

# Are Working Mothers Adequately Protected? A Comparative Analysis of Legal Frameworks in Malaysia, the United Kingdom, and Australia.

Dr. Ira Rozana Mohd Asri\*

Faculty of Law, University Teknologi MARA

\*Corresponding author

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## ABSTRACT

The statistics of working mothers in Malaysia are rising every year. Based on previous researches, the data of women who stopped working due to issue in child care are high. Nonetheless, the working mothers are not sufficiently protected under the domestic law. There has been lack of recognition of their legal rights, for example, rights relating to breastfeeding support and prohibiting gender discrimination. The situation is the same in public sector as well as in private sector. Therefore, the purpose of this paper is to examine the policies and laws governing working mothers in Malaysia and to analyse the strengths and weaknesses of the policies and laws by benchmarking with other jurisdictions specifically the United Kingdom and Australia. This paper adopts the doctrinal research method through the governing statutes, reported cases and scholarly articles as well as comparative research method through benchmarking with the other jurisdictions. This paper finds that Malaysia has policies in promoting women involvement in employment and the laws governing working mothers in Malaysia are improving throughout the years.

**Keywords:** Laws, policies, rights, legal protections, working mothers, Malaysia, the United Kingdom, Australia.

## INTRODUCTION

According to research done by Department of Statistics Malaysia, and it is reported in the Labour Force Survey Report, Malaysia, in 2023, Malaysia's labour force participation rate (LFPR) for women was 56.2%, while men's was 82.3%, with the government aiming to increase women's participation to 60% within the next decade.<sup>1</sup> In addition, according to Khazanah Research Institute, over the last fifty years, Malaysia has seen an increase in women's labour force participation from 37.2% in 1970 to 56.2% in 2023.<sup>2</sup>

In December 2024, the female labor force participation rate (LFPR) stood at 68.1%, while the male LFPR was 69.0%. This reflects a significant increase from 56.2% in 2023. Despite this progress, a gap remains between male and female participation rates. In the same year, the number of persons outside the labor force decreased slightly by 0.04% to 7.22 million, with housework and family responsibilities cited as the main reasons for not participating in the labor force, accounting for 43.1% of this group. Female labour force participation rates are higher among prime-age groups (25-34, 35-44, and 45-54) compared to younger (15-24) and older (55-64) age groups in which the percentages were higher than 55% compared to those for younger and older women.<sup>3</sup>

Another research which is conducted by National Population and Family Development Board Malaysia (LPPKN) in 2014, indicates that 46.5% women are working, 42.4% have stopped from working, while only 11.1% who never work. 32.4% of the women who have stopped from working were mainly because of issue in child care.<sup>4</sup>

Despite the fact that the number of working women in Malaysia is increasing, working women, specifically

working mothers are not adequately protected. Even though the employment issue affecting working mothers is serious, however, the law regulating women participation in labour force is not provided in Malaysia. Accordingly, the issue of gender discrimination is not given attention as there is no specific legislation on this. The law on the discrimination is only provided generally. Hence, although Malaysia is not a party to International Labour Organisation (ILO) Convention, however, this convention has been used to measure compliance with international standards. Among the ILO standards are encouraging non-discrimination, equal wage for work of equal value, social safeguard, maternity protection and support to workers with family responsibilities.<sup>5</sup> These standards can also be found in Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). For instance, Article 11 of the convention clearly prohibits discrimination against women in terms of employment in ensuring gender equality. The discrimination includes discrimination on the grounds of maternity, pregnancy and marital status.<sup>6</sup>

Notwithstanding the inadequacy of statutory law, the rights of working mothers are subject to court decisions. In the case of *Beatrice A/P Fernandez v. Sistem Penerbangan Malaysia & Ors*<sup>7</sup>, Beatrice (the appellant) was an employee to Malaysian Airlines System (the respondent) as a flight stewardess. A collective agreement that governed her terms and conditions of service requires all stewardesses to resign upon becoming pregnant. The respondent shall have the right to terminate her services in the event if she refuses to resign. The appellant refused to resign when she became pregnant and was terminated by the respondent. The appellant then applied to the court on the ground of wrongful dismissal submitting that the provisions of the collective agreement were gender discriminatory in nature and therefore contravened Article 8 of the Federal Constitution rendering the collective agreement void. However, she lost her case.

It was contrarily decided in the case of *Norfadilla Ahmad Saikin v Chayed bin Basirun & 5 Ors*<sup>8</sup>. Noorfadilla was pregnant and in search of a job. She applied at the local education office in Malaysia to be an untrained relief teacher and was delighted to receive an offer. After accepting the offer, she duly attended a preliminary briefing and was assigned a position at a local school. Before leaving, she was asked whether she was pregnant, to which she answered yes. To her surprise, her employment was revoked on the spot. Apparently, the education office does not hire pregnant women as relief teachers. The court in this case decided that discrimination on the basis of pregnancy is a form of gender discrimination and thus she won her case and entitled for an amount of damages.

The two cases above show that there were different decisions given by the courts in cases of gender discrimination. The result is not the same where the right of the working mother in private sector is not protected and resulted in termination of service due to pregnancy while in public sector, the right of the working mother is protected under the law. Thus, the law governing discrimination must be consistent regardless it relates to public or private sector because being pregnant is natural for women and to penalise them for being pregnant is unnatural and inhuman.

Another issue that should be highlighted in private sector is employer's prerogative where employers always prefer to recruit male employees than female employees because the reason of pregnancy and maternity. The discretionary powers that allow employers to manage their employees should be balanced with security of tenure of employees.

This paper is then followed with literature review, research methodology, findings and discussion, analysis, recommendations and conclusion.

