

Chapter 2

THE POLITICAL AND LEGAL STATUS OF WOMEN

This part of the paper analyzes the trends in Malaysian women's participation in political life and the civil service, and women's legal status with regard to citizenship, education, employment, legal rights and status in marriage, divorce, and the guardianship of children.

A. Women in Political Life

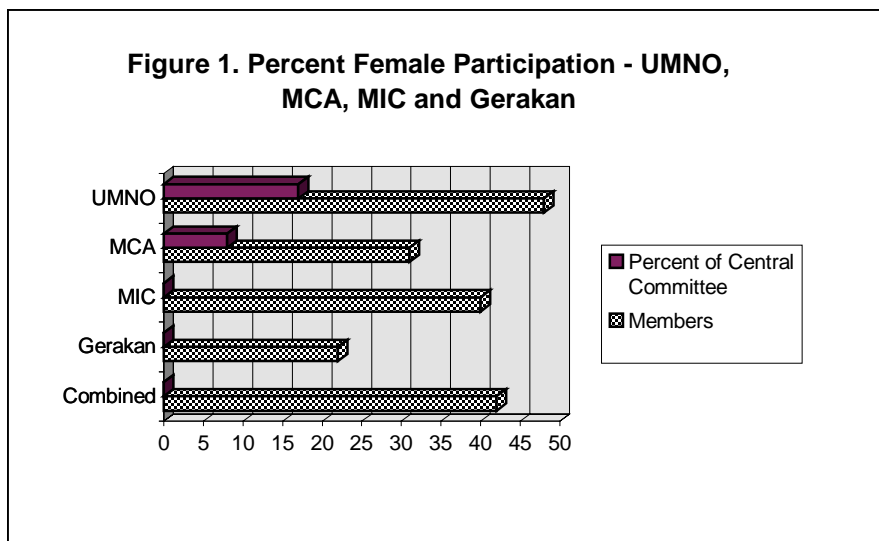
From the time of Independence in 1957, Malaysian women have had the right to vote and to hold office. Today women comprise one half of the registered voters and are active in political life. The trends of participation among women members of various political parties do not show significant differences among them. Women have continued being loyal supporters of political parties in Malaysia. Members of the Wanita UMNO in 1971 have continued to gain wide recognition for their prominent role amongst women's political organizations in Malaysia. These party members are regarded as the very backbone of the UMNO party.

However, women have continued the trend of providing solid support for male leaders, and have engaged themselves primarily in raising financial support for the parties. Women members turn out in full force during election campaigns, and carry out routine tasks related to daily campaigning and facilitating voter participation during the election process. While women provide strong support to their parties, the majority of women seem to have remained in their role as supporters of male leaders, and have, with important exceptions, retained traditional gender roles within contemporary political life.

Despite the significant roles played by the Wanita UMNO and the other women's auxiliaries at the level of mass politics, the representation of women as branch or division heads is limited (see Figure 1). In UMNO, in 1993, 5 out of 30 members (17 percent) of the central committee were women, and out of 153 divisions only one is headed by a woman. None of the 14,784 branches is headed by a woman. For more than forty-five years, the women's auxiliary of UMNO has only three women heads of divisions. The discrepancy between women's participation as members of the UMNO and their representation at higher echelons of the party is reflected by a comparison of the above mentioned figures with the fact that women constitute 872,116 of the total 1.8 million total UMNO members.⁶

Within the central committee of the Malaysian Chinese Association (MCA), of a total of 38 members, there are only 3 women (8 percent). In the Malaysian Indian Congress, (IMC), only one woman was in the central committee in 1995.

⁶ Ariffin, Jamilah, *Reviewing Malaysian Women's Status, Country Report in Preparation for the Fourth UN World Conference on Women*, Population Studies Unit, University of Malaysia, Kuala Lumpur, 1994.



