

Rebranding Equality: Malaysia's Progress on Women's Rights Advocacy

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ABSTRACT

Even though equality has been described as a simple concept, its meanings and principles have not been properly understood by the public. Similar treatment might not have a value of neutrality because, once the right to equality is related to and enforced by laws, its objectivity and impartiality can be challenged. The Malaysian government is making progress towards a safer and more equal environment for women and girls following the proposed new or amended legislation. These includes the anti-stalking law, the Sexual Harassment Act, and ending child marriage. Furthermore, the establishment of a Select Committee on Rights and Gender Equality in Parliament have been considered as a good step forward for equality. Indeed, implementation of policies such as childcare facilities in government offices as well as encouraging the private sector to follow suit are good moves towards creating more opportunities and encouraging the participation of women in the workforce. This paper explores the conceptual understanding of 'equality' globally and from the perspective of Islamic jurisprudence. This reflection is in line with Islamic belief that needs to reform the understanding of society based on the suggestion of Al-Quran and Islamic scholars. With this interpretation, this paper will explore Malaysia's progress in empowering women and gender equality. Finally, this paper will suggest a way forward for Malaysia to empower women that have been marginalized and subordinated.

Keywords: feminism, gender equality, women in Malaysia, women's empowerment, women's rights

Malaysian government could have improved in championing women's cause in this country. In Europe countries, gender mainstreaming is the way forward, including the gender equality dimension in all its policies. Not only that equality between women and men is one of the fundamental values of the European Union as enshrined in its treaties, but Islam also stressed that discrimination is unacceptable. Girls and women must achieve equality in all aspects of life - access to education, equal pay for equal work, access to top positions in companies and politics as well as protection from violence and any sort of harassment. Women must be put rights at the core of the Sustainable Development Goals as there is no sustainable development without gender equality.

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Thus, there are still a lot of works that need to be addressed by the government. Women and girls in Malaysia do still face harassment, abuse, and violence and women are still too often prevented from breaking the glass ceiling, receiving lower pay and fewer opportunities for career and business development. According to Ambassador and Head of the Delegation of the European Union (EU) to Malaysia, Maria Castillo Fernandez, European Commission has a framework in place to integrate gender equality in all its policies (Tan 2019).

Equality is one of the most fundamental principles of human rights together with justice and dignity. Baderin (2003: 58), in his research on international and Islamic laws on human rights, quotes Justice Tanaka in the South West Africa Cases (1966) International Court of Justice (ICJ) Reports that equality has been described as the 'starting point of all liberties'. Griffin (2008: 39) has stressed that 'equality is a ground for human rights. Equality and non-discrimination are the basis of international and Islamic human rights; as Rehman (2003: 269), McCrudden (2004) and Grant (2007) said, a corollary between equality and non-discrimination is well recognised.

Rebranding Equality

The widespread understanding of equality today is based on liberal equality, that 'things that are alike should be treated alike'. Non-discrimination is understood as formal equality (Kapur and Cossman 1996: 178). As stressed by Smith (2003: 185), the usual rule that applies for equality is that 'a situation is unequal if like situations are treated differently or different situations are treated similarly'. Wesson (2007: 751) and Salbiah (2005: 4) stated that this kind of equality relied upon the proposition that fairness requires similar treatment only. Liberal equality, which is drawn from the aforementioned maxim 'likes should be treated alike', asserted by Fredman (2001: 154), is associated with 'neutrality', individualism and autonomy. This might conflict with collective interest and equal distribution of social goods. Fredman (2003: 43) has stressed that the aim of equality is to give people an equal set of alternatives from which to choose to pursue their own version of a good life, thus, treating different people similarly will deny them their choice for a good life. Fredman has explained that this limited sense of equality which is correlated with neutrality is achieved by forbidding the state's preferences for any group (disadvantage group) but applying similar treatment by laws. Even though this sounds impartial to every individual, the insistence on a particular set of values based on the dominant power which set the choice might result in discrimination against disadvantaged groups. Fiss (1976: 107) has even claimed that the neutral value of similar treatment is merely an illusion.