## LITERATURE REVIEW

In their 2009 article, Poduval and Poduval define a working mother as a woman who can combine a career with another responsibility of raising a child. Based on the definition, it can be extracted that there are two kinds of working mothers which are firstly, working from home mothers and secondly, working away from home mothers who works at the office, for example, while fulfilling their duties as mothers.<sup>9</sup>

According to Hassan and Musa (2014), In Malaysia, the Employment Act 1955 does not include provisions for

breastfeeding breaks, resulting in a lack of legal support for breastfeeding mothers in the workplace. This absence of clear legal guidance and workplace facilities makes it challenging for working mothers to balance breastfeeding with their professional responsibilities.<sup>10</sup> To add, while certain industrial safety regulations in Malaysia provide temporary reassignment from hazardous work conditions for breastfeeding employees, there is no comprehensive legislation mandating lactation breaks or requiring employers to offer appropriate facilities for breastfeeding mothers across all workplaces. (Adi, Noor and Kamaruddin, 2017).<sup>11</sup>

A study by Sulaiman and Liamputtong (2022) utilized diary methods to examine the perceptions and experiences of breastfeeding among working women in urban Malaysia. The findings revealed that while many women felt supported, they often had to use their lunch breaks and find private spaces to express milk, highlighting the complexities of balancing work and breastfeeding.<sup>12</sup>

S., Tanaka and Sakiko (2005) are in the opinion that implementing supportive workplace policies, such as maternity leave and designated child-friendly spaces, has been shown to enhance breastfeeding outcomes. These measures not only facilitate mothers in initiating and maintaining breastfeeding but also contribute to improved health for both mothers and their infants. Employers benefit as well, experiencing reduced absenteeism, increased productivity, and higher employee morale and retention.<sup>13</sup> Not only that, advancing maternity protection policies necessitates effective advocacy, underpinned by robust partnerships and an understanding of local contexts. This includes raising awareness of maternity and paternity benefits among both employers and employees, fostering a supportive environment for working parents.<sup>14</sup>

Hana Maher (2014) emphasizes that Malaysian employers should enhance support for working mothers to help them balance family and work responsibilities. Implementing flexible working hours and locations can lead to a mutually beneficial situation, increasing workforce productivity while allowing mothers to fulfill their childcare duties.<sup>15</sup>

Similarly, Muzaffar Syah Mallow (2018) highlights the numerous advantages of flexible working hours for both employees and employers. Such arrangements can boost employee commitment and job satisfaction. Studies have shown that flexible schedules improve recruitment efforts and reduce absenteeism, leading to higher productivity. Additionally, these arrangements can decrease stress and fatigue among employees, attracting skilled workers and enhancing customer satisfaction. Over time, offering flexible work options can also enhance an organization's reputation and support employees in achieving a better work-life balance.<sup>16</sup>

Louise Thawley (2016) discusses various flexible working practices, including telecommuting, part-time work, flextime, job sharing, term-time work, and compressed hours. The goal of providing the option to request flexible working is to create a more practical workplace that aids employees in achieving work-life balance, while also helping employers improve employee retention and boost productivity.<sup>17</sup>

Bahri and Tong (2024) in their article stated that balancing employment with household and childcare responsibilities poses significant challenges for Malaysian women. The COVID-19 pandemic intensified these difficulties, leading to a notable decline in female labor force participation.<sup>18</sup>

Nurulbahiah Awang, Salma Yusof, and Nassar Nordin (2021) confirm the significant challenges faced by working women during the COVID-19 pandemic. The effects of these challenges were felt across all areas of their lives, stemming from the unexpected events of 2020 and the nature of the pandemic. Additionally, pre-existing gender inequalities in social, economic, and political domains intensified the difficulties encountered by women workers. Given that women often assume the role of primary caregivers, whether formally or informally, addressing this issue requires urgent attention. Effective policies and strategies that support sustainable development for women are crucial, along with a robust social support system that includes family, workplace, and community involvement.<sup>19</sup>

In another study, Baharuddin, Hussin, and Tajuddin (2023) conducted interviews with low-income (B40) working mothers in Klang Valley during the COVID-19 pandemic. The research shed light on their mental health struggles and unexpected silver linings, emphasizing the need for interventions that promote their well-being.<sup>20</sup>

## RESEARCH METHODOLOGY

This study will employ doctrinal legal research to examine the policies and laws governing working mothers in Malaysia and to analyse the strengths and weaknesses of the policies and laws by benchmarking with other jurisdictions specifically the United Kingdom and Australia.

According to Jain, doctrinal legal research involves “analysis of case law, arranging, ordering and systematising legal propositions and the study of legal institution through legal reasoning or rational deduction”.<sup>21</sup> It also provides “a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and perhaps predicts future development”.<sup>22</sup>

Therefore, in conducting this assessment, both primary and secondary legal sources will be examined. The latter is particularly important for highlighting current developments in the relevant area of law.<sup>23</sup> Both sources have been accessed not only through the library but also via online databases such as Lexis Legal Research for Academics, LawNet, CLJ Law, SpringerLink, HeinOnline, and the websites of relevant institutions and non-governmental organizations.

The primary sources of law, including statutes, rules, regulations, case law, and other regulatory instruments such as guidelines, circulars, standards, and guidance, will be rigorously analyzed. This analysis is further supported by secondary legal sources, including textbooks, journal articles, reports, working papers, seminar papers, theses, newspaper articles, and other periodicals. Additionally, annual reports of each regulator are heavily relied upon to obtain up-to-date information, particularly regarding the regulator’s performance in executing its functions and relevant statistical data.

