PHILIPPINE LAW ON SEXUAL HARASSMENT IN THE WORKPLACE

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I. INTRODUCTION

Sexual harassment is a complex issue involving the social norms in society. Sexual harassment is not confined to any one level, class, or profession. It can happen to executives, as well as factory workers. It occurs not only in the workplace but in the classroom, churches and even in court chambers. Sexual harassment may be an expression of power or desire, or both. Whether it is from supervisors, co-workers or customers, sexual harassment is an attempt to assert power over another person.[1] As Barbara Taylor puts it, "Sexual harassment is a put-down, not a turn-on."[2] Although there are cases where men have been sexually harassed.[3] and instances where homosexual advances were sustained by the courts,[4] majority of the victims are women. Because of the fear of losing their jobs, many women have silently endured sexual harassment in the workplace considering it to be a "normal" occupational hazard. Then, there is that prevalent social attitude that women are usually assumed to have invited harassment through their dress, speech, actions or personality.

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[1] A.P. AGGARWAL, SEXUAL HARASSMENT IN THE WORKPLACE 1 (1987).

[2] B.G. Taylor, *Response: Who is Responsible for Sexual Harassment?* 5 THOUGHT AND ACTION - THE NEA HIGHER EDUCATION JOURNAL 39 (Spring, 1989).

[3] *Huebschen v. Dept. of Health & Social Services*, 547 F. Supp. 1168 (1982) where a female supervisor was found liable for the harassment of a male state employee whom she demoted after he ended a sexual relationship with her.

[4] *Romman v. Séa-West Holdings, Ltd.*, 5 C.H.R.R. D. 2312 (Can., 1984).

Many victims do blame themselves unreasonably and are ashamed to risk public disapproval by talking about their experience.[5] Until the recent years, the practice of sexual harassment was virtually unchallenged.

Philippine culture has long tolerated and even encouraged sexual harassment by even joking about it. Although this has been a long-standing problem dating back to feudal days, it was hardly acknowledged. Filipinas had to suffer the humiliation of harassment in silence. The influences of literature and information from industrialized nations such as the United States, Canada and Australia and its eventual discussions in women's fora sponsored by non-governmental organizations led to the recognition that sexual harassment is a vital issue in the Philippines that needs to be prioritized and addressed to.

It was only in 1990 that a professor noted that "sexual harassment has not been studied or documented in any manner. No policies or guidelines in dealing with the offense are embodied in the manuals or codes governing personnel conduct in public or private institutions."[6] The first research on this phenomenon was conducted by Prof. Elena Samonte in 1993 which pertains to the perceptions of the students and faculty of the University of the Philippines on sexual harassment.[7] The student sample was taken from 419 students which is 5% of the population in identified males/females dominated college. Faculty sample was taken from 73 faculty members, which is 5% of the 1451 faculty population in the Diliman campus. The results indicate that 87.2% were not aware of any university policy regarding sexual harassment while 25.4% personally knew of somebody who had been sexually harassed by someone in the university. As to the question "if the victim did anything regarding the harassment incident, 22.8% gave a positive reply while 77.2% did not do anything about the

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[5] E.R. Dionisio, "Sexual Harassment and the Working Women," *National Midweek* (June 20, 1990), p. 21-22.

[6] B.A. Aquino, *Women in the Workplace: The Problem of Sexual Harassment,* 34 PHIL. JOURNAL OF PUBLIC ADMINISTRATION 306-7 (1990).

[7] E.L. Samonte, *Sexual Harassment: Perceptions of U.P. Students and Faculty,* 3 REVIEW OF WOMEN'S STUDIES 19-121 (1993).

incident. The main reasons given for doing something about it were: 1) to show guts; 2) could not take it; and 3) why not. On the other hand, the main reasons for not doing anything were: 1) fear; 2) embarrassment; 3) both gained from it; 4) avoidance of scandal; and 5) lack of knowledge as to what to do. The 71 who responded of having personal experience of being harassed, 68 indicated their gender. Of this number, more females (76.1%) than males (19.7%) have been sexually harassed at some point in their lives. Proportionate to the sub-sample, a greater percentage of the faculty have experienced sexual harassment (31.6%) as compared to the students (21%).[8]

