7-sources-choosing-the-right-ones/>.
- Horowitz, Maryanne Cline. "Aristotle and Woman." *Journal of the History of Biology* 9, no. 2 (2013): 183–213.
- Human Rights Commission of Malaysia. *An Independent Report to the Committee on the Convention on the Elimination of All Forms of Discrimination against Women ( CEDAW )*, 2017.
- Humphrey, Nicholas. "Introduction : Descartes," no. April (2015).
- Hutchinson, Terry. "The Doctrinal Method: Incorporating Interdisciplinary Methods

in Reforming the Law.” *Erasmus Law Review* 38, no. 3 (2016).

ILO. “Ratifications for Malaysia.” *International Labour Organization*. Last modified 2016. Accessed August 20, 2021.

[http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102960](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960).

International Labour Organization (ILO). “About the ILO.” *International Labour Organization (ILO)*. Last modified 2012. Accessed February 28, 2021.

<http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>.

———. “Mission and Impact of the ILO.” *International Labour Organization (ILO)*. Accessed March 6, 2021. <https://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>.

———. *The Elimination of Discrimination in Respect of Employment and Occupation. International Labour Organizations (ILO)*, 2000. Accessed April 13, 2020.

<https://www.ilo.org/public/english/standards/relm/gb/docs/gb277/pdf/d2-discr.pdf>.

Ismail, Rahmah, Maryam Farhadi, and Chung Khain Wye. “Occupational Segregation and Gender Wage Differentials: Evidence from Malaysia.” *Asian Economic Journal* 31, no. 4 (2017): 381–401.

Ismail, Suharne. “Unfair Dismissal or Unlawful Termination : A Review of Section 20, Industrial Relation Act 1967.” *Journal of Law & Governance* 1, no. 1 (2018): 15–24.

Johnson, Ben, and Richard Jordan. “Should Like Cases Be Decided Alike?: A Formal Analysis of Four Theories of Justice.” *SSRN Electronic Journal* (2018): 1–33.

Jubilee, Ribed Vianeca W., Roy W.L. Khong, and Woan Ting Hung. “Would Diversified Corporate Boards Add Value? The Case of Banking Institutions in Malaysia.” *Asia-Pacific Journal of Business Administration* 10, no. 2–3 (2018): 218–228.

Kadiresan, Vimala, and Najwa Khalid Javed. “Discrimination in Employment and Task Delegation at Workplace in the Malaysian Context.” *International Journal of Academic Research in Business and Social Sciences* 5, no. 7 (2015): 29–41. <http://dx.doi.org/10.6007/IJARBS/v5-i7/1707>.

Kausar, Zeenath. *Modern Western Political Ideologies: An Islamic Critique*. Malaysia: Pearson Malaysia Sdn. Bhd., 2005.

Kelan, Elisabeth K., and Patricia Wratil. “Post-Heroic Leadership, Tempered Radicalism and Senior Leaders as Change Agents for Gender Equality.” *European Management Review* 15, no. 1 (2017): 5–18.

Kevin Davasagayam, and Alisha. “MTUC Slams Move to Withdraw Proposed Anti-Discrimination Provision.” *The Sun Daily*, September 24, 2019.

<http://www.mtuc.org.my/mtuc-slams-move-to-withdraw-proposed-anti-discrimination-provision/>.

