

# JUSTICE AMONG US: Producing an Equilibrium of Interests in Peer-to-Peer Sexual Harassment Proceedings Within Educational and Training Institutions

*Ruby Rosselle L. Tugade\**  
*Athena Charanne R. Presto\*\**

## ABSTRACT

Peer-to-peer sexual harassment is a relatively new species of gender-based sexual harassment under Philippine law. Through the inclusion of punishable conduct of such nature in the *Safe Spaces Act of 2019*, Congress has recognized the need to update the definition of sexual harassment to cover acts committed between peers taking place in online and public spaces. Peer-to-peer sexual harassment still exists within asymmetrical and gendered power relations, albeit less overt in its manifestation. With a focus on peer-to-peer sexual harassment taking place in educational institutions, this Essay examines how the social policy behind the *Safe Spaces Act* is complicated by existing jurisprudence on due process rights, laws involving the privacy of the individual, and the rights of minors who may stand as accused. It anticipates the questions that may arise from the interaction between the policy considerations of the *Safe Spaces Act* and other rights and interests. Taking into account the cultural ethos which produced the necessity to update the law on sexual harassment, the Essay presents an interdisciplinary examination of anti-sexual harassment policy in academic institutions that considers broader legal and social implications.

## INTRODUCTION: SAFE SPACES ACT AND THE CHANGING FORMS OF SEXUAL HARASSMENT

The amplification of voices of victims of gender-based crimes in mainstream platforms surfaced a grim reality in our legal system—it had not

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\* LL.M., University for Peace & United Nations Interregional Crime and Justice Research Institute (2020); J.D., University of the Philippines (2016); Vice Chair (Volume 88), Philippine Law Journal; AB Political Science, *cum laude*, Ateneo de Manila University (2010). Lecturer, University of the Philippines College of Law and the Department of Political Science Ateneo de Manila University.

\*\* MA Sociology, University of the Philippines Diliman (ongoing), BA Sociology, *summa cum laude*, University of the Philippines Diliman (2016). Vice President for Research and Education, Youth Against Sexual Harassment (2020). Instructor, Department of Sociology, University of the Philippines Diliman.

fully caught up with the varying forms of sexual harassment as a crime. The different permutations of gender-based sexual harassment that went unpunished effectively exposed the gaps in legal remedies that were then available to victims. The enactment of Republic Act No. 11313 or the Safe Spaces Act of 2019 came at a time when a victim-focused broad cultural movement was taking place globally and domestically.

The Safe Spaces Act criminalizes various kinds of gender-based sexual harassment occurring in public spaces that were previously not contemplated by Philippine law. Under this legislation, a wide definition of public spaces where sexual harassment can occur is put into place.<sup>1</sup> Moreover, the Safe Spaces Act recognized the different social contexts where sexual harassment can happen, even outside a superior-subordinate relationship.

One such area where the Safe Spaces Act expands the coverage of criminal law on sexual harassment is that which takes place in educational institutions. Only relationships with overt moral ascendancy of the perpetrator on the victim were penalized under the old Anti Sexual Harassment Act of 1995 (ASH Law)<sup>2</sup>. Previously, sexual harassment among peers within the context of educational settings fell through the cracks. However, the reality is that acts of gender-based harassment can also occur outside the traditional hierarchy of power.

There is a need to ensure that public places such as educational institutions and the pockets of interactions arising from these environments remain safe and secure. As declared in the Safe Spaces Act, its main policy consideration is the State's recognition of the dignity of every human person and fundamental equality before the law.<sup>3</sup> Therefore, transgressions occurring in these spaces and within the relationships forged in these contexts merit the full force of mechanisms for accountability. On the other hand, the basic notions of fair play and due process must still be strictly observed. Failure to implement fair play and due process dilutes the credibility of institutions to exact accountability and justice, which ultimately hurts both alleged perpetrator and victim.<sup>4</sup>

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<sup>1</sup> 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 11313, sec. 3(g) (2019).

<sup>2</sup> An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes, Republic Act 7877 (1995).

<sup>3</sup> R.A. 11313, sec. 2.

<sup>4</sup> Harper, S., Maskaly, J., Kirkner, A., & Lorenz, K. *Enhancing Title IX Due Process Standards in Campus Sexual Assault Adjudication: Considering the Roles of Distributive, Procedural, and Restorative Justice*. 16 JOURNAL OF SCHOOL VIOLENCE, 302 (2017).

As a silent plague creeping across educational institutions, peer-to-peer sexual harassment victimizes the vulnerable in multiple ways: as conduct that directly harms the injured party; through the difficulty in gaining access to justice mechanisms after the fact; and as reinforcement of asymmetrical and gendered power relations in educational settings. While Congress has recognized the need to punish peer-to-peer sexual harassment in this environment, the enforcement of the Safe Spaces Act may give rise to new questions of law given the existing state of jurisprudence with respect to academic due process, and other relevant legislation relating to privacy rights and the rights of minors who may face accusations.

Adding to the legalistic challenge of enforcing anti-sexual harassment policies in schools are developmental perspectives on adolescent behavior and the complicated peer relations in learning environments. Some actions that provoke distress and discomfort to peers may be interpreted as a normal occurrence in an environment where social actors are seen to be exploring their identities vis-à-vis dealing with others who are themselves growing up. This complicates peer sexual harassment in school setting, especially where students can be victims or perpetrators given different social circumstances.