A comparative law method serves as the third methodology employed to achieve the objectives of this study. Essentially, comparative law involves examining and contrasting the legal frameworks of different countries. In most cases, this comparison is conducted by juxtaposing foreign laws against the legal measures of one’s own jurisdiction.<sup>24</sup> The benefit of comparative law methodology has been stated by Lepaulle in the following excerpt:

“To see things in their true light, we must see them from a certain distance, as strangers which is impossible when we study any phenomena of our own country. That is why comparative law should be one of the necessary elements in the training of all those who are to shape the law for societies in which every passing day brings new discoveries, new activities, new sources of complexity, of passion, and of hope.”<sup>25</sup>

With a view to propose recommendations to enhance the current institutional framework regulating working mothers in Malaysia, two jurisdictions have been chosen namely the UK and Australia. United Kingdom is selected for benchmarking due to the fact that the country is among those that provide the longest maternity leave in the world which is 52 weeks.<sup>26</sup> They also have a specific law on equality which is Equality Act 2010.<sup>27</sup> As for development of children, the United Kingdom provides UNICEF UK Baby Friendly Initiative which leads infant feeding care in a hospital. According to World Health Organisation (WHO), the Baby Friendly Hospital Initiative (BFHI) has demonstrated significant effectiveness in boosting the initiation of breastfeeding, promoting exclusive breastfeeding, and extending the duration of breastfeeding in numerous countries. Additionally, it enhances mothers' healthcare experiences and decreases rates of infant abandonment.<sup>28</sup>

The primary reason Australia is chosen is because the government of Australia offers a wide range of initiatives to reconcile work and family life. The initiatives include leave and return-to-work policies, child care benefits and flexible working arrangements. They also run work-family, work-life and gender campaigns to support and promote work-family initiatives.<sup>29</sup> Australia is also committed in ensuring gender equality. Minister for Foreign Affairs of Australia has launched a new Gender Equality Fund. In order to increase women’s labor participation, Australia is providing new financial literacy projects for women, improved assistance for child care and small business reforms that will deliver new opportunities for women in the employment.

Thus, a comparative law study with these countries seems to be indispensable. The strengths and weaknesses of the approaches adopted by these jurisdictions are appraised and recommendations are made based on the approaches considered as the most viable with the existing framework in Malaysia.



## FINDINGS AND DISCUSSION

### Laws Affecting Working Mothers in Malaysia

#### Federal Constitution

In Malaysia, the grundnorm is Federal Constitution. It is the mother of all laws. Federal Constitution applies throughout the whole country including Sabah and Sarawak. The Constitution has recognised and guaranteed the rights of women in Malaysia to participate in all aspects of life which includes employment since the independence of the country in 1957. This right is conferred under Article 8 of the Constitution.

“(1) All persons are equal before the law and entitled to the equal protection of the law.”

According to the quotation above, the law implies that every person is equally subject to the law, regardless of their social, political, or economical status.

“(2) 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.”

Further, in Article 8 (2), it states that there shall be no discrimination of gender in any law. Any law in this Article includes employment law. Gender discrimination or gender bias is an inherent form of employment discrimination in which employees especially female employees are treated unequally purely because of their gender.

Malaysia only complied partially to Convention on the Elimination of Discrimination against Women (CEDAW) provisions. It was when the CEDAW provisions were incorporated in Malaysian law through the amendment to Article 8(2) when the word 'gender' was inserted. Other than that, Malaysia has not incorporated CEDAW provisions into domestic law even though the Government has started some discussions in collecting information for a gender equality law in Malaysia in 2010.<sup>30</sup> To date, there is no gender equality legislation which lays down equality between men and women either in public or private sector of life. The term 'discrimination' in the Federal Constitution has been left out to be interpreted by the courts and the government.<sup>31</sup>

The latest case to illustrate this is *Airasia Berhad v Rafizah Shima bt. Mohamed Aris*<sup>32</sup>, the respondent was an employee of the appellant. The respondent then was chosen to undergo an Engineering Training Program. The respondent executed an agreement known as "Training Agreement and Bond" (Agreement). A material term in the Agreement was that the respondent must not get pregnant during the training period which was 4 years. The appellant terminated both the agreement and her employment when it was found out that the respondent became pregnant during the final year of the program. The High Court allowed the respondent's application because the said agreement violating Article 8 of the Federal Constitution, the United Nations Universal Declaration of Human Rights (UNDHR) and CEDAW. However, on appeal, it was decided that the material term in the Agreement does not discriminate against the rights of women. All Clauses contained in the Agreement do not restrain marriage and/or prohibit pregnancy if the respondent had completed the said training program in the manner as stipulated in the Agreement.

Applying the principle decided in the *Beatrice AT Fernandez v Sistem Penerbangan Malaysia & Anor*<sup>33</sup>, constitutional law as a branch of public law only addresses the contravention of an individual's rights by a public authority. However, when the rights of a private individual are infringed by another private individual, constitutional law will take no recognisance of it. It is not in dispute that Air Asia Berhad, is a private limited liability company. As it has been discussed earlier, the laws governing discrimination in Malaysia is inconsistent and ineffective.

#### Employment Act 1955

Employment Act 1955<sup>34</sup> is the main statute that governs employment law only in peninsular Malaysia, while

Sabah and Sarawak have their own labour ordinances. This is the major legislation which regulates all labour relations and provides minimum legal protections of employees. It includes restrictions in deduction of workers' wages, maternity protection, annual leave, sick leave and overtime rates payable for extra hours of work. The main concern of this Act is monetary protections such as annual leave, sick leave, maternity allowances and overtime. The Act is administered by the Labour Department at the Malaysian Ministry of Human Resources (MOHR).