Source: Ariffin, Jamilah, 1994, *op cit*

B. Women in Local and State Governments

The proportion of women gaining electoral office in local and state governments is limited. Gender inequalities still persist in this sphere, as is indicated by the extremely low percentages of women at all levels of political office. The proportions of women to men in the advisory board of the Kuala Lumpur City Hall, and local councils in five states of West Malaysia are extremely low. At the Kuala Lumpur City Hall, the ratio of women to men was 1:12 between 1985-88 and 1:13 between 1989-91.⁷

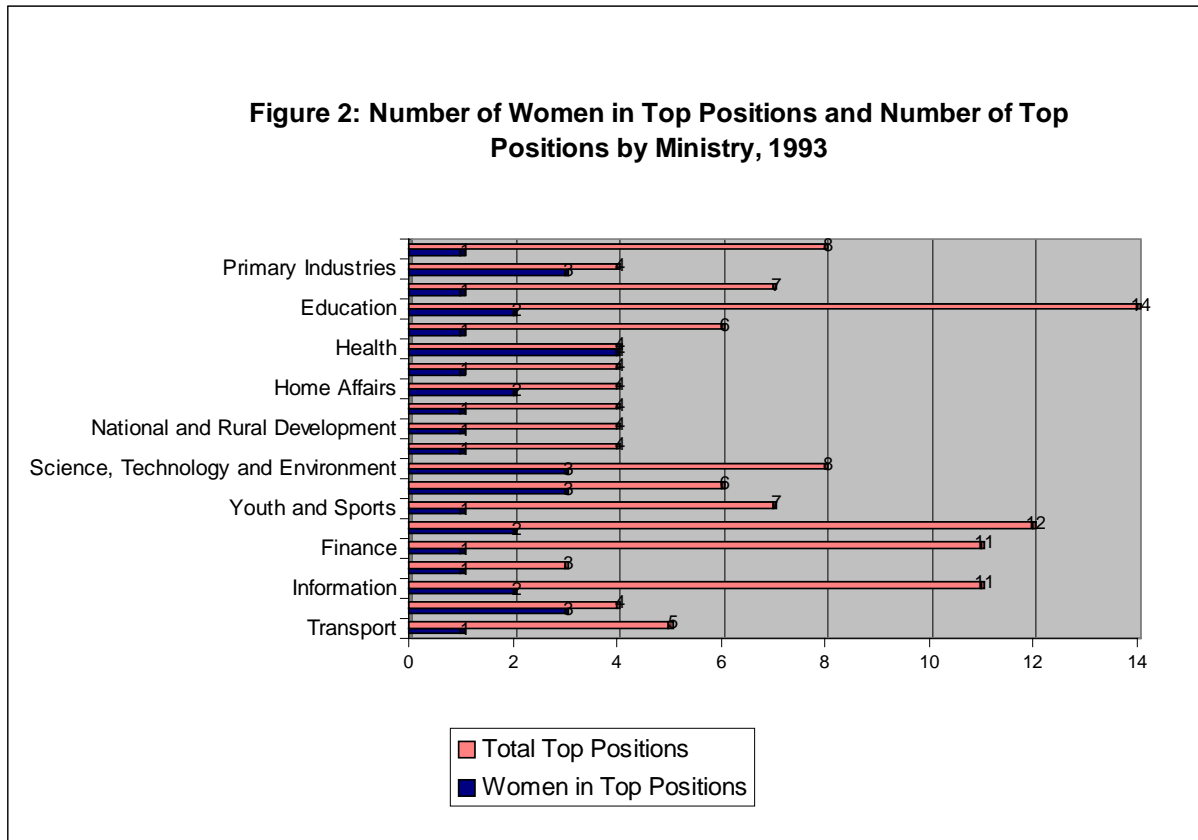
From available data on local councils from five state governments in Peninsular Malaysia, (Selangor, Penang, Johor, Kelantan, and Terengganu), the number of women councilors for the period 1988-93 is insignificant in comparison to male councilors. The representation of women in Selangor local councils is now lower than the pre 1991 period at seven percent of the total, as compared to eight percent in the earlier period. Women's representation in Penang local authorities has not changed significantly since 1988. On the basis of data analyzed from the states of Johore, Kelantan, Terengganu, similar trends are to be found.

In 1993, women were even less visible in state assemblies. At the national level, women's representation is still relatively low. Women's participation in decision making positions in government ministries is similar (see Figure 2).