According to Samonte, the results obtained regarding the defining features point to an interesting factor that affects perception of an incident. Faculty respondents seemed to give importance to student's behavior (*e.g.* the student made it obvious that she would do anything for a grade). Items with the greatest impact on whether an incident was judged as sexually harassing were those that involved promises, threats on physical action that suggested coercion (*e.g.* forcing student to a secluded area). However, even non-verbal behavior such as "winking" was deemed inappropriate for teachers by the faculty and contributes to the definition of sexual harassment. Likewise, there is an interplay of factors which define the perception of sexual harassment. In the Philippine context, the cultural norms and practices have been pointed out as important considerations. In the Philippine setting, perpetuators of sexual harassment are not only those with status and power but also those who harass in the context of anonymity (*e.g.*, fellow passengers, movie viewers, obscene callers, strangers). Gays are also noted as harassing basically man, although in an attempt to exploit the more tolerant attitudes of women regarding gays, some "straight" men pretend to be "gay" if only to be able to engage in behavior that gives them more liberal access to relating with women (*e.g.*, "chancing").[9]

During the Third Congress of Women in Government, held in March 23, 1994, a workshop was conducted to find out the participants' perceptions and reflections on sexual harassment in the

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[8] *Ibid.*, at 109.
[9] *Ibid.*, at 115, 117.

workplace. Part of this workshop was a mini-survey focusing on two questions: 1) what do you think are the causes of sexual harassment in the workplace? and 2) what are your own experiences on work-related sexual harassment?

The following table shows the responses of the participants:

1. *On the Causes of Sexual Harassment*

Cause	No. of Participants
Power Relations	14
Negative Attitude towards women	13
Media	11
No laws against sexual harassment	11
Poor implementation of laws on sexual harassment	11
Need for money/jobs/promotions connection	11
Low spiritual/moral value	10
Culture	10
Provocative attire	9
Conducive environment	7
Family background	3
Vengeance	3

Source: NCRFW, Newswings, June 1994

2. *On the Participants' Own Experiences With Sexual Harassment*

Form of Harassment	No. of Participants
Touching of body (hands, legs, etc.)	20
Green (and definitely not environmental jokes)	6
Malicious/lewd comments or remarks	6
Display of caricature of women's body	1
Attempted rape	1
Rape	1

Source: NCRFW, Newswings, June 1994

The findings confirm what women have known all along. Everyone has a role in perpetuating sexual harassment -- the society and its norms and institutions, the men, and yes, the women themselves. No woman is immune from it.

What constitutes sexual harassment is often based on perception by the person. Males and females have vastly different perceptions of what comprises behavior with sexual overtones. It is noted that men generally think that they are being friendly or flattering when they make aggressive moves towards women or display some body language. Others think that this is "macho" while many think that "it is natural for a man to act in this manner." Still, other men could rationalize his actions by "blaming the victim," that is a woman is "asking for it" by her dress or decorum.

On the other hand, females do not take such male behavior as friendly or casual. As women become more economically active and meet all kinds of hassles at the workplace, it is necessary to have their working environment free from the predatory and aggressive behavior of their male supervisors and co-workers. The opposing view of those who have reservations about sexual harassment policies is that most of the relationships being talked about are probably consensual and not harassing.

The Department of Labor and Employment (DOLE) is the first agency to launch a program on sexual harassment. This was originally conceptualized by DOLE management for the private sector but later on, decided that it would be best to pilot test the program within the agency so that it can evaluate its program. Administrative Order No. 60 was issued on March 25, 1992 which was the policy against sexual harassment in its offices. This was followed by Administrative Order No. 68, s. 1992 which clarified the procedures and steps to be taken in the event sexual harassment cases are reported. To implement the Administrative Order, the DOLE created a Special Fact-Finding Committee to receive, investigate and hear harassment complaints and submit reports and recommendations to the Secretary of Labor. This Committee is composed of: The DOLE Resident Ombudsperson as Chairperson, the Chairperson of the

DOLE Philippine Development Plan for Women Focal Point as Co-Chairperson and five selected DOLE officials and members.

