

No Place for Harassment: Construing Street Harassment as Gender-Based Sexual Violence and Providing Remedies Therefor

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I. INTRODUCTION

[N]o country can ever truly flourish if it stifles the potential of its women and deprives itself of the contributions of half its citizens.

— Michelle LaVaughn Robinson Obama¹

A. *Background of the Study*

Street harassment, in its general sense, is defined as the unsolicited comments, gestures, or other forms of speech that persons, more commonly, women, receive while moving about in the streets.² The issue of street harassment is not new; it is a phenomenon that women face every day when they go to school, commute to work, or perform any activity which involves stepping into the streets to get to one place to another. However, legal and academic discussions on the topic have only recently taken place. In the

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1. Michelle R. Obama, Former First Lady of the United States of America, Remarks by the First Lady at the Summit of the Mandela Washington Fellowship for Young African Leaders at the Omni Shoreham Hotel Washington, D.C. (July 30, 2014) (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2014/07/30/remarks-first-lady-summit-mandela-washington-fellowship-young-african-le> (last accessed Nov. 30, 2018)).
 2. See Stop Street Harassment, What is Street Harassment, available at <http://www.stopstreetharassment.org/about/what-is-street-harassment> (last accessed Nov. 30, 2018).

Philippines, a quick online search shows that the conversation on catcalling — a form of street harassment — in the country only started in 2014. A poster uploaded to Facebook by Mica Cruz in 2014 gives examples of various statements, which she terms as “catcalling,” and calls harassers out: “*Hindi ito okay.*”³ The poster is in *Taglish*, clearly trying to reach out not only to women who are victims of catcalling, but also men who perpetuate the same.

The experience of street harassment is not exclusive to the Philippines. It is a reality faced by women in other countries. In some parts of South Asia, such as India, Pakistan, Bangladesh, and Nepal, the act of harassment in the streets is called “eve teasing.”⁴ In Bangladesh, its High Court disregarded the euphemism as it downplayed the issue and, instead, labeled the same as sexual harassment. The term *taharrush*, translated as harassment, or *taharrush jinsi* and *taharrush gamea*, are forms of street sexual harassment in Arab countries.⁵ In Mexico, they are called *piropos*.⁶ In the United States (US), a woman uploaded a two-minute video entitled, “10 Hours of Walking in NYC as a Woman,” which depicted a woman being catcalled and harassed in the streets of New York City.⁷ Her appearance was commented on, as

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3. This translates to “This is not okay.” Frankie Concepcion, Catcalling: The hidden threat and prejudice, *available at* <http://www.rappler.com/move-ph/issues/gender-issues/93875-catcall-classicism-prejudice> (last accessed Nov. 30, 2018).
 4. Nidhi Dutt, Eve teasing in India: Assault or harassment by another name, *available at* <http://www.bbc.com/news/magazine-16503338> (last accessed Nov. 30, 2018).
 5. Corey Charlton, The Arabic gang-rape ‘Taharrush’ phenomenon which sees women surrounded by groups of men in crowds and sexually assaulted... and has now spread to Europe, *available at* <http://www.dailymail.co.uk/news/article-3395390/The-Arabic-gang-rape-Taharrush-phenomenon-sees-women-surrounded-groups-men-crowds-sexually-assaulted-spread-Europe.html> (last accessed Nov. 30, 2018).
 6. Daniel Serrano, Can New Laws Stop Men from Harassing Women in Public, *available at* https://www.vice.com/en_us/article/can-laws-stop-men-from-harassing-women-in-public-617 (last accessed Nov. 30, 2018).
 7. Rob Bliss Creative, Video, 10 Hours of Walking in NYC as a Woman, YOUTUBE, Oct. 28, 2014, *available at* <https://www.youtube.com/watch?v=b1XGPvbWnoA> (last accessed Nov. 30, 2018).

several men attempted to follow her or start a conversation with her.⁸ These escalated to angry remarks when their advances were not heeded.⁹

On 13–18 February 2016, the Social Weather Station (SWS) Safe Cities Quezon City Survey was conducted by the Social Weather Stations as part of the United Nations WOMEN Safe Cities Programme that focused on sexual harassment and violence committed against women in public spaces.¹⁰ It was considered the “first baseline data of [such] kind in the Philippines.”¹¹ The study was conducted in Quezon City, specifically, in two *barangays*: Barangay Bagong Silang and Barangay Payatas.¹² It had a sample size of 800 respondents, with 400 respondents from each barangay, composing of 200 males and 200 females, aged 12 to 75 years old.¹³

In terms of perception of safety at the barangay-level, the results show that while both men and women generally feel safe in the two barangays, men feel safer (49%) than women (45%).¹⁴ At the city-level, one in two respondents are unsure of their safety in Quezon City, with more women feeling more unsafe (56%) than men (49%).¹⁵ The study further inquired into the prevalence and incidence of sexual harassment. The results are as follows: “[three] in [five] women have experienced sexual harassment at least once in their lifetime; 88% of women 18 [to] 24 [years old] have experienced [sexual harassment] at least once in their lifetime.”¹⁶ Over 34% of women experience the worst forms of [sexual harassment] (flashing, public masturbation[, and groping]).¹⁷ Furthermore, “[one out of seven] women [has] experienced

8. *Id.*

9. *Id.*

10. Social Weather Stations, et al., Safe Cities Quezon City: Baseline Study Results 3 (A Presentation of Key Findings of SWS), available at https://www.sws.org.ph/downloads/media_release/pr20160311%20%20Baseline%20Study%20Topline%20Results%20FINAL.pdf (last accessed Nov. 30, 2018) [hereinafter Safe Cities Quezon City].