- Krippendorff, Klaus. "Content Analysis." *The International Encyclopedia of Communication*, 1989. [http://repository.upenn.edu/asc\\_papers/226](http://repository.upenn.edu/asc_papers/226).
- Kroska, Amy, and Trent C Cason. "The Gender Gap in Business Leadership : Exploring an Affect Control Theory Explanation." *Social Psychology Quarterly* 00, no. 0 (2019): 1–23.
- Kumar, Naresh. "Social Engineering by the Roscoe Pound." *Lawnotes4u*. Last modified 2020. Accessed September 20, 2021. <https://www.lawnotes4u.in/social-engineering-by-the-roscoe-pound-sociological-school/>.
- Leung, Ming D, Sharon Koppman, and Richard W. Lu. *The Dilemma of Mobility: The Differential Effects of Women and Men's Erratic Career Paths in a High Tech Firm*, 2019.
- von Leyden, W. "Aristotle on Equality and Justice." *Aristotle on Equality and Justice* (1985).
- Liberalism, Political, and Political Liberalism. "Notre Dame Philosophical Reviews Feminist Interpretations of John Rawls" (2014).
- Lim, Weng Marc. "A Comparative Review of Workplace Relations Law in Australia, UK and Malaysia." *International Journal of Public Law and Policy* 3, no. 1 (2013): 104–112.
- Locke, John. *Two Treatises of Government*, 1823.
- Louth, Andrew, and Helmut Thielicke. "Theology." *Encyclopedia Britannica*. Britannica, 2014. <https://www.britannica.com/topic/theology/The-19th-century-to-the-present>.
- Mackay, Finn. "Radical Feminism." *theory, Culture & Society* 32, no. 7 (2015): 332–336.
- Mackenzie, J. S. "The Methods of Ethics. Henry Sidgwick ." *The International Journal of Ethics* 4, no. 4 (1894): 512–514.
- MacKinnon, Catharine A. "A Reply to Sandra Fredman." *International Journal of Constitutional Law* 14, no. 3 (2016): 739–746.
- Mahon, Joseph. *Existentialism, Feminism and Simone de Beauvoir*. Edited by Jo Campling. First edit. New York: ST. MARTIN'S PRESS, INC, 1997.
- Malin, Martin H. "The Distributive and Corrective Justice Concerns in the Debate over Employment At-Will : Some Preliminary Thoughts." *Chicago-Kent Law Review* 68, no. 1 (1992): 117–146.
- Marshall, Christopher John. "Bringing About Equality," 2017.

- Marui, Kiyoyasu. "The Role of the Parents in the Education of Children." *Psychiatry and Clinical Neurosciences* 6, no. 3 (1952): 221–230.
- Matnuh, Harpani. "Law as a Tool of Social Engineering." *Advances in Social Science, Education and Humanities Research (ASSEHR)* 147, no. Icsse 2017 (2018): 118–120.
- McCrudden, Christopher. "Merit Principles" 20, no. 3 (2015): 675–699.
- McGrew, Will. "Gender Segregation at Work: 'Separate but Equal' or 'Inefficient and Unfair.'" *Washington Center for Equitable Growth*. Last modified 2016. Accessed January 29, 2020. <https://equitablegrowth.org/gender-segregation-at-work-separate-but-equal-or-inequitable-and-inefficient/>.
- Merriam-Webster. "Quasi Corporation | Definition of Quasi Corporation." Accessed September 25, 2021. <https://www.merriam-webster.com/dictionary/quasi-corporation>.
- Mickey, Ethel L. "When Gendered Logics Collide: Going Public and Restructuring in a High-Tech Organization." *Gender & Society* 33, no. 4 (2019): 509–533.
- Mills, Albert, Gabrielle Durepos, and Elden Wiebe. "Socialist Feminism." *Encyclopedia of Case Study Research*, 2012.
- Ministry of Women, Family and Community Development. "Malaysia Successfully Presented Reports on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)." *Ministry of Women, Family and Community Development*. Putrajaya, February 22, 2018.
- Mohamad, Maznah, Cecilia Ng, and Tan Hui. *Feminism and the Women's Movement in Malaysia: An Unsung (R)Evolution* (Routledge. Edited by Mohammed Hazim Shah, Shamsul A.B., and Terence Gomez. Routledge Taylor & Francis Group, 2006.
- Mohamed, Khadijah. "Combining Methods in Legal Research." *The Social Sciences (Pakistan)* 11, no. 21 (2016): 5191–5198.
- Mujibullah. "The Metaphysical Understanding The Concept of Allah." *EPRA International Journal of Multidisciplinary Research (IJMR)-Peer Reviewed Journal* 6, no. 9 (2020): 7–11. <https://doi.org/10.36713/epra2013>.
- Mulgan, R. "Aristotle and the Political Role of Women." *History of Political Thought*, 1994.
- Murugiah, Sumathi. *Norhapizah Khairani v. Bank Muamalat Malaysia Berhad*, 1991–20 (2018).
- Nagel, Thomas. *What Does It All Mean? A Very Short Introduction to Philosophy*. Oxford University Press. New York: Oxford University Press, 1987.
- Nam Institute for the Empowerment of Women. "Women Directors Programme," 2016.

