

UNWANTED SEXUAL ADVANCES AND SEX
DISCRIMINATION:
Sexual Harassment in light of the Safe Spaces Act of 2019
(R.A. 11313)

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*“Tacitly, it [sexual harassment] has
been both acceptable and taboo; acceptable for
men to do, taboo for women to confront, even to
themselves”*
- Catherine A. MacKinnon, 1979.

I. Introduction

Sexual harassment is a battle between unequal forces. It connotes an abuse of power or an exploitation of one’s position of authority as an effective means to demand sexual favors, make sexual advances, or perpetuate sexual violence. The United Nations System Model Policy on Sexual Harassment provides for a uniform definition of sexual harassment across all member states. Thus:

Sexual harassment is any unwelcome conduct of a sexual nature that might reasonably be expected or be perceived to cause offense or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. Sexual harassment may occur in the workplace or in connection with work. While typically involving a pattern of conduct, sexual harassment may take the form of a single incident. In assessing the reasonableness of expectations or perceptions, the perspective of the person who is the target of the conduct shall be considered.¹

Sexual harassment has no specific form. Oftentimes, it is concealed through humor wrapped with sexual innuendos or even through a compliment or any other highly uncomfortable yet highly implicit sexual deeds. To illustrate, the complainant in the case of *Re: Anonymous Complaint against Atty. Cresencio P. Co Untian, Jr.* gave a narration of an instance when she felt embarrassed during a recitation by reason of a sexually charged joke that her professor made in a class. In her statement, she narrated that:

¹ The UN System Model Policy on Sexual Harassment was endorsed by the UN System Chief Executives Board for Coordination at its second regular session of 2018 on recommendation of the Board’s High-level Committee on Management which had approved the model policy at its 36th session on 11-12 October 2018. The model policy was developed by the CEB Task Force on Addressing Sexual Harassment within the Organizations of the UN System.

Meanwhile, Dal recounted that in one of her recitations during respondent's class, she clarified a question propounded to her saying "Sir, come again?" Respondent retorted "What? You want me to come again? I have not come the first time and don't you know that it took me five minutes to come, and you want me to come again?" She later learned that respondent would narrate the said incident to almost all of his classes. Dal felt offended that she was subjected to such sexually charged language and the fact that her embarrassment was retold in other classes.²

The professor's statement in the above-mentioned case is a glaring example of a futile attempt to conceal one's intent to sexually harass a person. It is highly reprehensible and uncalled for. In this illustration, the intent to sexually harass is clear and unmistakable. However, sexual harassment is not always easily discernible. Sometimes, a person attempting to disguise an intent to sexually harass another may use a simple play of words with sexual overtones which may not be obvious to others. The person in the receiving end of this seemingly muted sexual aggression will certainly feel a sense of uneasiness, discomfort or embarrassment. But to others, this play of words, although highly offensive or degrading, can easily slide unnoticed.

As mentioned, acts of sexual harassment are not always committed in the foreground much less in open view. Therefore, many victims are left with little to no room for recourse for fear of the situation turning against them. Also, in sexual harassment, there is inequality between the aggressor and the victim. Oftentimes, the former exercises moral ascendancy or occupies a dominant position over the latter. Thus, it takes an incredible amount of courage on the part of the victim to stand up and protect his or her dignity.

Thus, when the perpetrators are employers, managers, or professors, and their victims are those who live from paycheck to paycheck, students who endeavor to finish their education, those who are breadwinners of the family responsible for bringing food on the table, the latter's silence is not only out of fear, but out of necessity. While sexual harassment knows no age, gender, degree of education, job description or even social status, we cannot deny that those who are at the tail end of the modern-day caste system are the common preys of sexual harassers. After all, predators target those who are vulnerable. Undoubtedly, the perversity of sexual

² Re: Anonymous Complaint Against Atty. Cresencio P. Co Untian, Jr., A.C. No. 5900. April 10, 2019

harassment is magnified when its victims are those who are defenseless. For these victims, it is not only a mental or physical crisis but also an economical one. If left unchecked, sexual harassment will continue to pose a threat against their financial security.