11. Social Weather Stations, SWS presents key findings of Survey on Sexual Violence against Women and Girls in Quezon City at UN WOMEN Presscon, available at <https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20160525150531> (last accessed Nov. 30, 2018).

12. Safe Cities Quezon City, *supra* note 10.

13. *Id.*

14. *Id.* at 7.

15. *Id.* at 8.

16. *Id.* at 9.

17. *Id.*

sexual harassment at least once every week in [just] the past year.”¹⁸ Out of these incidences, “70% of sexual harassment comes from a complete stranger.”¹⁹ Lastly, “58% are experienced on the *streets, major roads, and[,] eskinitas* with majority of physical [sexual harassment] happening in *public transport*.”²⁰ This clearly indicates that the majority of the incidence of street harassment happens in public. Furthermore, contrary to public notion, most of these incidents happen in broad daylight, with 70% of such experiences “during the day (6 a.m. to before 6 p.m).”²¹

As to the responses to the harassment, around 50% of women did not do anything after being harassed, while 20% did not do anything after being overcome by fear.²² According to the survey, the top four reasons for doing nothing were:

- (1) What happened was just [m]inor or [n]egligible (39%);
- (2) I [w]ould [b]e [i]n [g]reater [d]anger [i]f I [t]ake [a]ny [a]ction (23%);
- (3) Nothing [w]ould [h]appen [a]nyway (20%);
- (4) I [w]as [s]tunned/[o]vercome by [f]ear (20%).²³

This part of the survey exposes the difficulty in reporting incidents of sexual harassment. The tendency is to downplay the sexual violence committed for the sake of convenience (numbers 1 and 3), which then leads to impunity. Other reasons are legitimate fear or concern for safety (numbers 2 and 4). Apart from these reasons, this Note further inquires into other factors that make it even more difficult to report incidences of different forms of sexual violence.

On the topic of victim-blaming, on one hand, more women (27%) than men (21%) agree that it is the women’s fault why they get harassed and that there are women who deserve to be harassed; similarly, more women (40%) than men (36%) believe that how women are dressed is the cause for the harassment.²⁴ While there are those who *do not* blame the victims for the

18. Safe Cities Quezon City, *supra* note 10, at 10.

19. *Id.* at 11.

20. *Id.* at 12.

21. *Id.* at 13.

22. *Id.* at 14.

23. *Id.*

24. Safe Cities Quezon City, *supra* note 10, at 19–20.

sexual harassment committed against them,²⁵ the numbers are still significant enough to show that victim-blaming exists, wherein more women blame themselves or fellow women for sexual harassment, and that this may also be a reason why street sexual harassment goes unreported.

On the other hand, three out of five men “have admitted to committing a form of sexual harassment at least once in their lifetime.”²⁶ These come in the forms of “wolf-whistling,” lascivious language, stalking, voyeurism, groping, touching and rubbing, catcalling, indecent gestures, exhibitionism and public masturbation, sending pornographic videos or photos, and cyberviolence.²⁷ The graphs show that wolf-whistling, lascivious language, and catcalling are the most predominant forms of sexual harassment committed.²⁸ This lends to the fact that these forms of sexual harassment in public often go unpunished such that, apart from being easy to commit, they are also often neglected forms of street harassment. The survey shows that “men commit sexual harassment regardless of their educational background or employment status[,]” and that “[one out seven (or 15%) of men] commit sexual harassment [on a daily basis] in the past year.”²⁹

In terms of sanctions, over 80% of women replied that they will be more inclined to report incidents of sexual harassment because of sanctions imposed by the Quezon City Anti-Catcalling Ordinance,³⁰ while “70% of [the] self-admitted perpetrators believe that the sanctions will help deter them from committing sexual harassment again.”³¹

It appears that, while the conversation of catcalling in the Philippines has only started, the phenomenon has always been prevalent in the experiences

25. *Id.*

26. *Id.* at 16.

27. *Id.*

28. *Id.*

29. *Id.* at 17-18.

30. Safe Cities Quezon City, *supra* note 10, at 25 & Ordinance No. SP-2501, S-2016, *Sangguniang Panlungsod* of Quezon City, An Ordinance Amending Ordinance No. SP 1401, S-2004, Entitled “An Ordinance Providing For a City Gender and Development Code, and For Other Purposes,” to Harmonize with the Provisions of Republic Act No. 9710, Otherwise Known as “The Magna Carta of Women,” and to Adopt the UN Women’s Safe Cities and Safe Public Spaces Initiative, Gender, and Development Code [Quezon City Anti-Catcalling Ordinance] (May 16, 2016).

