

## **Filling In the Loopholes: An Assessment of The Philippine Safe Spaces Act**

**By**

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### **Abstract**

Before Republic Act No. 11313 or otherwise known as the Safe Spaces Act of 2019 became in force, Republic Act No. 7877 or the Anti-Sexual Harassment Act of 1995 was the primary law governing acts of sexual harassment in the Philippines. However, it only penalizes sexual harassment at work, training, or education perpetrated by a person who has authority, influence, or moral superiority over another person. The passage of the said Act aims to safeguard all genders from possible acts of sexual harassment in both physical and online spaces. This paper is aimed to examine the Philippine Safe Spaces Act. It is composed of three parts. Part 1 explores the broad concept of sexual harassment as defined under RA 7877 and RA 11313. Part 2 discusses the salient features of RA 11313 which fill the loopholes RA 7877. Finally, the duties of each authority responsible for ensuring the strict and proper implementation of the former was listed and discussed. With this law now in force, sexual harassment may be now put to halt as it serves as a tool to dissuade the sexual harassers, or what Filipinos call “*Bastos*”, from committing the said acts. This law protects all genders in all spaces. It rekindles the culture of respect among all Filipinos. In the first place, every person has the right to be safe in the spaces.

**Keywords:** Public Spaces, Online Spaces, Anti-Sexual Harassment, Gender-Based Sexual Harassment, Safe Spaces Act

### **I. Introduction**

The concept of "safe spaces" originated in the women, lesbian, gay, bisexual, and transgender (LGBT++) movement and was originally a place for people to rub shoulders with one another and to exchange their experiences in a safe atmosphere. It is used to designate a physical meeting place (Flenser & Von der Lippe, 2019). Research conducted by Kenny (2001) shows that it first emerged in the United States in the 1960s and 1970s by feminists, queers, and anti-racists. These spaces provided them a chance to speak and to act outspokenly, to exercise collective influence, and to devise tactics to resist oppression (Kenney, 2001). In other words, a safe space is a safe environment where people can realistically resist political and social oppression (Kenney, 2001). It is, therefore, a place where you can work freely without fear of discrimination.

In the 1960s, consensual homosexual sex was illegal in many states in the United States, so the LGBT++ community needed a safe haven. Crockett (2016) revealed that LGBT++ people could not even dance together nor hold hands with one another without the risk of facing a possible criminal charge.

Nowadays, the definition of a safe space is already different. No longer is it limited to members of the LGBT++ community. In fact, a study by Mansfield (2015) defines a safe space as a “girls-only” atmosphere where girls have access to positive environments and where they

can express themselves without fear. Ali (2017), on the other hand, shows that a safe space concept has been used in different ways in higher education. It has been used in many ways, from movement building to theoretical philosophy to student assistance programs and even classrooms.

In this paper, a safe space is shall be defined as a place or situation where a person is protected from any danger or harm (Cambridge Dictionary, n.d). Its definition is closely related to public places as defined under the Safe Spaces Act which include streets and alleys, public parks, schools, buildings, shopping malls, bars, restaurants, etc. (Safe Spaces Act, 2019).

The need to be safe in public spaces is a must since every person may become a victim of violence. One of the many forms of violence that has always been recorded is sexual harassment (mostly, committed by men against women). A study by Herzog (2007) shows that gender-stereotyping and oppression of women are intimately related to sexual harassment. In most cases, the main offenders are men while women are the primary victims. This problem women face and experience is global in scope (Lahsaeizadeh, et., al., 2012).

According to a 2017 study released by the Social Weather Station, eighty-eight percent (88%) of Filipino women aged 18 to 24 have been sexually harassed or assaulted at least once in their lifetime. (Cabral, 2017). Wolf whistling, profane language, stalking, peeping, groping, rubbing or touching, swearing, suggestive movements, exhibitionism and public masturbation, transmission of obscene images or images, and cyber violence are all classified as sexual harassment in the same survey (Cabral, 2017).

Prior to the passing of the Safe Spaces Act in 2019, sexual harassment was primarily regulated by the Sexual Harassment Prevention Act of 1995. However, the former penalizes only those sexual harassment committed in work, training, or educational settings by persons exercising authority, influence, or moral superiority over another.