The Civil Service Commission (CSC) reinforced DOLE's effort by issuing a Memorandum Circular No. 19, dated 31 May 1994, a Policy on Sexual Harassment in the Workplace.[10] The policy statement reads as follows:

> It is the policy of the state to afford protection to working women and ensure equal work opportunity for all, as well as full respect for human rights. Towards this end, the Civil Service Commission commits to provide a work environment supportive of productivity, wherein all officials and employees are treated with dignity and respect and will not tolerate any sexual harassment, whether engaged in by fellow employees, supervisors, associates or clients.

Sexual harassment by another employee or officer constitutes a ground for administrative disciplinary action under the offenses of Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service or Simple Misconduct provided in Section 46(b), Chapter 6, Title I(A), Book V of the Administrative Code of 1987 and subject to penalties up to dismissal from the service.

This policy covers all employees in government, whether in the career or non-career, holding positions under permanent or temporary status in the national or local government, including government owned or controlled corporations, with original charters, state colleges and universities. It also includes applicants for employment after the application has been received by the agency.

While the Circular provides full respect for human rights, it expressly states that the State's policy is: "to afford protection to working women and ensure equal work opportunity for all, as well as full respect for human rights. Toward this end, the Civil Service Commission commits to provide a work environment supportive of productivity, wherein all officials and employees are treated with dignity and respect and will not tolerate any sexual harassment

[10] Hereinafter referred to as CSC Circular.

whether engaged in by fellow employees, supervisors, associates or clients." Note that the Circular specifically recognizes the propensity of working women to be subjected to sexual harassment, thus the express declaration. At the same time, it recognizes the possibility of sexual harassment despite the absence of a superior-subordinate relationship. Thus, sexual harassment committed by fellow employees is made punishable.

As a result of the consultation with the women's groups and with the strong advocacy of SIBOL, the Lakas Manggagawa Labor Center-Women's Commission and the National Commission on the Role of Filipino Women (NCRFW), a certified administration bill on Sexual Harassment was filed in the lower house of Congress in 1993. This led to its enactment as Republic Act No. 7877 or the "Anti-Sexual Harassment Act of 1995" which was signed by Pres. Fidel V. Ramos on 14 February 1995.

II. HIGHLIGHTS OF REPUBLIC ACT NO. 7877 (1995)

A. What Constitutes Sexual Harassment?

The Philippines is the first Asian country to enact a law against sexual harassment. The policy of Republic Act No. 7877, known as the Anti-Sexual Harassment Act of 1995, lies in the full respect for human rights and dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education.[11] Under this statute:

> SEC. 3. Work, education or training-related sexual harassment is committed by an employer, employee, manager, supevisor, 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.

[11] 91 O.G. 2144-2146 (April 1995), hereinafter cited as RA 7877.

This provision does not really define sexual harassment. Moreover, the phrase "regardless of whether the demand, request or requirement for submission is accepted by the object of said act" is problematic because the very nature of the offense is that it is unwelcome. A mere proposal constitutes sexual harassment. A comparison with the following U.S. Equal Opportunity Commission Guidelines[12] would reveal that its definition of sexual harassment is clearer:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or (3) conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating hostile, or offensive working environment.

Section 3 of R.A. No. 7877 describes further the elements of the offense as follows:

> In a work-related or employment environment, sexual harassment is committed when:
>
> (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
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> (2) The above acts would impair the employee's rights or privileges under existing labor laws; or

[12] 29 C.F.R., Secs. 1604-1611(a) (1975).

> (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.[13]

The proposed exchange of job benefits for sexual favors suggests the name "quid pro quo" sexual harassment. The essence of this offense in the first paragraph is that the individual has been forced to choose between an economic detriment and submitting to sexual demands which is considered as "blackmail." The euphemism "lay down or lay off" or "put out or get out" bargain which makes employment benefits contingent upon sexual cooperativeness, is the kind of sexual harassment first recognized as discrimination on the basis of gender. It indicates also that whether this demand or request is unwelcome or not, it constitutes sexual harassment. The employer is solidarily liable for sexual harassment under the doctrine of *respondeat superior*.[14]

Consider also that the first paragraph does not necessarily require the existence of an employer-employee relationship, since the sexual favor may be made "as a condition in the hiring or in the employment xxx." The law is cognizant of the fact that the offense may be committed even against those who are not yet employees of the workplace. Thus, it treats job applicants as if they are regular employees to allow them to avail of the protection afforded by the law.