31. Safe Cities Quezon City, *supra* note 10, at 25.

of Filipinas, so much so that it has become normalized. Because of the detrimental effects of such practice, it is an issue which must be addressed.

B. Statement of the Problem

Having discussed the background of the study, this Note tackles the issue of whether the Philippines needs an Anti-Street Harassment Law. More specifically, on one hand, the Note tries to answer the question: Is street harassment addressed by current laws such that an Anti-Street Harassment Law can be said to exist?

Proceeding from an initial query, if an Anti-Street Harassment Law does exist or if laws can be interpreted to prevent catcalling, this Note then asks whether these laws are sufficient in terms of addressing street harassment as a form of discrimination and gender-based violence. In relation to this, whether the lack or insufficiency of such laws constitute a violation of the Convention on the Elimination of Discrimination Against Women (CEDAW)³² and the Magna Carta of Women.³³

On the other hand, if an Anti-Street Harassment Law does not exist or is, in fact, insufficient, this Note asks what statutory remedies, new laws, or amendments may be recommended in order to address the catcalling issue. Lastly, another question is posed: What legal problems or barriers face the legislation of such Anti-Street Harassment Law, including its intimate relation to the constitutional protection of the right to freedom of speech, and how are these problems resolved?

C. Definition of Terms

Street harassment covers a wide range of comments, gestures, and actions.³⁴ It often is “sexual in nature,” and comments on a woman’s features or her appearance in the public space.³⁵ It more often happens in large urban cities. Cynthia Grant Bowman, an American legal scholar specializing on law and women, and violence against women, enumerates the “defining characteristics” of sexual harassment, which are:

32. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13.

33. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2008).

34. Cynthia G. Bowman, *Street Harassment and the Informal Ghettoization of Women*, 106 HARV. L. REV. 517, 523 (1993).

35. *Id.*

- (1) the targets of street harassment are female;
- (2) the harassers are male;
- (3) the harassers are unacquainted with their targets;
- (4) the encounter is face[-]to[-]face;
- (5) the forum is a public one, such as a street, sidewalk, bus, bus station, taxi, or other place to which the public generally has access; but
- (6) the content of the speech, if any, is not intended as public discourse.³⁶

In the words of Micaela di Leonardo, a Professor of Anthropology, Gender Studies, and Performance Studies in Northwestern University, Illinois, street harassment

occurs when one or more strange men accost one or more women ... in a public place which is not the woman's/women's worksite. Through looks, words, or gestures[,] the man asserts his right to intrude on the woman's attention, defining her as a sexual object, and forcing her to interact with him.³⁷

Stop Street Harassment (SSH), a non-profit organization “dedicated to documenting and addressing and ending gender-based street harassment worldwide,”³⁸ regularly updates their working definition of street harassment, which is

unwanted comments, gestures, and actions forced on a stranger in a public place without their consent and is directed at them because of their actual or perceived sex, gender, gender expression, or sexual orientation.

Street harassment includes unwanted whistling, leering, sexist, homophobic or transphobic slurs, persistent requests for someone's name, number or destination after they've said no, sexual names, comments and demands, following, flashing, public masturbation, groping, sexual assault, and rape.³⁹

More importantly, SSH also defines street harassment as a human rights issue as it “limits harassed persons' ability to be in public, especially women's,”⁴⁰ citing the United Nations' press release on the issue.⁴¹

36. *Id.* at 523–24.

37. *Id.* at 524 (citing Micaela di Leonardo, *The Political Economy of Street Harassment*, AEGIS, Summer 1981, at 51–52).

38. Stop Street Harassment, *supra* note 2.

39. *Id.*

40. *Id.*

Furthermore, street harassment has been described to be “intimately tied to traditional forms of physical violence against women.”⁴² The speech is either “accompanie[d] [by] physical harm or invasion[,]”⁴³ or “a precursor to legally cognizable and severe harms, including stalking, sexual assault, battery, and rape, according to hundreds of personal stories.”⁴⁴

Laura Beth Nielsen, Professor of Sociology and Director of Center of Legal Studies at Northwestern University, Illinois, categorizes street harassment as a type of “street speech,” along with begging and racist street speech.⁴⁵ In her study, she discusses the premium placed by the American courts upon the protection of speech so that the classification of sexist or racist comments has worked “to normalize and justify such behavior.”⁴⁶ Because speech can only be regulated as an exception to the general rule, her study, supported by empirical data, argues that there is a disjunction between the “problem of [street] harassment” and the “legal intervention to control it.”⁴⁷

As can be surmised from the foregoing definitions, street harassment takes on many forms, but has only a few defining features. Moreover, it has several negative effects upon women as described earlier, including restricting mobility, making it, arguably, a violation of rights. In this Note, the definition used is Bowman’s mentioned above, which presents “defining characteristics” of street harassment without necessarily enclosing the definition as to accommodate different experiences thereof. Moreover,

41. Holly Kearn, 2013 U.N. Commission on the Status of Women, *available at* <http://www.stopstreetharassment.org/2013/05/2013-un-csw> (last accessed Nov. 30, 2018) (citing U.N. Econ. & Soc. Council, *Commission on the Status of Women, Report on the Fifty-Seventh Session*, at 4 & 13-14, 23 U.N. Doc. E/Cn.6/2013/11 (2013)).