Part VIII of the Act specify on employment of women where the Act prohibits night and underground work as well as work that is prohibited by Minister to women. Meanwhile, part IX of the Act provides for maternity protection. Previously, section 37 of the Employment Act 1955 provides 60 days of maternity leave. However, there is an amendment to the number of maternity leave. This is stated in Employment (Amendment) Act 2022<sup>35</sup>. The maternity leave has been extended to 98 days. The right to maternity allowance is also conferred under section 38 of the Employment Act 1955.

Likewise, formerly, the Employment Act only restricts dismissal of female employee after the maternity leave under section 42. Nevertheless, The Amendment Act then, also prohibits termination of pregnant female employee in additional section 41A. According to the section, it is an offence on part of an employer who terminates his or her employee who is pregnant or sick due to her pregnancy.

The Amendment Act also added new right which is right to paternity leave which was not covered in the Employment Act. The right is introduced in section 60FA of the Amendment Act. According to the section, a married male employee is entitled to seven days paid paternity leave at his ordinary rate of pay. The right is up to five confinements regardless of number of spouses.

Besides that, another new right is introduced in Employment (Amendment) Act 2022 which is the right to apply for flexible working arrangement. It is added in Part XIIc of the Act. Under section 60P (1), an employee may apply to an employer for a flexible working arrangement to vary the hours of work, days of work or place of work in relation to his employment. The steps of the application are laid down under section 60Q of the Act.

The extended maternity leave to 98 days is in line with the spirit of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the recommendations of International Labour Organisation (ILO) which suggests that governments should guarantee 98 days of paid maternity leave.

With regards to the right to paternity leave, the Malaysian Trades Union Congress (MTUC) has proposed in early 2017 that one month paid paternity leave is provided to all employees. The MTUC's secretary general was quoted as saying that it is time for a review of paternity leave provisions as most private companies in Malaysia do not provide such benefits. The argument was based on the wellbeing of all the family members. Nevertheless, this proposal was objected by the Malaysian Federation of Employers (MEF) on the basis that mandatory paid paternity leave would affect operational costs and company productivity.<sup>36</sup>

The Ministry of Women, Family and Community Development in late 2017 advocated for extension of paid paternity leave for civil servants in Malaysia. The Ministry proposed to extend the leave from the current seven days to a month. This is to strengthen family bonding among the members. Consequently, it helps in efficiency of the employees' works.<sup>37</sup>

An annual study by Monster Malaysia discloses a majority of local employers still have not incorporated flexible working policies, and consequently, new mothers find returning to work a challenge. Many of them looking for new jobs that meet their flexible requirements. The report shows that 55% of women said they have an unsupportive boss and working environment, 58% of employees in Malaysia are unable to work from home, 36% do not have any option for flexible working arrangements, while 94% of the women responded said that they will be looking for a new job in the next 12 months.

According to findings from an annual study by recruitment giant Monster.com, a lack of flexible working arrangements and a generally unsupportive environment for working mothers is driving many women to search for new employment in Malaysia. The biggest reasons given for new mothers quitting their jobs are a lack of

flexibility (75%), followed by concerns about poor childcare for their children while they are at work (60%). A further 55% said they have an unsupportive boss and work environment when it comes to balancing home and work life.<sup>38</sup>

While these amendments represent progress, certain shortcomings remain, particularly concerning the protection of working mothers. The removal of sections 44A and 81G, which extended maternity benefits and sexual harassment protections to all workers regardless of income, introduced uncertainty. Although the Deputy Minister of Human Resources indicated that a Ministerial Order would address this, the absence of immediate clarity may leave some working mothers unprotected.

The revised section 37AA permits any woman to return to work during her maternity leave if declared fit. While this offers flexibility, it raises concerns about potential employer coercion for early returns. The amendments also do not address discrimination against pregnant women during recruitment, allowing potential biases to persist unchallenged.<sup>39</sup>

On top of that, the amendments lack provisions for breastfeeding breaks or facilities, making it challenging for mothers to continue breastfeeding upon returning to work.

In Malaysia, the Work from Home (WFH) concept became widespread after the implementation of the Movement Control Order (MCO) that imposed by the Malaysian government. During the pandemic situation, organizations considered the cost structure, business strategies, and work procedures and expected in the future, WFH would be an option that would be fully embraced by employees in Malaysia. Even though the WFH concept was attractive and offered some advantages, the WFH concept and situation is unworkable for many employees, especially for working women as they encounter various challenges and this impacts their well-being and Work-Life Balance (WLB).<sup>40</sup> For them, whatever the situation is, the key is supportive family members and helpful employers to manage the challenges.<sup>41</sup>

## **Policies Supporting Working Mothers in Malaysia**

Malaysia has responded to United Nations conventions, treaties and recommendations by introducing several policies including National Policy for Women, National Family Policy, National Breastfeeding and Infant Feeding Policy and Flexible Working Arrangements Policy.