Using the terms 'adl' and 'ihsan', the context of justice in Quran is also related to the idea of 'equality' or 'balance', defined by Fyzee (1978: 17) as 'to be equal, neither more nor less'. Mohd Daud Bakar (2003: 4), while stressing that the definition of 'adl' related to equality in Islam, claimed that justice in Islam has been widely defined as 'to put a matter in its proper and valid context'. Equality in Islam is not about the distribution of one thing into two portions of similar amounts without taking into consideration whether or not both parties need such portions or whether or not both parties' needs are similar (Abdul Munir 1986: 82). This is consistent with the notion of equality stressed by Fredman (2003) earlier that equality is to give people an equal set of alternatives from which to choose to pursue their own version of a good life. Hence, equality could entail the distribution of things into dissimilar amounts; more importantly, similar distribution might lead to inequality.

For Muslims, Islam accords equal dignity to women and men, which could be based on similar or different entitlements to rights and duties. Proponents of Islamic standards defined equality as the complementary nature of the roles played by women and men (Venkatraman, 1995: 2005), in that different roles and responsibilities between women and men are assigned purposely to ensure equal outcomes for dignity and justice. Baderin (2003: 60-61) has stressed that Islam recognises the equality of women and men, but it is not absolute. By referring the idea of non-absolute equality to the notion that women and men could have different roles and

responsibilities, Baderin demonstrated the concept of 'equal but not equivalent' in Islam. Baderin (2003: 60) noted that 'equality of women is recognised in Islam on the principle of equal but not equivalent', especially in terms of their roles within the family. From this statement, to avoid inequalities, Islamic textual sources sometimes do not advocate equal treatment of women and men which is equated with sameness in family relations, because this will not result in equal dignity and justice.

Thus, in Islam, even though equality could be achieved if the laws treat likes alike, there is still a possibility that equality might not be achieved by treating likes alike. Apart from similar treatment of laws, Islam also focuses on 'substantive equality' to ensure gender justice and fairness and to promote the collective interest. This type of equality is not intended to give similar treatment, but to give more advantages to the disadvantaged individual or group to safeguard equal outcomes. Again, this type of equality for women, for instance, is not meant to protect women because women are different from men but because women have been historically and systematically disadvantaged (Salbiah 2005: 5; 2007: 61). The aim of substantive equality is to remedy past and present disadvantages (Rebouche, 2009: 712-713). As stressed by Husband (2004: 11), equality of treatment does not take into account the fact that 'the equal application of rules to unequal groups or individuals can have unequal results.

According to Husband, equal treatment for unequal potential groups tends to reinforce inequalities and can lead to inequalities for groups that have been disadvantaged by a system that fails to take different needs into account. Substantive equality goes further than the notion of equal treatment because it considers different needs between groups and individuals to achieve equal outcomes. Indeed, focusing only on results would not be the best practice because overemphasis on results might cause unfairness inherent in the process of achieving these results. Therefore, the application of formal equality without setting aside substantive equality in Islam would help achieve the maximum justice for people, including disadvantaged groups.

There is a varied body of literature on equality based on gender from the feminist perspective. Issues of equality and possible ways to achieve it have always been at the heart of the feminist project (Frug, 1992: 4). Like the Islamic perspective on equal treatment, most writers have claimed that similar treatment is insufficient because it fails to address societal structures that perpetually disadvantage women. Charlesworth and Chinkin (2000: 10) professed that, even though women's rights to equality are guaranteed with similar treatment, inequality might still exist in the process and the principles of legal systems. As noted by Unterhalter (2005: 30), 'equality is no longer a matter of equal amounts, but a more substantive idea associated with solidarities and confronting injustice'.