42. Sopen B. Shah, *Open Season: Street Harassment as True Threats*, 18 U. PA. J.L. & SOC. CHANGE 377, 380 (2016).

43. *Id.*

44. *Id.*

45. See LAURA BETH NIELSEN, LICENSE TO HARASS: LAW, HIERARCHY, AND OFFENSIVE PUBLIC SPEECH (2004 ed.).

46. *Id.* at 3.

47. *Id.*

several feminist legal theorists who have written in the area have used such definition.⁴⁸

D. Objectives of the Study

This Note seeks to examine the status of current laws on street harassment through enumerating the relevant laws which subsume street harassment and proceeding to an elemental analysis of such laws. Seeing that such domestic laws are lacking or insufficient, this Note examines such inadequacy in light of the Philippines' commitment to create national policies and measures to address inequality, discrimination, and gender-based violence committed against women, under the CEDAW.⁴⁹ Properly, as a consequence thereof, this Note also endeavors to provide or recommend legal measures in answer to the findings of the study.

It is submitted that through this legal work, the rights of women to access to the streets and to protection from sexual violence may be further addressed, not only as a problem faced by Filipino women, but by half of the total population of the world.

In relation to this, this Note undertakes to throw light on some arguments against the creation of an Anti-Street Harassment Law namely: (1) excusing such type of speech as a compliment or a display of admiration, or that such is merely trivial, and (2) legal arguments including the nature of street harassment as protected speech vis-à-vis the right to freedom of speech, which is a highly-regarded constitutional right,⁵⁰ or else such a law would be a violation of the right to due process and equal protection of laws.

More importantly, the Note seeks to de-normalize street harassment, to put an emphasis on its consequences, and to put it in discussion as a prevalent issue, apart from sexual harassment, or those which happen in controlled settings and circumstances. That the laws prescribe a certain relationship or standard to exist in order to be classified as sexual harassment or violence does not mean that harassment cannot take place outside school, workplace, or a relationship. Lastly, the Note hopes to increase the understanding and critical thinking on street harassment and the limits of freedom of speech.

48. Norma Anne Oshynko, *No Safe Place: The Legal Regulation of Street Harassment*, at 26-27 (May 2002) (unpublished LL.M. thesis, University of British Columbia).

49. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32.

50. *Gonzales v. Commission of Elections*, 27 SCRA 835, 873 (1969).

E. Significance of the Study

Street harassment poses a threat to women because — even if the substance of the language itself may be neutral — street harassment exists in the same spectrum as several other acts of sexual violence against women and, in fact, may be considered as a prelude to such other acts of sexual violence.⁵¹ Worse, its perpetrators are often left unpunished by the law.

Verbal street harassment is a form of gender-based hate speech. While the definition of hate speech depends largely on the policy of the jurisdiction under consideration, the prohibition generally covers “speech which intimidates, stigmatizes, abuses, denigrates, or inflicts intentional emotional distress on individuals or groups on the basis of race, color, national or ethnic origin, alienage, *sex*, gender identity, religion affectional orientation/preference, disability, or other characteristics *unrelated to individual merit*.”⁵² The speech is used against a person on the basis of the specific social group where one belongs, being viewed as a subordinate group. Hate speech is a form of discrimination, which is a display of power over and prejudice against marginalized groups in the form of prejudice. Street harassment as hate speech is committed when women, as a particular social group, become targets of men’s seemingly harmless comments. While the content of the speech may not be necessarily discriminatory or prejudicial, the power to intrude upon a woman’s personal space in a public arena is a display of historical and deep-rooted sexism and misogyny, which can only be done by men. According to Nielsen,

[t]he effects of street harassment are significant. It is not simply a reminder of lower status for the target. Instead, ... street harassment results in precautions people take to avoid being made a target. Taken together, the study of ... sexist street speech[] ... provide the basis for a sociological inquiry into the nature of being in public.⁵³

Street harassment is a form of gender-based violence committed against women. Violence committed against women, under the General

51. NIELSEN, *supra* note 45, at 1.

52. MARTHA T. ZINGO, *SEX/GENDER OUTSIDERS, HATE SPEECH, AND FREEDOM OF EXPRESSION I* (1998) (emphases supplied).

53. NIELSEN, *supra* note 45, at 6.

Recommendations made by the Committee on the Elimination of Discrimination Against Women,⁵⁴ is defined as

violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental[,] or sexual harm or suffering, threats of such acts, coercion[,] and other deprivations of liberty. Gender-based violence may breach specific provisions of the [CEDAW], regardless of whether those provisions expressly mention violence.⁵⁵

...

