

CYBER SEXUAL HARASSMENT & VICTIM PROTECTION LAWS: A COMPARATIVE STUDY OF MALAYSIA, SINGAPORE, AND AUSTRALIA

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Abstract

Sexual harassment is a widespread phenomenon, affecting various people across the globe, irrespective of gender and age. With the technological revolution, sexual harassment has infected the digital realm in the form of cyber sexual harassment, where an individual can be sexually harassed without the physical presence of the harasser. As cyberspace is a global platform for communication, the harasser could harass his target from any part of the world while remaining anonymous. On the other end, the victim could suffer in the real world with harm such as emotional disturbances and mental health issues. Thus, this paper aims to address the gap in Malaysian laws to protect victims of cyber sexual harassment. To achieve this aim, the sexual harassment laws in Malaysia and their weaknesses will be examined. Following this, a comparative study will be conducted on laws relating to cyber sexual harassment in Singapore and Australia.

Keywords: *Anti-Sexual Harassment Act 2022*, cyber sexual harassment, victim protection

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I. INTRODUCTION

‘Sexual harassment’, generally refers to unwelcomed sexual advances, requests for sexual favours or other conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in such circumstances. This includes unwelcome physical, verbal or nonverbal conduct.¹ It is a social phenomenon faced by various individuals globally, where males and females, regardless of age, can fall victim.

According to research conducted by the Ministry of Women, Family and Community Development of Malaysia in 2020, it was found that 44.4% of sexual harassment incidents in Malaysia occur in public places, 30.7% through cyberspace and 29.4% in the educational setting.² Conventionally, sexual harassment takes place in the physical form, where the victim encounters the harassing act in the physical presence of the harasser.³

With the evolution of technology, sexual harassment has plunged into the virtual world of cyberspace,⁴ where the victims face the sexual harassment act(s) through the virtual world, without the physical presence of the harasser. As cyberspace is a medium which connects people worldwide, cyber sexual harassment (“CSH”) can be carried out by a harasser from any part of the world at any time and remain anonymous.⁵ The nature of the Internet which enables a user to remain anonymous or conceal their identity is an added advantage for the harasser to execute the harassment acts in cyberspace.⁶

¹ Haezreena Begum, ‘International Criminal Law’ in Ashgar Ali Ali Mohamed and Muhamad Hassan Ahmad (eds), *Criminal Law in Malaysia* (Sweet & Maxwell Malaysia, 2023) 545

² Faridah Awang, Raja Kamariah Raja Mohd Khalid and Azyyati Mat Zam, ‘Pemahaman dan Pengalaman Gangguan Seksual Dalam Kalangan Masyarakat Malaysia’ (2020) 16 *International Journal of Social Policy and Society* 121, 131 <https://myjurnal.mohe.gov.my/filebank/published_article/99375/9_Pemahaman_dan_Pengalaman_Gangguan.pdf>.

³ Shahidah Hamzah and Daeyrell Walsh, ‘Gangguan Seksual: Kepentingan Kesedaran Mengenai Gangguan Seksual dalam Kalangan Pelajar’ (2023) 4(1) *Advances in Humanities and Contemporary Studies* 240, 242 <<https://doi.org/10.30880/ahcs.2023.04.01.020>>.

⁴ Marisa Kurnianingsih et al, ‘Legal and Moral Relations: Legal Protection for Women as Victims of Sexual Harassment in the Digital Age’ Irma Cahyaningtyas, Aju Putrijanti and Kadek Cahya Susila Wibawa (eds), *Proceedings of the 2nd International Conference on Law, Economic, Governance* (EAI 2021) 1.

⁵ Ahmed E Arafa et al., ‘Cyber Sexual Harassment: A Cross-Sectional Survey Over Female University Students In Upper Egypt’, (2018) 5(1) *International Journal of Community Medicine and Public Health* 61 62 < DOI: <http://dx.doi.org/10.18203/2394-6040.ijcmph20175763>>.

⁶ Azy Barak, ‘Sexual Harassment on the Internet’, (2005) 23(1) *Social Science Computer Review* 77, 83 <<https://doi.org/10.1177/0894439304271540>>.

On the other hand, the online harm caused by the harasser could affect the victim's personal life in the real world. They could suffer from significant emotional distress,⁷ sadness, anger, hatred, and fear,⁸ which could lead to depression, anxiety, stress, and posttraumatic reactions.⁹ Grievous kinds of CSH, like revenge pornography, could lead to severe consequences in their lives, such as facing public shame and humiliation, mental health issues, offline harassment, stalking, posttraumatic stress disorder, anxiety, depression, and suicidal thoughts.¹⁰ Thus, the researchers are of the view that online platforms need to be regulated to reduce risk and harm to Internet users and promote a safe online environment.

Recently, Malaysia introduced the *Anti-Sexual Harassment Act 2022 (Act 840)* ('the ASHA 2022'), which provides an avenue for the victim of sexual harassment to seek redress and establishes the Tribunal for Anti-Sexual Harassment, besides raising awareness and preventing sexual harassment.¹¹ Even though Malaysia has taken a step forward to protect victims of sexual harassment, unfortunately, this legislation fails to include provisions on CSH. Indeed, existing laws in Malaysia do not cater for the protection of victims in the cyber realm.

Thus, this paper supports immediate law reforms to safeguard Internet users from CSH. This study is structured into six parts. The first part sets the backdrop of this paper, and the abbreviations used in this paper. The second part of the paper provides an overview of CSH. The weaknesses in the Malaysian law are addressed in the third part, followed by a discussion of the approaches of Singapore and Australia in the fourth part. The next part provides for a discussion. In the final part, law reform suggestions are proffered.

⁷ Nicola Henry and Anastasia Powell, 'Technology-Facilitated Sexual Violence: A Literature Review of Empirical Research' (2018) 19(2) *Trauma, Violence, & Abuse* 195,200 <DOI: 10.1177/1524838016650189> .

⁸ Ahmed E Arafa (n 5) 64.

⁹ Jenna Cripps and Lana Stermac, 'Cyber-Sexual Violence and Negative Emotional States Among Women in a Canadian University' (2018) 12 *International Journal of Cyber Criminology* 171, 171 < DOI: 10.5281/zenodo.1467891>.

¹⁰ Samantha Bates, 'Revenge Porn and Mental Health: A Qualitative Analysis of the Mental Health Effects of Revenge Porn on Female Survivors' (2017) 12(1) *Feminist Criminology* 22,22 <DOI: 10.1177/1557085116654565>.

¹¹ See the Preamble to the *Anti-Sexual Harassment Act 2022* (Malaysia) ('ASHA 2022').

II. OVERVIEW OF CYBER SEXUAL HARASSMENT

CSH can be described as a form of unwelcomed communication of sexual desires or intentions by a perpetrator towards another individual,¹² which takes place over digital mediums.¹³ Unwelcomed acts of sending offensive sexual messages, sexual remarks, dirty jokes, and intentional sending of erotic and pornographic images or videos through online communication platforms amount to CSH.¹⁴ This unwanted communication can be in the form of verbal, written or visual harassment.

The verbal form of CSH refers to the conduct of ‘assaulting and intimidating others online using words and phrases that denote sexual connotations on social media platforms.’¹⁵ These may take place through phone calls, video calls, voice messages or any other communication where an individual utters words or phrases of sexual innuendo which is offensive and derogatory to the receiver of the communication.

On the other hand, written harassment refers to the conduct of sending lewd material in the form of text such as short message service (SMS), multimedia message service (MMS), electronic mail (e-mail) and other online modes.¹⁶ This occurs when an individual sends text messages with sexual content such as vulgar texts and requesting nude photos.¹⁷ Apart from these, offensive sexual messages, sexual remarks and dirty jokes also amount to this form of harassment.¹⁸

Meanwhile, the visual form of CSH can be classified into terms such as cyber flashing, revenge pornography or deepfake pornography. ‘Cyber-flashing’ refers to the behaviour of sharing sexually explicit images via digital

¹² Nicola Henry (n 7) 198.

¹³ Elizabeth Reed et al, ‘Cyber Sexual Harassment: Prevalence And Association With Substance Use, Poor Mental Health, And STI History Among Sexually Active Adolescent Girls’ (2019) 75 *Journal of Adolescence* 53, 54 <<https://doi.org/10.1016/j.adolescence.2019.07.005>>.

¹⁴ Azy Barak (n 6) 78.

¹⁵ Kyung-Shick Choi, Seong-Sik Lee and Jin Ree Lee, ‘Mobile Phone Technology and Online Sexual Harassment among Juveniles in South Korea: Effects of Self-control and Social Learning’ (2017) 11(1) *International Journal of Cyber Criminology* 110, 117<<https://doi.org/10.5281/zenodo.495776>>.

¹⁶ Farheen Baig Sardar Baig and Yusuf Abdul Azeez, ‘Sexual Harassment in the Education Sector: An Introduction’ in Ashgar Ali Ali Mohamed and Muzaffar Syah Mallow (eds), *Sexual Harassment in the Education Sector: A Malaysian Perspective* (IIUM Press, 2016) 1,5.

¹⁷ Sharifa Sultana, ‘Unmochon’: A Tool to Combat Online Sexual Harassment Over Facebook Messenger’ in *CHI '21: Proceedings of the 2021 CHI Conference on Human Factors in Computing Systems* (Association for Computing Machinery, 2021) 1-, 6 <<https://doi.org/10.1145/3411764.3445154>>.