This paper explores the different legal and policy questions that may flow from the implementation of the Safe Spaces Act in education institutions, with a focus on peer-to-peer sexual harassment. Part I presents peer-to-peer harassment as a social fact together with its nuances and broader implications. Part II looks at the legislative design of the Safe Spaces Act and how it departs from the previous legal regime on sexual harassment. Part III zooms in on peer-to-peer sexual harassment as punishable conduct and its potential interaction with other areas of law. Finally, Part IV tackles the broader social response to peer-to-peer sexual harassment in educational institutions, taking into account the preceding legal discussion.

## **I. PEER SEXUAL HARASSMENT IN SCHOOL SETTINGS: COMPLICATIONS AND COMPLEXITIES**

Outside the legal definition, sexual harassment refers to unwelcome and unwanted sexual behavior towards others that causes distress and discomfort.<sup>5</sup> It is a gender-specific vulnerability that disempowers women and people of

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<sup>5</sup> Esther Vega-Gea, Rosario Ortega-Ruiz, & Virginia Sanchez. *Peer sexual harassment in adolescence: Dimensions of the sexual harassment survey in boys and girls*, 16 INT'L. JOURN. OF CLINICAL AND HEALTH PSYCHOLOGY, 47, 48 (2016).

non-normative sexual orientation, gender identity, and gender expression (SOGIE). Sexual harassment occurs in various spaces, whether they be in domestic spheres and private spaces or in public and online spaces. Aside from these, sexual harassment can manifest in hierarchical relationships as well as peer relationships.

Peer refers to someone of equal standing with others in a social setting.<sup>6</sup> Students, for example, are considered as peers in educational institutions. Peer relations is no guarantee that sexual harassment would be avoided, especially when individuals involved are still distinguished by entitlements afforded to them by a privileged SOGIE or socio-economic class, among others. Most of the time, male students are the perpetrators of sexual harassment in schools.<sup>7</sup> Girls experience harassment more often, getting more trauma and more pronounced reactions to sexual harassment. The same acts that give trauma to female students may be viewed by male students as disturbing, but will not be as especially threatening to male students as these acts are to female students.<sup>8</sup>

Peer relations do not mean the absence of power relations. While students are seen as equals in educational parameters, these students are still defined by other vectors of inequality that affect power relations and creating different levels of vulnerabilities among these students. Misogyny and heterosexism are two such vectors.<sup>9</sup> Peer sexual harassment in schools commonly threads the lines of heterosexual masculinity wherein boys are pressured to behave in a dominating way towards girls or students perceived to have non-normative SOGIE.

Sexual harassment in educational institutions is a reflection of the unequal structures in society. Sexual behaviors towards peers are motivated by the pressure to conform to gender roles, which are amplified in an environment where social actors are defining identities in relation to others. Schools have a huge responsibility in this regard. Since this is a learning environment, sexual harassment results in two mutually reinforcing consequences: an environment that hampers students' learning, and a training ground that contributes towards misogyny and heterosexism already seen in the larger society.

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<sup>6</sup> J. Simoni, & J. Franks. *Peer Interventions to Promote Health: Conceptual Considerations*. 81 AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 351 (2011).

<sup>7</sup> Susan Fineran & Larry Bennett. *Teenage Peer Sexual Harassment: Implications for Social Work Practice in Education*. 43 SOCIAL WORK, 55, 56 (1998).

<sup>8</sup> Cheryl Terrance, Amie Logan, & Douglas Peters. *Perceptions of Peer Sexual Harassment Among High School Students*. 51 SEX ROLES 479, 487 (2004).

<sup>9</sup> Nicole Conroy. *Rethinking Adolescent Peer Sexual Harassment: Contributions of Feminist Theory*. *Journal of 12 SCHOOL VIOLENCE* 340, 346 (2013).

While the school setting traditionally conveys the imagery of hallways and buildings, peer sexual harassment in educational institutions occurs in various spaces. The concept of space can be abstract and subjective in nature, which is not only limited to physical and material places. The fact that the Safe Spaces Act includes online spaces and that the law expands the definition of private spaces is a welcome legal development.

Much like spaces, safety is also a concept that can be abstract and subjective. Since people have different vulnerabilities to sexual harassment—whether in terms of hierarchical or peer relations—and people will also have different ideas of what a safe space will be. The challenge now for the Safe Spaces Act, therefore, is capturing abstract and subjective concepts in an environment where peer sexual harassment can be complicated and complex.

In the following section, performing the task of situating the Safe Spaces Act within the Philippine legal landscape serves a dual purpose. First, it shows that the law tackles the lacuna present in previous legislation. Next—and as a logical consequence—it reveals that the law itself is a progressive response to what could now be regarded as socially conservative norms.