A. The Becoming of Sexual Harassment

Sexual harassment has existed since days beyond recall. It has been a practice kept under a hat long before mankind was able to recognize its existence and identify it as an act evil enough to be legally punishable. Back in the day, the issue of sexual harassment was so taboo that victims had no means to seek redress from legal remedies simply because there were none. Sexual harassment was particularly prevalent during the era of African-American slave trade in the 17th century³ when discrimination based on sex and race was the name of the game.⁴

Slavery also extracted sexual labor from enslaved women. Enslaved women found themselves coerced, blackmailed, induced, seduced, ordered and, of course, violently forced to have sexual relations with men. Sexual access was enforced through a variety of structural mechanisms.⁵

Despite its prevalence, sexual harassment was not recognized, let alone penalized. In fact, slaves and domestic servants were demonized and described as naturally promiscuous to shield men from accusations of sexual coercion.⁶ Following this culture of tolerance, discussions and governmental debates ensued. These discussions were mostly geared towards recognizing the vulnerability of women, especially those engaged in domestic work, to acts of sexual abuse. Slowly, the elephant in the room started to be the topic for discourse.

³ History.com Editors, *Slavery in America*, History, A&E Television Networks, November 12, 2009, <https://www.history.com/topics/black-history/slavery>

⁴ Sascha Cohen, *A Brief History of Sexual Harassment in America Before Anita Hill*, TIME Magazine, April 11, 2016, <https://time.com/4286575/sexual-harassment-before-anita-hill/>

⁵ Adrienne D. Davis William M. Van Cleve Professor of Law, *Slavery and the Roots of Sexual Harassment*, Washington University in St. Louis School of Law, November 2013, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=336122

⁶ Reva B. Siegel, *Directions in Sexual Harassment Law*, 3-8 (2003).

The feminist legal scholar Catherine A. MacKinnon wrote in 1979 that sexual harassment is a form of sex discrimination. MacKinnon pioneered the movement that shifted the dynamics of how sexual harassment in the workplace was confronted and remedied. She exposed the impact of sexual harassment among women in the workplace by characterizing it as an act of abuse and confronting the issue head on.

In addition to being victims of this practice [sexual harassment], working women have been subject to the social failure to recognize sexual harassment as an abuse at all. Tacitly, it has been both acceptable and taboo; acceptable for men to do, taboo for women to confront, even to themselves. But the systematic silence enforced by employment sanctions is beginning to be broken. The daily impact upon women's economic status and work opportunities, not to mention psychic health and self-esteem is beginning to be explored, documented, and, increasingly, resisted.⁷

Years thereafter, the U.S. Supreme Court, for the first time, addressed sexual harassment in the case of *Meritor Savings Bank v. Vinson*.⁸ This case involved a bank teller who sought punitive relief and damages based on Title VII of the Civil Rights Act of 1964 against her supervisor and her employer, Meritor Savings Bank. She claimed that her supervisor asked her to dinner and suggested going to a motel to have sexual congress with her. She initially refused. However, out of fear of losing her job, she acceded. During her four years of employment, she claimed to have had sexual relations with her supervisor forty to fifty times. She also claimed that her supervisor fondled her in front of other employees; exposed himself to her; followed her in the restrooms; and forcibly raped her. The U.S. Supreme Court upheld the rights of the teller and held:

The District Court's findings were insufficient to dispose of respondent's "hostile environment" claim. The District Court apparently erroneously believed that a sexual harassment claim will not lie absent an economic effect on the complainant's employment, and erroneously focused on the

⁷ Sexual Harassment of Working Women a Case of Sex Discrimination, *Catharine A. MacKinnon*, p.1, illustrated, Yale University Press, 1979

⁸ *Meritor Savings Bank v. Vinson* 477 U.S. 57 (1986)

“voluntariness” of respondent’s participation in the claimed sexual episodes. The correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, not whether her participation in them was voluntary.⁹

In its discussion, the U.S. Supreme Court stated that sexual harassment is committed despite the absence of any economic effect on the victim’s employment. Once it is satisfactorily established that sexual solicitation has created a hostile working environment for the employee, the same shall be considered sufficient to prove the existence of sexual harassment and consequently impose the corresponding liabilities. Therefore, the victim need not prove that the sexual favors were made to serve as a condition of initial or continued employment, or any other employment related benefits.