¹⁸ Azy Barak (n 6).

technologies to unsuspecting or non-consenting recipients.¹⁹ Here, the explicit content could be self-produced sexual media such as a nude selfie or genital picture of the harasser, or any pornographic material.²⁰ On the other hand, ‘revenge pornography’ refers to the distribution of private, explicit images of an individual without their consent, with the aim of embarrassing and or causing distress.²¹ In most cases of revenge pornography, the harasser is an ex-partner of the victim who commits the act to take revenge on the victim for terminating their relationship.²² Meanwhile, ‘deepfake pornography’ refers to fake videos created using artificial intelligence or machine-learning applications which merge, combine, replace and superimpose images and video clips onto a video which appears real.²³ Here, the face of an individual (victim) is laid over the body of another person engaging in sexual acts to depict the victim performing such acts.²⁴ Besides these, non-consensual dissemination of intimate images, such as upskirting videos is also a visual form of CSH.²⁵

Studies have found that females are vulnerable to sexual harassment, compared to males.²⁶ Recent statistics by the Royal Malaysian Police,²⁷ reveal that 98.56% of sexual harassment victims are females.²⁸ In fact, international law has proclaimed sexual harassment as a form of sexual violence against women,²⁹ which could lead to harm or suffering³⁰ to its victim. Studies conducted in

¹⁹ Craig A. Harper, Dean Fido and Dominic Petronzi, ‘Delineating Non-Consensual Sexual Image Offending: Towards An Empirical Approach’ (2021) 58 *Aggression and Violent Behaviour* 1, 2 <<https://doi.org/10.1016/j.avb.2021.101547>>.

²⁰ Ibid 6.

²¹ Ibid 2.

²² Ibid 4.

²³ Marie-Helen Maras and Alex Alexandrou, ‘Determining Authenticity of Video Evidence in the Age of Artificial Intelligence and in the Wake of Deepfake Videos’ (2019) 23(3) *The International Journal of Evidence & Proof* 255, 255 < DOI: 10.1177/1365712718807226>.

²⁴ Ibid.

²⁵ School of Sexuality Education et al, *Online Sexual Harassment: Comprehensive Guidance for Schools* (2020), 5 <<https://discovery.ucl.ac.uk/id/eprint/10136748/1/School%20of%20Sex%20Education%20Comprehensive%20Guidance.pdf>>.

²⁶ Elizabeth Reed (n 13) 54.

²⁷ Ben Tan, ‘Report: With Child Sex Crimes and Porn On the Rise, Bukit Aman Identifies Challenges and Manpower Needs’, *Malay Mail*, (online, 25 September 2023) <<https://www.malaymail.com/news/malaysia/2023/09/25/report-with-child-sex-crimes-and-porn-on-the-rise-bukit-aman-identifies-challenges-and-manpower-needs/92757>>.

²⁸ Justin Zack, ‘Male Victims Of Sexual Harassment On The Rise’, *The Star*, (online, 11th March 2024) <<https://www.thestar.com.my/news/nation/2024/03/11/male-victims-on-the-rise>>.

²⁹ *Declaration on the Elimination of Violence against Women*, GA Res 48/104, UN Doc A/RES/48/104 (20 December 1993) art 2(b).

³⁰ Ibid art 1.

foreign jurisdictions have found that young women are more vulnerable to experiencing CSH compared to males.³¹ Specifically, female university students, who fall under the category of heavy Internet users, have a higher tendency to be sexually harassed in cyberspace.³² In the Malaysian context, a previous study has found that young women between the age group of 18-29 are more vulnerable to experiencing CSH due to social media usage.³³ Specifically, female university students have a high tendency to experience CSH due to heavy Internet usage.³⁴ Previous studies also show that individuals who have experienced sexual harassment also tend to remain silent, unable to react to the harassment and female students may be affected emotionally, psychologically and physically.³⁵

III. CYBER SEXUAL HARASSMENT IN MALAYSIA: ISSUES & WEAKNESSES IN EXISTING LAWS

The Royal Malaysian Police recently revealed a tremendous spike in sexual harassment cases reported after 2018, compared to previous years. From the period of 2013 to 2017, the total number of sexual harassment cases recorded was only 1218, wherein a three-digit figure was reported each year,³⁶ compared to a sudden surge of 11,914 cases for 2018 until August 2021.³⁷ The hike in the sexual harassment cases recorded after 2018 projects an increase of almost ten times higher compared to 2013-2017.

Despite these figures lacking an exact breakdown of sexual harassment cases in cyberspace, the All Women's Action Society (AWAM), a non-profit feminist organisation, disclosed receiving 91 physical sexual harassment and 68 CSH complaints through its helpline known as Telenita in 2020, where 86.9%

³¹ Elizabeth Reed (n 13) ; Ahmed E Arafa (n 5) ; Sutiani Chorunnisa, 'Legal Protection Against Women Victims of Sexual Harassment Through Social Media (Cyberporn)' (2021) 3(3) *The Indonesian Journal of International Clinical Legal Education* 321, 372 <<https://doi.org/10.15294/ijicle.v3i3.48266>>.

³² Jenna Cripps (n 9) 171; Ahmed E Arafa (n 5).

³³ Norhayati Mat Ghani and Suriati Ghazali, 'Impak Media Sosial Terhadap Gangguan Seksual Atas Talian Dalam Kalangan Wanita Muda' (2021) 17(3) *Malaysian Journal of Society and Space* 123, 124.

³⁴ Ahmed E Arafa (n 5) 64.

³⁵ Shahidah Hamzah (n 3) 244.

³⁶ Women's Aid Organisation, *Sexual Harassment Statistics* (Web Page) <<https://wao.org.my/sexual-harassment-statistics/>>.

³⁷ 'Keratan Akhbar Pilihan: 11,914 Kes Gangguan Seksual Dalam Tempoh 4 Tahun', *The Official Portal of Royal Malaysian Police* (Web Page, 9 October 2021) <<https://www.rmp.gov.my/news-detail/2021/10/09/keratan-akhbar-pilihan-11-914-kes-gangguan-seksual-dalam-tempoh-4-tahun>>.

of the complainants were females.³⁸ Meanwhile, Telenita received a total of 139 physical sexual harassment and 98 CSH complaints in 2021.³⁹ However, for 2022, only statistics for quarter 1 and quarter 3 of the year are available. From January until March 2022, 12 physical sexual harassment and 9 CSH cases were reported.⁴⁰ Meanwhile from July until September 2022, 6 physical sexual harassment and 4 CSH cases were recorded.⁴¹ The figures for 2020, 2021 and 2022 reflect that approximately 40% of the sexual harassment cases occurred in cyberspace. For 2023, 69 physical sexual harassment and 24 CSH cases were recorded.⁴²

Meanwhile, for 2024, data is available from April to June, where 5 physical sexual harassment cases and 6 CSH complaints were recorded, in addition to 3 cases classified as verbal, 2 non-verbal and 3 undisclosed cases.⁴³ The number reflects that approximately 30% of the sexual harassment complaints occurred in cyberspace. The numbers recorded by Telenita are almost similar to the findings of the study by the Ministry of Women, Family and Community Development which found that 30.7 % of the sexual harassment incidents occur in cyberspace.⁴⁴

The researcher has identified two issues relating to the growing number of sexual harassment cases. The first issue is the low number of prosecuted cyber harassment cases in Malaysia. While at one end the number of sexual harassment cases has increased tremendously, at the other end, the rate of prosecuted cases is low. There is a disparity between the number of reported complaints and the number of prosecuted cases. The second identified issue from the previous studies is that sexual harassment cases are underreported. Even though the reported cases are showing a growth, many individuals who have experienced

³⁸ All Women's Action Society, *Telenita Sexual Harassment* (Report, 2020) <<https://www.awam.org.my/wp-content/uploads/2021/09/Telenita-Sexual-Harassment-Report-2020.pdf>>.

³⁹ All Women's Action Society, *2021 Telenita Annual Report* (Report, December 2021) <<https://www.awam.org.my/wp-content/uploads/2022/03/Telenita-2021-Annual-Report-2.pdf>>.

⁴⁰ All Women's Action Society, *2022 Telenita Quarter 1 Report* (Report, March 2022) <<https://www.awam.org.my/wp-content/uploads/2022/04/Telenita-2022-Q1-Report-AMENDED.pdf>>.

⁴¹ All Women's Action Society, *2022 Telenita Quarter 3 Report* (Report, September 2022) <<https://www.awam.org.my/wp-content/uploads/2022/11/Telenita-2022-Q3-July-Sept-Report.pdf>>.

⁴² All Women's Action Society, *2023 Annual Report* (Report, 2023) <<https://www.awam.org.my/wp-content/uploads/2024/05/FINAL-2023-AWAM-Annual-Report.pdf>>.

⁴³ All Women's Action Society, *Telenita 2024, Quarter 2 Report* (Report, June 2024) <<https://www.awam.org.my/wp-content/uploads/2024/09/Telenita-2024-Q2-Report-Full-Report.pdf>>.

⁴⁴ Faridah Awang (n 2) 11.

sexual harassment do not report the incident. This indicates that the actual number of those experiencing sexual harassment may be far higher than the reported numbers. These issues are discussed further below.