Even though equality has been described as a simple concept (Holtmaat, 2004: 2), its meanings and principles have not been properly understood. Similar treatment might not have a value of neutrality because, once the right to equality is related to and enforced by laws, its objectivity and impartiality can be challenged. As discussed earlier, because of the 'aura' of truth and justice, laws have always caused people to believe that truth and justice are incorporated into laws; in fact, however, as Fredman (1997: 2) alleged, laws are made by people in power, and their interests have always been predominantly male, which is why Fiss (1976) challenged the neutral value of similar treatment. This might be due to the fact that the concept of similar treatment conceals the real nature of substantive needs and correlative principles of human rights and equality.

In thinking their way through such problems, feminists have developed certain critiques of the concept of equality which informs them. The critique asks that 'equality not be reduced to sameness' (Fletcher, 2002: 149), similar to the Islamic perspective of equality offered by Mohd Daud Bakar (2003), Abdul Munir (1986), Baderin (2003) and Unterhalter (2005) as explained earlier. In other words, if obstacles still exist to impede genuine exercise of choice, equal treatment is not sufficient (Fredman, 2003: 43). Smart (1989: 85 and 1995: 188) was right, when she criticized the notion that women should be equal (treatment) to men, as if men are the

standard by which women must be judged. As claimed by Fredman (1997: 15), 'the problem with relying in this way on the male norm is that the existing values in a male-dominated world are accepted without challenge and women are required to compete on their terms'. McKinnon (1987: 34) also condemned the notion of the sameness standard which always measures females against male standards. Women, as such, must be given equal rights with men in order to gain access to all opportunities that might lead to equal outcomes of justice for them, not similar treatment with men which results in injustice. And indeed, justice for women, must be defined by women, not instructed and framed wholly by men.

Clearly, the idea that equality can be achieved by considering the differences between people is a departure from the notion that it can be achieved only by considering the sameness between them, as the latter requires that laws or policies be applied to treat people in the same way (Fredman, 2003). Therefore, like the Islamic method of achieving gender equality, modern feminism corresponds not only to equal treatment (similar treatment), which is commonly known as 'formal equality' in the feminist discourses, but also to 'substantive equality' which can be achieved through laws (Smart, 1989: 140). Substantive equality is also referred to as '*positive discrimination*' in certain European contexts and '*affirmation action*' in the United States context. For feminists, equality of gender may not be achieved if substantive equality is not to be considered, because the objective of substantive equality is to eliminate the substantive inequality of disadvantaged groups (Kapur and Cossman, 1996: 176). That is why feminists, both in the United States and United Kingdom, have been concerned with the inability of the concept of equal rights (which refers to formal equality only) to address the reality of gender inequality (Kingdom, 1991: 114). Wolgast (1980: 48), for instance, did not reject the concept of equality as commonly referring to equal status, but preferred the notion that rights are equally protected if they depend on gender differences. Women, as such, should be treated in a manner which implies they need special protection solely on account of being a disadvantaged group. Fredman (2003: 43) thus stressed that the aims of equality require more than equal treatment: they require equal outcomes.

European Framework on Equality

The European Commission's (EU) framework to integrate gender equality in all its policies focuses on five priority areas. They are greater female labour market participation and economic independence of women and men, reduce the gender pay (and thus fighting poverty among women), promote equality between women and men in decision-making, combating gender-based violence and protecting and supporting victims, and promoting gender equality and women's rights across the world (European Commission, 2017). The EU assists women and girls across the world who are on the move, displaced, or who are excluded from education, equal access to health and family planning services, the labour market, and political life more generally. Over 15 million girls of primary school age do not go to school around the world and the EU is helping boost access to education from Africa, Latin America and the Middle East to Southeast Asia (The World Bank, 2017).

The Spotlight Initiative, a joint programme by the EU and the United Nations, is the largest-ever programme to stop violence against women in the world. In the ASEAN region, Spotlight's 'Safe and Fair' programme, a 25 million Euro programme launched in 2017, focuses primarily on ending female trafficking and labour exploitation and Malaysia, as a major destination country for women migrant workers, is part of this programme (*Borneo Post Online*, March 8, 2019).