The Safe Spaces Act, on the other hand, regulates all sexual harassment. It protects all genders from sexual harassment in in all its forms and regardless of who the perpetrators are.

This paper is an assessment of the Philippine Safes Spaces Act. Here, the broad concept of sexual harassment as defined under the Anti-Sexual Harassment Act and the Safe Spaces Act is discussed. This paper also offers a disquisition on the salient features of the Safe Spaces Act which fill in the loopholes of the Anti-Sexual Harassment Act, as well as duties of each agency tasked to ensure its strict and proper implementation.

## **II. Sexual Harassment**

### ***A. Sexual Harassment under the RA 7877***

RA 7877 provides that the dignity of every individual shall be respected and the dignity of workers, employees, job seekers and professionals shall be protected. Hence, all forms of sexual harassment in the workplace, education or training environment have been declared unlawful. Under this law, sexual harassment is any act of demanding, requesting or requiring any sexual favor committed by a superior<sup>1</sup> in a work or training or education environment, regardless of whether the demand, request or requirement for submission is accepted or not.

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<sup>1</sup> Either an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any person who, has an authority, influence or moral ascendancy over another.

The Philippine Statistics Authority, citing *Civil Service Commission (CSC, 2017) Resolution No. 01-0940*, describes sexual harassment as any unwelcome sexual advance, appeal or demand for a sexual favor, or other sexual verbal or physical activity performed by a government employee or official in a work-related, training or education-related setting.

There are types of sexual harassment that should be discussed: the workplace and the controlled environment sexual harassment, and the education and training environments sexual harassment. These acts are based on legislative records from the debates surrounding the passing of the Anti-Sexual Harassment Act, as well as various academic and legal works.

The forms of sexual harassment in the workplace are the *quid pro quo* and the hostile work environment. *Quid pro quo* roughly translates to "something in exchange for something" (Black's Law Dictionary, 2000). Dickinson (1995) refers to it as "sexual blackmail."

Below is the Philippine jurisprudence in relation to *quid pro quo*.

In *Gonzales v. Serrano* (2015), a former Chief of the Legal Division of the Philippine Racing Commission was given a 6-month suspension, without pay, for kissing the victim against her will in the cheeks and in her lips in various occasions, thereby, constituting acts of sexual harassment and acts of lasciviousness.

In *Narvasa v. Sanchez* (2010), a suit was filed by a book keeper against a municipal assessor. Here, the respondent usually sent notes to the victim saying "*Gay, I like you*", and text messages saying "*Ka date ko si Mary Gay... ang tamis ng halik mo.*" (*I have a date with Mary Gay... your lips tastes so sweet*), "*Pauwi ka na ba sexy?*" (*Sexy, are you going home now?*), "*I slept and dreamt nice things about you.*", "*Have a date with me*". Hence, the Supreme Court found the municipal assessor guilty and was dismissed from the service, thereby, forfeiting his retirement benefits. Further, an accessory penalty of perpetual disqualification to re-employment in the government including government-owned and controlled corporations was likewise imposed.

In *Jacutin v. People of the Philippines* (2002), a City Health Officer was sentenced to imprisonment of six months and payment of a fine as a result of the sexual favor he made to the victim, who happened to be the daughter of his boyhood friend, as a condition of hiring her as a public nurse

Another form of sexual harassment is making the work environment hostile for the employee. In the case of *Meritor Savings Bank* (1986), it is described as harassment that does not "affect economic benefits [but] causes a hostile or offensive working environment." Here, the employee does not receive any tangible job advantage or drawback in this form of abuse, as in *quid pro quo* harassment. Instead, the victim is subjected to verbal or physical harassment as a result of his or her job (Bautista, 1998).

Hence, the gravamen of the crime of sexual harassment in the form of *quid pro quo* is the employer's misuse or abuse of authority, and not the infringement of the employee's sexuality (Project Jurisprudence, n.d.).