[Moreover, it is] one of the crucial social mechanisms by which women are forced into a subordinate position compared with men[.]

Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of [women's full advancement.]⁵⁶

The Declaration on the Elimination of Violence Against Women, further states that gender-based violence constitutes a violation of human rights and a form of discrimination against women.⁵⁷ Article 1 states —

[It] means [all] act[s] of gender-based violence that result[] in, or [are] likely to result in, physical, sexual, psychological[, or economic] harm or suffering to women, including threats of such acts, coercion[,] or arbitrary deprivation of liberty, whether occurring in public or in private life.⁵⁸

...

[It encompasses] ... [p]hysical, sexual[,] and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment[,] and intimidation at work, in educational institutions and elsewhere[.]⁵⁹

54. Comm. on the Elimination of Discrimination Against Women, *CEDAW General Recommendation No. 19, Eleventh Session* (1992), U.N. Doc. A/47/38 (1992).

55. *Id.* ¶ 6.

56. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993), pmb.

57. *Id.*

58. *Id.* art. 1.

59. *Id.* art. 2 (b).

[It also includes] [p]hysical, sexual[,] and psychological violence perpetrated or condoned by the State, wherever it occurs.⁶⁰

Because street harassment promotes an atmosphere where the perpetrators invade the private space of women without their consent, women are placed in a vulnerable position whereby something as simple as walking down the street may turn into a violent encounter. Gender-based street harassment in the form of street harassment exists in a spectrum of violence.⁶¹ Escalation from verbal to physical harassment is a real and continuing threat.

It is important, moreover, to re-conceptualize the idea of violence against women. In the Anti-Violence Against Women and Their Children Act of 2004 (Anti-VAWC Act),⁶² violence against women is defined as

any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment[,] or arbitrary deprivation of liberty.⁶³

This necessarily limits, in the Philippine context, the concept of violence against women as an act, which may be committed only when the woman is in a relationship as enumerated in the definition. This is understandable because, in the Philippines, the movement to protect women against violence is rooted in the domestic context, or one where the family setup allows for husbands to abuse their wives physically, emotionally, and even economically.

However, as evidenced in the promulgation of the CEDAW and DEVAW, there is a growing movement internationally to recognize a broad concept of violence against women as *any* type of violence committed on

60. *Id.* art. 2 (c).

61. Stop Street Harassment, Why Stopping Street Harassment Matters, *available at* <http://www.stopstreetharassment.org/about/what-is-street-harassment/why-stopping-street-harassment-matters> (last accessed Nov. 30, 2018).

62. An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes [Anti-Violence Against Women and Their Children Act of 2004], Republic Act No. 9262 (2004).

63. *Id.* § 3 (a).

the basis of the woman's sex. Evidently, in these definitions, there is no requirement that a woman be inside a specific relationship in order to be a victim of gender-based violence. While this redefinition may entail an amendment of the Anti-VAWC Act, such an approach might be more complex as it presents itself to be. The punishable acts in the Anti-VAWC Act are predicated on the fact that they are committed inside a relationship — giving justification also for the remedies of protection orders provided in the law — such that a mere change in the definition may also re-conceptualize the law itself, the punishable acts, and the remedies available.

This Note introduces the concept of violence against women in the form of street harassment in a separate law as to show that there are different manifestations of gender-based violence, i.e., one which does not only exist in sexual, dating, employer-employee, and other relationships, but also in those settings where the perpetrator and the victim are strangers to each other or do not have the same relationship as those provided by law already.

Street harassment perpetuates discrimination against women.⁶⁴ Men do not experience the same kind of frequency of harassment in the streets.⁶⁵ In fact, it is hard for “men to empathize with the pain caused by this gender-specific injury.”⁶⁶ Because it is predominantly women who experience street harassment, and because women in general do not have the same equal status with men, the experience, threats, and the “social and legal harms” of street harassment are overlooked.⁶⁷ In a way, street harassment is even more pervasive because it is often overlooked as trivial and harmless by legal and feminist discourse, as will be later discussed. But, as also expounded in the latter chapters, brushing off street harassment as a mere compliment is even more detrimental to women's safety in the streets.

F. Organization of the Study

This Note begins by introducing street harassment, including the history of the terms, the different definitions, their essential elements, and other related terms. This Chapter also includes the definitions to be used specifically for this Note.

64. Bunkosal Chhun, *Catcalls: Protected Speech or Fighting Words*, 33 T. JEFFERSON L. REV. 273, 294-95.

65. *Id.* at 279.

66. *Id.*

67. *Id.*

Chapter II discusses the historical underpinnings of sexual harassment in foreign jurisdictions, and in the Philippines, its definitions and classifications as provided by legal authorities. This includes the legislative history of and evolution of laws on sexual harassment in the Philippines.