On women's participation in the European Parliament, Maria Castello Fernandez, the Ambassador and Head of the Delegation of European Union to Malaysia has said, currently 36.1 per cent of its members are women, and this number was slightly higher from the 2014 election, with 35.8 per cent. In the current eighth parliamentary term, the number of female Vice-

Presidents rose from three to five out of 14, adding that there are now 12 women chairs of committees or subcommittees out of 24 compared to eight, in 2018. Greater representation of women in the European Parliament increases the level of democratic representation of EU citizens and helps Parliament to achieve gender mainstreaming more effectively.

Malaysia's Progress

The situation of women in Malaysia has improved over time due to women's increase access to education and awareness of their constitutional rights. Legal amendments to eliminate any discrimination against women have been made continuously but still there is no clear definition of such discrimination. Customary and traditional practices continue to make a distinction between the sexes; each ethnic group in Malaysia is influenced by Asian values which determine the role of women in the domestic or private sphere while men dominate the public sphere (CEDAW/C/MYS/1-2).

The emergence of a new consciousness of the patterns of discrimination against women and a rise in the number of organizations committed to combating the effect of such discrimination in 1960s, called the Government of Malaysia to show its support not only by setting up organisations as mentioned earlier, but also by allocating funds. In response to the UN's 1975 resolution to integrate women into the development process, the Government of Malaysia formed the National Advisory Council on Integrating Women in Development (NACIWID) which serve as an advisory and consultative body for the Government on matters relating to women in development planning and implementation. General Assembly Resolution 3519 on Women's Participation in the strengthening of International Peace & Security of 15 December 1975:

'Calls upon all Governments, intergovernmental and non-governmental organizations, particularly women's organizations and women's groups, to intensify their efforts to strengthen peace, to expand and deepen the process of international detente and make it irreversible, to eliminate completely and definitely all forms of colonialism and to put an end to the policy and practice of apartheid, all forms of racism, racial discrimination, aggression, occupation and foreign domination

General Assembly Resolution 3521 calling on States to ratify international conventions and other instruments concerning the protection of women's rights, A/RES/3521 (XXX), 15 December 1975:

Aware that women, enjoying fully the rights provided for in the relevant international instruments, should play an equal role with men in all spheres of life, including the ensuring of peace and the strengthening of international security, and should fully participate in political life'

NACIWID was the national coordinating, consultative and advisory body on women's affairs. The Department of Women's Development (JPW) serves as the secretariat for NACIWID. It was established in June 1976 as a multisectoral body comprising representative from the government and non-government sectors and provides the platform for greater intensification of efforts towards the integration of women in development. Amongst the functions of the Council are to provide advisory services and guidance to women's organizations on their participation in national development and to advise on the formulation of legislation and programmes affecting women. It serves as a nucleus to which issues pertaining to women are referred and in addition, initiates research, studies and the dissemination of information. It liaises with appropriate authorities and related international organizations to promote friendly international relations and peace.

However, the role and composition of NACIWID should have been reviewed to establish a secretariat independent of the Government's Women Ministry and limited its members to all

experts on gender to strengthen its role as a coordinating, consultative and advisory body and operating effectively (NGO Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia 2005).

Subsequently in 1982-83, the Women's Affairs Secretariat (HAWA) was set up in the Prime Minister's Office of Malaysia to administer matters related to women. HAWA was established to take over the tasks of the NACIWID Secretariat. From 1997, HAWA functioned as a department under the former Ministry of National Unity and Social Development. In 2001, the Department was placed under the then newly established Ministry of Women, Family and Community Development and restructured as the Department for Women's Development (DWD). By 2002, the DWD had set up branch offices in every state in Malaysia.