3.1 Issue 1: Rate of Investigation/Prosecution

The rate of investigation and prosecution of sexual harassment and CSH cases is relatively low in Malaysia. It was reported in the media that only 6% out of the 15,230 online harassment complaints received by the Malaysian Communication and Multimedia Commission (MCMC) from the year 2016 to September 2021 were investigated. Similarly, MCMC revealed that only 27% of the reports on offences relating to misuse of social media received by MCMC from January until September 2022 were investigated.⁴⁵

Likewise, the study conducted by the Ministry of Women, Family and Community Development in 2020 also revealed that out of 796 respondents who had reported their sexual harassment cases, only 52 (2.95%) had their cases investigated and brought to court. Meanwhile, many of the respondents (42.25%) revealed that no investigation or further action was taken in their report.⁴⁶

Recently, the Royal Malaysian Police revealed the number of reported sexual harassment and sexual abuse cases from the period of 2021 to 2023.⁴⁷ In 2021, 2905 cases were recorded, but only 480 cases were charged in court.⁴⁸ Meanwhile, in 2022, 2920 cases were recorded, with only 467 cases charged in court.⁴⁹ On the other hand, 3373 cases were recorded in 2023, but only 547 cases were charged in court.⁵⁰ These figures indicate that the rate of sexual harassment and sexual assault cases being prosecuted makes up approximately only 16% of the reported cases.

⁴⁵ FMT Reporters, 'Only 6% Of 15,000 Online Harassment Complaints Probed Since 2016', *Free Malaysia Today*, (online, 7 December 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/12/07/only-6-of-15000-online-harassment-complaints-probed-since-2016>>.

⁴⁶ Malaysian Communications and Multimedia Commission, 'Salah Guna Media Sosial: 48 Kes Didakwa Di Mahkamah Setakat Suku Ketiga 2020' (Press Release, 11 November 2020) <<https://www.mcmc.gov.my/en/media/press-releases/salah-guna-media-sosial-48-kes-didakwa-di-mahkamah>>.

⁴⁷ Justin Zack (n 28).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

3.2 Issue 2: Underreporting

The majority of female victims opt to hide and do not report their sexual harassment experience due to stereotypes, stigmatization and fear of being victim blamed.⁵¹ The study conducted by the Ministry of Women, Family and Community Development in 2020 on 28,852 respondents of which the majority were women (82.5%) and university or college students (38.5%), revealed that 93.7% of the respondents who have experienced sexual harassment do not report the incident due to reasons such as no proof, occurring for the first time and views that the authorities will treat their report as a petty issue.⁵² Similarly, a recent survey conducted at a public university in Malaysia reveals that one in five students have experienced some form of sexual harassment, and 88.9% choose to remain silent and not report their experience.⁵³ On the other hand, according to ACP Siti Kamsiah Hassan, the principal assistant director of Bukit Aman Sexual, Women and Child Investigations Division, the police are aware of cases of spreading deepfake pornographic materials at various social media platforms such as *Telegram*, although no reports were lodged on the same.⁵⁴

Unfortunately, non-reporting of sexual harassment incidents does not stop the harassment; instead it causes the occurrence of more sexual harassment incidents. This can be seen from the CSH faced by a female university student in Malaysia, which was reported in the media. In 2022, a public university student known as Farah revealed that she had encountered CSH in 2021, where the harasser was her lecturer. The lecturer had sent her a set of survey questions through *WhatsApp*, a messaging application, containing lewd questions, and later, spoke to her through a telephone conversation and expressed that he wanted to do sexual acts with students. Farah, lodged a police report against him only after a year, as she was afraid to expose him earlier.⁵⁵ Eventually, it was reported that 15 other students came forward alleging being harassed by the same lecturer.⁵⁶ This case also substantiates that the victims can be intimidated

⁵¹ Elizabeth Reed (n 13) 61.

⁵² Faridah Awang (n 2) 13.

⁵³ Jaayne Jeevita, 'One in Five UM Students Encounters Sexual Harassment, Says Survey,' *The Star*, (online, 29th March 2024) <<https://www.thestar.com.my/news/nation/2024/03/29/one-in-five-um-students-encounters-sexual-harassment-says-survey>>.

⁵⁴ Shivani Supramani, 'Lodge Report Over Fake Nude Photos- Police', *The Sun*, (online, 29 March 2021) <<https://thesun.my/local-news/lodge-report-over-fake-nude-photos-police-FI7468272>>.

⁵⁵ Jasmine Chea, 'UiTM Johor Student Makes Police Report Alleging Lecturer Sexually Harassed Her In 2021', *Says*, (online, 18th August 2022) <<https://says.com/my/news/uitm-johor-student-makes-police-report-alleging-lecturer-sexually-harassed-her-in-2021>>.

⁵⁶ 'Over 15 Students Come Forward With Sexual Harassment Allegations Against A UiTM Lecturer', (Reddit, 15 June 2021)

and it is not easy for the victims to come forward to report the harassment faced by them.

In the cyberspace context, harassers have the advantage of being anonymous. Internet anonymity acts as a shield and enables an individual who would not dare to sexually harass a person physically, to commit CSH, without revealing his/her identity. Hence, being silent will encourage the harasser to target new victims,⁵⁷ without being able to be tracked. This condition paves the way for the harasser to repeat the harassing act on the victim.

3.3 Limitation & Weaknesses in Malaysian Laws

The Malaysian government has already implemented laws to combat sexual harassment in its legislation, namely under *the Sexual Offences Against Children Act 2017*, *Employment Act 1995*, *Penal Code*, *Communications and Multimedia Act 1998*, and *Anti-Sexual Harassment Act 2022*. However, there are limitations and weaknesses in these laws. The scope of the sexual harassment laws embodied under the *Sexual Offences Against Children Act 2017* only applies to a child.⁵⁸ Likewise, *the Employment Act 1995* is limited to occurrences of sexual harassment arising out of and in the course of employment.⁵⁹

3.3.1 Penal Code

On the other hand, the *Penal Code* ('PC'), criminalises sexual harassment in the physical form under s 354,⁶⁰ s 355,⁶¹ and s 509.⁶² S 354 of the PC criminalises the act of assaulting or using criminal force to outrage the modesty of a person. Meanwhile, s 355 criminalises the act of assaulting or using criminal force to any person to dishonour them. On the other hand, s 509 of the PC criminalises the act of insulting the modesty of a person by word or gesture. If an individual utters any word, makes any sound or gesture, or exhibits any object with the intention that such act intrudes the privacy of a person, that individual has committed an offence and is liable for an imprisonment term of five years or

<https://www.reddit.com/r/malaysia/comments/o01dp4/over_15_students_come_forward_with_sexual/>.

⁵⁷ Noor Azimaahmad, Jariah Masud and Noor Azizah Ahmad, 'Balancing Acts Between the Powerful and the Powerless: Coping with Sexual Harassment among Malay Women in the Malaysian Public Service' (2012) 15 *Jurnal Pembangunan Sosial* 1, 12.

⁵⁸ *Sexual Offences Against Children Act 2017* (Malaysia) s 2(1).

⁵⁹ *Employment Act 1955* (Malaysia) s 2.

⁶⁰ Assault or use of criminal force to a person with intent to outrage modesty.

⁶¹ Assault or criminal force with intent to dishonour a person, otherwise than on grave provocation.

⁶² Word or gesture intended to insult the modesty of a person.

with a fine or both.⁶³ Cases involving voyeuristic behaviour⁶⁴ and subsequent conduct such as recording video which intrudes on the privacy of an individual and spreading it⁶⁵ were charged under this section. S 509 of PC has limitations as only acts which insult the modesty or intruding privacy that amount to CSH could be charged under this section.

Besides these provisions, Malaysia introduced a new s 507A into the PC, criminalising stalking, which refers to the repeated act of harassment that causes distress, fear or alarm to a person of their safety.⁶⁶ ‘The act of harassment’ includes ‘communicating in any manner or by any means’ and also ‘sending anything to a person in any manner’⁶⁷, meanwhile ‘repeated’ refers to a minimum of two instances.⁶⁸

Thus, based on the wording, an inference can be drawn that, if a person repeatedly commits CSH against another individual on at least two occasions, they could be charged with stalking under s 507A of PC. A victim, a victim’s counsel or in the case of a child or an incapacitated adult, the guardian, a relative or a person responsible for the victim may apply for a protection order to the court against the harasser, until the completion of the investigation or disposal of the criminal proceeding.⁶⁹ The protection order shall prohibit the individual, against whom the protection order is made from continuing the harassing act.⁷⁰ Additionally, if it is necessary, the court shall prohibit the individual from approaching either the victim or any other person related or associated with the victim.⁷¹ If the protection order is violated, an individual faces an imprisonment term of up to 1 year or a fine, or both.⁷² Nevertheless, a charge under this section can only be initiated if the harassment act was repeated on at least two occasions. As s 507A was recently implemented, there is no data on CSH cases being charged under this law.

⁶³ *Penal Code* (Malaysia) s 509.

⁶⁴ *PP v Harkirath Singh Harbans Singh* [2023] 4 CLJ 576 (High Court).

⁶⁵ *PP lwn. Nor Hanizam Mohd Noor* [2019] CLJU 944 (High Court).

⁶⁶ *Penal Code* (Malaysia) s 507 A.

⁶⁷ *Ibid* s 507A(2).

⁶⁸ *Ibid* s. 507(4).

⁶⁹ *Criminal Procedure Code* (Malaysia) s 98 A (1) & s 98 A (2).

⁷⁰ *Ibid* s 98 A(6).

⁷¹ *Ibid* s 98A(7) .

⁷² *Ibid* s 98 A(8).