- Narayanan, Selvi. "A Study on Challenges Faced by Disabled People at Workplace in Malaysia." *International Journal for Studies on Children, Women, Elderly and Disabled* 5, no. Oct (2018): 85–92.
- Nathan, Christopher. "What Is Basic Equality." *Etica e Politica* 15, no. 1 (2013): 583–605.
- Navin, Mark C. "Democratic Equality." *Encyclopedia of Global Justice*, 2011.
- Neufeld, Blain, and Chad van Schoelandt. "Political Liberalism, Ethos Justice, and Gender Equality." *Law and Philosophy* 33, no. 1 (2014): 75–104.
- Nurhafilah Musa, and Asmak Husin. "Towards Gender Equality in Malaysia: Legal and Policy Perspectives." 313–325, 2018. <http://www.ukm.my/pkwtfh/wp-content/uploads/2018/11/28-Towards-Gender-Equality-In-Malaysia-Legal-And-Policy-Perspectives.pdf>.
- O'Brian, William E. "Equality in Law and Philosophy." *Inquiry* 53, no. 3 (2010): 257–284. <http://dx.doi.org/10.1080/00201741003784648>.
- Okin, Susan Moller. "Justice and Gender." *Philosophy & Public Affairs* 16, no. 1 (1987): 42–72.
- Olatokun, Ganiat, Rusniah Ahmad, and Harlida Abdul Wahab. "Feminism and the Rights of the Unborn: A Critical Analysis." In *Philosophy and Theory of Law*, edited by Asmah Laili Yeon and Yuhanif Yusof, 155–170. First Edit. UUM Press, 2015.
- Olatokun, Ganiat Mobolaji. "An Analysis of the Concept of the Right To Choose in Relation To Abortion in Nigeria : A Case Study of the Convention on the Elimination of All Forms of Discrimination Against Women," 2014.
- Oppenheim, Felix E. "Egalitarianism as a Descriptive Concept." *American Philosophical Quarterly* 7, no. 2 (1970): 143–152. <http://www.jstor.org/stable/20009343>.
- Othman, Zaiton, and Nooraini Othman. "A Literatural Review on Work Discrimination among Women Employees." *Asian Social Science* 11, no. 4 (2015): 26–32.
- Ottsen, Christina Lundsgaard. "Lucky to Reach the Top? : Gendered Perspectives on Leadership Acquisition across Qatar and Denmark." *Gender in Management: An International Journal* 34, no. 7 (2019): 541–553.
- Owoyemi, Musa Yusof. *A Brief Historical Examination of the Diversity of the Feminist Discourse*, n.d.
- Plickert, Gabriele. "A Life Course Approach to Workplace Discrimination and Employment : Evidence from a US National Sample of Women and Men Lawyers." In *Gender, Age and Inequality in the Professions*. New York: Routledge, 2019.