The second paragraph stipulates that the above act, *i.e.*, the sexual favor is made as a condition of the hiring, employment, re-employment or continued employment of the individual or in granting favorable terms, conditions, promotions, or privileges, would impair the employee's rights and privileges under existing labor laws. Note that this paragraph presupposes that there already exists an employer-employee relationship. If you scrutinize closely this paragraph, it actually reiterates the first paragraph because such acts of sexual harassment would necessarily impair their rights and privileges of the employees under the existing labor laws and thus can

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[13] *Ibid.*, Sec. 3(a) (1)-(3).

[14] It means "Let the master answer," wherein an employer is liable in certain cases for the wrongful acts of his servant and a principal for those of his agent. *See* Section 5 of RA 7877 (1995).

even constitute as an unfair labor practice. Moreover, under Article 135 of the Labor Code, this constitutes discrimination against any woman employee with respect to terms and conditions of employment solely on account of her sex.[15]

The third paragraph espouses a second theory of liability wherein sexual harassment occurs when the requests for sexual favor would result in an intimidating, hostile, or offensive environment for the employment. In this form of harassment, an employee supervisor engages in conduct that is unpleasant to the employee and often reflects hostility. The hostility is usually reflected in sexually stereotyped and demeaning insults or propositions to which the worker is indisputably subjected and which causes her anxiety and debilitation and thus, illegally poisons the working environment. The essence of a hostile environment claim is that an individual has been required to endure a work environment that, while not necessary causing any direct economic harm, causes psychological or emotional harm or otherwise interferes with the individual's job performance. Thus, a hostile environment may drive employees off the job, demoralize or upset them to the extent that they are fired for absenteeism or unsatisfactory work or cause them to complain about the harassment and risk retaliatory discharge.[16] The conduct usually involve a series of incidents rather than a single episode. But it should be noted that under this paragraph, the hostile environment is a result of the request or refusal of sexual favors which is made a condition in subparagraph (a) (1). Hence, the statute does not apply to sexual harassment made by a co-employee.

Consider also that the third paragraph presupposes that there is already an employer-employee relationship. Can it then be assumed that if an applicant for a job feels intimidation or hostility, say, during a job interview conducted in a room containing a nude poster, there can be no sexual harassment? The author believes that there could still be sexual harassment, considering that the spirit of the law (as

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[15] PRES. DECREE NO. 442 (1974), art. 135, as amended by REP. ACT NO. 6725 (1989).

[16] B. LINDEMANN & D.D. KADUE, SEXUAL HARASSMENT IN EMPLOYMENT LAW 8-9 (1992).

embodied in its Declaration of Policy) seeks to promote full respect for human rights and dignity.

The definition of sexual harassment in the earlier mentioned CSC Circular No. 19 which applies to government workers is much more broader than that found in R.A. No. 7877. It defines sexual harassment as:

> "one or a series of incidents involving unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of sexual nature, made directly, indirectly and impliedly when: (1) such conduct might be expected to cause insecurity, discomfort, offense or humiliation to another person or group; or (2) submission to such conduct is made either implicitly or explicitly a condition of employment; or any opportunity for training or grant of scholarship; or (3) submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, matters of promotion, raise in salary, job security and benefits affecting the employee) or (4) such conduct has the purpose or the effect of interfering with a person's work performance, or creating an intimidating, hostile or offensive work environment."[17]

Paragraph 4 of this definition admits a hostile environment harassment by a supervisor or a co-employee which is not found in R.A. No. 7877. Moreover, CSC Memo Circular defines also what is "employment-related sexual harassment" by a member of the employee of the agency which occurs (1) in the working environment, or (2) anywhere else as a result of employment responsibilities or employment relationship. It includes but is not limited to sexual harassment at the office, at office-related social functions in the course of work assignments outside the office, at work-related conferences or training sessions, during work-related travel or over the telephone."[18] In this sense, the Memo Circular is more comprehensive than the statute because it details all the possible avenues whereby the offense could be committed.

Sexual harassment is also committed in an education or training environment against one who is under the care, custody or

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[17] Sec. 3.
[18] Sec. 3.

supervision of the teacher or employer or his agent or whose education, training or apprenticeship is entrusted to the offender.[19] This is also true when the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations; or when such sexual advances result in an intimidating or offensive environment for the student, trainee or apprentice.[20]

Any person who directs or induces another to commit any act of sexual harassment or who cooperates in the commission thereof without which it would not have been committed is also held liable under this Act.