3.3.2 Communication and Multimedia Act 1998

S 233 of the *Communication and Multimedia Act 1998* ('CMA 1998') criminalises 'improper use of network facilities or network service', which carries the punishment of a fine not exceeding RM50,000.00, or imprisonment not exceeding one year or both.⁷³ 'Network facilities' is defined as 'any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include customer equipment'.⁷⁴ On the other hand, 'network service' is defined as a service which transports communication using guided and/or unguided electromagnetic radiation.⁷⁵

It is an offence under this section for an individual to make, create, or solicit and initiate the transmission of any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive with intent to annoy, abuse, threaten or harass another person.⁷⁶ It is also an offence if a person initiates a communication using any application service, whether continuously or, repeatedly irrespective of either revealing his identity to abuse, threaten, or harass any person at any number or electronic address.⁷⁷ 'Applications service' is defined as services provided by network services.⁷⁸

A person who violates this section is liable for a fine not exceeding RM50,000 or to a maximum imprisonment term of one year and also liable for a further fine of RM1,000.00 for every day of continuance of the offence.⁷⁹ A person who commits CSH can be charged under s 233 of the CMA1998.

Despite the presence of the elements of CSH in s 233 of the CMA 1998, it does not provide for online safety provisions to protect victims. Additionally, s 233(1)(b) criminalises the harassing conduct of an anonymous person but fails to prescribe safety measures, protection orders or harassing content removal orders to protect the victim.

⁷³ *Communications and Multimedia Act 1998* (Malaysia) s 233(3).

⁷⁴ *Ibid* s 6.

⁷⁵ *Ibid* s 6.

⁷⁶ *Ibid* s 233(1)(a).

⁷⁷ *Ibid* s 233(1)(b).

⁷⁸ *Ibid* s 6.

⁷⁹ *Ibid* s 233 (3).

3.3.3 Anti-Sexual Harassment Act 2022

The *Anti-Sexual Harassment Act 2022* ('ASHA 2022') was recently enacted in Malaysia. It aims to provide for the right to redress for a person who has been sexually harassed, to establish a Tribunal for Anti-Sexual Harassment, and to raise awareness and prevention of sexual harassment.⁸⁰

'Sexual harassment' is defined as 'any unwanted conduct of a sexual nature, in any form, whether verbal, non-verbal, visual, gestural or physical, committed against another individual which is offensive, humiliating or threatening his well-being.'⁸¹

The ASHA 2022 establishes the Tribunal for Anti-Sexual Harassment,⁸² which has the jurisdiction to hear and determine any complaint of sexual harassment lodged by an individual,⁸³ on the balance of probability.⁸⁴ The Tribunal has powers to make an interlocutory order, determine the relevancy, admissibility and weight of any evidence, take evidence on oath, or affirmation, order the submission of further particulars in a statement of complaint of sexual harassment or statement of reply, order the preservation and interim custody of any evidence for the purpose of hearing, and summon the parties to the proceedings or any other person to appear before the Tribunal to give evidence or produce any document, record or other things in his possession to assist the Tribunal.⁸⁵

All hearings before the Tribunal are closed hearings,⁸⁶ where the public is not permitted to observe the proceedings. If it is agreeable by the parties, the Tribunal can assist the parties in exploring a settlement.⁸⁷ If the parties agree to a settlement, the Tribunal shall approve and record the agreed settlement, which will take effect as if it is an award.⁸⁸ On the other hand, the Tribunal shall proceed with the hearing if it is not appropriate for the Tribunal to assist the parties to explore settlement, or if the parties could not reach a settlement.⁸⁹ If a question of law is invoked in the proceedings, the Tribunal shall refer the matter to the High Court.⁹⁰

The Tribunal shall make an award within 60 days from the first day of the

⁸⁰ ASHA 2022(n 11) Preamble.

⁸¹ *Ibid* s 2.

⁸² *Ibid* s 3.

⁸³ *Ibid* s 7(1).

⁸⁴ *Ibid* s 9(5).

⁸⁵ *Ibid* s 9(3).

⁸⁶ *Ibid* s 14.

⁸⁷ *Ibid* s 16(1).

⁸⁸ *Ibid* s 16(3).

⁸⁹ *Ibid* s16(4).

⁹⁰ *Ibid* s 17.

commencement of the hearing.⁹¹ When making an award, the Tribunal has the power to make several orders such as ordering the respondent to issue an apology statement to the complainant, pay compensation sum, not exceeding RM250,000.00 for the loss or damage suffered by the complainant, or order the parties to attend any programme as the Tribunal thinks necessary.⁹² The Tribunal may also make any other supplementary orders or relief that is necessary to give effect to an order made by the Tribunal.⁹³

The award made by the Tribunal shall be final and binding upon all parties to the proceedings,⁹⁴ and deemed to be an order of court and enforced accordingly.⁹⁵ It is an offence if an individual fails to comply with the award within 30 days from the date on which the award was made, and on conviction, be liable to a fine twice the amount of compensation if the court ordered payment of compensation or imposed imprisonment for a term not exceeding 2 years, or impose a fine of a maximum of RM10,000.00 if no compensation is ordered in the award.⁹⁶ If the offence continues, the person is liable for a maximum fine of RM1,000.00 for each day of the continuation of the offence.⁹⁷

CSH falls under the scope of the ASHA 2022, as the definition of ‘sexual harassment’ under this Act covers ‘unwanted conduct of a sexual nature, in any form’. Thus, a CSH victim could only proceed to seek redress by complaining to the Tribunal, besides lodging a police report. Regardless, a CSH victim may only initiate this action if the identity of the harasser is known. Even though establishing a Tribunal for Sexual Harassment is one step forward, its powers are limited to only making orders to issue apologies, pay compensation or direct parties to attend programmes, which can only be imposed over an individual whose identity is known. These cannot be imposed over CSH attacks executed from anonymous accounts. The Tribunal has no power to issue an online protection order or order to remove the harassing contents. The ASHA 2022 merely recognises a victim's right to redress and lacks provisions on online safety to protect victims of CSH.

⁹¹ Ibid s 19(1).

⁹² Ibid s 20(1).

⁹³ Ibid s 20(2).

⁹⁴ Ibid s 22(1)(a).

⁹⁵ Ibid s 22(1)(b).

⁹⁶ Ibid s 21(1).

⁹⁷ Ibid s 21(2).

IV. COMPARATIVE STUDY OF CYBER SEXUAL HARASSMENT IN SINGAPORE & AUSTRALIA

This part will discuss the approaches taken by Singapore and Australia to combat CSH in their respective countries. These countries are chosen for a comparative study due to their mutual similarity from the perspective of online safety laws implementation.

4.1 SINGAPORE

Singapore has criminalised several offences amounting to CSH and enacted laws to protect victims of CSH under its legislation. These are found under its *Penal Code 1871*, and the *Protection from Harassment Act 2014*. The relevant provisions in these Acts will be discussed further below.

4.1.1 Penal Code 1871

The *Penal Code 1871* ('PC 1871') criminalises a few image-based sexual misconducts, which amount to CSH under s 377BC, s 377BE and s 377BF.

Offences under s 377BC and s 377BE are connected to the offence of voyeurism, which is criminalised under s 377BB. S 377 BB criminalises the acts of observing another individual engaged in a private act,⁹⁸ operating equipment to observe another individual engaged in a private act,⁹⁹ recording another individual engaged in a private act,¹⁰⁰ and recording¹⁰¹ or operating equipment to enable himself or others to observe another individual's private parts.¹⁰² All these are criminal offences if the individual ('victim') does not consent to such acts.¹⁰³ All these offences carry an imprisonment term of 2 years, or a fine, or caning or a combination of these punishments.¹⁰⁴

Meanwhile, s 377BC criminalises the act of distributing voyeuristic images or recordings. This section criminalises the conduct of unconsented distributing¹⁰⁵ or possessing the image or recording of another individual to distribute¹⁰⁶ that was obtained by committing an offence under s 377BB, without the consent of the individual (victim).

⁹⁸ *Penal Code 1871* (Singapore), s 377 BB(1)(a).

⁹⁹ *Ibid* s 377BB (2)(a).

¹⁰⁰ *Ibid* s 377BB(3)(a).

¹⁰¹ *Ibid* s 377BB(5)(a).

¹⁰² *Ibid* s 377BB(4)(a).

¹⁰³ *Ibid* ss 377BB(1)(b), (2)(b), (3)(b), (4)(b), (5)(b).

¹⁰⁴ *Ibid* s 377BB(7).

¹⁰⁵ *Ibid* s 377BC(1)(a).

¹⁰⁶ *Ibid* s 377BE(5)(a)(1).

On the other hand, s 377BE criminalises the act of distributing¹⁰⁷ or threatening to distribute¹⁰⁸ intimate image or recording of an individual (victim) without the consent of that individual¹⁰⁹ (victim) that can cause humiliation, alarm or distress to that individual (victim).¹¹⁰ ‘Intimate image or recording’ is defined under s 377BE(5) as an image or recording of an individual’s genital, anal region or breasts, either bare or covered by underwear or doing a private act¹¹¹ which includes a modified image or recording in any form depicting the individual.¹¹² Section 377BE also provides an illustration of what amounts to an ‘intimate image’ as follows:

Illustrations

(a) A copies, crops, and pastes an image of B’s face onto the image of a body of a person who is engaging in a sexual act. This image has been altered to appear to show that B actually engaged in a sexual act. This is an intimate image.

Offences under s 377BC¹¹³ and s 377BE¹¹⁴ carry an imprisonment term of up to 5 years or a fine, or caning, or a combination of these.