The U.S. Supreme Court also provided a guideline as to when the employer shall be made liable for the acts of its agent (as in this case, the bank supervisor) which constitute as sexual harassment. It said:

Finally, we reject petitioner’s view that the mere existence of a grievance procedure and a policy against discrimination, coupled with respondent’s failure to invoke that procedure, must insulate petitioner from liability. While those facts are plainly relevant, the situation before us demonstrates why they are not necessarily dispositive. Petitioner’s general nondiscrimination policy did not address sexual harassment in particular, and thus did not alert employees to their employer’s interest in correcting that form of discrimination. Moreover, the bank’s grievance procedure apparently required an employee to complain first to her supervisor, in this case Taylor. Since Taylor was the alleged perpetrator, it is not altogether surprising that respondent failed to invoke the procedure and report her grievance to him. Petitioner’s contention that respondent’s failure should insulate it from liability might be substantially stronger if its procedures were better calculated to encourage victims of harassment to come forward.¹⁰

⁹ *Id.* at page 3

¹⁰ *Id.* at page 3

This was considered a landmark case on sexual harassment in the United States. In this case, a formerly innominate immoral act was finally acknowledged and recognized by the high court voting unanimously to uphold women's rights against sexual harassment in the workplace.

B. Modern trends on addressing sexual harassment: The #MeToo Movement

The movement that broke the stigma against survivors of sexual abuse and hurdled obstacles in the process of destroying this culture of hate and apathy was sparked by testimonies of everyday people through the unsophisticated platforms of social media. A simple *hashtag* created groundbreaking changes in the culture of sexual abuse and shifted the focal point of shame—from the survivors, to the perpetrators. The conversations were neither formal nor were they written in scholarly articles.

The #MeToo movement, launched in 2006 through the efforts of activist Tarana Burke, aimed to help survivors of sexual harassment particularly women of color and others who are vulnerable to abuse. It sought to provide sources of healing for survivors and advocated to find measures that would end sexual harassment of all kinds.¹¹ Later on, through various social media platforms, the movement spread globally and sparked a wide array of discourse through the hashtag #MeToo. People from all walks of life including celebrities and other prominent personalities using this hashtag started sharing their stories of sexual abuse through social media. Hollywood actress Alyssa Milano's testimony about her experience on sexual abuse through the said hashtag became one of the catalysts that raised this movement into a global conversation.¹² From then, allegations of sexual harassment against high-profile personalities spread like wildfire. Women started coming forward.

This movement undoubtedly creates and continues to effect change in our culture of sexual harassment particularly on how it is viewed, accepted or remedied. Previously, our culture dictates apathy, victim-blaming, and skepticism on cases and

¹¹ History and Vision, <https://metoomvmt.org/about/#history>, December 5, 2019

¹² Anna Pivovarchuk, The MeToo Movement: Changing the Rules of the Game, Fair Observer, November 15, 2019, <https://www.fairobserver.com/culture/me-too-movement-history-consequences-womens-rights-news-17621/>

stories of sexual harassment. Before this new wave of conversations, issues on sexual harassment were underplayed and treated nonchalantly. This shift is a significant breakthrough because victims who, before, refused to speak out of fear of being ridiculed, started coming forward to avail of legal remedies. Gone were the days when sexual harassment was only endured or fought in silence. As it should be, acts of sexual abuse are fought with resounding volume enough to cement in the minds of every person that sexual abuse of any kind shall occupy no space in any civilized society.

In Japan, a woman named Shiori Ito became the symbol of the #MeToo movement when she won in a civil action for rape against a high-profile journalist named Noriyuki Yamaguchi. She narrated that she went out with Yamaguchi to discuss a possible job opportunity. When she regained her consciousness, she found herself in a hotel room with Yamaguchi already on top of her while she felt pain all over her body. This civil action was filed after public prosecutors in Japan refused to file a criminal case for rape against Yamaguchi.¹³ Her case exemplified that sexual assault victims in Japan had to endure not only public ridicule but also legal barriers.¹⁴In fact, the Survey on Violence between Men and Women conducted by the Cabinet Office in FY 2017 in Japan showed that 56.1% of those who had “experienced forced sexual intercourse” did not consult anybody.¹⁵