- Podgorecki, Adam. "Law and Social Engineering." *Human Organization* 21, no. 3 (1962): 177–181.
- Pojman, Louis. "Theories of Equality : A Critical Analysis." *Behavior and Philosophy* 23, no. 2 (1995): 1–27.
- Pollard, Jane. *Feminism and Work. International Encyclopedia of Human Geography*. Second Edi. Vol. 5. Elsevier, 2020. <http://dx.doi.org/10.1016/B978-0-08-102295-5.10179-9>.
- Pollock, Lansing. "Moral Equality." *Public Affairs Quarterly* 15, no. 3 (2001): 241–260.
- Pretorius, Engela. "Men's Role in the Quest for Gender Justice: A Historical Overview of Antifeminism and Profeminism." *Tydskrif vir Geesteswetenskappe* 58, no. 4 (2018): 887–904.
- Quinan, Christine L. "Feminism, Existential." *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies* (2016): 1–3.
- Rahman, Anwar Abdul, Nor Haizan Mehat, and Khatijah Hamzah. "Discrimination Against Women in Workplace : A Case Study on Hotel Dress Code." *Journal of Hospitality and Networks* 1 (2019): 18–22.
- Rai, Shirin M., Benjamin D. Brown, and Kanchana N. Ruwanpura. "SDG 8: Decent Work and Economic Growth – A Gendered Analysis." *World Development* 113 (2019): 368–380. <https://doi.org/10.1016/j.worlddev.2018.09.006>.
- Raj, Anita, Tina Kumra, Gary L. Darmstadt, and Karen M. Freund. "Achieving Gender and Social Equality: More Than Gender Parity Is Needed." *Academic medicine : journal of the Association of American Medical Colleges* 94, no. 11 (2019): 1658–1664.
- Rawls, John. "A Theory of Justice." In *Economic Justice in Perspective*, 207–221. The Belknap Press of Harvard University Press, 1971. <https://www.csus.edu/indiv/c/chalmersk/econ184sp09/johnrawls.pdf>.
- Raz, J. "Principles of Equality." *Mind* 87, no. 3 (1978): 321–342.
- Rehman, Azizur, Muhammad Ishaq, and Syed Bacha Agha. "Grief and Shock , Discernment and Dificulties , Their Reasons and Motives in The Light of the Teachings of the Holy Prophet ( PBUH )." *Rahat-ul-Quloob* 3, no. 2 (2019): 23–26.
- Reiner, Toby. "The Philosophical Foundations of Gender Equality in Liberalism and Marxism: A Study of Mill and Marx." *Twenty-First Century Society* 3, no. 1 (2008): 13–30.
- Robinson, Victoria. "Radical Revisionings?: The Theorizing of Masculinity and (Radical) Feminist Theory." *Women's Studies International Forum* 26, no. 2 (2003): 129–137.