Meanwhile, s 377BF criminalises ‘sexual exposure’. Under this section, two behaviours are criminalised. First, if an individual exposes his/her genitals to another person¹¹⁵ or secondly, if an individual distributes a picture of his/her or another individual’s genital to another person¹¹⁶ to obtain sexual gratification, without that person’s consent and to cause humiliation, alarm or distress to that person.¹¹⁷ These offences carry the punishment of one year imprisonment, a fine or both.¹¹⁸ In the event these offences were committed against a person below the age of 14, the offender may face, on conviction, imprisonment of up to 2 years, and may be liable to a fine and also caning.¹¹⁹

¹⁰⁷ Ibid s 377BE(1)(a).

¹⁰⁸ Ibid s 377BE(2)(a).

¹⁰⁹ Ibid ss 377BE(1)(b), (2)(b).

¹¹⁰ Ibid ss 377BE(1)(c), (2)(c).

¹¹¹ Ibid s 377BE(5)(a).

¹¹² *Penal Code 1871* (Singapore) s 377BE(5)(b).

¹¹³ Ibid s 377 BC(3).

¹¹⁴ Ibid s 377 BE(3).

¹¹⁵ Ibid s 377BF(1).

¹¹⁶ Ibid s 377 BF(2).

¹¹⁷ Ibid ss 377BF (1)(a)– (c), 377BF(2)(a)–(c).

¹¹⁸ Ibid s 377 BF(3).

¹¹⁹ Ibid s 377BF(4).

S 377BC and s 377BE criminalise subsequent acts associated with voyeurism which amount to the visual forms of CSH. S 377 BC shares similarities with the Malaysian s 509 of the PC, i.e., criminalising subsequent acts after voyeurism amounting to CSH. It is also similar in terms of the punishment imposed. Based on the illustration of s 377BE, its scope also covers deepfake pornography, which falls under the classification of the various visual forms of CSH. However, this element is lacking in the Malaysian s 509 of PC.

S 377BF criminalises cyber flashing, which provides the specification of behaviours amounting to ‘sexual exposure’. Unlike the Malaysian position, even though cyber flashing falls under the general s 233(1) of the CMA 1998 as ‘obscene’, the Malaysian law does not specify what could fall under ‘obscene’. Additionally, Singapore’s act of imposing a severe imprisonment term if the offence is committed against a child¹²⁰ serves as a deterrent measure.

4.1.2 Protection from Harassment Act 2014 (POHA 2014)

S.3 of the *Protection from Harassment Act 2014* (‘POHA 2014’) criminalises intentionally causing harassment, alarm or distress which covers a large area of harassment, inclusive of CSH. According to this section, it is an offence to harass someone by using any threatening, abusive or insulting words or behaviour, making any threatening, abusive or insulting communication, or publishing any identity information of the targeted person or a person related to the targeted person (victim).¹²¹ On conviction for this offence, an individual is liable to a fine of \$5,000.00, or to an imprisonment term up to 6 months or both.¹²² The section also provides several illustrations, one of which is reproduced below:

Illustrations

(c) *X and Y were formerly in a relationship which has since ended. X writes a post on a social media platform making abusive and insulting remarks about Y’s alleged sexual promiscuity. In a subsequent post, X includes Y’s photographs and personal mobile number, intending to cause Y harassment by facilitating the identification or contacting of Y by others. Y did not see the posts, but receives and is harassed by telephone calls and SMS messages from strangers (who have read the posts) propositioning Y for sex. X is guilty of an offence under section 3(2) about each post.*

¹²⁰ Ibid s 377BF(4).

¹²¹ *Protection from Harassment Act 2014* (Singapore) s 3(1).

¹²² Ibid s 3(2).

Similar to s 3, s 4 of the POHA 2014 prohibits an individual or entity from using any threatening, abusive or insulting words or behaviour, or making any threatening, abusive or insulting communication which is heard, seen or perceived by any person (victim) likely to cause harassment, alarm or distress.¹²³ On conviction under this section, the individual or entity is liable to a fine not exceeding \$5,000.00.¹²⁴ The scope of this section is depicted in the illustrations as follows:

Illustrations

(a) *X and Y are classmates. X posts a vulgar tirade against Y on a website accessible to all of their classmates. One of Y's classmates shows the message on the website to Y, and Y is distressed. X is guilty of an offence under this section.*

On the other hand, s 7 criminalises unlawful stalking. The elements of CSH are also present under this provision. S 7(2) provides that an individual or an entity unlawfully stalks another person (victim) if they are engaged in conduct which involves acts or omissions connected to stalking or causes harassment, alarm or distress to the victim¹²⁵ with the intention and knowledge that their act is likely to cause harassment, alarm or distress to the victim.¹²⁶ S 7(3) further provides examples of 'acts or omissions associated with stalking' such as following the victim, entering or loitering near the victim's residence or workplace, surveilling, communicating, attempting to communicate or sending material to either the victim or person-related to the victim.¹²⁷

An individual or entity is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both,¹²⁸ if convicted under this section.

In the event the offences under s 3, s 4 and s 7 of POHA 2014 were committed against a person (victim) in an intimate relationship with the offender, the offender is subjected to an enhanced penalty of twice the maximum prescribed punishment.¹²⁹

S 3 and s 4 of the POHA 2014 criminalise the verbal and written forms of CSH. The gist of s 3 and s 4 of the POHA 2014 is covered under the Malaysian s 233(1) of the CMA 1998. Nevertheless, s 3 and s 4 of the POHA 2014 provide clear illustrations of what could amount to 'harassment'. On the other hand, s 7

¹²³ Ibid s 4(1).

¹²⁴ Ibid s 4(2).

¹²⁵ Ibid s 7(2)(b).

¹²⁶ Ibid s 7(2)(c).

¹²⁷ Ibid s 7(3).

¹²⁸ Ibid s 7(6).

¹²⁹ Ibid s 8B.

of the POHA 2014 criminalises stalking, where CSH could be an act associated with stalking, as provided under illustration (a) of the section. S 7 of the POHA 2014 shares similarities with the Malaysian s 507A., However, illustration (a) to s 7 of the POHA 2014 expresses acts such as sending emails containing suggestive comments of a person's body to another individual and repeatedly circulating revealing photographs of an individual to another person,¹³⁰ provides a clear indication that CSH could be considered as an act associated with stalking.

The Protection from Harassment Court

Besides protecting an individual from harassment, unlawful stalking and false statements, the *Protection from Harassment Act 2014* also establishes the Protection from Harassment Court in Singapore.¹³¹

This Act also established Singapore's Protection from Harassment Court,¹³² a special district court which hears offences under this Act, which has the civil and criminal jurisdiction of a District Court.¹³³ This court also has the jurisdiction to hear proceedings under Part 3 of the POHA 2014,¹³⁴ namely sections 11 until 16 D. As such, the Protection from Harassment Court has the power to hear civil cases initiated under s 11. This court also has the jurisdiction to try the offences under ss 3,4,5, 6 and 7 of the POHA 2014 and impose the punishment and the issuance of protection orders under s 12 and s 13 of the POHA 2014.¹³⁵ S 11, s 12, s 13 and s 17 of the POHA 2014 will be discussed further below:

Firstly, s 11 of the POHA 2014 provides a statutory right to a victim under s 3, 4, 5 or 7 of the Act to initiate civil proceedings in a court against the wrongdoer, who can be either an entity or an individual.¹³⁶

Secondly, s 12 and s 13 of the POHA 2014 also provide for the issuing of a protection order for the victims of ss 3, 4,5 or 7 against the wrongdoer. Under s 12, a victim may apply for a protection order from the court against the harasser, in the event the individual had harassed the victim and if the harassment is most likely to continue.¹³⁷ The protection order may prohibit the harasser from continuing the harassment act and publishing any offending communication.¹³⁸ Additionally, the court may direct the harasser, victim or person related to the

¹³⁰ Ibid s 7.

¹³¹ Ibid Preamble.

¹³² Ibid s16E.

¹³³ Ibid s16G.

¹³⁴ Ibid s16(1).

¹³⁵ Ibid s 17(1).

¹³⁶ Ibid s 11.

¹³⁷ Ibid s 12(1) and (2).

¹³⁸ Ibid ss 12(2B)(a),(b).

victim to attend mediation or counselling.¹³⁹ In the event, that the harassment act involves an offending communication through an internet intermediary service provider, the court may order the internet intermediary to disable access to the offending communication by the service end users.¹⁴⁰

On the other hand, s 13 provides the Court with the power to issue a protection order on an expedited basis, in the event the court is satisfied that there is prima facie evidence that the respondent had violated s 3,4,5 or 7 of the POHA 2014, if the violation is probable to continue, or in the event the violation continues, it is likely to cause a significant negative effect on the victim or the victim's daily activities.¹⁴¹

S 17 of the POHA 2014 provides the Protection from Harassment Court the jurisdiction to hear cases where either the victim or the harasser was outside Singapore when the offences occurred, in the following circumstances:

- (i) For the offences under s 3,4,5, or 6 of the POHA 2014, if the victim was outside Singapore when the accused committed the wrongful act,¹⁴² while the accused was in Singapore.¹⁴³
- (ii) For the offence under s 3 of the POHA 2014, if the accused was outside Singapore when the accused committed the wrongful act,¹⁴⁴ the court has jurisdiction in the event the victim is in Singapore when the wrongful act caused harassment, alarm or distress to the victim¹⁴⁵ or when the accused knew that the victim was in Singapore during the occurrence of the wrongful act.¹⁴⁶
- (iii) For the offences under s 4,5 or 6 of the POHA 2014, if the accused was outside Singapore when the accused committed the wrongful act,¹⁴⁷ the court has jurisdiction if the victim experienced harassing conduct¹⁴⁸ while in Singapore¹⁴⁹ or if the accused believed that the

¹³⁹ Ibid s 12(2B)(c).