Since 1985 the number of women appointed as senators has remained at similar levels. In the period 1985-87, there were 11 women senators, with a decrease in the next period of 1988-90. In 1994 the number went up to 13. Women's participation in the cabinet reflects the overall

⁷ Ariffin, *op cit*.

pattern of their roles in decision making positions in the political hierarchy. It was not until 1969 that the first woman member of the Malaysian cabinet was elected. In 1994-95, the female-male ratio in the cabinet was 1:12.5, and nothing has happened to increase women's representation. In this period there were three women deputy ministers.



Women's participation in the diplomatic services is limited. The first woman ambassador was appointed in 1976. In 1994-95 there were three women ambassadors, as compared to 67 men. The current overall ratio of women to men serving as diplomats overseas is 1:22. The Ministry of Foreign Affairs does not impose any limitations when appointing women overseas. Gender stereotypes still prevail, with women themselves not preferring to go abroad on long postings, unless single or divorced.

C. Women in Government Service

Trends in women's participation in the government sector are important insofar as government is still the single largest employer, although the share of the private sector is increasing rapidly. Government policies therefore directly and indirectly impact on policies and approaches of employers in the private sector. Government officers also develop policy advice for government and implement the same. The advancement of women, with gender sensitive policy making and program/project design and implementation, is dependent upon their access to higher levels of policy agenda setting, and decision making, in politics and government. It is also dependent upon the

creation of gender awareness and sensitization, among both men and women responsible for policy making, implementation of programs and projects, monitoring and evaluation.

Women's participation in government service has increased rapidly between 1980 and 1991, from 27 percent to 33.6 percent. Several factors are important in this regard, the most significant being women's increasing participation in education. It was also in part due to the expansion of the health and education sectors, and the increased opportunities in government service for teachers and health workers. There is a positive correlation between the educational attainments of women, and their labor force participation rates. Women have increasingly opted to join the government services. This has to do with the expansion of government employment from the 1960s until the 1980s, during which period, government extended its scope to include support services to provide for the rapid social and economic development of the nation. Women's entry into government service also helps illustrate attitudinal changes among parents, who recognize that girls have educational and professional potential, which provides options for them outside of marriage.

Table 1 shows the distribution of women in the different divisions in their government services. However, as Table 1 shows, in the distribution of women in the different divisions of government service, women made slow progress in the Group A category between 1970-90. Only 8.9 percent of women were in this category of a total of 214,814 women in government

Group	1986	1987	1988	1989	1990	1991
Salary	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)
Group A	244 (1.1)	19,032 (8.9)	19,962 (9.2)	21,367 (9.5)	22,965 (9.9)	25,050 (10.5)
Group B	748 (3.2)	15,066 (7)	15,475 (7.1)	16,551 (7.4)	17,805 (7.7)	23,461 (9.8)
Group C	15,804 (68.5)	104,153 (48.5)	105,551 (48.8)	109,366 (48.8)	113,686 (49.5)	11,596 (48.3)
Group D	6,268 (27.7)	76,563 (35.6)	7,097 (35.4)	76,766 (34.3)	75,329 (32.8)	74,708 (31.3)
Total	23,064	214,814	218,084	223,050	229,785	238,415

Source: Mansor, Norma and Rosnah Nik (1993). Data obtained from Central Staff Records, Public Services Department (1988).

employment by 1988. By 1993 there was an increase to 25.5 percent.⁸ In the Category B, there was a 51.6 percent increase. While the trends in women's participation in Categories A and B were favorable as compared to men between 1988-91, in absolute terms, the majority of women are in category C, and they account for 42.6 percent of total government employees in this category. Women are also concentrated here in traditional women's jobs such as in health, medical, and

education services. These are still in keeping with gender roles of women as providers of care, and child rearers. Also, within the medical and health services, women are still predominantly nurses, rather than doctors or hospital administrators.

⁸ Mansor, Norma, and Nik Rosnah, 1993, Quoted in Ariffin, *Reviewing Malaysian Women's Status: Country Report in Preparation for the Fourth UN World Conference on Women*, Population Studies Unit, University of Malaysia, Kuala Lumpur, 1994.