## II. THE SAFE SPACES ACT OF 2019: POLICY AND STRUCTURE

### *A. Creating Safe Spaces in local and national legislation*

The legislative journey of the Safe Spaces Act was built from the ground up, starting from local ordinances. The Local Government Unit (LGU) of Quezon City adopted the first local legislation penalizing gender-based sexual harassment in public spaces. On May 16, 2016, Mayor Herbert Bautista approved Ordinance No. SP-2501, S-2016 which amended the Gender and Development Code of Quezon City. The main feature of the Ordinance was its integration of UN Women’s Safe Cities and Safe Public Spaces Initiative into its local gender code, citing the fact that Quezon City was selected as one of the pilot cities for the UN project.<sup>10</sup> The City of Manila was the second LGU to approve a local safe spaces law, with the passage of Ordinance No. 7857 on June 28, 2018.<sup>11</sup>

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<sup>10</sup> Quezon City Ordinance No. SP-2501, S-2016 (May 16, 2016). Gender and Development Code of Quezon City.

<sup>11</sup> CNN Philippines Staff, *Manila penalizes sexual harassment, promotes safety for women*, CNN PHILIPPINES, Jun. 29, 2018, available at <https://cnnphilippines.com/news/2018/06/29/Manila-sexual-harassment-safety-women.html>.

Cases have been filed on the basis of the local ordinances. For instance, in Quezon City, a man was arrested under the ordinance for verbally harassing his neighbor.<sup>12</sup> In another incident, two police officers were charged under the same ordinance for catcalling a woman in a public space.<sup>13</sup> A year after the pioneering ordinance in Quezon City was approved, the first Congressional bills seeking to penalize gender-based sexual harassment in public places would be filed in the House of Representatives and in the Senate.

In the explanatory note to Senate Bill No. 1326 filed in the Seventeenth Congress, Senator Risa Hontiveros stated that harassment in public spaces is a “daily reality for an overwhelming majority of Filipinas and LGBTs”, thus necessitating legislation that would criminalize such conduct “with exactitude.”<sup>14</sup> The relevant Senate committees came up with a report on August 16, 2017 recommending the approval of Senate Bill No. 1558, substituting three earlier bills in the Senate.<sup>15</sup>

Meanwhile, in the House of Representatives, the Committee on Women & Gender Equality recommended the approval of House Bill No. 8794 on December 12, 2018.<sup>16</sup> One of the earlier bills in the House filed by Rep. Tomasito Villarín pointed out that “the forms and venue of sexual harassment has radically evolved” beyond the traditional context of the workplace.<sup>17</sup>

It can thus be gleaned from the legislative history of the Safe Spaces Act that it seeks to address the limitations of the special penal law on sexual harassment and the inadequacy of the crimes in the Revised Penal Code. The Safe Spaces Act became law on April 17, 2019 as Republic Act No. 11313. Its Implementing Rules and Regulations (IRR) was approved on October 28, 2019.

What centrally binds the law is its adoption of a progressive approach to gender and other related concepts. It incorporates a definition of gender<sup>18</sup> and

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<sup>12</sup> Asia News Network, *Philippine man arrested for catcalling neighbour faces criminal charges, jail under landmark ordinance*, THE STRAITS TIMES, Mar. 06, 2019, available at <https://www.straitstimes.com/asia/se-asia/philippine-man-arrested-for-catcalling-neighbour-faces-criminal-charges-jail-under>.

<sup>13</sup> CNN Philippines Staff, *QC police sacks, charges officers in catcalling incident*, CNN PHILIPPINES, Nov. 10, 2017, available at <https://cnnphilippines.com/news/2017/11/10/QC-police-sacks-charges-officers-in-catcalling-incident.html>.

<sup>14</sup> S.B. No. 1326, 17<sup>th</sup> Cong., 1<sup>st</sup> Sess., Explanatory Note (2017). Safe Streets and Public Spaces Act of 2017.

<sup>15</sup> Committees on Women, Children, Family Relations and Gender Equality, Civil Service, Government Reorganization and Professional Regulation; Labor, Employment and Human Resources Development; and Justice and Human Rights, S. Rep No 156, 17<sup>th</sup> Cong, 2<sup>nd</sup> Sess (2017).

<sup>16</sup> Committee on Women & Gender Equality, HR Rep No 1030, 17<sup>th</sup> Cong, 3<sup>rd</sup> Sess (2018).

<sup>17</sup> H.B. No. 5781, 17<sup>th</sup> Cong., 1<sup>st</sup> Sess., Explanatory Note (2017). Safe Streets and Public Spaces Act of 2017.

<sup>18</sup> R.A. 11313, Sec 3(d).

gender identity and/or expression.<sup>19</sup> It is only the second Republic Act to make such incorporation.<sup>20</sup> The use of a gender lens is crucial in crafting the law's policy. The use of this framework led to the recognition of the different forms and contexts of gender-based harassment experienced in the everyday lives of women and members of the LGBTQIA+ community. Another legal turn that came with the passage of the Safe Spaces Act is Congress responding to the limits of related older criminal laws.

*B. As a departure from felonies and the Anti-Sexual Harassment Act of 1995*

*1. Deficiencies in the Revised Penal Code*

Several felonies in Philippine law punish conduct that is of a sexual nature, as well as acts that may be considered unjustly causing irritation or annoyance to the victim. The former refers to the class of felonies called crimes against chastity,<sup>21</sup> while the latter is unjust vexation as a form of light coercion.<sup>22</sup> These felonies do not quite capture the essence of new forms of gender-based harassment contemplated by the Safe Spaces Act.

