



LETTER | Esha Clause: Why punishment alone cannot protect children

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LETTER | Malaysia has recently undergone a significant shift in its legal approach to bullying and cyberbullying, driven largely by public outrage over tragic losses of life. The most notable result is Section 507D(2) of the Penal Code - widely dubbed the "Esha Clause."

This provision criminalises threatening, abusive or insulting conduct intended to provoke a person to harm themselves or another person, or that the perpetrator knew or ought to have known was likely to do so. If that provocation results in a suicide attempt or death by suicide, the maximum prison sentence rises to 10 years.

Having this law on the books sends a strong moral message. However, the public must understand the harsh legal reality: a severe penalty does not guarantee an easy conviction, nor does it act as an immediate shield for victims.

In a criminal court, proving that bullying took place may only be half the battle. The ongoing investigation into the tragic death of 14-year-old Keziah Nisha may become an important test of this clause.

While police are presently investigating the case under Section 507B, the investigation remains active, and no final charging decision has been announced. It would therefore be premature to conclude that Section 507D(2) has been ruled out.

Immense difficulty

Nevertheless, the case highlights the immense difficulty at the heart of the Esha Clause. Prosecutors must prove not merely that the conduct was cruel or distressing, but that the accused intended to provoke self-harm or knew or ought to have known that the conduct was likely to do so.

Where suicide followed, they must also prove that it occurred as a result of that provocation. Human distress rarely has a single, tidy cause. Where mental health, accumulated incidents, and other pressures overlap, establishing that connection beyond a reasonable doubt becomes a monumental hurdle.

But there is a deeper limitation to the Esha Clause. It is fundamentally an after-the-fact tool. It can hold a perpetrator accountable after threatening or abusive conduct has occurred, but it cannot by itself provide the immediate protection a vulnerable person may urgently need.

Criminal law can punish and deter, but it cannot substitute for protecting a victim in real time. Although the Esha Clause applies regardless of the victim's age, its limitations are especially serious when children are involved. Children depend heavily on parents, teachers and school administrators to recognise the danger and intervene before bullying escalates into self-harm.

True protection therefore depends on what happens during the critical hours and days after a child first reports bullying or shows signs of distress.

Crowded anti-bullying framework

Yet Malaysia has moved from fragmented legal protections to an increasingly crowded anti-bullying framework. Beyond the Penal Code, we now have the Online Safety Act and the Anti-Bullying Act 2026, which established the Tribunal for Anti-Bullying.

While these measures serve different purposes, making sense of them in the midst of a crisis can be daunting. Teachers and school administrators must navigate the 2023 bullying guidelines, the sweeping 402-page 2026 Safe School Management Guidelines, the separate Student Protection Policy, the Safe framework, and procedural reporting timelines such as SOP 1:3:7.

Having multiple laws and thick policy documents is not the same as having a cohesive safety net. When a child is facing severe psychological distress, a terrified parent or an overwhelmed teacher does not have time to solve an administrative puzzle.

They need a single, unambiguous "no-wrong-door" emergency triage protocol. This must include an immediate suicide risk assessment, interim protection, and a designated response coordinator.

The Esha Clause is necessary, but it is not a safety net. The true measure of our national anti-bullying framework should not be how severely we can punish a perpetrator after the fact, but whether we can protect a victim in time.

If a child facing bullying has attempted suicide or is already gone, our frontline intervention system has failed to reach that child in time.

To truly honour Esha and the other victims who inspired these reforms, early intervention must become our first and most urgent line of defence.

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