- Rolleri, Lori A. "Understanding Gender and Gender Equality Gender & Sexual Health Part One" (2013).
- Rosenbury, Laura A. "Postmodern Feminist Legal Theory : A Contingent , Contextual Account." In *Feminist Legal Theory in the United States and Asia: A Dialogue* (Cynthia Grant Bowman, Ed., 2016 Forthcoming), 1–14. University of Florida Levin College of Law Research Paper No. 16-39, 2016.
- Russell, J S. "Okin ' s Rawlsian Feminism ? Justice in the Family and Another Liberalism." *Social Theory and Practice* 21, no. 3 (1995): 397–426.
- Sahamid, Badariah. "Teori-Teori Keadilan." In *Jurisprudens Dan Teori Undang-Undang Dalam Konteks Malaysia*, 177–190, 2005.
- . "Teori Undang-Undang Feminisme." In *Jurisprudens Dan Teori Undang-Undang Dalam Konteks Malaysia*, 165–175. Sweet & Maxwell Asia, 2005.
- Salbiah Ahmad. "Gender Equality Under Article 8: Human Rights, Islam and 'Feminisms.'" *The Malaysian Bar*. Last modified 2005. Accessed November 19, 2019.  
[http://www.malaysianbar.org.my/gender\\_issues/gender\\_equality\\_under\\_article\\_8\\_human\\_rights\\_islam\\_and\\_feminisims\\_by\\_salbiah\\_ahmad.html](http://www.malaysianbar.org.my/gender_issues/gender_equality_under_article_8_human_rights_islam_and_feminisims_by_salbiah_ahmad.html).
- Scheffler, Samuel. "What Is Egalitarianism?" *Philosophy and Public Affairs* 31, no. 1 (2003): 5–39.
- Schemmel, Christian. "Distributive and Relational Equality." *Politics, Philosophy and Economics* 11, no. 2 (2012): 123–148.
- Scholten, Christina, and Hope Witmer. "The Opaque Gendered Lens – Barriers to Recruitment and Career Development." *Gender in Management* 32, no. 1 (2017): 47–65.
- Segovia-Pérez, Mónica, Pilar Laguna-Sánchez, and Concepción de la Fuente-Cabrero. "Education for Sustainable Leadership: Fostering Women's Empowerment at the University Level." *Sustainability (Switzerland)* 11, no. 20 (2019).
- Setiawan, Heri, Steven Ouddy, and Mutiara Girindra Pratiwi. "Isu Kesetaraan Gender Dalam Optik Feminist Jurisprudence Dan Implementasinya Di Indonesia." *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah dan Hukum* 5, no. 2 (2018): 121.
- Shah, Saeeda. "'We Are Equals'; Datum or Delusion: Perceptions of Muslim Women Academics in Three Malaysian Universities." *British Journal of Sociology of Education* 39, no. 3 (2017): 1–14.  
<http://doi.org/10.1080/01425692.2017.1343126>.
- Shahrilnizam, M., P. Balakrishnan, and M. K. Murshamsul. "Employer's Managerial Prerogative Right: An Evaluation of Its Relevancy to the Employer-Employee Relationship." *Pertanika Journal of Social Sciences and Humanities* 23, no. SpecialIssue11 (2015): 227–238.

- Shalahudin, Henri. “Wacana Kesetaraan Gender Dalam Pemikiran Islam Di Institusi Pengajian Tinggi Islam Negeri Di Indonesia: Kajian Kes Di Universitas Islam Negeri Sunan Kalijaga Yogyakarta.” Universiti Malaya, 2016.
- Shapiro, Scott J. *What Is the Rule of Recognition (and Does It Exist)?*, 2009.
- Shuaib, Farid Sufian. “Administration of Islamic Law and Human Rights: The Basis and Its Trajectory in Malaysia.” *Al-Jami’ah* 56, no. 2 (2018): 281–304.
- Sparshott, Francis. “The Open Repository @ Binghamton ( The ORB ) Aristotle on Women” (1983).
- Sreenevasan, Ambiga. “PRESS RELEASE: Common Law - The Malaysian Bar.” *The Malaysian Bar*. Last modified 2007. Accessed September 27, 2021. <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-common-law>.
- Stamarski, Cailin S., and Leanne S. Son Hing. “Gender Inequalities in the Workplace: The Effects of Organizational Structures, Processes, Practices, and Decision Makers’ Sexism.” *Frontiers in Psychology* 6, no. 1400r (2015): 1–20.
- Suffian. *Datuk Haji Harun Bin Haji Idris v. Public Prosecutor*, 2 MLJ 155 (1977).
- Suhainah, Wahiduddin. *Mohd Ridzwan Abdul Razak v. Asmah Hj Mohd Nor*, 6 346–367 (2016).
- Sumner, Caden. “René Descartes and the Cogito: Our Foundation of Philosophical Knowledge.” *ResearchGate*, no. October (2015).
- Sundara Raja, Sivachandralingam, and Evelyn Shyamala Devadason. “Lack of Gender Sensitization in Malaysian Laws and Regulations: Need for a Rights-Based Approach.” *SSRN Electronic Journal* 26, no. 2 (2017): 71–83.
- Swee Yik, Chia. “Basic Guide to Employment Law in Malaysia.” *Chia, Lee & Associates*. Last modified 2019. Accessed December 27, 2020. <https://chiale.com.my/knowledge-hub/basic-guide-to-employment-law-in-malaysia>.
- Syed Sheikh, Sharifah Syahirah. “The Implementation of CEDAW in Malaysia : A Human Rights-Based Analysis.” *Sarjana* 25, no. 3 (2010): 55–72.
- The Commissioner of Law Revision, Malaysia. *Federal Constitution*, 2010.
- The Equal Right Trust. “Declaration of Principles on Equality.” *The Equal Right Trust*. Last modified 2008. Accessed December 26, 2020. <https://www.equalrightstrust.org/ertdocumentbank/Pages from Declaration perfect principle.pdf>.
- The Organisation for Economic Co-operation and Development (OECD). “OECD ILibrary | Corporate Sector.” Accessed September 25, 2021. [https://www.oecd-ilibrary.org/economics/corporate-sector/indicator-group/english\\_a68c33e9-en](https://www.oecd-ilibrary.org/economics/corporate-sector/indicator-group/english_a68c33e9-en).