In the *Rayala case* (2008) which involved a victim who was a stenographer and a National Labor Relations Commission Chairman as the perpetrator of the sexual harassment, the Supreme Court defined sexual harassment as a display of erroneous "superiority" that is sufficient to dampen an employee's spirit and ability to advance. It has an effect on her decision

and her life (Philippine Aeolus Auto-Motive Case, 2000). Here, it is sufficient that the employer's acts result in creating a hostile or offensive environment for the employee (Domingo v. Rayala, 2008).

However, of the two types of sexual harassment in a workplace or controlled environments, the hostile environment is more difficult to prove, owing to the fact that the employee may not suffer any tangible economic injury (Pollack, 1990). According to Gutek (1985), men and women often differ about what constitutes disrespectful behaviour in the workplace. Hence, it can be gleaned that compare to *quid pro quo* where acts of sexual harassment can easily be determined, there is no clear line between appropriate and inappropriate behavior occurring in a hostile environment.

Meanwhile, the Anti-Sexual Harassment Act as discussed by Ancheta (2018) included the other environments such as schools and training environments where sexual harassment might also take place.

In the case of *Bacsin v. Wahiman* (2008), a public school teacher in the province of Camiguin was dismissed from service for violating the Anti-Sexual Harassment Act. Here, the victim, a minor, was a student of the said public school teacher. She claimed that the school teacher, in various occasions, called her to come in his office. There, the teacher would hold her hands, and would touch her private parts for several times.

In the recent case against *Atty. Co Untian, Jr.* (2019), the Supreme Court held that he be barred from the practice of law for ten years due to the commission of acts falling under the parameters of sexual harassment against some of his students. This is the first time wherein the Court punished a law professor for sexual harassment committed against his students.

### ***B. Sexual Harassment under RA 11313***

The concept of sexual harassment in the workplace was expanded by Safe Spaces Act. One of the primary changes is that no longer it is material for the harasser to be superior to the victim. Under this extended concept of sexual harassment, someone of lower status can now be also held criminally responsible. Further, sexual harassment could not just be committed in the workplace, institution or education-related environments but in all spaces - physical and online spaces.

It is believed that the power imbalance that exists in the Sexual Harassment Act does not exist in the Safe Spaces Act. For a peer to be accused of sexual harassment, the sexual favor must be unwelcome or disrespectful to the victim. Otherwise, the behavior is considered consensual and therefore not considered harassment (Divina, 2019).

What is great about the Safe Spaces Act is that the forms of sexual harassment are now categorized into: a) Gender-Based Sexual Harassment in Streets and Public Spaces; b) Gender-Based Online Sexual Harassment; and c) Gender-Based Sexual Harassment in the Workplace, Educational and Training Institutions.

## **III. Framework For Ra 11313**

Before the Safe Spaces Act became in force, the Gender and Development Code of Quezon City (2015) was actually passed establishing penalties for sexual harassment in public spaces (UN Women, 2017). Later, the City of Manila, in partnership with the Institute of Politics and Governance and UN Women, created and endorsed the Safe City for Women and

Girls Ordinance (2018) on the prevention and response to sexual harassment in public spaces in Manila City which includes catcalling, wolf-whistling, cursing, and stalking, among others (UN Women, 2019).

According to the study conducted by Ancheta (2018), it was acknowledged that there are laws that capture such experiences of street harassment.<sup>2</sup> However, these laws are insufficient because they fail to address street harassment as a gender-based type of abuse or harassment.

Meanwhile, a study conducted by Laura Logan (2015) offered a concise overview of street harassment. It also offered examples of initiatives from around the world to address this global problem. According to the report of Livingston et., al. (2012), anti-street harassment campaigns may be modeled after efforts to tackle sexual harassment in the workplace.

The study of Azy Barak (2015) revealed that there are parallel similarities between off-line and online sexual abuse in terms of gender harassment, the display of unwanted sexual attention, and sexual exploitation. Barak also divided the most prevalent form of online gender sexual harassment into four categories: the active verbal sexual harassment; the passive verbal sexual harassment; the active graphic gender harassment; and the passive graphic gender harassment.

In 2017, PROJECT de SHAME published a cross-country study that classified online sexual abuse into four categories: a) non-consensual sharing of personal photos and video; b) exploitation, intimidation, and threats; c) sexualized bullying; and d) unwanted sexualization (Project de SHAME, 2017).