B. Duty of Employer

The law is very specific on the duty of the employer towards the prevention and resolution of sexual harassment cases. Section 4 of R.A. No. 7877 provides:

> SEC. 4. *Duty of the Employer or Head of Office in a Work-related, Education or Training Environment.* — It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head of office shall:
>
> a. Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.
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> Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

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[19] REP. ACT NO. 7877 (1995), sec. 3 (b) (1)-(2).
[20] *Id.*, sec. 3 (b) (3)-(4).

> The said rules and regulations issued pursuant to this subsection:
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> (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.
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> (b) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainors and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.
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> In the case of a work-related environment, the committee shall be composed of at least one (1) representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank and file employees.
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> In the case of the educational or training institution, the Committee shall be composed of at least one (1) representative from the administration, the trainors, teachers, instructors, professors or coaches and students or trainees, as the case may be.
>
> The employer or head of office, educational or training institution shall disseminate or post a copy of this Act for the information of all concerned.

It also imposes the duty upon the employer to disseminate or post a copy of R.A. No. 7877 for the information of all concerned.

Republic Act No. 7877 is very clear that the employer or head of office, educational or training institution shall be solidarily liable for damages arising from the acts of sexual harassment if such employer or head of office is informed of such acts by the offended party and no immediate action is taken thereon.[21] In the American setting, employers are held liable if they had actual or constructive

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[21] *Id.*, sec. 5.

knowledge of the misconduct and they did not take prompt remedial action.[22]

In order to avoid liability, the employer is tasked to promulgate procedures for the resolution, settlement or prosecution of sexual harassment cases and the appropriate administrative sanctions. For this purpose, a committee is created with the corresponding membership from the management, union, employees from the supervisory rank and from the rank and file employees.

Among the duties of the Committee are:

> 1. To conduct meetings with officers, employees, trainees and apprentices to increase understanding and prevent incidents of sexual harassment.
>
> 2. To promulgate appropriate rules and regulations prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.
>
> 3. To receive complaints, investigate and hear sexual harassment cases, prepare and submit reports with the corresponding recommendations.[23]

In the formulation of the company's policy and procedures, a convenient, confidential and reliable mechanism for reporting incidents of sexual harassment and retaliation must be put into place. A telephone hotline can be instituted as well as a women's desk, to informally receive sexual harassment complaints, if possible. The U.S. EEOC Policy Guidance on current issues of sexual harassment issued on 19 March 1990 offers this criteria:

> The policy should also address to retaliatory tactics resorted to by the harrasser against the victim for making the complaint. This is so because the American courts have recognized that

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[22] Rabidre v. Osceota Refining Co., 805 F. 2d 611 (1986); Volk v. Coler, 638 F. Supp. 1555 (1986); Hall v. Gua Const. Co., 842 F. 2d 1015-16 (1988); Barrett v. Omaha National Bank, 726 F. 2d 427 (1984); Guess v. Bethlehem Corp., 913 F. 2d 463 (1990).

[23] Rep. Act No. 7877 (1995), sec. 4 (a) & (b).

employees are virtually reticent to complain about sexual harassment.

Within what period should such complaints in the company be made? The law is silent on this aspect, it is up for the company policy to determine. Likewise, it is silent as to which government agency is responsible for the implementation of the statute. The Department of Labor and Employment was in a quandary as to whether or not it can issue the necessary rules and regulations. Instead it opted for the issuance of an Advisory dated 22 June 1995 reminding all the employers in the private sector about the provisions of R.A. No. 7877 on the duties of the employer or head of work-related institution.

In this connection, the Civil Service Commission issued Resolution 95-6161 dated October 1995, the Rules and Regulations implementing R.A. No. 7877 with the CSC Memo Circular as suppletory rules. It listed the following forms of sexual harassment:

(a) Physical

i. Physical contact or malicious touching

ii. Overt sexual advances

iii. Unwelcome, improper or any unnecessary gesture of a sexual nature; or

iv. any other suggestive expression or lewd insinuations.

(b) Verbal, such as requests or demands for sexual favors or lurid remarks.