- Thomé, Candy Florencio, and Rodrigo Garcia Schwarz. "The Principle of Gender Equality and the Fundamental Rights and Guarantees of Participation of Women in Union Organizations in Brazil." *Revista Quaestio Iuris* 10, no. 2 (2017): 1–31.
- Todd, Janet M. "The Biographies of Mary Wollstonecraft." *Signs: Journal of Women in Culture and Society* 1, no. 3, Part 1 (1976): 721–734.
- Triana, María del Carmen, Mevan Jayasinghe, Jenna R. Pieper, Dora María Delgado, and Mingxiang Li. "Perceived Workplace Gender Discrimination and Employee Consequences: A Meta-Analysis and Complementary Studies Considering Country Context." *Journal of Management* 45, no. 6 (2019): 2419–2447.
- U . S . Equal Employment Opportunity Commission. "Sexual Harassment." *U . S . Equal Employment Opportunity Commission*. Last modified 1964. Accessed April 13, 2020. [https://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](https://www.eeoc.gov/laws/types/sexual_harassment.cfm).
- UN Women. "Facts and Figures: Women's Leadership and Political Participation | What We Do." Last modified 2021. Accessed September 24, 2021. <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>.
- . "Overview of the Convention on the Elimination of All Forms of Discrimination against Women." *United Nations Entity for Gender Equality and the Empowerment of Women*. Last modified 2007. Accessed June 13, 2020. <https://www.un.org/womenwatch/daw/cedaw/>.
- Unifem. *Advancing Gender Equality Using CEDAW and UN Security Council Resolution 1325; Training Module for Gender Equality Advocates*, 2007.
- United Nations. *Universal Declaration of Human Rights*. United Nations, 2015. <http://library1.nida.ac.th/termpaper6/sd/2554/19755.pdf>.
- United Nations Development Programme. "Sustainable Development Goals." *UNDP2020*. Last modified 2020. Accessed February 15, 2020. <https://www.my.undp.org/content/malaysia/en/home/sustainable-development-goals/goal-5-gender-equality.html>.
- United Nations Entity for Gender Equality and the Empowerment of Women. "Concepts and Definitions." *United Nations*. Last modified 2019. Accessed April 6, 2020. <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>.
- . "Convention on the Elimination of All Forms of Discrimination against Women." *UN Women*. Accessed December 25, 2020. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro>.
- US Legal Inc. "Quasi Corporation Law and Legal Definition | USLegal, Inc." Accessed September 25, 2021. <https://definitions.uslegal.com/q/quasi-corporation/>.
- Victorian Equal Opportunity & Human Rights Commission. "Discrimination -

Workplace.”