In South Korea, public prosecutor Seo Ji-hyeon accused former South Korean Ministry of Justice official Ahn Tae-geun of groping her during a funeral in 2010. This spearheaded public debates on addressing the issues on sexual harassment and prompted politicians to address the issue.¹⁶ On January 22, 2020, Seo Ji-hyeon received an unprecedented victory when Ahn Tae-geun was sentenced to two years in prison for using his authority to commit a sexual misconduct.¹⁷

¹³ Yuko Aizawa, *Shiori Ito wins rape case*, NHK World Japan, December 20, 2019, <https://www3.nhk.or.jp/nhkworld/en/news/backstories/803/>

¹⁴ Julia Hollingsworth, *Japanese #MeToo symbol wins civil court case two years after she accused a prominent journalist of raping her*, CNN Business, December 18, 2019, <https://edition.cnn.com/2019/12/18/media/japan-shiori-ito-legal-intl-hnk/index.html>

¹⁵ *Survey on Violence between Men and Women conducted by the Cabinet Office in FY 2017*, https://www.npa.go.jp/hanzaihigai/whitepaper/w-2018/html/zenbun/part4/s4_2c17.html, December 5, 2019

¹⁶ Laura Bicker, *#MeToo movement takes hold in South Korea*, BBC News Seoul, March 26, 2018, <https://www.bbc.com/news/world-asia-43534074>

¹⁷ Choe Sang-Hun, *The New York Times*, January 23, 2019, <https://www.nytimes.com/2019/01/23/world/asia/south-korea-prosecutor-sexual-misconduct.html>

C. Sexual Harassment in the Philippines

Republic Act No. 7877 otherwise known as the Anti-Sexual Harassment Act of 1995 gives a definition of Work, Education or Training-related Sexual Harassment. Sec. 3 of the said law provides:

SEC. 3. Work, Education or Training-related Sexual Harassment Defined.
– Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.¹⁸

Although the above-mentioned definition calls for a demand, request, or requirement of a sexual favor, the Supreme Court has clarified that it is not necessary that the same be explicit. In the case of *Domingo v. Rayala*¹⁹, which originated from a sexual harassment case that a stenographer filed against a National Labor Relations Commission (NLRC) chairman, the Supreme Court ruled that the demand, request, or requirement of a sexual favor need not be articulated in a categorical oral or written statement. It held that the acts of the NLRC Chairman holding and squeezing the victim's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones resound with deafening clarity the unspoken request for a sexual favor. In short, actions speak louder than words. The demand or request of sexual favor need not be spelled out.

It was also mentioned in the same case that sexual demands or requests need not be made as a condition for continued employment or for promotion. As long as the sexual demands result to a hostile or offensive work environment for the employee, the same shall suffice to constitute sexual harassment.

¹⁸ An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes, Republic Act No. 7877, sec. 3 (1995).

¹⁹ *Domingo v. Rayala*, G.R. No. 155831, February 18, 2008.

In the more recent case of *Re: Anonymous Complaint against Atty. Cresencio P. Co Untian, Jr.*²⁰, a law school professor was suspended from the practice of law for a period of five (5) years and from teaching in any law school for a period of ten (10) years on account of sexually harassing some of his students. One of the acts complained of was that the professor showed a picture of a naked woman to one of her female students who supposedly resembles the face of the woman in the image. He also teased her within hearing distance of other law students.

In his separate concurring opinion, Associate Justice Marvic Leonen recognized the patriarchal dominancy in Philippine culture and its role in perpetuating sexual harassment against women. He stated:

Our ruling today acknowledges the persistence of patriarchy in our society. The historical and cultural expression of male privilege—or simply, the privilege of males qua males over females qua females—still exists. It is a powerful, dominant, molding attitude that is nefariously manifested when demeaning and distressing representations of any woman, especially when clearly identified, are disguised as jokes. While normally entertaining for most men, this is generally callous to women, whose dignity may suffer.

x x x Patriarchy becomes encoded in our culture when it is normalized. The more it pervades our culture, the more its chances to infect this and future generations. x x x²¹

Interestingly, this 2019 administrative case is the first instance that the Supreme Court punished a law professor for sexually harassing his students. The decision was coupled with a stern warning that future cases will carry a heavier punishment—specifically, disbarment.

²⁰ *Re: Anonymous Complaint Against Atty. Cresencio P. Co Untian, Jr., A.C. No. 5900. April 10, 2019*

²¹ *Id.* at page 4.

