

# Why sexual harassment victims in Malaysia stay silent

Friday 23 February 2018, by [KONG Lee Lian](#) (Date first published: 21 February 2018).

**ON June 2, 2016, Asmah wept as she sat on a bench in Malaysia's highest court. The court had just delivered its decision on her sexual harassment claim against her superior - and she'd won. But the victory was bittersweet; it had taken all of six years, 10 months and four days to get vindication in a case she says should never have become that complicated.**

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From her very first day of work at Malaysia's Lembaga Tabung Haji (pilgrims funds board), Asmah's boss, Mohd Ridzwan Abdul Razak, had spoken and acted indecently toward her.

He taught her how to find out whether a man's genitals were still working. He asked her to pray to God for a dream of her having sex with her future husband.

Yet, he sued her for defamation when she complained against him to his superior. He demanded an apology and half a million ringgit as damages. She sued him back for the mental and emotional pain his unwanted advances had caused her. The High Court found in her favour.

But it didn't end there. Mohd Ridzwan pursued the case all the way to the Federal Court. Asmah was forced to fork out nearly RM100,000 in legal fees and spent hours at psychiatric clinics for the distress she went through.

"It was hell," Asmah told *Asian Correspondent*.

Asmah's case represents the terrible length, expense and pain most sexual crime victims go through when they report their perpetrators.

It's an experience that many would rather not have, when justice looks more elusive than certain. They let their abusers go free.

But Asmah chose to fight. The 35-year-old accounting graduate was not letting him get away with his rude and lewd behaviour.

"Right is right. Wrong is wrong," she said.

In the High Court judgment, the judge considered several separate incidents.

In one, Mohd Ridzwan made this sexual joke in front of Asmah and another colleague:

*"Kalau you nak tahu 'benda' lelaki itu berfungsi ke tak ikut orang-orang tua, ikat 'benda' tu dekat tali. Tali itu disambungkan dengan buah kelapa. Kalau buah kelapa itu terangkat, maksudnya*

*'benda' itu good ... Sexual graph of a person – men after 50 is no use. Kalau 20 it shoots up. 30 graf turun. When 40, it shoots up again"*

("If you want to know whether a guy's 'thing' still functions, follow the advice of the elders – tie their genitals using a string to a coconut. If the coconut is lifted, that means the genitals are 'good' ... Sexual graph of a person – men after 50 is no use. If he is 20, it shoots up. If 30, the graph will go down. When he is 40, it shoots up again".)

Another time, under the pretext of offering advice to Asmah, Mohd Ridzwan asked her to look for a husband as "religious and responsible" as him.

*"Kalau nak cari husband, cari yang beragama, bertanggungjawab, macam I ... you kena buat sembahyang istikharah dan kalau you mimpi, you akan mimpi berjimak dengan orang tu ...".*

("You have to pray to God for guidance and you will dream about having sex with the chosen man.")

The above incidents were reported in detail and judged as true in the verdict by the Kuala Lumpur High Court.

Asmah finally received vindication, as well as RM100,000 and RM20,000 in general and aggravated damages respectively, when the country's highest court found in her favour that June day.

But the journey was an ordeal that had turned her life upside down.

"I don't think anyone would want to go through what I went through," Asmah said.

## **Reprisals gag victims**

For sexual harassment victims who speak out, retaliation is almost always certain.

Suing Asmah for defamation shows only one facet of the retaliation victims like Asmah face. Reprisals can come from other sources too, like the public and the media, the very same parties demanding victims to report their abuse.

When we published our report on how female journalists in Southeast Asia are sexually harassed by male politicians, we received a barrage of comments from readers. They were angry and sympathetic. But a good deal also blamed the journalists for tempting the behaviour and for not reporting.

These stand out:

"Stupid...so low dignity...why didn't you defend yourself? Why didn't report to police?"

"They greet u by sticking their tongue into your mouth and you didn't think of it as harassment that time? Seems like you are the one baiting them to me."

"You girls enjoyed the fame and pleasure, now you want to complain..?"

In a statement that was later retracted, Malaysia's National Union of Journalists chief told female journalists to not wear clothing that was "too revealing or sexy".

When Asmah went public with her story, she received this same treatment. She heard rumours that people believed her transfer to another department meant she was the guilty party.

Victim-blaming is “rampant” in Malaysia, according to Women’s Aid Organisation Malaysia Communications Officer Tan Heang-Lee.

Victims are usually branded as “lying, exaggerating, or too sensitive”, Tan said.

“There is the myth of the ‘perfect victim’ – the false idea that victims only deserve to be believed and supported, if they do everything ‘right’. Such standards clearly do not apply to perpetrators, who are often excused for their actions.”