- Voigt, Kristin. “Distributive Equality, Relational Equality and Preferences about Higher Education.” *Theory and Research in Education* 15, no. 2 (2017): 109–128.
- Vong, Sreytouch, Bandeth Ros, Rosemary Morgan, and Sally Theobald. “Why Are Fewer Women Rising to the Top? A Life History Gender Analysis of Cambodia’s Health Workforce.” *BMC Health Services Research* 19, no. 1 (2019): 1–9.
- Wahab, Harlida Abdul, Azhar Alias, and Haslinda Mohd Anuar. “Equality Vis-À-Vis Affirmative Action From Different Equality Vis-À-Vis Affirmative Action From.” *International Journal of Law, Government and Communication* 2, no. 6 (2017): 31–45.
- Wahab, Harlida Abdul, and Nik Ahmad Kamal Nik Mahmud. “Defining Employment Discrimination in Malaysian Legal Context.” *Pertanika Journal of Social Sciences and Humanities* 28, no. 1 (2020): 379–395.
- Webb, Mark O., A.G. Karabayeva, and I.M. Kuntuova. “The Role of Philosophy in the Life of a Student of a Technical University.” *Procedia - Social and Behavioral Sciences* 174 (2015): 3847–3852.  
<http://dx.doi.org/10.1016/j.sbspro.2015.01.1123>.
- Weisberg, Yanna J., Colin G. De Young, and Jacob B. Hirsh. “Gender Differences in Personality across the Ten Aspects of the Big Five.” *Frontiers in Psychology* 2, no. 178 (2011): 1–11.
- Westen, Peter. “On ‘Confusing Ideas’: Reply.” *The Yale Law Journal* 91, no. 6 (1982): 1153.
- . “The Empty Idea of Equality.” *Harvard Law Review* 95, no. 3 (1982): 537–596.
- Wolff, Kristina. “Psychoanalytic Feminism.” *The Blackwell Encyclopedia of Sociology* (2007).
- Wollstonecraft, Mary. *A Vindication of the Rights of Woman*, 1792.
- Wolters, A. M. “On the Idea of Worldview and Its Relation to Philosophy.” In *Stained Glass: Worldviews and Social Science*, edited by Marshall et al., 25:14–25, 1983.  
[http://view.edu/\\_data/view/file/m2\\_6/845308285\\_JtqoSdc\\_AMVWorldviews-ED8CA8EB9FACEB8BA4EC9E84EBB680EBB684.pdf](http://view.edu/_data/view/file/m2_6/845308285_JtqoSdc_AMVWorldviews-ED8CA8EB9FACEB8BA4EC9E84EBB680EBB684.pdf).
- Women’s Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG). *The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia*, 2018.
- Women’s Aid Organisation (WAO), and Joint Action Group for Gender Equality (JAG). *Critical Issues and Questions to Be Raised with the Malaysian*

*Government at the 69 Th CEDAW Pre-Sessional Working Group, 2017.*  
<http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality->.

World Bank Group. *Gender at Work: A Companion to the World Development Report on Jobs. World Bank Group Gender & Development, 2014.*

Yow, Jack. "Malaysia." In *Employment Law Review*, 369–382. 11th editi. The Law Review, 2020. <https://thelawreviews.co.uk/edition/the-employment-law-review-edition-11/1216113/malaysia>.

*Industrial Relations Act 1967, 2010.*



## Appendix A

### Interview Question (Group A)



Dear Prof./ Assoc. Prof./ Dr./ Sir/ Madam.

You are invited as a respondent to participate in an interview for an academic study entitled "An Analysis on Gender Equality in Philosophical and Legal Perspective". Your selection as a respondent is based on your position and knowledge in relation to gender equality issues. The objective of this interview is to get your views on the issues and the concept of gender equality in the workplace.

For your information, this interview is intended to meet the needs of researchers for the Master of Law. Feedback from this interview will be used for academic purposes only. Your information as a respondent is for the purpose of the researcher's record only unless you are willing and expressly agree to allow the researcher to share the information.