¹⁴⁰ Ibid s 12(2F).

¹⁴¹ Ibid s 13(1)(a).

¹⁴² The wrongful act of having used the words or behaviour, made the communication or published the identity information, in contravention of sections 3,4,5 or 6 POHA 2014 (Singapore).

¹⁴³ Ibid s 17(2).

¹⁴⁴ The wrongful act of having used the words or behaviour, made the communication or published the identity information.

¹⁴⁵ Ibid s 17(3)(a).

¹⁴⁶ Ibid s 17(3)(b).

¹⁴⁷ The wrongful act of having used the words or behaviour, made the communication or published the identity information, in contravention of section 4, 5 or 6 of the POHA 2014.

¹⁴⁸ when the victim heard, saw or otherwise perceived those words or behaviour, that communication or that identity information.

¹⁴⁹ Ibid s 17(4)(a).

victim was in Singapore.¹⁵⁰

(iv) For the offence under s 7 of the POHA 2014, if the victim experienced acts or omissions associated with unlawful stalking, the court has jurisdiction if the accused was in Singapore during the occurrence of the wrongdoing.¹⁵¹ In the event, that the accused was outside Singapore during the occurrence of the wrongdoing, the court also has jurisdiction in the event the victim was in Singapore during the occurrence of the wrongdoing, or if the accused believed that the victim was in Singapore.¹⁵²

The Protection from Harassment Court also has jurisdiction over prohibiting orders issued to a respondent outside Singapore relating to a victim under s 3,4,5,6 or 7 of the POHA 2014 in the following circumstances:

(i) If an order is issued against a respondent prohibiting him/her from doing any act towards a victim or to any other related person in the order, and the respondent violated the prohibiting order when the victim or the related person was outside Singapore.¹⁵³

(ii) In the case of an order prohibiting a respondent from doing an act concerning a victim or any related person specified in the order, where the respondent was outside Singapore during the violation of the order,¹⁵⁴ in the event, the victim,¹⁵⁵ or a related person¹⁵⁶ was in Singapore when the violating act was done by the respondent and the respondent knew that the victim,¹⁵⁷ or a related person¹⁵⁸ would be in Singapore during the violation.

(iii) In the case of a respondent outside Singapore who violates an order prohibiting to publish or continue to publish a communication, in the event the communication was heard, seen or perceived by a section of the public in Singapore or the respondent knew that such communication would be heard, seen or perceived by a section of the public in Singapore.¹⁵⁹

¹⁵⁰ Ibid s 17(4)(b).

¹⁵¹ Ibid s17(5).

¹⁵² Ibid s 17(6).

¹⁵³ Ibid s 17(8).

¹⁵⁴ Ibid s 17(9)(a).

¹⁵⁵ Ibid s 17(9)(a)(i).

¹⁵⁶ Ibid s 17(9)(b)(i).

¹⁵⁷ Ibid s 17(9)(a)(ii).

¹⁵⁸ Ibid s 17(9)(b)(ii).

¹⁵⁹ Ibid s 17(9).

Comparing Singapore's Protection from Harassment Court to the Malaysian position, there are no special courts in Malaysia for harassment cases, except for the newly established Tribunal for Anti-Sexual Harassment, which has limited powers. Firstly, Singapore's Protection from Harassment Court has the power to issue protection orders and expedited protection orders against the wrongdoer to prohibit the harassment act and the publication of any offending communications. Secondly, it has the jurisdiction over cases where either the victim or harasser was outside Singapore, as provided under s 17 of the POHA 2014. Unfortunately, the Malaysian Tribunal for Anti-Sexual Harassment has no such powers.

4.2 AUSTRALIA

The Australian Constitution establishes the Commonwealth Parliament, also known as the Federal Parliament, which consists of the Senate, the House of Representatives and the King.¹⁶⁰ Besides this, each of the six States has its own State Parliaments.¹⁶¹ Both the Commonwealth Parliament¹⁶² and the State Parliaments have legislative powers. As such, the State Parliament also has the power to make criminal laws.¹⁶³ The scope of this study is narrowed to discuss only the Federal Legislation which is applicable throughout Australia. Thus, only the relevant provisions of the *Criminal Code Act 1995* and the *Online Safety Act 2021* will be examined.

4.2.1 Criminal Code Act 1995

The *Criminal Code Act 1995* ('CCA1995') criminalizes several offences relating to 'carriage service' which amount to CSH. 'Carriage Service' is defined under s 7 of the *Telecommunications Act 1997* as a service for carrying communications through guided and/or unguided electromagnetic energy.¹⁶⁴ Offences under. s 474.17, s 474.17A, and s 474.27A of the CCA 1995 are discussed below:

S 474.17 of the CCA 1995 criminalises the usage of a carriage service, in any way¹⁶⁵ to menace, harass or offend. On conviction under this section, an individual can be imprisoned for a maximum period of 5 years.¹⁶⁶

¹⁶⁰ 'About Parliament' *Parliament of Australia* (Web Page)<
https://www.aph.gov.au/About_Parliament>.

¹⁶¹ *Ibid.*

¹⁶² *Australian Constitution* s 51, s 52.

¹⁶³ *Ibid* Overview.

¹⁶⁴ *Telecommunications Act 1997* (Australia) s 7.

¹⁶⁵ *Criminal Code Act 1995* (Australia) s 474.17(1)(b).

¹⁶⁶ *Ibid* s 474.17(1).

Meanwhile, s 474.17A of the CCA 1995 sets out the provision for an aggravated offence of s 474.17, which involves private sexual material.¹⁶⁷ ‘Private sexual material’ is defined as material depicting a person above the age of 18 engaged or appears to be engaged in a sexual pose or sexual activity, and includes the material depicting sexual organ, anal region or breast of a female of a person above 18 years of age.¹⁶⁸ One can be charged under s 474.17A if they had already violated s 474.17. S.474.17A of the CCA 1995 categorizes the offences into standard aggravated offences and special aggravated offences. If an individual transmits, makes available, publishes, distributes, advertises or promotes a private sexual material, it is a standard aggravated offence which carries imprisonment up to 6 years.¹⁶⁹ On the other hand, it will be a special aggravated offence in the event a person who had violated s 474.17, and has at least 3 or more civil penalty orders made against that person for violating s 75(1) and/or s 91 of the Online Safety Act 2021,¹⁷⁰ commits the act of transmitting, making available, publishes, distributes, advertises or promotes a private sexual material¹⁷¹ This offence carries a maximum imprisonment term of 7 years.¹⁷² In the event the aggravated offence¹⁷³ is not proven during the trial, the accused person can still be found guilty under s 474.17, if it was proven beyond reasonable doubt that the accused had violated s 474.17.¹⁷⁴

Next, s 474.27A of the CCA 1995 criminalizes the act of transmitting indecent communication, using a carriage service to a person under 16 years of age. It is an offence under this section which carries imprisonment up to 7 years, if a person of at least 18 years of age transmits communication containing indecent material to another person under the age of 16 years.¹⁷⁵ Under this section, ‘indecent’ is defined as ‘indecent according to the standards of ordinary people’.¹⁷⁶

CSH in the forms of verbal, written and cyberflashing falls under the scope of s 474.17 of the CCA 1995. S.474.17 of the CCA 1995 is like the Malaysian s 233(1) of the CMA 2003. However, the punishment under s 474.17 of the CCA 1995 is higher, where on conviction one could face an imprisonment term of up to 5 years,¹⁷⁷ compared to the Malaysian context where the maximum

¹⁶⁷ Ibid s 474.17A.

¹⁶⁸ Ibid s 473.1.

¹⁶⁹ Ibid s 474.17A (1).

¹⁷⁰ Ibid, s.474.17A(4)(d).

¹⁷¹ Ibid s 474.17A(4)(c).

¹⁷² Ibid s 474.17A.

¹⁷³ Ibid s 474.17A(1), s 474.17A(4).

¹⁷⁴ Ibid s 474.17B.

¹⁷⁵ Ibid s 474.27A.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid s 474.17(1).

imprisonment term is only 1 year.¹⁷⁸

On the other hand, visual forms or image based CSH are criminalised under s 474.17A of the CCA 1995. The scope of s 474.17A of the CCA includes revenge pornography and deepfake pornography. As the definition of the word ‘private sexual material’ uses the term “... a material depicting a person...”, an image which need not be authentic falls under the scope of s 474.17A of the CCA. Additionally, s 474.17A categorises the offences into aggravated offences and special aggravated offences based on severity, with varying punishments, unlike the Malaysian position. Moreover, s 474.17B ensures an individual to be charged at least under s 474.17 if the aggravated offences are not proven. Meanwhile, s 474.27A criminalises CSH committed against a person under the age of 16, which carries a greater imprisonment term, compared to s 474.17 and s 474.17A. These provisions are absent in the Malaysian s 233 of the CMA1998.