The felony of Acts of Lasciviousness<sup>23</sup> fails to approximate the variety of acts and contexts captured by the Safe Spaces Act. At first blush, “lascivious conduct” may appear to be broad enough to cover acts such as groping or any other physical advances. An act is “lewd” if it is obscene, lustful, indecent, lascivious, or lecherous.<sup>24</sup>

However, it is not enough that an act meets this characterization of immorality. Acts of Lasciviousness must be read with reference to the immediately preceding provision on rape.<sup>25</sup> The elements of Acts of Lasciviousness are thus formulated as follows: 1) the offender must commit any act of lasciviousness or lewdness; 2) the act is committed upon other persons of either sex; and 3) the act is done under any of the circumstances of using force or intimidation, or the offended party is deprived of reason or otherwise unconscious, or that the offended party is under twelve years of age regardless of the first two circumstances. As such, any act laced with lewdness

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<sup>19</sup> R.A. 11313, Sec 3(f).

<sup>20</sup> See Rep. Act No. 11166 (2018). Philippine HIV and AIDS Policy Act.

<sup>21</sup> REV. PEN. CODE, arts. 333–345.

<sup>22</sup> REV. PEN. CODE, art. 287.

<sup>23</sup> REV. PEN. CODE, art 336.

<sup>24</sup> *People v. Tayag*, G.R. No. 132053 (2000).

<sup>25</sup> REV. PEN. CODE, art. 335 before its repeal by Rep. Act No. 8353 (1997).

must be in conjunction with the abovementioned circumstance for it to be considered an act of lasciviousness.

The severe limitation of the provision is compounded by the fact that the Supreme Court, in a line of cases, has not departed from its contextual approach in assessing what constitutes lascivious conduct. As early as 1915 and even before the enactment of the Revised Penal Code, the Court ruled in *United States v. Gomez* that:

What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.<sup>26</sup>

Subsequent cases decided after the effectivity of the Revised Penal Code would still quote *Gomez* in considering whether conduct is lewd or lascivious.<sup>27</sup>

Other acts such as catcalling, wolf-whistling, persistent uninvited comments or gestures, or gender-based slurs cannot fall squarely within Acts of Lasciviousness. There is some degree of difficulty in pinning down the lasciviousness element in these acts. In the absence of lascivious or lewd design in an act that produces irritation or annoyance, the conduct may be considered as Unjust Vexation.<sup>28</sup> However, the gravity of some acts such as utterances that are misogynistic, transphobic, homophobic, or sexist can hardly be just irritating or annoying and so deserving of a light penalty. These remarks can already be considered hate speech, a class of speech that creates serious harm.<sup>29</sup>

Congress deemed it fit to penalize acts that occupy the gray areas not encompassed by the felonies of the Revised Penal Code. The Safe Spaces Act casts a bigger net on lewd conduct without the restrictive qualifications of Acts of Lasciviousness and on acts that produce irritation that are rooted in gender-based prejudice, not merely Unjust Vexation. In this regard, the Safe Spaces Act eclipses the rigid and traditional notions that underlie the decades-old law.

## 2. Differences with the Anti-Sexual Harassment Act of 1995

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<sup>26</sup> *United States v. Gomez*, 30 Phil. 22 (1915).

<sup>27</sup> See *Amoyo v. People*, G.R. No. 157718 (2005). The relevant portion of *Amoyo* and its citation of *Gomez* is reproduced in *People v. Ladra*, G.R. No. 221443 (2017).

<sup>28</sup> See *People v. Gilo*, G.R. No. L-18202 (1964).

<sup>29</sup> Amer Madcasim, Jr. & Czar Matthew Gerard Dayday, *Defending "Safe Spaces": Hate Speech and the Constitutional Mandate to Uphold the Dignity of Communities*, 92 PHIL. L.J. 856, 864 (2019).



The Safe Spaces Act likewise plugs the gaping holes in the previous Anti-Sexual Harassment Law. With the enactment of the Safe Spaces Act, the ASH Law of 1995 was amended by way of expansion of scope. From the restrictive definitions provided by the ASH Law, the Safe Spaces Act widens the types of acts punished, the venue or context where sexual harassment is committed, and who may be liable for the perpetration of illegal acts. Expanding the notion of harassment is important especially in instances where cultural norms are used as excuses for behaving inappropriately.

The ASH Law of 1995 has a narrow scope; as a result, it is only applicable to a specific set of situations. It deals with sexual harassment occurring in a workplace setting<sup>30</sup> and in an educational setting.<sup>31</sup> Workplace sexual harassment can occur outside an employer-employee relationship, if the act was made as a condition for hiring.<sup>32</sup> Otherwise, if the act was committed on an employee, the perpetrator cannot be a mere co-employee.<sup>33</sup> In effect, the law requires that there has to be a superior-subordinate relationship if the victim is already an employee in the workplace. Sexual harassment in education settings, on the other hand, is categorical such that the offender must be in a position of influence or ascendancy over the victim. Both types of sexual harassment implicitly require that from the perspective of the victim, the request for sexual favors is unwanted.