### **National Policy for Women**

National Policy for Women (NPW) was formulated in 1989. This policy manifested a significant landmark for women.<sup>42</sup> This policy is intended to be a guidance and direction to design and implement all developmental programs with the awareness that women constitute half of the country's population. Women have been supporters of the politics of the country for a long time. Development is a process that needs the full contribution from men and women. Thus, this policy repeats the stand that stresses on the active and meaningful participation of women in politics. This policy considers interests, efforts and involvement of the government, demands by associations to support some resolutions at international levels, the demands of women organisations in Malaysia including the forming of mover at the central government level, the Secretariat of Women's Affairs (HAWA).<sup>43</sup>

Malaysia has specifically committed itself to strengthen the implementation of the National Policy on Women in order to involve more women in decision-making; safeguard their rights to health, education, and social well-being; remove legal obstacles and discriminatory practices; and ensure access to and benefits of development particularly in science and technology. An observable impact of the National Policy on Women was the inclusion of a chapter on Women in Development in the 6MP as discussed earlier.<sup>44</sup>

### **National Family Policy**

The National Family Policy (NFP) and its accompanying plan of action was launched in March 2011 and implemented by the National Family Planning Board (NFPB) in conjunction with other ministries, departments and related non-government organizations (NGOs).<sup>45</sup> NFPB is established in 1966, focuses on the promotion of family planning ideas and techniques, and offering of counselling services for marital and family planning

problems and implementation of handicraft programs. The other areas of the NFPB activities address cultural, social, economic and demographic factors which affect women's roles in development.<sup>46</sup>

The NFP is a policy for prioritising family perspectives in all socio-economic development efforts to ensure a quality generation. The goal of this policy is to develop prosperous, healthy and resilient families to ensure social stability. Among the principles of the policy are family-friendly legislations, policies and programmes and also employers' commitment to ensure family well-being. Among the action plan is by advocacy. The obligation to prioritise family well-being in development policies and programs by leaders, policy makers and decision makers in the public and private sectors, leaders of civil society and families can be increased through advocacy.<sup>47</sup> This policy helps in coping many challenges faced by family institution nowadays as a result of modern technology and rising cost of living. These problems are most encountered by working mothers who need to balance between family and career. The National Family Policy supports and complements existing policies such as the National Social Policy, National Policy on Women and the National Child Policy.<sup>48</sup>

### **National Breastfeeding and Infant Feeding Policy**

Malaysia's breastfeeding and infant feeding policy recommends exclusive breastfeeding for first six months of life and continued breastfeeding along with complementary food up to two years of life.<sup>49</sup> Further, Malaysian Breastfeeding Policy was revised in 2005 in accordance with the 2002 World Health Assembly Resolution 54.2. It follows the recommendation by the World Health Organization that all infants be exclusively breastfed from birth to 6 months of age, and continued by the gradual introduction of other forms of nutrition; where breastfeeding should then continue into the second year.<sup>50</sup>

In 2006, the Third National Health and Morbidity Survey conducted in Malaysia reported an overall prevalence of ever being breastfed among children less than 12 months of age of 94.7%. However, the overall prevalence of exclusive breastfeeding below 6 months was very low which was only 14.5%. Sociocultural factors seem to influence practices related to breastfeeding.<sup>51</sup> These include living environment, socioeconomic status, maternal education, the woman's employment situation, and commercial pressures, by contributing to the knowledge and availability of breastmilk substitutes.<sup>52</sup>

Breastfeeding education has been a critical component of the public health efforts to encourage breastfeeding. These suggest that other factors apart from attitude may contribute to the lack of breastfeeding. In the previous study, two-thirds of the respondents were working mothers. A high proportion of those who had stopped breastfeeding had cited returning to work as one of the main reasons for not continuing breastfeeding. Mothers who intend to return to work after the confinement period may feel that formula feeding is the better choice. The lack of support from the workplace may be a reason why these mothers decide to discontinue or not to consider breastfeeding, even though they had a positive attitude toward breastfeeding. A study conducted in 2006 concluded that providing a more conducive environment for breastfeeding would encourage a higher rate of exclusive breastfeeding among working mothers.<sup>53</sup> Apart from that, employers should also have breastfeeding support policies and practices that fit their company's budget and resources.<sup>54</sup>

### **Flexible Working Arrangements Policy**

Flexible working arrangements (FWA) or family- friendly policy (FFP) can be understood as employees having the opportunity to make changes to the times or places they work. Not only that, it is also about how careers are organised, how transitions in and out of work are managed, and how flexible work is arranged in the workplace so that both the employees and employers can benefit from it. The main objective of this policy is to provide work- life balance for all employees especially working parents.<sup>55</sup>

Scholars and researchers have emphasised that flexibility and flexible work arrangements as one of the solutions to refrain working mothers from quitting their jobs. Research carried out disclosed that 46% of the participants agreed that flexible work arrangements would make them consider continuing in the workforce.<sup>56</sup> Another survey revealed that flexible work arrangements were key to retaining women at the workplace as it allows them to integrate their motherhood and professional responsibilities better.<sup>57</sup>

Flexible working opportunities can also motivate working mothers to take up more career advancement



opportunities and flexibility related policies are also seen as easing the transition of re-entering the workplace after maternity leave as well as increasing the working mothers' competency levels. Previous studies have found work/family conflict associated with poor parental preferences, which leads to lifestyle preferences that contribute to inadequate work/family balance. Consequently, social policymakers are challenged when addressing the complexity of work/family balance while giving equal consideration to economic productivity.<sup>58</sup>

Among the policy of FFP includes leave entitlements. As part of an action plan to improve the benefits to female employees in the civil service and retain them, 60 days paid maternity leave was introduced in 1998 and this was superseded by a 90 days maternity leave beginning early 2011 and 98 days beginning early 2023. Another policy that allows mothers to take up unpaid leave for up to five years for the first five children was introduced in 2009.