II. The Safe Spaces Act (R.A. No. 11313)

A. Salient Features of the Safe Spaces Act

Catcalling is never a compliment the same way that silence does not signify consent.

Republic Act No. 11313 otherwise known as the Safe Spaces Act was signed into law on April 17, 2019. In its declared policy, the Safe Spaces Act recognizes that sexual harassment knows no gender and that men, women, and all genders must be treated equally when it comes to safety and security both in private and public spaces. Thus, Section 2 of the said law provides:

Section 2. Declaration of Policies. – It is the policy of the State to value the dignity of every human person and guarantee full respect for human rights. It is likewise the policy of the State to recognize the role of women in nation-building and ensure the fundamental equality before the law of women and men. The State also recognizes that both men and women must have equality, security and safety not only in private, but also on the streets, public spaces, online, workplaces and educational and training institutions.²²

One of the highlights of the Safe Spaces Act is its provisions on gender-based sexual harassment in public places. This law provides criminal sanctions²³ against persons who shall commit catcalling, wolf-whistling, and misogynistic, transphobic, homophobic, and sexist slurs in public spaces—acts that are embedded in Philippine street culture and are endured by many specially women. This law is highly inclusive as it recognizes that sexual harassment affects all genders. This inclusivity is evident in this provision as it includes multiple forms of sexist slurs. Under Section 4 of the Safe Spaces Act, the crime of gender-based streets and public spaces sexual harassment is committed through any unwanted and uninvited sexual actions or remarks against *any person* regardless of the motive for committing such action or remarks.²⁴ The same

²² An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, and Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties Therefor, Republic Act No. 11313, sec. 2 (2019).

²³ R.A. 11313, Sec. 11

²⁴ R.A. 11313, Sec. 4.

provision enumerates the acts that are considered gender-based streets and public spaces sexual harassment. Thus, it provides that:

Section 4. xxx Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks and parks. Acts constitutive of gender-based streets and public spaces sexual harassment are those performed in buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public markets, transportation terminals or public utility vehicles.

Another development in this law is the recognition that sexual harassment takes place not only in work, education, or training environments and that its perpetrators are not limited to persons of authority or those exercising moral ascendancy over the offended party. Unlike the Anti-Sexual Harassment Act of 1995, the Safe Spaces Act guards against sexual harassment not only in workplaces, educational institutions, or training environments but also in public spaces such as restaurants, malls and other privately-owned places open to the public. Thus, Section 5 of the same law provides:

Section 5. Gender-Based Sexual Harassment in Restaurants and Cafes, Bars and Clubs, Resorts and Water Parks, Hotels and Casinos, Cinemas, Malls, Buildings and Other Privately-Owned Places Open to the Public. – Restaurants, bars, cinemas, malls, buildings and other privately-owned places open to the public shall adopt a zero-tolerance policy against gender-based streets and public spaces sexual harassment. These establishments are obliged to provide assistance to victims of gender-based sexual harassment by coordinating with local police authorities immediately after gender-based sexual harassment is reported, making CCTV footage available when ordered by the court, and providing a safe gender-sensitive environment to encourage victims to report gender-based sexual harassment at the first instance.

All restaurants, bars, cinemas and other places of recreation shall install in their business establishments clearly-visible warning signs against gender-based public spaces sexual harassment, including the anti-sexual harassment hotline number in bold letters, and shall designate at least one (1) anti-sexual harassment officer to receive gender-based sexual harassment complaints. Security guards in these places may be deputized to apprehend perpetrators caught in flagrante delicto and are required to immediately coordinate with local authorities.

The Safe Spaces Act also provides sanctions against transportation operators who commit gender-based streets and public spaces sexual harassment acts in public utility vehicles. The penalties may include suspension and even revocation of franchise by the Land Transportation Franchising and Regulatory Board (LTFRB). If the perpetrator is the driver of the vehicle, it will also constitute a breach of contract of carriage, for the purpose of creating a presumption of negligence on the part of the owner or operator of the vehicle. This will render the owner or operator solidarily liable for the offenses of his employees.²⁵

Furthermore, the law provides for a higher penalty for sexual harassment committed in certain places and against certain group of persons. Thus:

Section 15. Qualified Gender-Based Streets, Public Spaces and Online Sexual Harassment. – The penalty next higher in degree will be applied in the following cases:

- (a) If the act takes place in a common carrier or PUV, including, but not limited to, jeepneys, taxis, tricycles, or app-based transport network vehicle services, where the perpetrator is the driver of the vehicle and the offended party is a passenger;
- (b) If the offended party is a minor, a senior citizen, or a person with disability (PWD), or a breastfeeding mother nursing her child;
- (c) If the offended party is diagnosed with a mental problem tending to impair consent;

²⁵ R.A. 11313, Sec.6

(d) If the perpetrator is a member of the uniformed services, such as the PNP and the Armed Forces of the Philippines (AFP), and the act was perpetrated while the perpetrator was in uniform; and

(e) If the act takes place in the premises of a government agency offering frontline services to the public and the perpetrator is a government employee.²⁶

The Safe Spaces Act also addresses online sexual harassment. This feature is timely and necessary because of the prevalence of online platforms where sexual harassment proliferates particularly through various social media outlets. This law re-establishes and emphasizes that privacy should be respected even in online platforms. It punishes among others, cyberstalking and incessant messaging through information and communications technology and uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content, any unauthorized recording and sharing of any of the victim's photos, videos, or any information online.²⁷ The penalty for Gender-Based Online Sexual Harassment is also considerably higher than other offenses punishable under this law. Section 14 of the said law provides:

Section 14. Penalties for Gender-Based Online Sexual Harassment.
-The penalty of prision correccional in its medium period or a fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00), or both, at the discretion of the court shall be imposed upon any person found guilty of any gender-based online sexual harassment. xxx²⁸

B. Implementing Rules and Regulations

i. Privately-owned Spaces Open to the Public

In the Implementing Rules and Regulations of the Safe Spaces Act (Rules), owners of privately-owned spaces open to the public are mandated to adopt a zero-

²⁶ R.A. 11313, Sec. 15

²⁷ R.A. 11313, Sec. 12

²⁸ R.A. 11313, Sec. 14

tolerance policy in their establishments against gender-based streets and public spaces sexual harassment (GBSH).²⁹ Zero-tolerance means that these establishments are required to provide precautionary or preventive measures to ensure a safe space for their customers. These so-called measures include warning signs against GBSH which display anti-sexual harassment hotline number(s), the nearest police station and the designation of at least one (1) anti-sexual harassment officer to receive GBSH complaints. This designated authority must be knowledgeable on GBSH so as to provide proper assistance to the complainant.

The Rules also highlight victim assistance and require establishments to be fully cooperative with the cause of the victim. The Rules also required establishments to have a private area wherein the victim may freely report and narrate incidents of sexual harassment as soon as it happens. When possible, the rules also require establishments to install CCTV cameras and make footages available to victims upon a court order or otherwise.³⁰

Another interesting provision in the Implementing Rules and Regulations of the Safe Spaces Act is that on citizen's arrest. The rules provide that:

Whenever GBSH happens, a security guard or any person who witnessed the crime may conduct a citizen's arrest and apprehend the perpetrator in accordance with law. The security guards in these places may be deputized to apprehend perpetrators caught in flagrante delicto (or in the act of committing a crime) and are required to immediately coordinate with local authorities. Towards this end, the Philippine National Police (PNP) shall issue guidelines on the deputization of security guards. A citizen's arrest is when any private person may arrest, without need of warrant under the following circumstances: a) When, in the presence of the private person, the person to be arrested has committed, is actually committing or is attempting to commit GBSH; and b) When GBSH has in fact just been committed, and the private person has personal

²⁹ The Implementing Rules and Regulations of Republic Act No. 11313 Or "An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, And Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties Therefor", Otherwise Known as The "Safe Spaces Act", IRR of R.A. 11313, (2019)

³⁰ IRR of R.A. 11313, Sec. 6

knowledge of facts indicating that the person to be arrested has committed it. To ensure that the security guards are knowledgeable on GBSH, awareness of the law will form part of topics or modules for trainings which are conducted before security agencies and security guards may renew their licenses.³¹

This provision is rather superfluous since a private person is already allowed under Rule 113, Sec. 5 of the Rules of Criminal Procedure to conduct a warrantless arrest in certain instances similar to those mentioned under this provision.

ii. The Duties and Responsibilities of Local Government Units (LGUs) and the Department of Interior and Local Government