(c) Use of objects, pictures, letters or written notes with bold persuasive sexual underpinnings and which create a hostile, offensive or intimidating work or training environment which is annoying or disgusting to the victim.[24]

It should be noted that administrative sanctions imposed by an employer is not a bar to prosecution in the proper courts for unlawful

[24] Rule V, sec. 5.

acts of sexual harassment.[25] Neither is the victim of work, education or training-related sexual harassment precluded from instituting a separate and independent action for damages and other affirmative relief.[26] This means that aside from the administrative case which is lodged by the victim in the company, a criminal case can be filed in the court wherein penalties are imposed upon any person who violates the provisions of R.A. No. 7877 while a separate and independent civil action for damages can also be instituted. Accordingly, any action arising from the violation of the provisions of R.A. No. 7877 prescribes in three years. Any person who violates its provision shall upon conviction be penalized by imprisonment of not less than one month nor more than six months, or a fine of not less than ₱10,000 nor more than ₱20,000 or both such fine and imprisonment at the discretion of the court.[27]

On the other hand, the 1995 CSC Implementing Rules and Regulations prescribed the following administrative liabilities:

> A. For light offenses:
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> 1. Reprimand or fine or suspension not exceeding ten (10) days; or
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> 2. Fine or suspension not exceeding twenty (20) days; or
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> 3. Fine or suspension not exceeding thirty (30) days at the discretion of the disciplinary authority.
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> B. For less grave offenses:
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> 1. Transfer or demotion in rank or salary of one grade or fine or suspension not exceeding six (6) months; or
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> 2. Fine not exceeding four (4) months or suspension not exceeding eight (8) months at the discretion of the disciplining authority.

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[25] *Id.*, sec. 6.
[26] *Id.*, sec. 7.
[27] *Id.*, sec. 7

C. For grave offenses:

1. Transfer or demotion in rank or salary from two to three grades or fine in an amount equivalent to six (6) months salary; or

2. Suspension for one year; or

3. Dismissal, at the discretion of the disciplining authority.[28]

III. CASES ON SEXUAL HARASSMENT

There have been cases which have considered conduct that could be clearly characterized as sexual harassment but the courts have dealt with them either under acts of lasciviousness, unjust vexations, grave coercion or even rape.[29] For workers in the government, acts of sexual harassment were governed by the provisions of the Civil Service Law[30] and characterized under the administrative offenses of "grave and immoral conduct" and "grave misconduct."

Since both R.A. No. 7877 and the CSC Memo Circular are recent enactments, there have been no cases to date decided by the courts applying them. However, there are two cases decided by the Supreme Court which had sexual harassment as a considerable factor.

In the case of *City Mayor of Zamboanga v. Court of Appeals*,[31] the acts of a veterinarian, chief of an office, in goading his female subordinates to dine and drink with him during office hours; asking for "gifts" in exchange for his official signature or favor; utilizing his rank to get back at those who refused his advances and those who sympathized with the latter; proposing to meet them at hotels, tempting them with money to submit to his advances and even

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[28] Rule X, sec. 22.

[29] REV. PENAL CODE, arts. 336, 287, 2nd par., 286 & 335.

[30] PRES. DECREE NO. 807 (1975), as amended as implemented by CSC Memo Circular No. 8, s. 1970.

[31] G.R. No. 80270, February 27, 1990, 182 SCRA 785 (1990).

coaching them to avoid being caught by their husbands, depicted moral depravity, which merited dismissal under Memorandum No. 30, series of 1989, issued by the Civil Service Commission for "disgraceful and immoral conduct" and "grave misconduct" since these are classified as grave offenses. The Court, speaking through Justice Emilio Gancayco, said:

> In determining what penalty must be imposed on private respondent, the Court took into consideration the fact that there is here not only one but three complainants, all married at that. *It projects the abnormality of private respondents' behavior consisting of a libidinous desire for women and the propensity to sexually harass members of the opposite sex working with him.* (emphasis ours)
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> ...What aggravates the situation is the undeniable circumstances that private respondent took advantage of his position as the superior of the three ladies involved herein.
>
> ...Such acts of private respondent cannot be condoned. He should not be let loose to pursue his lewd advances towards lady employees in said office.