4.2.2 Online Safety Act 2021

The *Online Safety Act 2021* (‘OSA 2021’) is an Act which aims to improve and promote online safety for Australians.¹⁷⁹ The OSA 2021 also establishes the eSafety Commissioner, who is responsible for promoting online safety for Australians and administering a complaints system for cyber-abuse material, intimate images and online content schemes.¹⁸⁰ ‘Online safety for Australians’ is defined as the capacity of Australians to use social media services and electronic services safely.¹⁸¹

The OSA 2021 provides an avenue for an Australian adult who has been the target of cyber-abuse material and non-consensual sharing of intimate images to lodge a complaint with the eSafety Commissioner. The eSafety Commissioner has a duty to investigate the complaint and has the power to issue a removal notice to the social media service, electronic service or internet service, to an end-user or to a hosting service provider to remove the cyber-abuse material. These are discussed further below.

Cyber-abuse material targeted at the Australian adult

‘Cyber-abuse material targeted at Australian adult’ refers to material provided on a social media service, electronic service or internet service that an ordinary Australian adult would conclude that the material has an effect of causing serious harm or would regard it as being menacing, harassing or offensive.¹⁸²

¹⁷⁸ *Communications and Multimedia Act 1998* (Malaysia) s 233(3).

¹⁷⁹ *Online Safety Act 2021* (Australia) s 3.

¹⁸⁰ *Ibid* s 4.

¹⁸¹ *Ibid* s 5.

¹⁸² *Ibid* s 7(1).

If an Australian adult was or is a target of cyber-abuse material that has been or is being provided on a particular social media service,¹⁸³ electronic service,¹⁸⁴ or a designated internet service, the adult,¹⁸⁵ or a person authorised by the adult,¹⁸⁶ he or she may make a complaint to the Commissioner.¹⁸⁷

Upon a complaint being lodged, the Commissioner has the power to investigate such complaints, in the appropriate manner.¹⁸⁸ The Commissioner also has the power to issue removal notice of such cyber-abuse material to a provider of social media service, relevant electronic service, designated internet service,¹⁸⁹ an end user,¹⁹⁰ or to a hosting service provider.¹⁹¹ The OSA 2021 also defines ‘social media service’, ‘relevant electronic service’ and ‘designated internet service’.

‘Social media service’, is defined as an electronic service which enables social interaction between two or more end users, allows end users to link or interact with other end users, or post materials on the service.¹⁹² Meanwhile, ‘relevant electronic service’ refers to a service that enables end users to communicate with other users by email, instant messaging service, SMS service, MMS service, a chat service, or a service that enables end-users to play online games with other end-users.¹⁹³ On the other hand, ‘designated internet service’ refers to a service which enables end-users to access material using an internet carriage service, or a service which delivers materials by an internet carriage service, which excludes a social media service, a relevant electronic service, an on-demand programme service, or an exempt service.¹⁹⁴

Upon issuance of the removal notice, the social media service, relevant electronic service, designated internet service,¹⁹⁵ end-user,¹⁹⁶ and the hosting service provider¹⁹⁷ must take the necessary action to remove the content within 24 hours. If the party fails to comply with the removal notice, they are liable to a civil penalty of 500 units,¹⁹⁸ which amounts to \$105,000.00.¹⁹⁹

¹⁸³ Ibid ss 36(1)(a), 36(2)(a)(i).

¹⁸⁴ Ibid ss 36 (1)(b), 36(2)(a)(ii).

¹⁸⁵ Ibid ss 36(1)(c), 36(2)(a)(iii).

¹⁸⁶ Ibid s 36(2)(b).

¹⁸⁷ Ibid ss 36(1), 36(2).

¹⁸⁸ Ibid s 37.

¹⁸⁹ Ibid s 88.

¹⁹⁰ Ibid s 89.

¹⁹¹ Ibid s 90.

¹⁹² Ibid s 13(1)(a).

¹⁹³ Ibid s 13A(1).

¹⁹⁴ Ibid s 14(1).

¹⁹⁵ Ibid s 88.

¹⁹⁶ Ibid s 89.

¹⁹⁷ Ibid s 90.

¹⁹⁸ Ibid s 91.

¹⁹⁹ *Crimes Act 1914* (Australia) s 4AA(1).

Intimate images

Part 6 of the OSA 2021 provides for the laws on the non-consensual sharing of intimate images. According to s 15 of the OSA 2021, ‘intimate image’ could refer to the depiction of private parts,²⁰⁰ private activity,²⁰¹ or even a person without attire of religious or cultural significance.²⁰² ‘Depiction of private parts’ refers to material of either a still or a moving visual image which depicts or appears to depict a person’s genital or anal area either exposed or covered by underwear, or an individual’s breast(s) if the individual is a woman, transgender or intersex person.²⁰³ Meanwhile, ‘depiction of private activity’ refers to a material of either a still or a moving visual image which depicts or appears to depict a person in a state of undress, using the toilet, showering, having a bath, engaging in a sexual act, or engaged in other activity which a reasonable person expects to be afforded privacy.²⁰⁴ On the other hand, ‘depiction of a person without attire of religious or cultural significance’ refers to a material of either a still or a moving visual image, of a person who constantly wears a particular attire of religious or cultural background, depicts that person without that attire which a reasonable person expects to be afforded privacy.²⁰⁵ For the purpose of this study, only the intimate image which amounts to the depiction of private parts or private activity will be discussed.

The OSA 2021 also defines ‘non-consensual intimate image of a person’ as an intimate image of an individual, provided on a social media service, or a relevant electronic service, or a designated internet service, to which the person did not agree to the availability of the intimate image on the service.²⁰⁶

S 75 of the OSA 2021 prohibits an Australian resident who is an end-user of a social media service, a relevant electronic service or a designated internet service from posting or threatening to post an intimate image of another resident in Australia.²⁰⁷ The end user is liable to a civil penalty of 500 units,²⁰⁸ which amounts to \$105,000.00.²⁰⁹

“penalty unit means the amount of \$210”.

²⁰⁰ *Online Safety Act 2021* (Australia) s 15(2).

²⁰¹ *Ibid* s 15(3).

²⁰² *Ibid* s 15(4).

²⁰³ *Ibid* s15(2).

²⁰⁴ *Ibid* s15(3).

²⁰⁵ *Ibid* s15(4).

²⁰⁶ *Ibid* s 16.

²⁰⁷ *Ibid* s 75(1).

²⁰⁸ *Ibid* s 75.

²⁰⁹ *Crimes Act 1914* (Australia), s 4AA(1):

“penalty unit means the amount of \$210”.

If an intimate image of an individual, or depicting the individual is made available online, the individual can complain to the Commissioner.²¹⁰ A complaint may also be lodged by an authorised person if the depicted person has permitted the authorised person to lodge a complaint. The parent or guardian can be the authorised person, in case the depicted person is a child under the age of 16, or if the depicted person is incapable due to a temporary or permanent physical or mental condition.²¹¹ If the identity of the person who contravened s 75 is unknown, the complainant²¹² or the authorised person²¹³ shall make a statement to the Commissioner.

In contravention of s 75, the Commissioner may issue a formal warning.²¹⁴ The Commissioner also has the power to issue a notice to remove the intimate image to the provider of the social media service, relevant electronic service or designated internet service,²¹⁵ an end-user,²¹⁶ and to a hosting service provider,²¹⁷ within 24 hours.²¹⁸ A party's failure to comply with the removal notice is liable to 500 penalty units.²¹⁹

Overall, the Australian OSA 2021 aims to improve and promote online safety for Australians.²²⁰ Similarly, in the Malaysian context, the CMA 1998 aims to regulate for the long-term benefit of the end user.²²¹ Unfortunately, the CMA 1998 does not contain any provisions on victim protection, unlike the OSA 2021. First, OSA 2021 established the eSafety Commissioner, specifically to promote online safety, and administer a complaints system for cyber abuse material, intimate images and online content schemes. In the Malaysian context, the Malaysian Communication and Multimedia Commission ('MCMC') is the body responsible for supervising and regulating communications and multimedia activities.²²² Similar to the eSafety Commissioner, the MCMC also has a complaint system, unfortunately, the scope handled by MCMC is wide. Secondly, the Australian s 75 of the OSA 2021 prohibits an individual from posting or threatening an individual to post an intimate image. Even though the element of s 75 of the OSA is also present within the ambit of s 233(1) of the CMA 1998, however, s 233(1) of the CMA does not provide for victim

²¹⁰ *Online Safety Act 2021* (Australia), s 32(1)

²¹¹ *Ibid* s 32(3).

²¹² *Ibid* s 32(2).

²¹³ *Ibid* s 32(5).

²¹⁴ *Ibid* s 76.

²¹⁵ *Ibid* s 77.

²¹⁶ *Ibid* s 78.

²¹⁷ *Ibid* s 79.

²¹⁸ *Ibid* s 77(1)(f)(i), s 78(1)(g)(i), s 79(1)(g)(i).

²¹⁹ *Ibid* s 80.

²²⁰ *Ibid* s 3.

²²¹ *Communications and Multimedia Act 1998* (Malaysia) s 3(d).

²²² *Communication and Multimedia Commissions Act 1998* (Malaysia) Preamble.

protection compared to the OSA 2021 which has powers to issue content removal notice to the provider of the social media service, relevant electronic service, designated internet service, end-user and to a hosting service provider.

V. ANALYSIS & DISCUSSION

After examining the relevant laws relating to CSH in Malaysia and comparing them with the Singapore and Australia positions, the weaknesses in the existing laws in Malaysia and the Malaysian regulatory body and the issue of victim protection will be discussed below.