The types of overt acts that may be committed by the offender are not enumerated or set out in the ASH Law, unlike the relatively exhaustive list in the Safe Spaces Act. In the ASH Law, the acts may be “sexual advances” or the solicitation of “sexual favors” in exchange for a context-specific favorable outcome. The Safe Spaces Act goes further by including actions like catcalling, stalking, flashing of private parts, online identity theft, or other acts that threaten the victim’s sense of personal space or physical safety. These acts do not necessarily involve the solicitation of sexual favors or are sexual advances *per se*. The expansion of the list of punishable acts under the Safe Spaces Law feeds into the areas where it modifies the ASH Law—in terms of context and on who may be liable.

The Safe Spaces Act is structured in such a way that its major sections are based on the context or setting where gender-based sexual harassment occurs. Article I deals with Streets and Public Spaces, Article II is on Online Sexual Harassment, Article IV is on Harassment in the Workplace, and Article V is on Education and Training Institutions. The law, then, accounts for two

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<sup>30</sup> R.A. 7877, sec 3(a).

<sup>31</sup> R.A. 7877, sec 3(b).

<sup>32</sup> R.A. 7877, sec 3(a)(1).

<sup>33</sup> Myrna S. Feliciano. *Philippine Law on Sexual Harassment in the Workplace*. 70 PHIL. L.J. 541, 550 (1996).

additional places where harassment can occur: in public places, of which there is a further listing of examples, and in a digital space.

In terms of who may be liable for gender-based sexual harassment, the Safe Spaces Act contemplates as perpetrators even those who may not necessarily be in a formal position of influence or moral ascendancy. For instance, strangers in a public utility vehicle who utter slurs or perform acts like public masturbation, may be held liable. Even minors may be held liable under the law.<sup>34</sup> Gender-based sexual harassment committed by peers would certainly be included as perpetrators, whether in a workplace or educational or training institution.

Other innovations in the Safe Spaces Act are provisions on the primary role of LGUs in localization and implementation of the law, the availability of a restraining order as a remedy, and circumstances that qualify the offenses. The penalties under this law are also on a graduated scale, and the prescriptive periods have been adjusted.

The Safe Spaces Act clearly diverges considerably from the ASH Law both in substance and structure. By and large, the provisions of the Safe Spaces Act serve to fulfill the State's policy of upholding human dignity and guaranteeing human rights.<sup>35</sup> Additionally, it is a piece of legislation that gives life to the constitutionally integrated concept of social justice.<sup>36</sup> The social significance of this law should be beyond question. However, its application may not be as straightforward in some instances. The following section examines how implementing the Safe Spaces Act, particularly in peer-to-peer harassment within the context of educational institutions, might be made complicated by existing law and jurisprudence on due process, privacy rights, and the rights of the child.

### III. LEGAL COMPLICATIONS IN PEER-TO-PEER SEXUAL HARASSMENT IN EDUCATIONAL AND TRAINING INSTITUTIONS

#### *A. Due process rights in education settings*

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<sup>34</sup> R.A. 11313, secs. 4 and 24.

<sup>35</sup> CONST., art. II, sec. 11.

<sup>36</sup> Madcasim, Jr. and Dayday, *supra* note 29, at 990.

The principle behind the investigation of cases of gender-based sexual harassment in educational institutions is well-articulated in the law: it must be both “respectful to the victims’ needs and conducive to truth-telling.”<sup>37</sup> This appears to be the law’s textual acknowledgment of the vulnerabilities of the victim. Even so, the Safe Spaces Act points out the need to observe due process in Committee on Decorum and Investigation (CODI) proceedings.<sup>38</sup> A delicate balance must be made between these considerations.

Under the Safe Spaces Act, cases of gender-based harassment shall be addressed by a CODI in accordance with its published rules and procedures.<sup>39</sup> The CODI proceedings are administrative in nature and stand independently of any criminal or civil liability that may arise from a specific act of gender-based sexual harassment. A CODI organized in the context of an educational institution, however, will have to be guided by existing case law on standards for due process, especially when the act of harassment is committed by a student against peers.

In academic or educational institutions, the classical formulation of administrative due process in *Ang Tibay v. CIR*<sup>40</sup> will not squarely apply when a student is under investigation by the school. Instead, the Supreme Court has decided in a line of cases<sup>41</sup> that what would apply instead is the formulation of due process rules in *Guzman v. National University*.<sup>42</sup> The minimum standards set forth in *Guzman* are as follows:

- (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.

Administrative proceedings involving students and which employ the *Guzman* formulation are summary in nature and “need not be clothed with the attributes of a judicial proceeding.”<sup>43</sup> This implies, among other things, that the right to cross-examination is not necessarily included.<sup>44</sup> There would be no violation of fundamental rights in maintaining this standard. Due process is a

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<sup>37</sup> R.A. 11313, sec. 21.

<sup>38</sup> R.A. 11313, sec. 22(c)(6).

<sup>39</sup> *Id.*

<sup>40</sup> *Ang Tibay v. Court of Industrial Relations*, G.R. No. L-46496 (1940).

<sup>41</sup> See *Alcuaz v. PSBA*, G.R. No. 76353 (1988); *Non v. Dames II*, G.R. No. 89317 (1990); *Ateneo de Manila University v. Capulong*, G.R. No. 99327 (1993); *Sps. Go v. Colegio San Juan de Letran*, G.R. No. 169391 (2012).