The Rules also mobilize the Local Government Units (LGUs) by enumerating its duties to promote and ensure compliance with the Safe Spaces Act. These duties include, among others, the passing of an ordinance that shall localize the applicability of the law within sixty (60) days from the effectivity of the Safe Spaces Act. Aside from such law, LGUs are also required to prevent GBSH in educational institutions by launching anti-sexual harassment campaigns. Additionally, LGUs are mandated to establish an anti-sexual harassment hotline manned by knowledgeable personnel to provide immediate assistance to the victims. An anti-sexual harassment desk must also be placed in all barangays, city, and municipal halls.³²

To ensure compliance from the LGUs, the Rules require the Department of Interior and Local Government (DILG) to inspect if all LGUs enacted the required ordinance to localize the application of the Safe Spaces Act. The DILG is further mandated to conduct surveys and studies to better implement the law and to give full assistance to the LGUs in its localized application.³³

iii. Gender-Based Online Sexual Harassment

For the provision on Gender-Based Online Sexual Harassment to be properly

³¹ IRR of R.A. 11313, Sec. 6.

³² IRR of R.A. 11313, Sec. 9

³³ IRR of R.A. 11313, Sec. 9.

implemented, the Rules mandate that the PNP Anti-Cybercrime Group (PNP-ACG) shall receive all complaints and thereafter apprehend the perpetrators. The Rules also mobilize governmental agencies to develop a system for better implementation of the Safe Spaces Act. Thus, it provides:

The Cybercrime Investigation and Coordinating Center (CICC) of the DICT shall coordinate with the PNP-ACG, National Telecommunications Commission (NTC), National Privacy Commission (NPC) and other relevant agencies to prepare appropriate and effective measures to monitor and penalize gender-based online sexual harassment, including: a) The development of a monitoring and evaluation system, including a database for gender based online sexual harassment, tools, and/or process to see whether the law is effectively being implemented. b) The recommendation of policies, law, issuances, and measures for the effective implementation and enforcement of the provisions of gender-based online sexual harassment, based, among others, on the results of the monitoring and evaluation.³⁴

iv. Support for Workers in the Informal Economy

The Rules expanded its coverage to workers in the informal economy. It mandates the Department of Labor and Employment (DOLE) to develop guidelines that will provide redress mechanisms for kasambahays and other employees working in establishments with ten or fewer employees.³⁵

v. Gender-Based Sexual Harassment in Educational and Training Institutions

The Rules require educational and training institutions to assign an officer-in-charge to receive complaints for GBSH and to ensure the confidentiality of the process. These institutions are also mandated to adopt and publish grievance procedures to facilitate the filing of complaints. Most importantly, the Rules allow schools to independently conduct an investigation on possible acts of GBSH even if the victim refuses to file an official complaint.³⁶

³⁴ IRR of R.A. 11313, Sec. 14.

³⁵ IRR of R.A. 11313, Sec. 20.

³⁶ IRR of R.A. 11313, Sec. 25

The Rules also recognize that schools may reserve the right to strip the diploma from the perpetrator or issue an expulsion order.³⁷ Additionally, it provides for the liability of school heads and heads of training institutions should they fail to implement their duties enumerated under the Rules or fail to report acts of GBSH in their institution.³⁸

vi. The Code of Conduct and Committee on Decorum and Investigation

Within one hundred fifty (150) days from the effectivity of the Rules, employers both from the public and private sector, and heads of educational and training institutions are duty-bound to develop a Code of Conduct which shall define GBSH and provide for its punishment. It shall also provide for the procedures on filing cases in relation to GBSH.³⁹

Within the same period, employers both from the public and private sector, and heads of educational and training institutions shall establish a Committee on Decorum and Investigation (CODI).⁴⁰ This will serve as an independent internal grievance mechanism that will act as the main body in the investigation and resolution of cases involving GBSH in the workplace and in educational and training institutions. This committee shall have representatives from the management, the employees from the supervisory rank, the rank-and-file employees, and the union/s or employees' association, if any. For educational and training institutions, the CODI shall be composed of at least one (1) representative each from the school administration, the trainers, instructors, professors or coaches and students or trainees, students and parents, as the case may be. Furthermore, every CODI shall be headed by a woman and not less than half of its members shall be women.⁴¹

³⁷ IRR of R.A. 11313, Sec. 25

³⁸ IRR of R.A. 11313, Sec. 28

³⁹ IRR of R.A. 11313, Sec. 32.