The under representation of women in the higher and middle echelons of government service is an area of concern, insofar as these positions are critical in terms of gender sensitive policy making, and program and project design and implementation.

D. Women's Legal Status

1. Women under the Federal Constitution

The State enacts laws which are meant on the one hand, to prevent any forms of discrimination among citizens, with regard to the laws and policies of government, and on the other, to create positive opportunities for vulnerable groups to be able to participate in development processes. In Malaysia, there are two sources of laws, written and unwritten laws. The written laws comprise the Federal constitution, legislation enacted by parliament, and subsidiary legislation prepared under powers conferred by Parliament and State Assemblies. Unwritten laws consist of English common law suitable to local circumstance, judicial decisions of the Supreme Court, and local customary laws. Since Independence in 1957, Malaysian women's rights as citizens to participate in the political and administrative life of the nation have been recognized and guaranteed by the Federal Constitution, which states under Article 8, clause 1, that " all persons are equal before the law and entitled to the equal protection of the law". Clause 2 further provides that "except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, or place of birth 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 any property or the establishing or carrying on of any trade, business, profession, vocation, or employment". The Federal Constitution thus contains no specific provision against gender-based discrimination, as opposed to other types of discrimination based upon religion, race, descent or place of birth, which are expressly stated in the Constitution. The omission of gender from among the categories is increasingly regarded as significant, and needing change, inasmuch as it allows for the existence of provisions that provide for protective discrimination against women in the Employment Act, and avoids elimination of alleged discrimination under Islamic laws.

E. Women's Participation in the Legal System

Within the legal system, women are well placed to support reforms to improve the legal status of women. In 1991, one-third of the registered lawyers were women. In 1993, one-half of the session court judges, 44 percent of the Magistrate judges, and 15 percent of the appointees to the Attorney-General Chambers were women. In 1994, the first female Solicitor General was appointed.

F. Laws Affecting Women

1. Citizenship and Permanent Residence

Under the Federal Constitution, both men and women are equally competent to acquire citizenship by means of the law, through registration, or naturalization. Under Article 15 of the Constitution, no conditions were imposed upon foreign wives of citizens from applying for citizenship to the registering authority. However by a subsequent amendment made in 1962, conditions are imposed upon such acquisition of citizenship, including "good character". By another amendment in Clause (2) of Article 15, citizenship rights could be acquired by any child of a citizen.

This amendment put women on par with men as regards the automatic citizenship of children born to them. However, discrimination remains as regards acquisition of citizenship rights by foreign spouses of Malaysian women. This can be related to the view that upon marriage a woman should follow her husband and not vice versa. There is a growing demand among educated Malaysian women that the policy requires to be changed in order to reflect women's increasing participation in education, and in the economy, and their contribution to the advancement of the country. It is feared that if the policy is not changed, highly skilled and educated women may leave the country in search of other opportunities simply as their foreign husbands cannot stay in the country. This would militate against the country's need for a highly skilled and increasingly technically competent labor force.

2. *Education*

In the area of education, there are written laws which categorically forbid discrimination against women and men with regard to education. An important legislation in this regard, is the Universities and University College Act of 1991 which stipulates open membership to all irrespective of sex.

3. *Women's Status under Labor Legislation*

While labor laws do not reflect inequalities on the surface, and apply to both the sexes equally, yet there are gender concerns related to provisions of laws that apply exclusively to women, and can be discriminatory.

4. *The Employment Act, 1955⁹*

This Act covers both unionized and non-unionized labor and employers but it only applies to Peninsular Malaysia, while Sabah and Sarawak have their own labor ordinances. The Employment Act is more beneficial to workers than the latter, and there are ongoing debates to extend it to all of Malaysia. This is the major legislation which regulates all labor relations, and certain parts apply equally to men and women, such as contracts of service, wages, rest hours, hours of work, holidays, annual leave, sick leave, maternity benefits and termination and lay-off benefits. However, there are some aspects of these that can be detrimental to women workers. There is no stipulation in the Act with regard to employers paying lower wages to their women employees, as compared to male workers, for doing the same amount of work. Women in the private sector are subject to wage discrimination as compared to their male counterparts. In the public sector, women are better placed as the norm of equal pay for equal work prevails. Women in the private sector do not at present have any legal redress against wage discrimination.

