

SECTION 353 PENAL CODE

With the ongoing movement control order (MCO) it is no doubt that there will be many cases involving s.353 of the Penal Code which makes it a criminal offence to use criminal force to deter a public servant from discharging his duty:

“353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.”

According to the context above, it means anyone that assaults or uses criminal force against any person being a public servant while he is discharging his duties and preventing him from carrying out his duties shall be punished with imprisonment which may extend to a maximum of 2 years or fine or both, upon conviction.

Next, how to know what can prevent public servants from doing their duties? According to the s.353, Penal Code, it means assault or criminal force which prevents them from doing their duties. So what is assault and criminal force? The relevant sections of the Penal Code set them out as follow:

- **Criminal force:** *Whoever intentionally uses force to any person, without that person's consent, in order to cause the committing of any offence, or intending by the use of such force illegally to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.*

In short, it means force must be applied + force applied without consent + intention or knowledge to cause the force = criminal force. An example may be found in the case of *Mohamed Abdul Kader v Public Prosecutor (1966) 1 LNS 101*. In this case, the appellant held a chopper and said “if you go, in I will hammer you”, but the force was not used, hence no criminal force

- **Assault:** *Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.*

Reference is made to the case of *Raja Izzuddin Shah v Public Prosecutor (1978) 1 LNS 165* in which case, causing threats with intention either with words or physical actions will amount to an assault where, as in this case, the accused slapped the complainant and goes on to dragged the complainant by the shirt and pushed him against the wall.

With assault and criminal force explained, hence, who are the public servants?

- Public servants are people who works for the state or the local government and this can include armed forces such as police and the army and this is common to see them often on roads performing their duties during the MCO period.

In conclusion, understanding s.353, Penal Code 353 will allow all parties involved to be more aware on what constitutes criminal force and assault to public servants and why it is wrong to do so. The law as codified by the Penal Code has the purpose of protecting both citizens and public servants especially during the MCO period or even during non-MCO period where it ensures offenders do not create harm to public servants when the public servants themselves are doing their own duties to protect people.