

Need for better protection

'It is time for a stand-alone Act against sexual harassers'

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IT could happen to anyone – man or woman, and anytime. But more often than not, it is never brought up. And that is one of the stumbling blocks in combating sexual harassment at the workplace.

There are some setbacks in getting justice from being sexually harassed at work, leading to groups pushing for a stand-alone Sexual Harassment Act and other proposals to beef up the law.

Noting that many victims would rather not report their case, All Women's Action Society representative Betty Yeoh says more will step forward if there are better protection policies for them.

"Presently, sexual harassment is not an offence under the Penal Code. Such cases can be charged under different provisions like assault. But because of this, there is not much data to show that there are X number of cases or the prevalence of the problem," she says.

She adds that a stand-alone Act to deal specifically with sexual harassment will be more effective in stamping out offences.

While the Employment Act was recently amended to address sexual harassment at work, Yeoh says there are legal "gaps" including lack of a clear mechanism when the matter is being handled by the Labour Department.

Sexual harassment, as defined in the Act, means any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural

or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment.

The Star recently reported that labour law experts have said the Industrial Court was willing to accept flirting as sexual harassment if it is severe or pervasive.

Deputy Women, Family and Community Development Minister Datin Paduka Chew Mei Fun says the ministry has started discussing the possibility of forming a Sexual Harassment Act.

"We have started and will continue to push for it," she says.

Women's Aid Organisation (WAO) advocacy manager Yu Ren Chung says the Joint Action Group for Gender Equality has been constantly calling for the Government to enact such an Act to address legal shortfalls.

"The Government has made progressive steps to amend the Employment Act but it is not enough. There is too much power in the hands of the employer as they decide whether or not to investigate the case.

"The complainant can take the case to the Labour Department to direct the employer to investigate the claim but it is back to the employer again," he says. Another problem, Yu says, is that victims are unable to appeal against the results of the investigations.

He points out that the Employment Act only covers offences at the workplace and does not protect students or sexual harass-



Unkindest touch: Sexual harassment often occurs in the workplace, but most women are usually too afraid to report it.



Sumitra: Sumitra cites power imbalance as the reason for harassment in the workplace.



Mohd Khalid: Investigation should be done by an independent body.

ment by strangers in public areas.

Yu says it is not mandatory for employers to follow the Human Resource Ministry's Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace as it was a guideline.

WAO executive director Sumitra Visvanathan says harassment occurs due to power imbalance and so, every company should have a policy that supports gender sensitivity and equality.

"Employers should have a policy of non-retaliation so that cases can be dealt in an objective way.

"Some victims worry about their future prospects being jeopardised and fear that they could suffer con-

sequent laws are sufficient.

Malaysian Employers Federation (MEF) executive director Datuk Shamsuddin Bardan disagrees that the current mechanism was "one-sided".

He stresses that there must be sufficient evidence to back the complainant's claim and critical details must be provided like the date, time and place of the offence.

"In some cases, the employee takes a long time before coming forward and may have forgotten the details," he says.

Shamsuddin says employers are sometimes torn between taking action against the alleged harasser and protecting themselves from being taken to court by the harasser for terminating their services.

"We urge the Government to amend the law to protect employers from being challenged in court under the Industrial Relations Act for dismissing them over sexual harassment incidents," he says.

Shamsuddin reveals that the MEF occasionally receives cases where the victims are men.

"In these cases, some perpetrators are men. We do have cases of men being harassed by women, especially female bosses, although it is rare. In such cases, female bosses try to take advantage of their position over the men," he says.

sequences from the abuser if they make a report," she says.

Malaysian Trades Union Congress president Mohd Khalid Atan says investigations into sexual harassment claims should be done by an independent body and not by the employer.

"It should not be a unilateral decision by the employer. The true story may not be discovered if the company seeks to safeguard its image or that of some people," he says.

Khalid says the MTUC supports the proposal to have a dedicated law to deal with the problem and agreed that sexual harassment is not only limited to the work place. However, some believe the cur-