5.1 Weaknesses in the existing laws to combat CSH in Malaysia

First, after examining the existing Malaysian laws, the elements of CSH are covered under s 509 and s 507 A of the PC. Section 509 of the PC criminalises words or gestures intended to insult the modesty of a person, where acts that intrude on the privacy of a person, such as recording and spreading intimate recordings which amount to CSH could fall under this law. Hence, if the harassing act does not 'intrude on the privacy' or 'insult the modesty of a victim', this law is not applicable. Thus, cyber flashing may not fall as an offence under s 509 of the PC. Another remarkable weakness of s 509 is that despite the law prohibiting words or gestures which insult a person's modesty, it fails to include victim protection measures such as an order to prohibit the conduct which insults the modesty of a victim.

Next, to the extent that stalking could amount to CSH, this could be covered by s 507A of the PC which criminalises stalking. However, s 507A may be resorted to only if the harassing act was repeated on at least two occasions. A victim under s 507A may apply for a protection order²²³ prohibiting the harasser from committing the harassing act, restraining the harasser from going near the victim or any other person related or associated with the victim²²⁴ until the investigation is completed or the criminal proceeding is disposed of. This protection measure is, however, not available for a victim under s 509 of the PC. Secondly, a comparison with the Singapore and Australian positions also reveals several weaknesses in the CMA 1998 and ASHA 2022. For instance, even though the scope of s 233(1) of the CMA 1998 includes CSH, it does not provide proper classifications of CSH offences like the Singapore and Australia positions. Reference in this regard is made to s 377 BF of the PC1871 which criminalises cyberflashing, and specifies what amounts to 'sexual exposure'. Similarly, Australia criminalises image-based CSH into several offences under

²²³ *Criminal Procedure Code* (Malaysia) s 98A.

²²⁴ *Ibid* s 98A(7).

s 474.17 of the CCA 1995, aggravated offences under s 474.17A of the CCA 1995 and offences committed on a person under the age of 16 under s 474.27A of the CCA 1995 which carry different punishments, based on their seriousness. Another notable weakness of s 233(1) of the CMA 1998 is the failure to prescribe safety measures or protection orders for the victim. In contrast to the Australian s 75 of the OSA 2021, s 233(1) of the CMA does not cater for any protection orders or provisions for content removal. In fact, s 233(1) of the CMA 1998 does not provide the necessary protection for victims of cyber-sexual crimes due to the absence of any sexual harassment laws, cyber-harassment laws or cyberbullying laws.²²⁵

After examining s 509 of the PC, s 507A of the PC and s 233 (1) of the CMA, the authors acknowledge that CSH cases can be prosecuted under these laws, despite lacking proper definitions or classifications of CSH offences. However, a victim can seek a protection order only if the offence was investigated or a criminal proceeding was initiated under S.507A of the PC.

Next, the ASHA 2022 is an act which recognises the right to redress for a victim. However, a victim can only initiate an action to claim redress at the Tribunal for Sexual Harassment if the identity of the harasser is known. Thus, in the case of CSH where the harasser is an anonymous individual, a victim is denied this right.

Another aim of the ASHA 2022 is to prevent the occurrence of sexual harassment. However, the Tribunal for sexual harassment's powers are limited to only making orders to issue apologies, pay compensation or direct parties to attend programmes. The Tribunal has no power to issue protection orders or orders to remove CSH contents. The ASHA 2022 merely recognises a victim's right to redress and is deficient in protecting victims of CSH. The ASHA 2022 is inadequate to protect CSH victims due to its failure to include provisions on the definition of sexual harassment & the protection against victimization.²²⁶

5.2 Weaknesses in the Malaysian regulatory body

After studying the Australian position, it is revealed that there are weaknesses in the Malaysian regulatory body. Similar to the Australian eSafety Commissioner, the Malaysian MCMC is responsible to supervise and regulate communication and multimedia activities, which also has a complaint system. However, while the Australian eSafety Commissioner's duty is confined to matters relating to cyber abuse materials, intimate images and online content schemes, the MCMC

²²⁵ Dr Haezreena Begum Bt Abdul Hamid, 'Combating Sexual Cyberviolence Against Women in Malaysia' [2022] 3 MLJ ccxxx1

²²⁶ Zaiton Hamin et al, 'Recent Development in Sexual Harassment Law in Malaysia: Whither the Victim's Protection?', (2022) 12(11) *International Journal of Academic Research in Business and Social Sciences* 3089.

handles online content as well as other matters relating to telecommunication, postal and courier, broadcasting and other subsidiary matters.²²⁷ The scope of cyber harassment handled by the MCMC is also wide-ranging from online bullying, sexual harassment, threats, causing fear, abuse of personal information, use of personal photographs to oppress and stalk and abuse of social media. This wide scope of work shouldered by the MCMC could also be a reason for the low rate of investigation in contrast to the large number of complaints received. Thus, the government should also relook at revamping the structure and/or job scope of the relevant regulatory body relating to CSH cases.

5.3 Victim Protection

The researchers are of the view that victim protection measures are crucial in tackling the issues of under reporting, to empower the victims to report the occurrence of CSH. Meanwhile, as the rate of investigation and prosecution is relatively low, victim protection measures also need to be implemented to prevent secondary victimisation or the spread of intimate or obscene images in various online platforms.

A victim of CSH, particularly a victim of intimate image or voyeuristic image abuse, revenge pornography, or deepfake pornography faces the loss of dignity, and honour which tarnishes their reputation. Thus, it is crucial to place adequate protection to prevent the spread as well as the removal of harmful contents from digital platforms, more so when the Internet enables humans to perform CSH while being anonymous. Further, a victim must also be protected from subsequent attacks.

Although human rights are safeguarded through international and domestic laws, the evolution of technology poses a great challenge in safeguarding human rights in cyberspace,²²⁸ particularly the rights of a CSH victim.

The ‘right to life’ is embedded under Article 3 of the Universal Declaration of Human Rights (‘UDHR’), as “everyone has the right to life, liberty and the security of person”.²²⁹ Likewise, the ‘right to privacy’ is found under Article 12 of UDHR as “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or

²²⁷ ‘Complaint Sector’ *MCMC Consumer Redress Portal* (Web Page) <<https://aduan.mcmc.gov.my/#/public/main>>.

²²⁸ Dafna Dror-Shpoliansky and Yuval Shany, ‘It’s the End of the (Offline) World as We Know It: From Human Rights to Digital Human Rights – A Proposed Typology’ 2021 (32) *4 European Journal of International Law* 1249.

²²⁹ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 3.

attacks”.²³⁰

In the Malaysian context, the ‘right to life’ is contained under Article 5 of the Federal Constitution. Article 5(1) states that ‘No person shall be deprived of his life or personal liberty save in accordance with law’.²³¹ Meanwhile, entitlement to equal protection of law is rooted under Article 8 (1) of the *Federal Constitution*. These two rights work hand-in-hand in safeguarding a victim’s right.

Although the term ‘the security of person’ found under Article 3 of UDHR is absent from Article 5(1) of the *Federal Constitution*, the scope of the ‘right to life’ covered in the Malaysian context is wide. In the case of *Lembaga Tata tertib Perkhidmatan Awam, Hospital Besar Pulau Pinang v Utra Badi A/L K Perumal*,²³² Justice Gopal Sri Ram referred to two Indian cases²³³ and interpreted that:

“Now, it cannot be gainsaid that any sort of punishment imposed upon a public servant has serious consequences. It carries with it a stigma. It tarnishes reputation. The authorities are now well settled that the punishment of dismissal deprives a person of his livelihood and therefore of his 'life' within the meaning of that expression in art 5(1) of the Federal Constitution.... Similarly, when a person is deprived of his reputation, it would in my judgment, amount to a deprivation of 'life' within art 5(1) of the Federal Constitution. The right to reputation is part and parcel of human dignity. And it is the fundamental right of every person within the shores of Malaysia to live with common human dignity.”²³⁴

Thus, applying this interpretation, a victim of CSH is deprived of their right to life due to stigmatization, damage to reputation and loss of dignity. Thus, a CSH victim has the right to be protected in cyberspace and is entitled to be safe in online space. As such, the government should re-look into reinforcing an individual's right to life in the cyberspace context and place adequate laws to safeguard their rights.

²³⁰ Ibid art 12.

²³¹ *The Federal Constitution* (Malaysia) art 5(1).

²³² [2000] 3 MLJ 281. (Court of Appeal) 294.

²³³ *Francis Coralie v Union of India* AIR 1981 SC 746 (Supreme Court of India); *Board of Trustees of the Port of Bombay v Dilipkumar* AIR 1983 SC 114 (Supreme Court of India).

²³⁴ *Lembaga Tata tertib Perkhidmatan Awam, Hospital Besar Pulau Pinang v Utra Badi A/L K Perumal* [2000] 3 MLJ 281 (Court of Appeal) 294.

VI. CONCLUSION

After examining and comparing the CSH laws in Malaysia, Singapore and Australia, it can be concluded that the existing Malaysian laws are inadequate to combat CSH and fail to include provisions to protect victims from CSH. Thus, law reform is crucial in Malaysia.

The researchers would like to suggest the following reforms. Firstly, the *Anti Sexual Harassment Act 2022* should be amended to include a proper definition of CSH. Secondly, following the Singapore and Australian positions, offences relating to CSH should be separated based on the severity which carries different punishments, instead of the current situation where everything is subsumed under s 233(1) of the CMA 1998. Thirdly, laws on protection orders and the removal of content orders to enable victims of CSH to seek protection must be implemented. The scope of the right to life should also be extended to the cyberspace context, and adequate laws to protect victims must be placed to safeguard the victims' rights.