<sup>42</sup> *Guzman v. National University*, G.R. No. L-68288 (1986).

<sup>43</sup> *Ateneo de Manila University v. Capulong*, G.R. No. 99327 (1993).

<sup>44</sup> *Id.*

“malleable concept anchored on fairness and equity.”<sup>45</sup> As long as these core principles are present, due process is legally guaranteed.

Considering, however, the nuances in the dynamics between peer victims and perpetrators, CODI proceedings might produce effects other than formal sanctions. The law mandates that the proceedings be essentially protective of victims and geared towards the elimination of a hostile environment. The educational institution is given the power to act on complaints even if a concerned individual does not want to do so.<sup>46</sup> While the law itself is silent on the form of complaints that may be entertained by the CODI, there appears to be no impediment to take cognizance of anonymous complaints or allegations aired publicly. This finds support in the text of the law, where the school must promptly investigate cases whenever it has knowledge or reasonably knows of a possible situation of sexual harassment.<sup>47</sup>

While it is expected that schools will fairly investigate all allegations of gender-based sexual harassment, the investigation proceedings in the meantime might cause real harm to victims and perpetrators alike. Victims may find the process of recounting incidents particularly degrading or traumatizing. Consequences for the perpetrator, on the other hand, also merit consideration. Sexual harassment can be construed as a serious breach of discipline. Breaches of this nature are sufficient to sever the contractual ties between the school and the student.<sup>48</sup> The fear of these repercussions could potentially draw remorse from a student perpetrator who, nevertheless, will be dealt with punishment once found guilty.

A school’s finding of a student’s administrative liability is a terminal decision absent any showing of arbitrariness. An order of expulsion or removal of conferred academic degrees under the Safe Spaces Act, if exercised by the educational institution, is one such resulting administrative liability. The right of schools to refuse re-admission on the basis of disciplinary violations has been previously recognized by the Supreme Court.<sup>49</sup>

One must also note that CODI or school administrative proceedings are clearly not criminal in nature. The legal maxim of *in dubio pro reo*<sup>50</sup> has so far been only applied in interpreting provisions with criminal penalties in our jurisdiction. CODI proceedings may, however, choose to adopt an analogous

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<sup>45</sup> *Samar v. Executive Secretary*, G.R. No. 186502 (2017).

<sup>46</sup> R.A. 11313, sec 21.

<sup>47</sup> *Id.*

<sup>48</sup> *Licup v. The University of San Carlos (USC)*, G.R. No. 186509 (1989).

<sup>49</sup> *Alcazar v. PSBA*, G.R. No. 76353 (1988).

<sup>50</sup> A legal principle which, when translated, means “When in doubt, for the accused.” See *Intestate Estate of Gonzales v. People of the Philippines*, G.R. No. 181409 (2010).

rule of lenity, especially in exceptional circumstances where doubt exists in the appreciation of equally credible conflicting accounts.

Moreover, the manner in which victims are regarded in the proceedings must be context-sensitive and calibrated. On the other hand, due process rights for perpetrators cannot be simply cut and dry; the level and process of discernment of perpetrators for their actions must be thoroughly examined. The selection of CODI composition must not only adhere to the formal requirements of the law<sup>51</sup> but also be reflective of the goal to balance the interests involved. In designing institution-specific CODI rules and procedures, it is essential that the set of guidelines account for the social dimensions of gender-based sexual harassment, from its causes to its effects.

*B. Interaction with the Right to Privacy*

Another consideration in sexual harassment proceedings is the right to privacy of those involved, especially given the sensitive nature of the facts and circumstances. The confidentiality of proceedings in education institutions is guaranteed to the greatest extent possible.<sup>52</sup> The victim's privacy shall be respected, and great care is taken to determine his or her willingness to pursue a case notwithstanding the school's obligation to investigate.<sup>53</sup> Respecting the right of a minor accused to confidentiality is also mandated.<sup>54</sup>

It is possible that in the course of an investigation of an act committed in violation of the Safe Spaces Act, the public or third parties may demand information such as the identity of perpetrators. Such a demand may be due to different reasons. In peer settings, there would be a legitimate interest in knowing perpetrator identity since students regularly interact with one another, more than they do with faculty or staff. This kind of call for transparency could feed, perhaps, into the purpose of protecting a community from a possible repeat offender. A victim might also want to have the name of the perpetrator be made public for various personal reasons. Disclosure of information, if it is made at all, should be due proportional to the interest involved.

The National Privacy Commission (NPC) has issued an advisory opinion with regard to confidentiality in administrative proceedings in educational institutions:

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<sup>51</sup> Rules and Regulations Implementing the Safe Spaces Act, R.A. 11313, sec. 33(b).

<sup>52</sup> R.A. 11313, sec. 22(c)(8).

<sup>53</sup> Rules and Regulations Implementing the Safe Spaces Act, R.A. 11313, sec. 25(2).

<sup>54</sup> R.A. 11313, sec 26.