The public sector provided an example to the private sector by implementing flexible work time by staggering the start and end periods into three periods in 2006. Government employees can choose to start work at 7.30 a.m. and finish at 4.30 p.m. or 8 a.m. and finish at 5 p.m. or 8.30 a.m. and finish at 5.30 p.m.<sup>59</sup>

FFPs are beginning to get importance in the corporate sector in Malaysia but flexible working hours are still hard to come by in most Malaysian firms. The previous study showed that there are many work places in Malaysia which have implemented FFPs such as various types of leave entitlements but in terms of working hours flexibility, there is still lack of awareness and urgency among employers. Based on that study, there still exists a gap between employee's practical needs and the availability of family friendly policies. It is submitted that flexibility in the work place and more FFPs will not only benefit the organisations to access the global economy but also enable better work life balance and lead to increased labour force participation among women in Malaysia.<sup>60</sup>

Implementing Malaysia's National Policy for Women, National Family Policy, National Breastfeeding and Infant Feeding Policy, and Flexible Working Arrangements Policy faces several challenges that hinder their effectiveness.

Cultural norms and traditional gender roles significantly impede the National Policy for Women and the National Family Policy. In Malaysia, women often bear a disproportionate share of domestic responsibilities, which restricts their opportunities for paid employment, advanced education, and active participation in public life. This societal expectation limits the effectiveness of policies aimed at promoting gender equality and family well-being.<sup>61</sup>

A significant barrier to the successful implementation of the National Breastfeeding and Infant Feeding Policy is the lack of public awareness and education. Many mothers are unaware of the benefits and recommendations for exclusive breastfeeding during the first six months, leading to low adherence rates. This gap in knowledge undermines efforts to promote optimal infant nutrition and health.<sup>62</sup>

The absence of adequate support infrastructure, such as childcare facilities and family-friendly amenities, poses a challenge to the National Family Policy and Flexible Working Arrangements Policy. Without these essential services, parents, particularly mothers, find it difficult to balance work and family responsibilities, thereby limiting the effectiveness of these policies.<sup>63</sup>

Employer resistance to adopting flexible working arrangements further complicates policy implementation. Concerns about productivity, operational challenges, and a lack of understanding of the benefits of flexible work options lead to reluctance in embracing such policies, despite their potential to enhance employee well-being and retention.<sup>64</sup>

Fragmentation among implementing agencies and weak enforcement mechanisms result in inconsistent application of these policies. The lack of coordination and monitoring leads to gaps in service delivery and diminished policy impact.

To overcome these barriers, it is essential to engage communities through awareness campaigns that challenge traditional norms and promote gender equality. Educational initiatives can inform the public about the benefits

and provisions of these national policies, encouraging greater acceptance and adherence.<sup>65</sup>

Investing in support infrastructure, such as accessible childcare centers and family-friendly workplace facilities, can alleviate the burden on working parents and facilitate the successful implementation of family-oriented policies.<sup>66</sup>

Incentivizing employers to adopt flexible working arrangements through tax benefits or subsidies can address resistance. Developing clear guidelines and showcasing successful case studies may also demonstrate the advantages of such arrangements, encouraging broader acceptance.<sup>67</sup>

Strengthening policy coordination by establishing inter-agency task forces can ensure cohesive implementation and monitoring. Regular reviews and updates based on feedback and evolving societal needs will enhance policy relevance and effectiveness.<sup>68</sup>

By addressing these challenges with targeted strategies, Malaysia can improve the implementation of its national policies, fostering a more inclusive and supportive environment for women and families.

## **Laws Affecting Working Mothers in The United Kingdom**

### **Employment Rights Act 1996**

The Employment Rights Act 1996 consolidates various legislations related to employment rights, including protections against unfair dismissal, wage safeguards, and regulations on employment termination. Regarding maternity leave, the Act specifies three types:

1. Ordinary Maternity Leave: Under Section 71, eligible employees are entitled to at least 26 weeks of leave.
2. Compulsory Maternity Leave: Section 72 mandates a minimum of two weeks' leave commencing with the day of childbirth, during which the employee is prohibited from working.
3. Additional Maternity Leave: Section 73 provides for an additional 26 weeks of leave, allowing eligible employees to take up to 52 weeks of maternity leave in total.<sup>69</sup>

This comprehensive approach positions the United Kingdom among countries offering extended maternity leave, aligning with UNICEF's recommendation of six months for optimal child development. The American Academy of Pediatrics supports legislation guaranteeing 12 weeks of paid leave for new parents. Experts suggest that extended parental leave, particularly during the first six to nine months, benefits both the child and the parent-child bond.

### **The Statutory Maternity Pay (General) Regulations 1986**

The Statutory Maternity Pay (General) Regulations 1986 outline the provisions for paid maternity leave in the United Kingdom, specifying the duration and payment methods. According to Section 2 of these regulations, eligible employees receive Statutory Maternity Pay (SMP) for up to 39 weeks. This extended period of paid leave is among the longest globally, reflecting the UK's commitment to supporting working mothers.

Extended paid maternity leave offers numerous benefits:

- For Working Mothers: Longer leave allows mothers ample time to recover from childbirth and bond with their newborns without financial stress. This period is crucial for both physical and mental health, reducing risks of postpartum depression and promoting overall well-being.
- For Children: Infants benefit from increased maternal presence, leading to better health outcomes and developmental milestones. Extended leave supports practices like breastfeeding, which contribute positively to a child's health.

- For Employers: Offering substantial maternity leave can enhance employee retention and loyalty. Companies that provide generous leave policies often see reduced turnover rates, preserving experienced talent and reducing recruitment costs. Additionally, such policies can enhance a company's reputation, making it more attractive to potential employees.

In summary, the UK's provision for up to 39 weeks of paid maternity leave not only supports the health and well-being of mothers and their children but also offers significant advantages to employers by fostering a committed and stable workforce.

