

New Straits Times, Business Times – Thursday, 28 July 2022 (A)



DEVANESAN
EVANSON

NEW ACT

TACKLING SEXUAL HARASSMENT

THE Anti-Sexual Harassment Bill was passed in the Dewan Rakyat on July 20. That is a good thing. The Bill was mooted in 2011. Better late than never is not a valid excuse for a pressing issue that needed to be addressed. Sexual harassment is a worldwide concern with several countries having their “#MeToo” revelations.

The Anti-Sexual Harassment Act 2021 will come into effect on a date set by the women, family and community development minister by notification in the Gazette. The minister may set different dates for different parts of the Act — a staggered approach as opposed to a big-bang approach.

Sexual harassment is defined as any unwanted conduct of a sexual nature, in any form whether verbal, non-verbal, visual, gestural or physical, directed at a person that is reasonably offensive or humiliating or is a threat to a person's wellbeing.

What is clear from this definition is its intended wide-reaching coverage using phrases such as “in any form”, “non-verbal”, “visual” and “reasonably offensive”.

It is worthwhile to read the definition slowly and appreciate (and beware) the wide net that the definition intends to cast. In the Act, there are no granular specifics to guide as to, or give examples of, what may be construed as sexual harassment.

According to All Women's Action Society (AWAM), sexual harassment consists of a single or a

series of unwelcoming conduct of a sexual nature perceived by the recipient to be intimidating, hostile, degrading, humiliating or offensive, with the intent to violate the dignity of the recipient.

AWAM goes on to provide granular examples as follows:

Physical

❑ Unwanted and inappropriate touching (stroking, groping, rubbing, patting, fondling, kissing and hugging, etc).

❑ Standing too close in a way that is unwelcoming for the recipient.

Verbal

❑ Offensive or sexually suggestive remarks, jokes, sounds (such as catcalling) and expressions (such as *sayang*).

❑ Sexually inappropriate comments about the person's body or appearance.

❑ Unwanted questions on personal life (not limited to sex) that are invasive to the recipient.

Gestural

❑ Unwanted leering, ogling or staring, peeping Toms.

❑ Sexually suggestive hand signals or sign language.

❑ Flashing or mooning.

Visual

❑ Displays of obscene materials (e.g. drawings, text in physical materials, images) that are unwanted and sexual in nature.

Psychological

❑ Repeated and unwanted social invitations for dates or phys-

ical intimacy.

❑ Constant and unwanted offers or benefits (e.g. promotions or academic credits, long leave) on the condition of sexual favours.

Online

❑ Receiving, sending or posting comments via online text, audio messages, images, videos, GIFs, etc, that are unwanted and sexual in nature (social media, messaging apps, etc).

❑ Pressuring or threatening someone to do the above.

❑ Sharing someone else's sexual photos, images or videos online directly or publicly without their express consent.

Determining guilt

A 12-member tribunal will be set up under the Act, which stipulates that complaints of sexual harassment shall be determined on a balance of probabilities. The higher standard of beyond reasonable doubt has not been adopted.

Penalties

The penalties stipulated is sufficiently deterrent.

The tribunal may make an order for a private or public apology (if the harassment was done in public). The respondent may be ordered to pay compensation or damages not exceeding RM250,000 for any loss or damage suffered by the complainant in respect of the act of sexual harassment.

Failure to comply with the award within 30 days from the

date on which the award was made has dire consequences. Such failure is an offence and shall, on conviction, be liable to two times the total amount of compensation or damages that was ordered by the tribunal or imprisonment not exceeding two years, or both.

If the tribunal has not ordered any compensation or damages, then there will be a fine not exceeding RM10,000 or an imprisonment of not more than two years, or both.

Re-examining current habits

An introspective self-evaluation and self-examination will indeed be the order of the day. What had been construed as acceptable behaviour may not be acceptable any more. Better companies in the past would have held briefings for all staff on the issue of sexual harassment.

Other companies must now hold briefings to ensure that everyone understands what constitutes sexual harassment. Posters around the workplace may be an option to constantly remind all of the need to avoid sexual harassment.

The traditionally taboo subject of sexual harassment, especially in Asian societies, will finally see light of the day and justice with the implementation of the new Act. Those who have suffered will be emboldened to speak out and seek justice.

The writer is chief executive officer of Minority Shareholders Watch Group.

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