[T]he parties involved in the administrative proceeding, specifically the complainant and respondent, have the right to be informed of the details of the case, including personal data, as a matter of procedural due process. This holds true whether the party to the case is a student, faculty or school personnel. Meanwhile, third parties to the proceeding, including witnesses, other individuals who may be affected by the case and its outcome, and the public, are not accorded the same right.<sup>55</sup>

Meanwhile, the law's principal author has stated that the Safe Spaces Act "does not promote non-transparency, nor does it condone any culture of secrecy regarding cases of sexual harassment, especially if it favors the harassers."<sup>56</sup> NPC's administrative interpretation, on the one hand, and Senator Hontiveros' statement, on the other, exhibit the tension between the data privacy rights and the interests protected by the Safe Spaces Act. Contemporaneous construction by administrative agencies is given great respect but is not necessarily controlling or binding.<sup>57</sup> Arguably, there is reason to depart from the NPC's more rigid view. The NPC is not the primary body that implements the Safe Spaces Act. The pronouncement of the law's primary author should suggest a different interpretation, one that assures the welfare of all who may have an interest in a case.

Persons accused of committing acts of sexual harassment are not left without remedies to vindicate their rights in case of unnecessary intrusion into their privacy or even in cases of false accusations. A civil remedy is available in cases of breaches of privacy.<sup>58</sup> Disciplinary mechanisms on the administrative level should also be put in place to address issues related to privacy matters.

Some might fear that these guarantees of confidentiality could provide a subterfuge for the perpetrator to evade accountability, though this should not be the case if the law is interpreted according to sound policy and implemented properly. Ultimately, fostering transparency in procedures is the most productive way of disincentivizing unnecessary breaches of privacy while respecting the call for accountability.

### *C. Dealing with minor peers involved in sexual harassment*

A particular concern in peer-to-peer sexual harassment is what happens when at least one party is a minor. Aside from the statutorily provided

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<sup>55</sup> NPC Adv. No. 2020-013.

<sup>56</sup> Senate of the Philippines, *Safe Spaces Act Defends the Harassed, not the Harasser: Akbayan Senator Risa Hontiveros on allegations of sexual harassment in Ateneo de Manila University* (Press Release), SENATE WEBSITE, at [http://legacy.senate.gov.ph/press\\_release/2019/1017\\_hontiveros1.asp](http://legacy.senate.gov.ph/press_release/2019/1017_hontiveros1.asp).

<sup>57</sup> *Adasa v. Abalos*, G.R. No. 168617 (2007).

<sup>58</sup> CIVIL CODE, art. 26.

guarantee of confidentiality, the Safe Spaces Act also mandates that minor students shall only be held administratively liable.<sup>59</sup> Thus, the law leaves a wide room for the crafting of rules that could serve formative—rather than largely punitive—functions.

The Philippines is a party to the Convention on the Rights of the Child and thus, must comply with its state obligations under the treaty.<sup>60</sup> Among these obligations is that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>61</sup> Taking into account the best interests of the child is an obligation that encompasses a wide range of situations.<sup>62</sup> Schools, having special parental authority over minors,<sup>63</sup> may be considered secondary duty-bearers in fulfilling this obligation. Thus, administrative proceedings involving children perpetrators or victims ought to be designed with their best interests in mind at all times.

The educational institution is part of a child’s community and shares in the duty to foster an environment necessary for normal growth and enhancement of well-being.<sup>64</sup> Educational institutions must have enabling mechanisms that simultaneously serve to rehabilitate minor children offenders and restore the dignity of their victims. As much as possible, alternative modes of dispute resolution should be available to parties who are minors. Psychosocial interventions should also be an integral part of every phase of the administrative proceedings. Finally, the proceedings must have components specifically addressing minors’ attitudes towards sex and gender in order to address the underlying social cause.

#### IV. MOVING FORWARD: COMPREHENSIVE SEXUAL HARASSMENT RESPONSE AND PROTOCOLS IN SCHOOL SETTINGS

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<sup>59</sup> R.A. 11313, sec. 24.

<sup>60</sup> *Cang v. Court of Appeals*, G.R. No. 105308 (1998).

<sup>61</sup> Convention on the Rights of the Child, art. 3, Nov. 20, 1989, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>62</sup> Committee on the Rights of the Children, *General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* (2013), available at [https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf).

<sup>63</sup> FAM. CODE., art. 218.

<sup>64</sup> CHILD AND YOUTH WELFARE CODE, art. 85 (1).

Sexual harassment among peers is tricky because of how subjective it can be, especially given that acts of sexual harassment are prone to be labeled as part of supposedly normal adolescent behavior.<sup>65</sup> This points to the need for further operationalization of acts of sexual harassment and concepts associated with it. The need for further operationalization cannot be overstated given that the Safe Spaces Act does not provide acts that shall be considered as sexual harassment under Article V or the part of the law tackling gender-based sexual harassment in educational and training institutions.

Sexual harassment is deeply rooted in perceived gender difference and heterosexism. To make educational institutions safe, school policies must be proactive and must address sexual harassment from its roots. Anti-sexual harassment policies, therefore, must first and foremost recognize students' equality and affirm students' identities. Sexist remarks or comments that put down peers of diverse SOGIE must be considered as offenses relating to sexual harassment. This is especially crucial in schools because they fulfill the purpose of training institutions for values and knowledge that students will take moving forward with their lives.