⁹ Revised in 1981.

5. *Prohibition Against Nightwork*

Section 34 of the Act prohibits night work for women in the agricultural and industrial sector, subject to the proviso that empowers the Director General of Labor to exempt in writing, any female employees from the prohibition. Given the structural changes in the economy and in the labor market, the increasing employment of women in light industries, and for longer hours of work involving night work, is becoming more widespread. The practical value of such prohibitions is now being called in question by women in today's conditions, and Malaysian women are asking for legislation to regulate the working conditions for women during night time employment, not by prohibition, but by employers being asked to provide suitable support facilities for women who opt to work during night shifts.

6. *Maternity Benefits*

Pregnant women under the Employment Act are entitled to maternity leave for 60 days during which they are to receive full pay. Recently, the Government has reviewed maternity leave allowed for public sector employees and extended the 42 days to 60 days after which the leave can be extended up to three months as unpaid leave. Women in Malaysia are entitled to full pay for five deliveries.

It is important from the public viewpoint, that young Malaysian women who are increasingly entering the labor force, should gain full social protection benefits for themselves and their children.

7. *Employees' Social Security Act, 1969, and Pensions Act, 1980*

These Acts regulate social insurance and pension benefits for Malaysian workers. The Employers' Social Security Act provides social security protection for workers. It excludes certain categories of workers including domestic servants and self-employed persons. These Acts are based on the premise that the male is the breadwinner of the family, and hence, should not be dependent upon the benefits arising from the loss of a female worker belonging to the family. Both acts prescribe different entitlements for widows and widowers, in case of compensation, and pension payments for employees suffering death or injury sustained during work. While social security and income laws have been amended to meet the needs of working women to pay taxes and accumulate pensions, there are ongoing gender issues regarding differentials in laws, rules and regulations. Some ongoing issues are the following: (i) self employed women must pool their income and file in their husbands' names; (ii) women supporting families are not entitled to the same dependent allowances as men; and (iii) while tax reliefs are available for men claiming to have a "dependent" wife, no such provision is made for women who support their husbands. These are important gender considerations for legal reform, especially given the increasing participation of women in the Malaysian labor force, and the situation of households which are female headed or primarily supported by women.

G. Other Laws Impacting upon Women's Status

1. Guardianship of Children

The Guardianship of Children Act of 1961 militates against women, as regards the legal recognition of their guardianship of their children, *vis-à-vis* their husbands. This poses a particular difficulty for women whose husbands desert their families, and who then have to apply to the courts for legal recognition as guardians of their children. Malaysian women have been advocating a change in the law to provide for equal rights to guardianship for both parents.

2. Inheritance

The Distribution Act also goes against the interests of women who die intestate in that, their property will be inherited by their husbands irrespective of whether they have children or not. This Act is also under review and amendment. For Muslims, the rule whereby the widow gets an eighth share of the husband's estate if there are children, and a fourth if there are none, is justified by the patriarchal ideology that the man is responsible for support to all the members of his family, whereas by implication women do not have such a responsibility.

The provisions related to marriage and divorce for non-Muslims is governed by the Law Reform (Marriage and Divorce) Act 1976 (LRA). The law outlaws bigamous and polygamous marriages, and its implementation in 1982 represents a progressive step for the women of the country.¹⁰

3. Secular Family Law

The LRA invalidated early marriages (below the minimum age of 18), and introduced compulsory registration of all marriages. The LRA provides for divorce by mutual consent after two years of marriage, which is easily effected. However, when the divorce is contested, the entire process is complicated and long. Women are disadvantaged on issues such as child custody, division of matrimonial assets, and maintenance payments.¹¹ Although the LRA includes provision for the maintenance of the spouse, the real problem arises for women in the enforcement of the husbands' legal responsibility to provide maintenance. Women thereby suffer the most due to the breakdown of marriage. Guardianship of children is vested with the father under the Guardianship of Infants Act 1961. This law is in the process of amendment in the Attorney-General's Chambers.