If there are any questions or concerns, you can contact the researcher, Nur Aina Atiqah binti Mohd Arif at 018-2954605.

Your cooperation to be involved in this interview is greatly appreciated. I would also like to thank you for your involvement in making this research a success. Thank you.

Best regards,

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## INTERVIEW QUESTIONS

### General information

1. Gender:  Male  Female
2. Current position: \_\_\_\_\_
3. Period of service in the organisation: \_\_\_\_\_
4. Department: \_\_\_\_\_
5. Level of education: \_\_\_\_\_

### Questions

1. How do you define gender equality? What is your view about gender equality in Malaysia? Is it critical, obvious, hidden or no issue?
2. What is your opinion on the practice of hiring and promotion of man and woman in the work place?
3. Do you think that there must be an equality of gender in the economic sector?
4. Do you think gender equality is important in the society and for the nation? Why?
5. Talking about gender equality, it is common understanding that woman is disadvantaged (in labour market) as compared to man. Do you agree? Why?
6. How can we assure that both men's and women's rights are being upheld fairly?

7. In what circumstances do you think the preferences of an employer can be different from gender bias especially in the employees' promotion to higher positions? (How to differentiate between gender bias and prerogative rights of an employer)
8. With the government efforts to achieve gender equality through Sustainable Development Goals (SDGs), what is your opinion about our existing law in addressing the issue of gender equality at the Malaysia workplace?
9. To what extent do you think the policies and laws in Malaysia address the issue of gender equality/inequalities and gender discrimination in the workplace?
10. What is your views on gender equality when it relates with the religion?
11. In your opinion, how can we measure the equality of gender?
12. What are your recommendations in addressing the issues of gender in the workplace in Malaysia? (gender inequality, gender discrimination, gender bias)

**THANK YOU FOR ANSWERING THIS QUESTION.**

**YOUR COOPERATION IS VERY APPRECIATED.**

## Appendix B

### Interview Question (Group B)



Dear Sir/Madam,

You are invited as a respondent to participate in an interview for an academic study entitled “*An Analysis on Gender Equality in Philosophical and Legal Perspective: A Study of Malaysia Corporate Sector*”. Your selection as a respondent is based on your position and knowledge in relation to gender equality issues. The objective of this interview is to get your views on the issue and the practice of gender equality in the workplace especially in top management.

For your information, this interview is intended to meet the needs of researchers for the Master of Law. Feedback from this interview will be used for academic purposes only. Your information as a respondent is for the purpose of the researcher's record only unless you are willing and expressly agree to allow the researcher to share the information.

If there are any questions or concerns, you can contact the researcher, Nur Aina Atiqah binti Mohd Arif at 018-2954605.

Your cooperation to be involved in this interview is greatly appreciated. I would also like to thank you for your involvement in making this research a success. Thank you.

Best regards,

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## INTERVIEW QUESTIONS

### General information

1. Gender:  Male  Female
2. Current position: \_\_\_\_\_
3. Period of service in the organisation: \_\_\_\_\_
4. Department: \_\_\_\_\_
5. Level of education: \_\_\_\_\_

### Questions

1. How do you define gender equality?
2. Based on your experience, how do you think is the practice of equality between genders in this organisation?
3. In your opinion, do you think gender plays role in the performance of duty?
4. Why do you think women get little chance to be hired in higher post as compared to man? Is it because of qualification, appearance, culture or perception? \_\_\_\_\_
5. What are the requirements considered in the application for this position?
6. Other than the requirements that necessary for the post, do you think gender of the applicant play roles?
7. Does the organisation have an Equal Opportunity Policy or equivalent, to ensure non-discrimination against any type of demographic group (e.g. Gender, race, religion, age, etc.?)
8. Do you think that gender equality is practiced in Malaysian economic sector?
9. What are your recommendations in addressing the issues on gender in the workplace? (gender inequality, gender discrimination, gender bias)