Social policies must discourage gendered hierarchies, especially among peers who are perceived to be equals. Given that sexual harassment thrives on heterosexism, school policies must explicitly mention the inherent equality between students' SOGIE as well as explicitly recognize that harassment is done towards the same sex as much as towards the opposite sex.

It is important to note that while male students are commonly the perpetrators of sexual harassment, these students are also disadvantaged by a system that thrives on gender inequality. Policies must include provisions that address the pressure to perform hegemonic masculinities that constrain male students and that target girls and other students of diverse SOGIE. Male students who choose to stand up against their peers, for example, are called different slurs, revealing the necessity of school policies to be proactively anti-sexual harassment by being, first and foremost, anti-heterosexism.

Everyone becomes a victim in environments where sexual harassment is not properly dealt with.<sup>66</sup> Beyond recognizing that male students are also disadvantaged by the system that encourages sexual harassment, school policies must also consider the harm brought about by witnessing sexual harassment. Thus, the perpetrator is not only accountable for the victim's trauma but also for the trauma of the witnesses.

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<sup>65</sup> Terrance, *supra* note 7, at 486.

<sup>66</sup> Fineran & Bennett, *supra* note 6, at 55.



Educational institutions add to the victims' and witnesses' trauma when it fails to act on sexual harassment cases. Not only this, educational institutions also add to the trauma when they put in place reporting and response protocols that bear down on the victim. As such, schools must ensure that policies on sexual harassment include swift response mechanisms without the added bureaucracy on the part of the victim, especially when this bureaucracy expects the victim to recount distressful experiences again and again. This goes without saying that school policies must also include support mechanisms for victims. People experience the consequences of sexual harassment differently. For girls, these are more traumatic, given victim-blaming and loss of socially enforced honor.

There needs to be preventive measures vis-à-vis the developmental perspective on sexual harassment, which sees sexual harassment as part of the adolescent exploration. Some actions that are deemed sexually harassing may hide behind the veil of growing up, but these acts still produce a culture that hampers on students' learning process. Many students are victims and perpetrators,<sup>67</sup> and quick one-size-fits-all interventions may not serve well, especially when students use sexual harassment as a defense mechanism.

Reporting protocols must engage other social actors, such as teachers and parents, who may also spot sexual harassment cases or general discomfort that students are experiencing. Section 21 of the Safe Spaces Act emphasizes that schools should ensure a "gender-sensitive environment that is both respectful to the victims' needs and conducive to truth-telling". Reporting sexual harassment cases is hugely affected by whether or not the office assigned to receive sexual harassment cases is empowering or constraining. As such, proper gender-mainstreaming and personnel training must also be done for members of the CODI and the gender committee's officer-in-charge.

Engaging multiple sectors is an essential part of building a community of trust that makes anti-sexual harassment policies work. Educational institutions are prone to dealing complaints against minors by minors, which highlights the necessity to involve parents in drafting school policies. Since parents and teachers alike serve as role models and disciplinary figures to students, they shall be expected to report instances that make the learning environment hostile and prevent their reoccurrence.

Misogyny and heterosexism pressure students into behaving a certain way towards their peers. When not dealt with comprehensively, peer sexual harassment in school settings will still contribute to a culture of misogyny and

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<sup>67</sup> Susan Fineran. *Sexual Harassment between Same-Sex Peers: Intersection of Mental Health, Homophobia, and Sexual Violence in Schools*. 47 SOCIAL WORK 65 (2002).

heterosexism evident in the larger society.<sup>68</sup> The Safe Spaces Act is a forward step in recognizing that sexual harassment also happens among peers and that sexual harassment is not a normal part of growing up. However, more needs to be done in terms to proactively address sexual harassment that engenders a hostile learning environment for all students, no matter the SOGIE.

### **CONCLUSION: STRENGTHENING THE SAFE SPACES ACT IN EDUCATIONAL INSTITUTIONS**

The Safe Spaces Act answers to the State's constitutionally embedded social policies and its aspirational spirit towards greater progressiveness. It is also a palpable response to the changing times and attitudes towards sex and gender. The law has expanded the scope of sexual harassment in online and public spaces by recognizing peer-to-peer sexual harassment and providing for more punishable acts of sexual harassment.

Despite so, the Safe Spaces Act is still complicated by existing law and jurisprudence on due process, privacy rights, and the rights of the child. These resulting legal complexities reflect the idea that legal solutions need to be aided by nuanced insights. Addressing these concerns, especially on the level of school policies, cannot be overstated in a school setting. Educational institutions reflect larger structures of inequality in society and contribute to these structures by serving as a training ground for individuals.

Manifestations of peer-to-peer sexual harassment in schools are heterosexist in nature, which cannot be excused owing to the idea that these are normal behaviors for individuals who are forming their identities. Amid the policy and legal questions that flow from the implementation of the Safe Spaces Act, this Essay emphasizes the importance of providing clear and efficient response mechanisms against peer-to-peer sexual harassment that are informed by disciplines beyond the confines of the law. Policies are better crafted, and society at large is better served when multiple dimensions of social problems are considered.

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<sup>68</sup> Nicole Conroy. *Rethinking Adolescent Peer Sexual Harassment: Contributions of Feminist Theory*. *Journal of 12 School Violence* 340, 346 (2013).

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