4. The Islamic Family Law Enactment

Islamic Family Law is under the legislative authority of the States with the Sultan as the prime authority. In each state, the Islamic Religious Council takes care of all matters pertaining to Islam, and the Mufti presides over a legislative committee. Administrative matters are under state religious departments, while the judiciary is under the state Syariah Court system.

¹⁰ RETA 5700: Sociolegal Status of Women in Selected DMCs: Draft Country Study for Malaysia, 1997.

¹¹ *Op cit.*

A fundamental issue of contention is the problem of ensuring uniformity of laws across the different states. In the late 1970s, the federal government started a process of legal reform, which is still ongoing. A Committee set up by the Department of Islamic Development in the Prime Minister's Office has drawn up a model statute which has been passed on to the states for adoption. Model statutes for family law, administration of the law, procedural law, Syariah Criminal Law, and laws of evidence have been submitted to the states. The problem that arises is that after adopting the model statutes of the Islamic Family Law, the states make their own amendments. The model statute of the Islamic Family Law provides for greater protection of women's rights, which are whittled away by state amendments. The lack of uniformity leads to errant husbands crossing state boundaries to escape court judgments, payments of maintenance, or in order to contract polygamous marriages.

Women's organizations recently presented two memoranda on legal and administrative reform to the Government, one on polygamy and the other on other aspects of Islamic Family Laws and the overall administrative system.¹²

Consent to marriage is required from both parties. However enactments in certain states allow the father or paternal grandfather to marry off an unmarried, virgin daughter/grand daughter without her consent. Change in this has been asked for by women, as all marriages should be based upon women's consent. Besides this, the consent of the father/guardian to the marriage has also to be obtained. In cases where such consent is not forthcoming, there is the possibility of women going to other States, or outside the country to escape the provision. This creates complications regarding "foreign marriages" and the registration of these under the local laws.

5. *Violence Against Women*

The Domestic Violence Act of 1994 (DVA) implemented in 1996 was the "crowning achievement" of a campaign that began in 1985.¹³ It is administered by the Ministry of National Unity and Social Development, and enforced by social welfare officers and the police. The rules and regulations under this Act are still to be prepared. The main problems with the law are the difficulty and length of time needed to obtain police protection, which is very often ineffective due to the lack of adequate provisions, as well as the attitude of the law enforcement agencies, which tend to treat domestic violence against women as a private family matter.

The rape laws were amended in 1989 as a result of a vigorous campaign, but there are still shortcomings. There is no law specifically for incest, which is subsumed under rape. This is unsatisfactory, and proposals for a new law are under consideration.

The Women and Girls Protection Act of 1975 (WGPA) contains provisions for prosecuting persons involved in prostitution and trafficking of women. The Act is very vaguely worded and can be liberally interpreted. As a result, any under-aged woman found in a questionable place or circumstance may be defined as "in need of protection" and detained. This law needs to be studied and its discriminatory aspects should be amended or repealed.¹⁴ The Government is currently

¹² *Ibid.*

¹³ RETA 5700: *Op cit.*

¹⁴ RETA 5700, op cit.

reviewing all legislation that pertains to social matters. This is being undertaken by an inter-ministerial committee chaired by the Minister of Education. Recently, it was announced that a new law has been proposed to replace three existing Acts – the Juvenile Courts Act (1947), Child Protection Act (1991), and the WGPA (1975).

6. *Sexual Harassment*

At present, there are no laws against sexual harassment at the workplace. Women who wish to pursue the matter have to make a police report and rely on the police to prosecute the aggressor under criminal law. It is very difficult to prosecute harassers in the courts and at the workplace. The situation is complicated as the women's jobs may be at risk if they file a complaint against the aggressor(s).

The Labor Department headquarters has set up a special division in its office to deal with problems of female employees at their workplace. There is clear need for specific legislation to deal with the problem of sexual harassment. It should also be addressed as an area of concern in the National Policy for Women.