The Government made allocations of funds to the Third Malaysia Plan (1976-1980) for the development of women, primarily in their roles and functions as housewives, mothers, and supplementary income earners. These funds were channelled through organizations such as the National Family Planning and Development Board or the ministry dealing with social welfare. A National Policy on Women was formulated in 1989, incorporates its contents in the Sixth Malaysia Plan (1991-1995) period. The formulation of a National Action Plan in 1992 to support the implementation of the National Policy on Women was an integral component of the planning process. Under the Plan various strategies and programs were drawn up to be implemented by the government agencies, private sector, and non-governmental organizations (NGO). Therefore, the Sixth Malaysia Plan emphasized the formulation of the National Action Plan, which was to integrate women in the institutional process for planning, implementation, and monitoring followed by an Action Plan for Women in Development in 1997. It is stated that the government recognizes that specific strategies must necessarily be formulated to effectively incorporate women in the process of development. Towards this end, concerted efforts are made to progressively reduce existing constraints and facilitate the assimilation of women into the mainstream of social and economic activities.

Subsequently in 1982-83, the Women's Affairs Secretariat (HAWA) was set up in the Prime Minister's Office to inter alia administer matters related to capacity development of women. HAWA was upgraded in 1997 as a Department of the Ministry of National Unity and Social Development and responsible for integrating gender issues in development planning and policy formulation, through an Inter-Ministerial Coordinating Committee.

Later, the Human Rights Commission of Malaysia (hereinafter referred to as SUHAKAM) was established as an independent statutory body operating under the Human Rights Commission of Malaysia Act 1999 to promote and protect human rights in Malaysia. The SUHAKAM's report to the Women's Convention Committee highlights the observation by the Government of Malaysia's responses and implementations on comments and recommendations on the Women's Convention made by the Committee (CEDAW/C/MYS/CO/2) and in the Universal Periodic Review (UPR) in October 2013. In developing the report, various consultations were held together with the Malaysian Government and Civil Society Organisations (CSO) to share ideas, recommendations and information on the Women's Convention. SUHAKAM also monitored laws and policies which have impacted women's rights in Malaysia.

In January 2001, the Government announced the formation of a Women's Affairs Ministry developed from the HAWA as recognition of the contribution and role of Malaysian women. The Ministry, today known as the Ministry of Women, Family and Community Development, headed by a female minister is seen as a further acknowledgement of the importance of women's role in national development and as evidence of the Government's aim to promote gender equality. To empower women in Malaysia, the Government made allocations of funds to the Third Malaysia Plan (1976-1980) for the development of women, primarily in their roles and functions as housewives, mothers, and supplementary income earners. These funds were channelled through organizations such as the National Family Planning and Development Board or the ministry dealing with social welfare.

Like other State Parties, Malaysia is legally bound to put the Women's Convention's provisions into practice, committed to submit national reports, at least every four years, on measures it has taken to comply with its treaty obligations. Malaysia agrees to take all appropriate measures, including legislation, against all forms of traffic in women and exploitation of women, so that women can enjoy all their human rights and fundamental freedoms. Malaysia also undertakes a series of instrument to establish tribunals and other public institutions to ensure the effective protection of women against discrimination and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

National Policy on Women and National Women in Development (WID) Machinery Report acknowledges that while it appears that women have made significant advances in all aspects of private and public life, as reflected by the overall status of women in the country, detailed analysis of the participation of women in all spheres of development, reveals the continuous existence of obstacles and constraints to the fullest utilization of women's potential. Women's position, the Report acknowledges, relative to men, remains less than satisfactory. Women still lag, particularly in assuming political power, leadership roles, legal standing and employment. The Government's acceptance of the Plan demonstrates its commitment towards a fundamental shift in development policies that would adequately address the realities of women's lives, and actively assist women in gaining equal access to resources, wages, employment, health care, education, personal autonomy, and decision making.

The different religions and cultures have consequences of complex implementation of legislation pertaining to human rights in Malaysia. Instead of having many positive aspects in women's lives due to multi-religious and cultures, however, it is also the case that women are discriminated against by their religions and cultures which perpetuate stereotype gender roles and protectionist and patriarchal attitudes towards women. Stereotyped gender roles enshrined in religion and culture permeate through society, and are reflected in the nation's schools, in places of work, in media, government, laws and in the home. School curricula, religious teaching material and media images continue to stereotype women as homemakers when many women in Malaysia work and pursue careers.