Chapter III delves into a discussion of the statutes which may subsume catcalling, which are: the Anti-Sexual Harassment Act of 1995,⁶⁸ the Anti-VAWC Act,⁶⁹ the Anti-Child Abuse Act,⁷⁰ and articles of the Revised Penal Code (RPC) on Rape,⁷¹ Acts of Lasciviousness,⁷² Libel and Defamation,⁷³ and Unjust Vexation,⁷⁴ enumerating the elements thereof, discussing them vis-à-vis street harassment as punishable acts, and explaining how such laws cannot amply protect women from the negative impacts of street harassment.

Chapter IV discusses the need for an Anti-Street Harassment Law. It initially discusses the different types of harms it produces and proceeds to discuss street harassment vis-à-vis other rights of persons such as the rights to equal protection under the laws and against discrimination, to privacy, and to travel. The same Chapter also discusses the State's constitutional policy on the role of women in nation-building, the declaration of policy under several pro-women laws, and under international conventions such as the CEDAW.

68. An Act Declaring Sexual Harassment Unlawful in the Employment, Education, or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995).

69. Anti-Violence Against Women and Their Children Act of 2004 (2004).

70. An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation, and Discrimination, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610 (1992) & An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as Amended, Otherwise Known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act", Republic Act No. 9231 (2003).

71. An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for this Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes [The Anti-Rape Law of 1997], Republic Act No. 8353 (1997).

72. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 336 (1932).

73. *Id.* arts. 353-55.

74. *Id.* art. 287, ¶ 2.

Chapters V and VI outline arguments against regulating or penalizing street harassment which may be anticipated in providing legal remedies therefor, including among others: (1) the right to freedom of speech, and (2) the perceived subjectivity underlying the punishment of street harassment, including the argument that street harassment is a compliment. The Chapter on the right to freedom of speech discusses the relevant laws and jurisprudence on the history and nature of freedom of speech in the Philippines, and the exceptions thereto, in the form of unprotected speech.

Having established that Philippine legislation is deficient in protecting women from street harassment, and that it may, in fact, be subject to regulation, Chapter VII discusses the recommendations and propositions of this Note after the preceding findings.

II. SEXUAL HARASSMENT AND CATCALLING: AN INTRODUCTION AND DEFINITION

A. Sexual Harassment in the Philippines and in the International Context

The term “sexual harassment” is a new addition to the English vocabulary. In the US, prior to the 1980s, there were no laws punishing sexual harassment in the workplace — the term itself was unheard of.⁷⁵ Sexual harassment, in the context of employment, only became illegal upon the establishment of the Equal Employment Opportunities Commission (EOCC) under Civil Rights Act of 1964, which created rules and guidelines on sexual harassment.⁷⁶ The term was nowhere found in the law, but women contended that sexual harassment was a form of sexual discrimination, and therefore punishable. In 1980, the EOCC issued guidelines which categorize sexual harassment as sexual discrimination, and in 1986, the US Supreme Court upheld the same view.⁷⁷

In international law, sexual harassment has been recognized by the United Nations (U.N.) and other international systems as a form of discrimination and violence against women. The U.N. General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women provides that violence includes sexual harassment, which is

75. Dante Miguel Cadiz, *The Law on Sexual Harassment: A Focus on Employer's Liability*, 40 ATENEO L.J. 26, 27 (1996).

76. *Id.* (citing WILLIAM PETROCELLI & BARBARA KATE REPA, SEXUAL HARASSMENT ON THE JOB 1-20 (1991)).

77. Cadiz, *supra* note 75, at 28 (citing Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986)).

prohibited at work, in educational institutions, and elsewhere.⁷⁸ The CEDAW, moreover, directs States Parties to take appropriate measures to eliminate discrimination against women in all fields.⁷⁹

The International Labour Organization (ILO) has included sexual harassment in the definition of sexual violence, while the African Union and its Subregional Bodies, European Bodies, and the Organization of American States are together in affirming that sexual harassment is a form of sexual violence.⁸⁰ The acknowledgment of sexual harassment as a form of violence, excluding that of the ILO, also acknowledges that sexual harassment may happen in all spheres of a woman's life.

In the Philippines, sexual harassment is punishable under the Anti-Sexual Harassment Law of 1995. The Civil Service Commission Resolution No. 01-0940 further provides for administrative rules on sexual harassment covering government employees.⁸¹ Likewise, women are acknowledged to be the most vulnerable victims of sexual harassment and violence. This is embodied in the Anti-VAWC Act as a policy,⁸² and supported by the recent SWS Safe Cities Survey.⁸³

Expanding the discussion to street harassment, U.N. Women Executive Director Michelle Bachelet wrote —

Whether walking city streets, using public transport, going to school, or selling goods at the market, women and girls are subject to the threat of sexual harassment and violence. This reality of daily life limits women's

78. Declaration on the Elimination of Violence Against Women, *supra* note 57, art. 2 (b).

79. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32, arts. 7-16.

80. U.N. Entity for Gender Equality and the Empowerment of Women, Sources of International Law Related to Sexual Harassment, *available at* <http://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html> (last accessed Nov. 30, 2018).