The Court emphasized that private respondent, being the chief of office is bound to set an example as to others as to how they should conduct themselves in public office, to see to it that his subordinates work efficiently, and to provide them with a healthy working atmosphere wherein co-workers treat each other with respect, courtesy and cooperation, so that in the end the public interest will be served. The Supreme Court reinstated the decision of the CSC, and meted the penalty of dismissal from office with prejudice.

There is a noticeable scarcity of sexual harassment cases in the private sector resolved by the National Labor Relations Commission. The case of *Delfin G. Villarama v. Golden Donuts, Inc.*,[32] however had sexual harassment as a considerable factor which gave rise to its institution.

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[32] NLRC NCR CA Nos. 001373-91, July 16, 1992.

In this case, complainant Villarama was a Material Manager of private respondent Golden Donuts, Inc. Villarama was dismissed from service based on the written letter of resignation/complaint submitted by Divina Gonzaga, a Clerk-Typist of the Materials Department headed by Villarama Gonzaga alleged that on July 7, 1989, Villarama invited all the girls of the Materials Department for a dinner. While the other girls did not accept the invitation, Gonzaga did not have second thoughts in accepting the offer since she considered Villarama a colleague, and she had nothing in mind that would in any manner prompt her to refuse what appeared to her as a simple and cordial invitation. After dinner, Villarama took Gonzaga home. Much to her surprise, Gonzaga said: *"...I found out that Mr. Villarama was not driving the way to my house. I was wondering why we were taking the wrong way until I found out that we were entering a motel. I was really shocked. I did not expect that a somewhat reputable person like Mr. Villarama could do such a thing to any of his subordinates. I should have left the company without any word but I feel that I would be unfair to those who might be similarly situated."*

Based on this letter, respondent Villarama was invited by the President of the company to explain/rebut the charges attributed to him. It was not clear from the record whether there was any denial or admission of guilt, "but it would appear that complainant during such meeting volunteered, or was admonished to resign, as may be inferred from his letter of 16 August 1989, wherein he requested a reconsideration of the decision to terminate him during the said meeting."

On appeal to the NLRC, Chairman Bartolome S. Carale reversed saying that: *"Complainant is a senior executive of the respondent company, being the materials manager, and the victim of his amorous acts (sexual advances/harassment/sexually molested - the terms used in the decision) is a lady employee "who is assigned to and was under the department headed by complainant. Thus, complainant has the moral ascendancy which he misused." The NLRC further stated that: "...the act of complainant constituted a disgraceful and immoral conduct; moreover, the fact that the complainant occupies a position of managerial work, whose functions are central to the effective operation*

of the company, such immoral act would more than justify loss of trust and confidence."

With the NLRC's decision, Villarama appealed the case to the Supreme Court.[33] While the Supreme Court found that the company did indeed commit procedural lapses, there was a valid cause for terminating Villarama. The Supreme Court ruled that the records show that his immoral act was substantiated. Loss of trust and confidence, as proven by substantial evidence presented, is a valid ground for dismissing a managerial employee. The Supreme Court said:

> As a managerial employee, petitioner is bound by a more exacting work ethic. He failed to live up to this higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay the duty of every employer to protect its employees from over-sexed superiors.

The Supreme Court has also decided two cases amounting to sexual harassment involving judges. In *Uy v. Tapucar*,[34] the complainant was subjected to immoral advances and indecent proposal to be his mistress by the respondent judge in exchange for the dismissal of her pending case. The Supreme Court found such brazen and despicable actuation by respondent judge towards a party litigant, who happened to be a woman, cannot but deserve reprobation. Here, the judge was dismissed from service.

In *Hadap v. Lee*,[35] the respondent judge was charged with the "habitual use of vulgar and obscene words and phrases wherever solemnizing marriages" and for the vulgar off-rostrum comments in a rape case, respondent judge was dismissed from service with forfeiture of retirement benefits and with prejudice to reemployment in government service.

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[33] G.R. No. 103641, September 2, 1994, 236 SCRA 280 (1994).

[34] ADM. MATTER NO. 2300 CFI, 31 January 1981, 102 SCRA 492, 505 (1981).

[35] ADM. MATTER NO. 1665-MJ, June 29, 1982, 114 SCRA 559 (1982).