In a more recent study published by Powell and Henry (2020), transgenders were found to be more likely than cisgender heterosexuals to undergo polyvictimization via the internet. Later, a study found out that co-workers and peers more often commit sexual harassment than their superiors (National Academies of Sciences, Engineering and Medicine, 2018).

#### **IV. Salient Features Of Ra 11313**

The Safe Spaces Act or also known as the *Bawal Bastos Law* in the Philippines, went into force on the 3<sup>rd</sup> day of August 2019. The implementing rules and regulations (IRR) was later introduced on the same year in an effort to counter new forms of committing gender-based sexual harassment (GBSH) and other forms of sexual violence not protected under the previous laws.

The *Bawal Bastos Law* not only prohibits the sexual harassment of women, but also punishes misogynistic, transphobic and homophobic behavior. This means that any offense or statement punishable under the above laws may be directed at men, women or LGBTQ++ people; in other words, to anyone.

The Anti-Sexual Harassment Act holds those in power and those with moral influence or authority over others responsible for sexual harassment. Under the Safe Spaces Act, GBSH can now be conducted between colleagues and subordinates of senior officials in the workplace

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<sup>2</sup> These include the Anti-Violence Against Women and Their Children, the Anti-Sexual Harassment Act, and the Child Abuse Prevention and Treatment Act, among others.

or wherever employees do their jobs. Minors can also break the law, but they will only face disciplinary action as stated in the school manual (Fajardo, n.d.)

#### ***A. Gender-Based Streets and Public Spaces Sexual Harassment (GBSH)***

Under Section 4, Article I of the Safe Spaces Act, sexual harassment in the streets and public spaces may be committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks. These are those performed in all public and private spaces including public utility vehicles.

To put it simple, any act that violate one's sense of personal space and protection are examples of crimes that can be committed regardless of the intent of the individual performing the acts or remarks enumerated.

#### ***B. Gender-Based Online Sexual Harassment (GBOSH)***

Online sexual harassment is perpetrated through the use of information and communications technology in terrorizing or intimidating the victims.

This prohibition is timely and appropriate due to the frequency of sexual harassment on the internet, especially through various social media channels. This legislation restores and emphasizes the importance of privacy protection even when using online platforms (Fajardo, n.d.)

#### ***C. Qualified Gender-Based Streets, Public Spaces, and Online Sexual Harassment (QGBSHOSH)***

Under RA 11313, sexual harassment shall be qualified and shall be meted with a penalty next higher in degree when the act was committed in a common carrier or a public utility vehicle; or when the offended party is a minor or a senior citizen, a person with disability or a breastfeeding mother nursing her child, or a person diagnosed to be suffering from a mental problem; or when the perpetrator is a uniformed personnel and the act occurs in a government premise offering frontline services to the public and the harasser is an employee thereof (Safe Spaces Act, 2019).

#### ***D. Gender-Based Sexual Harassment in the Workplace (GBSHW)***

Sexual Harassment in the workplace take place when the acts constituting sexual harassment have a detrimental effect on the conditions of an applicant's or worker's employment, actual job or opportunities, or when it affects the dignity of a person, or when the conduct creates an intimidating or humiliating environment for the worker (Safe Spaces Act, 2019).

What makes the Safe Spaces Act different from the Anti-Sexual Harassment Act is that, in the former, sexual harassment in the work environment may also now be committed between and among employees regardless of their ranks (IRR of Safe Spaces Act, 2019). Here, workplaces include all places or locations where an employee performs work, whether inside or outside the employer's usual place of business (IRR of Safe Spaces Act, 2019).

#### ***E. Gender-Based Sexual Harassment in Educational and Training Institutions (GBSHETI)***

The prohibited acts in this section are those which are enumerated under Section 16, Article 4 of the Safe Spaces Act. Here, the minor students may be held liable for gender-based sexual harassment and, consequentially, may be subject to administrative sanctions by their institution in line with the policies in their student handbook (Safe Spaces Act, 2015). To be specific, students are those who are enrolled either full-time or part-time in standard classes, short-term or special training provided by the school (IRR of Safe Spaces Act, 2019).