81. Civil Service Commission, Administrative Disciplinary Rules on Sexual Harassment Cases, Resolution No. 01-0940 [CSC Res. No. 01-0940] (May 21, 2001).

82. *See* Anti-Violence Against Women and Their Children Act of 2004, § 1.

83. Safe Cities Quezon City, *supra* note 10.

freedom to get an education, to work, to participate in politics [—] or to simply enjoy their own [neighborhoods].⁸⁴

However, she maintains that, “despite its prevalence, violence and harassment against women and girls in public spaces remain a largely neglected issue, with few laws or policies in place to address it.”⁸⁵ The lack of research and studies expanding the understanding of street harassment is also affirmed by Hanaa El Moghrabi in her work,⁸⁶ maintaining that street harassment is often overlooked because of its normalization in society, and its negative effects are neglected as a result.⁸⁷

The non-profit organization Stop Street Harassment, which started out as a blog in 2008 and was later on incorporated as an organization in 2012, dedicates itself to “documenting and ending gender-based street harassment worldwide.”⁸⁸ Apart from providing online education regarding street harassment, it also provides intensive research and direct services to victims of street harassment. In their website, it states —

Gender-based street harassment limits people’s access to public spaces and lowers their comfort level there. It can cause people to ‘choose’ less convenient routes and alter their routines[,] give up hobbies and change habits[,] and even quit jobs or move neighborhoods or simply stay home because they can’t face the thought of one more day of harassment.⁸⁹

Catcalling is one such form of street harassment. In the Philippine setting, catcalling is the most predominant form of street harassment, as evidenced by the results of the SWS Safe Cities Survey.⁹⁰ Catcalling may be verbal and non-verbal but remains to be a non-physical contact. Examples of verbal street harassment include “name-calling, propositioning, wolf-whistles, or comments evaluating physical appearance. Examples of catcalling

84. Michelle Bachelet, Making cities safe for women and girls, *available at* <https://www.theguardian.com/global-development/2013/feb/21/making-cities-safe-women-girls> (last accessed Nov. 30, 2018).

85. *Id.*

86. See Hanaa El Moghrabi, *Acceptance in Blame: How and Why We Blame the Victims of Street Harassment*, BEHAVIORAL SCI. UNDERGRADUATE J., Volume No. 2, Issue No. 1.

87. *Id.* at 75.

88. Stop Street Harassment, About, *available at* <http://www.stopstreetharassment.org/about> (last accessed Nov. 30, 2018).

89. Stop Street Harassment, *supra* note 61.

90. Safe Cities Quezon City, *supra* note 10.

as non-verbal expression include leers, winks, physical gestures, or the use of signs to rate physical appearance.”⁹¹

B. Types of Sexual Harassment

Sexual harassment under our laws is defined as an act

committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, train[e]r, 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.⁹²

Evidently, the definition is circumscribed to certain controlled environments and to specific types of relationships, namely, employer-employee, teacher-student, instructor-apprentice, and its variations. It requires, on the one hand, the element of moral ascendancy as the core element.

The Civil Service Commission, on the other hand, defines sexual harassment as “an act, or a series of acts, involving any unwelcome sexual advance, request[,] or demand for a sexual favor, or other verbal or physical behavior of a sexual nature, committed by a government employee or official in a work-[], training[-] or education-related environment[.]”⁹³ In the US, the Equal Employment Opportunity Commission (EEOC) describes sexual harassment as a type of discrimination and provides that it is unlawful to harass a person on the basis of sex.⁹⁴

The types of sexual harassment to be discussed have been drawn from legislative records containing debates relating to the passage of the Anti-Sexual Harassment Law of 1995, as well as from different legal and academic works.

Two types of sexual harassment — specifically in the workplace and controlled environments — are *quid pro quo* harassment and hostile work

91. Chhun, *supra* note 64, at 276 (citing Bowman, *supra* note 34, at 523).

92. Anti-Sexual Harassment Act of 1995, § 3.

93. Civil Service Commission, Administrative Disciplinary Rules on Sexual Harassment Cases, rule III (May 21, 2001).

94. Equal Employment Opportunity Commission, Sexual Harassment, *available at* https://www.eeoc.gov/laws/types/sexual_harassment.cfm (last accessed Nov. 30, 2018).

environment sexual harassment. *Quid pro quo* literally means “something for something.”⁹⁵ It has been described as “sexual blackmail.”⁹⁶ It happens when employment benefits are conditioned upon sexual favors⁹⁷ or unwelcome sexual conduct.⁹⁸ The second type of harassment, hostile work environment, is that which does not “[affect] economic benefits [but] creates a hostile or offensive working environment.”⁹⁹ Unlike in *quid pro quo* harassment, in the latter type, the employee does not experience any tangible work benefit or detriment. Instead, the victim “must endure verbal or physical abuse as part of her employment[.]”¹⁰⁰ To repeat, these types of harassment are exclusive to work settings. Our current legislation, however, as discussed previously, has expanded the application to other types of environments such as schools, universities, and training environments. Still, the present law does not cover sexual harassment in public.