However, SUHAKAM commends the Malaysian Government's commitment to the Sustainable Development Goals 2030 (SDG) and its effort in incorporating those goals into the Eleventh Malaysia Plan (11MP) (*Malaymail Online*. 25 September 2016). The 2030 Agenda comprises of 17 transformative goals which consists of, among others, gender equality and empowerment of women and children. Goal 5 focuses on the elimination of all forms of violence against women and girls in public and private spheres including human trafficking and sexual exploitation. This is the first time a global gendered framework for development has been adopted that is inclusive and builds upon human rights instruments (Special Rapporteur on Violence against Women, Its Causes and Consequences. A/HRC/32/42: para 38).

The implementation of the 2030 Agenda will give a fresh opportunity to accelerate progress in achieving gender equality and empowering women and girls and eliminating violence against women. Furthermore, the establishment of a Select Committee on Rights and Gender Equality in Parliament was also a good step forward for equality. As put by Katharine Davis, the Managing Director of Ipsos "More and more people in Malaysia now understand the equality issues and the empowerment of women and girls is not just a goal in itself, but a key to sustainable development, economic growth, and peace and security. The study revealed that there is a sense of complacency that we have already come far enough, and it is important for Malaysians to be aware that there is still a long way to go. Where women are fully represented, societies are more peaceful and stable. Standing up for women's rights and development is standing up for the global good" (Ipsos, 2018: 4). The future of gender equality in Malaysia may depend as much on understanding its past as well as drawing lessons from abroad (Hirschman, 2017). Thus, rebranding equality should be the way forward to empower women in Malaysia.

Women play a very important role in the well-being of family and national development. Since 2004, the Malaysian government has mandated that 30 per cent of public sector employees are women; as a result, the number of women in the civil service has risen to 35 per cent. However, the majority are still engaged in low-level clerical work rather than in decision-making roles. In the private sector, despite tax incentives and policies to reach the target of 30 per cent female decision-makers, little has changed. Women continue encounter sexism in both the private and public sectors in Malaysia, whether because of perceptions women are unfit or entrenched ideas about the role of women in society.

As a way forward, Government policies need to recognise better the unpaid care women provide and thus pave the way for a healthier work-life balance for women. A positive move would be a policy that reconciles work and family while also finding a way for the state to play a larger role in providing childcare services. It is hoped that, if 'work and family' reconciled, women would not be subordinated and marginalised.

The idea that the meaning, concept and principle of equality according to the global standard and *Shariah* be widely understood and conveyed to people through education and public discourse by Islamic women legal scholars. So far, the term equality has commonly been understood as treating people similarly, without taking into consideration the possibility that similar application of rules to unequal groups or individuals might achieve unequal results. The problem in Malaysia nowadays is that women's movements themselves do not have a pluralistic understanding of equality according to various cultures and religions; therefore, they have tried to universalise the idea of equality based on their own definition. The women's movements claim that placing women as the subject would settle the multicultural or multi-religious issues concerning women, but the movements ignore how people's religions address their believers. We propose that '*understanding equality*' be embedded in all teaching subjects in secondary schools and universities. Then men would respect women as human beings, as people similar to them, and they would realise that they have duties to perform for women.

Developing a culture to respect and appreciate women's rights and encouraging men to participate in all actions towards equality would help eliminate discrimination against women. It is well understood that, anywhere in this world, women are always the likely victims of criminals. This might occur due to a lack of respect for women's right to protection, their social rights, and their right to be treated as human (or man) or possibly because men see women as second-class human beings who deserve second-class treatment and who can be victimised. Therefore, encouraging men to participate in all actions towards equality would be a new dimension in the efforts to empower women in Malaysia. This would not only empower women and their lives but would also create awareness among men to appreciate their masculinity by protecting and providing for women, especially in the family unit, rather than considering themselves superior to them.

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