Asmah was, by many accounts, a victim who had done everything “right”.

She dressed “modestly”. She followed Tabung Haji’s proper channels to report sexual misconduct. She collected witnesses and evidence.

Yet, it took her years before she was believed. “Seven years of my life were wasted due to this,” Asmah said.

At the same time, Mohd Ridzwan was only given an administrative warning for his actions after an internal investigation found insufficient evidence to proceed with disciplinary action.

He continued to receive bonuses in 2009 and 2010. And though he claimed Asmah’s complaint had caused his contract with Tabung Haji to not be renewed in 2010, he was offered to lead Bank Simpanan Malaysia’s Risk Department just six months after, a position estimated to have an annual remuneration upwards of RM168,000 for someone with 8 to 12 years of experience.

Asmah’s career did not get the same treatment. She was transferred to a department that did not match her qualifications. The accounting graduate was relegated to administrative tasks like ordering “*pisang goreng*” (banana fritters) or making travel arrangements for her new department.

Though she got a better offer at Citibank, she stayed with the hopes of getting justice from Tabung Haji. But Human Resources blindsided her in their handling of her case.

They did not even inform her that they’ve closed her case, Asmah claimed, with just a warning letter to Mohd Ridzwan, one she received no copy of. Her case was swept under the carpet.

### **‘Slim’ protection**

Malaysian law barely protects sexual harassment victims, according to Tan.

“If survivors were to report sexual harassment to the police, their primary legal recourse would be the Penal Code. But the Penal Code only applies to certain forms of sexual harassment – such as if the harassment amounts to assault, criminal intimidation, etc.,” Tan explained.

Asmah’s case revealed the shortcomings of the country’s limited legal protection. Her case rested on the psychological harassment she endured, something the country’s Employment Act does not cover.

There is no standalone legislation for sexual harassment here either.

What’s available is a Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, introduced by the Human Resources Ministry in 1999.

The trouble with this, activists and lawyers say, is that it’s on a voluntary basis. So far, less than 10 percent of registered and active companies have implemented the code as of August 2010.

And while Asmah's case did create a tort of sexual harassment in Malaysia, the law is still limited in how it frames an employer's duty to create a "safe environment", according to her lead counsel, David Morais.

It lacks clear guidance on whether one, a company needs to have a policy against sexual harassment; two, whether that policy is one that is clearly understood by all employees and; three, whether a company needs to have a structure for complaints, which requires a fairly immediate form of response for not just sexual harassment, but any form of harassment or bullying.

Morais said:

*"If you look at how Asmah's case was handled here, the process itself is opaque, it is lengthy and the results seem incomplete."*

In an email to *Asian Correspondent*, a Tabung Haji spokesman said the legal suit did not "directly involve" the hajj fund board save for the fact that it involved two former employees.

"For many years, Tabung Haji has put in place an internal policy against sexual harassment. The Code of Practice on the prevention and eradication of sexual harassment in the workplace which was issued by the Human Resource Ministry was also adopted by Tabung Haji and informed to all staff since 2006. The policy against sexual harassment is also part of Tabung Haji's Disciplinary Regulation 2010."

When asked whether there have been improvements to the hajj fund board's policies after Asmah's case, Tabung Haji did not wish to comment further.

### **Legal paralysis or reform?**

It's been two years since Asmah's case at the Federal Court.

Since then, a police officer has been convicted for forcing a teenager to perform oral sex on him, a commuter had a penis rubbed against her in the train and the national diving team is embroiled in what the youth and sports minister himself has described as a "toxic culture" that has caused "cases of rape, sexual harassment, violence, beatings, bullying and threats".

A sexual harassment act – something activists have been campaigning for since the 1980s – remains nowhere in sight.

Victims like Asmah continue to be dismissed and dehumanised by the gaping holes in Malaysia's legal framework, the very same local politicians continue urging victims to put themselves through.

Support is scarce too. One of the biggest obstacles Asmah faced throughout her years fighting in the courts was when her lawyer then left her just as they were preparing for the Federal Court hearing. Morais and his team took over then, and for free.

Her tears at the Federal Court were because she was overwhelmed by the gratitude she felt towards this small group of strangers who stood by her despite all these odds.

Yet, it need not be this way.

The process of getting justice can be made more "survivor-friendly" and centred around their needs, Tan said.

And a sexual harassment act, while long overdue, can certainly offer greater legal protection to victims.

Malaysia can borrow and adopt legislation from many countries, lawyer Morais said. Singapore, Hong Kong and the United Kingdom – all of which practise the same common law system as us – have laws against sexual harassment that our legislators can adopt.

“There’s no need to reinvent the wheel.”

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**Lee Lian Kong**

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