⁴⁰ IRR of R.A. 11313, Sec. 33.

⁴¹ IRR of R.A. 11313, Sec. 33 (c)

III. Conclusion

No matter how common, persistent or deeply entrenched it is in our culture, sexual harassment in whatever shape or form should never be tolerated. The reasons are readily discernible. Sexual harassment creates a hostile and unsafe environment for its victims and also promotes a culture of abuse of power, influence, and moral ascendancy.

Streets, alleys, and public transportations in the Philippines are the most common avenues of sexual harassment; so common that wolf-whistling and catcalling have been widely considered and sometimes even accepted as part of Filipino street culture. In fact, 88% of women ages 18 to 24 experience sexual harassment in the streets.⁴² Sexual harassment ranges from the most discreet to the most explicit such as exhibitionism and public masturbation. Ironically, this common and almost daily predicament was not clearly addressed by any Philippine law until the enactment of the Safe Spaces Act in 2019. Previously, the remedies were extremely limited in scope. For instance, Unjust Vexation under Article 287 of the 1930 Revised Penal Code does not directly address sexual harassment in public spaces and is a mere umbrella law that may be interpreted to cover sexual harassment. The Anti-Sexual Harassment Act of 1995 is also limited in scope as it only addresses sexual harassment that are work, education, or training-related. It hastily boxed sexual harassment within the four corners of an office or a classroom when in fact, sexual harassment happens anywhere and against anybody.

The Safe Spaces Act is a groundbreaking piece of legislation since it directly addresses sexual harassment in public spaces and expands the Anti-Sexual Harassment Act of 1995. It penalizes acts that, for the longest time, were considered to be normal. It defies the culture of tolerance by imposing penalties and condemning acts of sexual harassment. Moreover, it exacts the active participation of proprietors or owners of private establishments open to the public, local government units, police force and educational institutions in carrying out its zero-tolerance policy. Furthermore, this law also recognizes and addresses the prevalence of online-based sexual harassment.

⁴² An Act Defining Gender-Based Street and Public Spaces Harassment, Providing Protective Measures and Prescribing Penalties Therefor, And for Other Purposes, Seventeenth Congress of the Republic of the Philippines, First Regular Session, February 14, 2017, In Senate S. B. No. 132G.

But can this noble piece of legislation effectively afford protection to victims of sexual harassment? Will it be a sufficient deterrent against acts of sexual harassment? Will it achieve its purpose of providing a safe space for all regardless of gender?

The insufficiency or perhaps the inexistence of laws that recognize and penalize sexual misconduct of all forms is only one of the many obstacles in providing a safer space for all. Truth be told, any legislation no matter how noble and well-intentioned, will only remain to be a piece of paper if their violators will be left unpunished. Thus, its honest and proper enforcement is vital in ensuring the culmination of the intent behind the law—securing a safer, respectful and more dignified public spaces for all.

R.A. 11313 is a law that aims to correct a culture that otherwise views unwelcome sexual remarks, sexist, homophobic or transphobic slurs and other sexual misconduct as acceptable human behavior. It punishes acts that are for the longest time tolerated, accepted and considered as harmless and sometimes innocent. It provides reassurance and vindication to people whose plight were invalidated and those who were misled by this long-standing tradition into thinking that certain sexual remarks such as cat-calling and wolf-whistling should just be brushed aside, taken lightly, viewed as a compliment or tolerated if not accepted.

Therefore, it is the writer's opinion that although the enactment of a more comprehensive law addressing and punishing acts of sexual harassment brings us a step closer to ensuring a safer space for all, a more important obstacle to hurdle is the culture of tolerance and indifference on matters involving sexual harassment. Tolerance is condonation. Those who remain to be indifferent on misdeeds that degrade human dignity are complicit. It is high time to unlearn dated principles which cultivate a mindset that views sexual harassment against any gender as acceptable.

Lastly, the teeth of legislation lie heavily on implementation. In order to deter people from committing acts of sexual harassment under the R.A. 11313, there must be due enforcement of the law in accordance with its Implementing Rules and Regulations. In the end, only time will tell.