A sexual harassment case which a male judge failed to appreciate by acquitting the accused on reasonable doubt is the administrative charge against Judge Crisanto C. Concepcion for "gross ignorance of the law and knowingly rendering unjust judgment."[36] The complainants were four girls aged eleven to thirteen, members of their school's volleyball team. They alleged that all members of the team were summoned by their coach to a room where he stroked their private parts for the presence of pubic hair, to ensure that none of them was over thirteen years of age per Ministry of Education and Culture memorandum circular. The Supreme Court dismissed the administrative charges against respondent because "as a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous."

The better view in this case is the following dissenting opinion of Justice Flerida Ruth P. Romero:

> To my mind, any teacher who uses administrative guidelines of the Ministry of Education as an excuse to satisfy his lust and inflict his lecherousness on innocent girls deserves strong condemnation from any judge worth the robe he dons and who is regarded in the community as an upright, moral and just man.
>
> The judiciary would undoubtedly be better off minus one judge of the questionable moral scruples of respondent.

The judge here needed "gender sensitivity training" because when he acquitted the accused charged with acts of lasciviousness in his court, he failed to appreciate that the coach was in a position of authority when he committed such acts on the students. There was gross ignorance of the law here because he did not take into consideration the jurisprudence on the matter. Moreover, the school could have designated a woman to examine the players to comply with the MECS Circular. It is with this view that the dissenting opinion penned by Justice Romero should have been adopted.

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[36] Dela Cruz v. Concepcion, Adm. Matter No. RTJ-93-1062, August 25, 1994, 235 SCRA 597 (1994).

The Civil Service Commission (CSC) has, for its part, decided on a number of cases involving sexual harassment in the workplace.

Suspension for a period of six months without pay were imposed on a Philippine National Railway employee who committed acts of lasciviousness on a passenger;[37] and on a school superintendent who was guest of honor in a "bold show" by a job applicant as requested by a school supervisor and a principal, with them being meted a year's suspension each;[38] while three months suspension without pay was imposed on a co-employee for acts of lasciviousness committed during an inspection trip;[39] and dismissal from office for grave misconduct in a case where a complaint of sexual harassment was filed by a woman employee against her supervisor.[40]

IV. CONCLUSION

Section 14, Article II of the 1987 Constitution provides that: "The State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men." This provision is not self-executory. Article 135 of the Labor Code which was amended by Republic Act No. 6725 (1989) prohibits discrimination but its provisions are too limited. Since sexual harassment is discrimination on grounds of sex, it would be beneficial to amend its provisions to include sexual harassment.

The major problem with our recent law, Republic Act No. 7877, is that it does not specifically address to the issue of "hostile environment" sexual harassment between peers or co-employees. Neither does it address the situation between doctor and patient where the doctor sexually harasses the patient. Until such laws are amended, there are several short-term solutions recommended. A real and viable alternative lies in collective action. For instance, if two or more women will file a joint complaint against another supervisor or employee, the management cannot treat sexual harassment as an

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[37] *In re* Rolando Garcia, CSC Resolution No. 89-442 (1989).
[38] *In re* Filomeno Sicad, *et al.*, CSC Resolution No. 92-1912 (1992).
[39] *In re* Augusto Labalan, CSC Resolution 90-1063 (1990).
[40] *In re* Armando Alegre, CSC Resolution 95-3599 (1995).

isolated incident. If the sexual harassment incident occurs without a witness, it is necessary that the victim narrate the incident immediately to somebody in order to corroborate that such an incident occurred. In order to prevent further incidents, others even recommend metalegal tactics such as picketing and handing out of leaflets condemning the harasser's behavior, or posting notices identifying sexual harassers in women's washrooms at the workplace, or even learning self-defense techniques whereby it must be stressed to the perpetrator that such conduct is *unwelcome.*

The most effective weapon against sexual harassment, however, remains with the union. If provisions against sexual harassment are placed in collective bargaining agreements, victims will be encouraged to voice out their complaints, thus, forming the basis for collective action.

It is also important to provide comprehensive education about sexual harassment to company and union officials and members, and even judges, law enforcers and prosecutors as provided by law. Gender sensitivity training should also be given to the officials, such as the labor arbiters and judges, who administer and enforce the law. For, in the ultimate analysis, the hope of eliminating sexist practices and discriminatory attitudes in the workplace will only be realized if the larger society is educated on the basic principles of sexual equality.

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