### **Policies Supporting Working Mothers in the United Kingdom Civil Service Employee Policy: Guide to Job Sharing**

This policy promotes job sharing as a flexible working arrangement within the Civil Service. It provides guidance for both employees and managers on recruiting, selecting, and managing job share partnerships. The policy outlines various job sharing structures, such as dividing the workweek or alternating weeks, emphasizing benefits like enhanced work-life balance, increased job satisfaction, and continuous job coverage. By accommodating diverse needs, including caregiving responsibilities and health considerations, this policy aims to attract and retain a diverse workforce.<sup>70</sup>

### **UNICEF Baby-Friendly Initiative: Guide to Breastfeeding after Returning to Work or Study**

This initiative offers guidance to support breastfeeding mothers resuming work or study. It emphasizes the importance of creating supportive environments that enable mothers to continue breastfeeding upon their return. The guide provides practical advice on expressing and storing breast milk, communicating with employers or educational institutions about breastfeeding needs, and understanding legal rights related to breastfeeding in the workplace or educational settings. By fostering such supportive environments, the initiative aims to promote the health and well-being of both mothers and their infants.

These policies collectively contribute to a supportive framework for working mothers in the UK, addressing both flexible working arrangements and the continuation of breastfeeding after returning to work or study.<sup>71</sup>

### **Laws Affecting Working Mothers in Australia Sex Discrimination Act 1984**

The Sex Discrimination Act 1984 aims to eliminate discrimination in Australia based on sex, marital status, and pregnancy. Specifically, Section 7 prohibits discrimination against women due to pregnancy or potential pregnancy, considering it unlawful to treat a woman unfavorably for these reasons. Additionally, Section 7A addresses discrimination based on family responsibilities, deeming it discriminatory when an employer treats an employee with family obligations less favorably than one without such responsibilities.<sup>72</sup>

This Act aligns with international standards, notably Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates the elimination of discrimination against women in employment, including on the grounds of pregnancy and potential pregnancy. Furthermore, the Act corresponds with the International Labour Organization's Workers with Family Responsibilities Convention, 1981 (No. 156), which seeks to prevent conflicts between employment and family duties.

However, the Act has been critiqued for not explicitly addressing discrimination related to maternity, indicating a potential area for legislative improvement.

### **Equal Opportunity Act 2010**

The Equal Opportunity Act 2010 aims to protect individuals in Victoria, Australia, from discrimination based on personal characteristics. Section 6 of the Act specifies attributes protected against discrimination, including breastfeeding, parental status or status as a carer, and pregnancy.<sup>73</sup>

Part 4, Division 1, addresses discrimination in employment. Section 16 prohibits employers from discriminating against job applicants by:

- Deciding who should be offered employment.
- Determining the terms on which employment is offered.
- Refusing or deliberately omitting to offer employment.
- Denying access to guidance programs, apprenticeships, or other occupational training.<sup>74</sup>

Furthermore, Section 17 mandates that employers must not unreasonably refuse to accommodate an employee's responsibilities as a parent or carer. The Act provides criteria to assess the reasonableness of such refusals.<sup>75</sup>

This legislation aligns with Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires the elimination of discrimination against women in employment. The Act comprehensively addresses various forms of discrimination against working mothers, detailing specific attributes and extending protections to parents and carers.

### Policy Supporting Working Mothers in Australia Breastfeeding Friendly Workplace Program

The Breastfeeding Friendly Workplace (BFW) Accreditation, administered by the Australian Breastfeeding Association (ABA), aims to assist women in balancing work and breastfeeding. To achieve this accreditation, organizations must fulfill three primary criteria:

1. Space: Provide a private area for employees to breastfeed or express breastmilk.
2. Time: Allow flexible breaks for breastfeeding or expressing milk.
3. Support: Implement supportive policies, including clear communication strategies and other workplace incentives.

By meeting these requirements, employers create a supportive environment that benefits both employees and the organization. Breastfeeding employees experience improved work-life balance and job satisfaction, leading to increased productivity and reduced absenteeism. Employers benefit from higher employee retention rates and a positive workplace reputation.<sup>76</sup>

In summary, the BFW Accreditation encourages workplaces to support breastfeeding employees through dedicated space, flexible time, and comprehensive support, resulting in mutual advantages for both employees and employers.

### Analysis

TABLE 1: Comparative Table Analyzing Legal frameworks of Malaysia, Australia and the United Kingdom on Working Mothers.

Aspect	Malaysia	The United Kingdom	Australia
Legal Protections	<b>Article 8 of the Federal Constitution:</b> Prohibits discrimination based on gender, ensuring equality in employment. <b>Employment Act 1955:</b> Provides maternity protection, including leave entitlements.	<b>Employment Rights Act 1996:</b> Consolidates employment rights, including protection against unfair dismissal and provisions for maternity leave.  <b>The Statutory Maternity Pay (General) Regulations 1986:</b> Details paid	<b>Sex Discrimination Act 1984:</b> Prohibits discrimination based on sex, marital status, and pregnancy.  <b>Equal Opportunity Act 2010:</b> Protects individuals from discrimination, including attributes like