## **V. The Implementors of The Safe Spaces Act**

### ***a) The Local Government Unit/s***

The local government units (LGUs) are the ones primarily responsible in enforcing the provisions of GBSH. They are mandated to pass an ordinance that shall localize and disseminate the applicability of RA 11313 and to provide measures to prevent GBSH in all spaces, among others (Safe Spaces Act, 2019).

### ***b) The Department of Interior and Local Government (DILG)***

The DILG is mandated to ensure the full implementation of the Safe Spaces Act in all LGUs and to provide capacity-building and training activities to build the capability of the local government officials to implement the law (Safe Spaces Act, 2019).

### ***c) The Implementing Bodies for GBSH***

Under RA 11313, the following government agencies are responsible to respond to GBSH in the streets and public places. They shall have the authority to apprehend perpetrators and to enforce the law, provided that they undergo gender sensitivity training (GST): the Metro Manila Development Authority, the local units of and the Women and Children Protection Desk (WCPD) of the Philippine National Police (IRR of the Safe Spaces Act, 2019).

### ***d) The Implementing Bodies for GBOSH***

For violations of the GBOSH, the following government agencies are responsible for the implementation of the Safe Spaces Act: the PNP Anti-Cybercrime Group, the Department of Justice, the Department of Information and Communications Technology, the National Privacy Commission and other agencies (IRR of the Safe Space Act, 2019).

### ***e) Duties of Employers***

In the implementation of RA 11313, employers or other persons of authority, influence or moral ascendancy in the workplace shall have the duty to prevent, deter, or punish the performance of GBSHW. In so doing, they are mandated by law to do the following: to disseminate the law, to conduct seminars, to create the Committee on Decorum and Investigation (CODI), and to develop a code of conduct or workplace policy (IRR of the Safe Spaces Act, 2019).

### ***f) Duties of Educational and Training Institutions***

In every educational and training institution, an officer-in-charge (OIC) shall be assigned to receive complaints regarding violations of the law. He or she shall ensure that the victims are provided with a gender-sensitive environment that is both respectful to their needs and conducive to truth-telling. Hence, education and training institutions are responsible to do the following: to assign a person who shall receive complaints of GBSH with confidentiality (IRR of the Safe Spaces Act, 2019)

### ***g) Duties of School Heads and Heads of Training Institutions***

The following are the duties of the School heads and heads of training institutions: to disseminate the law, to include the law in the student handbook and to train the teachers, personnel and security officers, to create a CODI, and to assign a person who shall receive complaints of GBSH with confidentiality (IRR of the Safe Spaces Act, 2019).

## VI. Conclusion

Sexual harassment of any kind should not be accepted, no matter how widespread, pervasive or ingrained it is in our culture. The reason is clear. Sexual harassment creates a hostile and dangerous environment for all potential victims (Gomez, 2020).

No space is presumed to be safe. There had been recorded sexual harassment cases in the workplace, and in the education and training institutions. There had been dismissed superiors because of sexually harassing their subordinates. There will be future harassment cases, no one can ever tell.

There had been interventions to address the safety of women in public transportation in Manila, for example, such as the introduction of women-only public transportation (Boros, 2014). There had been ordinances passed by the local legislative bodies of Quezon City and of Manila to address sexual harassment in the streets. However, they were not enough as the perpetrators still find ways to attack like a prying monster.

The passing of the Safe Spaces Act gave a much-needed protection for all genders, especially that sexual harassment could not only be committed in the workplaces, and in the education and training institutions and by persons in authority, influence or moral ascendancy over the other. Many are sexually harassed in the streets in the public spaces, and even in the cyberspace. Acts of harassment are committed by peers or colleagues or by any people with whom the victims just meet, or even those they rub elbows with in the public places or in the streets.

With this law now in force, there is a hope that acts of sexual harassment may be now put to halt. But more so, may this law not just serve as a tool to dissuade the sexual harassers or what Filipinos call "*Bastos*" in committing the said acts. May this law not just serve as a protection to all genders in all spaces but may it rekindle the culture of respect among all Filipinos. In the first place, every person has the right to be safe in the spaces.

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