		maternity leave, specifying duration and payment methods.	breastfeeding, parental status, and pregnancy.
<b>Policies Supporting Working Mothers</b>	<b>National Policy for Women:</b> Aims to enhance women's participation in various sectors. <b>National Family Policy:</b> Promotes family well-being and work-life balance. <b>National Breastfeeding and Infant Feeding Policy:</b> Encourages breastfeeding-friendly environments. <b>Flexible Working Arrangements Policy:</b> Supports work flexibility to accommodate family responsibilities.	<b>Civil Service Employee Policy: Guide to Job Sharing:</b> Encourages job-sharing arrangements to promote work-life balance. <b>UNICEF Baby-Friendly Initiative: Guide to Breastfeeding after Returning to Work or Study:</b> Supports breastfeeding upon return to work or study.	<b>Breastfeeding Friendly Workplace Program:</b> Supports women in combining work and breastfeeding, offering accreditation to supportive workplaces.
<b>Maternity Leave Entitlements</b>	<b>Employment Act 1955:</b> Provides 60 consecutive days of paid maternity leave.	<b>Employment Rights Act 1996:</b> Allows up to 52 weeks of maternity leave, comprising Ordinary Maternity Leave (26 weeks) and Additional Maternity Leave (26 weeks).  <b>The Statutory Maternity Pay (General) Regulations 1986:</b> Provides up to 39 weeks of paid maternity leave.	<b>Fair Work Act 2009:</b> Provides 12 months of unpaid parental leave, with the option to request an additional 12 months.  <b>Paid Parental Leave Scheme:</b> Offers up to 18 weeks of paid leave at the national minimum wage.
<b>Flexible Working Arrangements</b>	<b>Flexible Working Arrangements Policy:</b> Encourages employers to offer flexible working options to accommodate employees' family responsibilities.	<b>Employment Rights Act 1996:</b> Grants employees the right to request flexible working arrangements. <b>Civil Service Employee Policy: Guide to Job Sharing:</b> Provides guidance on job-sharing arrangements.	<b>National Employment Standards:</b> Allows employees to request flexible working arrangements. <b>Breastfeeding Friendly Workplace Program:</b> Encourages workplaces to support breastfeeding employees through flexible arrangements.
<b>Breastfeeding Support</b>	<b>National Breastfeeding and Infant Feeding Policy:</b> Promotes breastfeeding-friendly environments in workplaces and public areas.	<b>UNICEF Baby-Friendly Initiative:</b> Provides guidelines to support breastfeeding upon returning to work or study.	<b>Breastfeeding Friendly Workplace Program:</b> Accredits workplaces that provide facilities and support for breastfeeding employees.

<b>Anti-Discrimination Measures</b>	<b>Article 8 of the Federal Constitution:</b> Ensures equality and prohibits discrimination based on gender. <b>Employment Act 1955:</b> Protects against dismissal during maternity leave.	<b>Sex Discrimination Act 1975:</b> Prohibits discrimination based on sex, including pregnancy and maternity. <b>Equality Act 2010:</b> Consolidates anti-discrimination laws, offering protection against pregnancy and maternity discrimination.	<b>Sex Discrimination Act 1984:</b> Prohibits discrimination based on sex, marital status, pregnancy, or potential pregnancy. <b>Equal Opportunity Act 2010:</b> Protects against discrimination, including attributes like breastfeeding and parental status.
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## RECOMMENDATIONS

The first recommendation concerns maternity leave rights for working mothers. Maternity leave is of utmost importance for working mothers, as studies have shown that the first six months of a baby's life are crucial for their development. During this period, parents are adapting to their new life, and exclusive breastfeeding is essential. Therefore, this paper suggests to amend the Employment Act 1955 to extend maternity leave from 98 days to six months to enhance child development and promote parental well-being.

The second recommendation focuses on the right of working mothers to flexible working arrangements. In Malaysia, this right was introduced through the amendments to the Employment Act 1955 under the Employment (Amendment) Act 2022. However, the right is not automatically granted and requires employees to apply for it, subject to the discretion of employers. Hence, this article suggests that the law should automatically provide this right to working mothers, as it is crucial for achieving work-life balance and promoting children's health and development. Surveys have indicated that flexible working arrangements, such as remote work and flexible working hours, have improved work productivity, especially during the COVID-19 pandemic.

The third recommendation addresses the need for a legal provision, rather than just a policy, regarding breastfeeding rights in Malaysia. This paper proposes the enactment of a law that guarantees comfortable spaces and breaks for breastfeeding. The law shall mandate employers to provide appropriate facilities and breaks for breastfeeding, aligning with international best practices. Such a law would provide moral support to breastfeeding mothers, enabling them to continue their breastfeeding journey after returning to work from maternity leave. Previous studies have demonstrated numerous benefits of breastfeeding, particularly for newborns.

The fourth recommendation pertains to sex discrimination in employment. Despite Malaysia having a law prohibiting sex discrimination in the Federal Constitution, the effectiveness of the law remains inadequate, as evidenced by previous discussed cases. Therefore, a reassessment of the law is necessary to ensure its efficiency.

The next recommendation is to clarify legislative coverage. Prompt issuance of the Ministerial Order is essential to ensure all working mothers, irrespective of income, receive maternity and related protections.

This paper also suggests a safeguard against coercion. There should be implementation of measures to prevent employers from pressuring mothers to return to work prematurely during maternity leave. In addition, this paper recommends to introduce explicit protections against discrimination for pregnant job seekers to promote fair employment opportunities.

While the Employment (Amendment) Act 2022 marks a step forward in supporting working mothers in Malaysia, addressing these gaps is crucial to ensure comprehensive protection and support for maternal rights in the workplace.

## CONCLUSION

From the above discussion, it can be concluded that Malaysian existing law in relation to the rights of working mothers are insufficient and inefficient as there are many women who prefer not to work due to their status as mothers. However, as the government are actively encouraging women participation in the labour force, they have realised the importance of these rights as the number of working women increased annually. Therefore, there are efforts in improving the law throughout the years.

There are several jurisdictions that can be benchmarked by Malaysia in order to reform the law like it has been discussed earlier. Adequate and effective policies and laws together with strict enforcement of the laws will gradually help in solving the issue faced by the working women especially working mothers.

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