Street harassment, nevertheless, is a type of sexual harassment that occurs in a public atmosphere. It may be committed by either a stranger or even a non-stranger. Although the differences between stranger and non-stranger harassment are evident, the effects of stranger harassment, according to research are more “consistent and significant” on women as compared to non-stranger harassment.¹⁰¹

C. Defining Street Harassment

1. The Different Names and Definitions of Street Harassment

Street harassment, as referred to in this Note, is also called various names by different theorists and writers. According to Norma Anne Oshynko of the University of British Columbia, naming an experience is relevant in recognizing injury and recognizing that there is, indeed, a social problem.¹⁰² The importance of naming street harassment is further discussed in the

95. BLACK'S LAW DICTIONARY 1009 (7th ed. 2000).

96. Lynn T. Dickinson, *Quid Pro Quo Sexual Harassment: A New Standard*, 2 WM. & MARY J. WOMEN & L. 107, 107 (1995) (citing *Carrero v. New York City Housing Authority*, 890 F.2d 569, 579 (2d Cir. 1989) (U.S.)).

97. *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 62 (1986).

98. Dickinson, *supra* note 96, at 107 (citing 29 C.F.R. § 1604.11 (a) (1)-(2) (1995)).

99. *Meritor Savings Bank, FSB*, 477 U.S. at 62.

100. Chrysilla Carissa Bautista, *Sexual Harassment: Bridging the Gender Divide*, 73 PHIL. L.J. 122, 136 (1998).

101. Shah, *supra* note 42, at 381.

102. Oshynko, *supra* note 48, at 24.

subsequent Chapter. Muriel Dimen, an Adjunct Clinical Professor of Psychology at the New York University Postdoctoral Program in Psychotherapy and Psychoanalysis, refers to street harassment as “street hassling.”¹⁰³ It is also referred to as “street remarks” by Elizabeth A. Kissling, a Professor of Women’s and Gender Studies and Communication Studies at Eastern Washington University, and Cheris Kramarae, a Professor at the Center for the Study of Women in Society at the University of Oregon who use such a neutral term in deference to women who actually find such remarks complimentary than harmful.¹⁰⁴

The term “catcalling” is more often used in describing harassment in the city streets of the Philippines only because it is one of the most common form of harassment experienced by women, next to wolf-whistling.¹⁰⁵ In this Note, however, taking precedence from Oshynko, the term “street harassment” is similarly used. Apart from the facts that street harassment has already been settled on by various feminist legal theorists,¹⁰⁶ that “street remarks” is a rather neutral term compared to street harassment,¹⁰⁷ and that harassment ties up with sexual harassment in the workplace,¹⁰⁸ street harassment also carries with it the same sexual connotation as used in the Anti-Sexual Harassment Act of 1995. Moreover, the term street harassment used in the context of unwanted sexual comments and advances in public

103. *Id.* (citing MURIEL DIMEN, SURVIVING SEXUAL CONTRADICTIONS: A STARTLING AND DIFFERENT LOOK AT A DAY IN THE LIFE OF A CONTEMPORARY PROFESSIONAL WOMAN 4 (1986)).

104. Oshynko, *supra* note 48, at 24 (citing Elizabeth Arveda Kissling, *Street Harassment: Language of Sexual Terrorism*, 2 DISCOURSE & SOC’Y 451 (1991) [hereinafter *Language of Sexual Terrorism*]; Elizabeth Arveda Kissling, *Unwanted Attention*, 8 WOMEN & LANGUAGE 25 (1985) [hereinafter *Unwanted Attention*]; Elizabeth Arveda Kissling & Cheris Kramarae, *Stranger Compliments: The Interpretation of Street Remarks*, WOMEN’S STUDIES IN COMMUNICATION, Vol. No. 14, Issue No. 1 [hereinafter *Stranger Compliments*]; Cheris Kramarae, *Speech Crimes Which the Law Cannot Reach or Compliments and Other Insulting Behavior*, in PROCEEDINGS OF THE FIRST BERKELEY WOMEN AND LANGUAGE CONFERENCE (Sue Brenner et al. eds., 1986) [hereinafter *Speech Crimes*]; & Cheris Kramarae, *Harassment and Everyday Life*, in WOMEN MAKING MEANING: NEW FEMINIST DIRECTIONS IN COMMUNICATION (Lana Rakow ed., 1992)) [hereinafter *Harassment and Everyday Life*].

105. Safe Cities Quezon City, *supra* note 10, at 9.

106. Oshynko, *supra* note 48, at 25.

107. *Id.*

108. *Id.*

places has already gained recognition in the Philippines, especially upon the introduction of the proposed bill of Senator Ana Theresia N. Hontiveros.¹⁰⁹ Hontiveros, however, uses the term street and *public spaces* harassment, clearly making a contrast from workplace harassment.¹¹⁰ Using the term “catcalling” also limits the experience to verbal forms of street harassment when, in fact, street harassment also comes in other forms such as stalking or physical street harassment.

Di Leonardo defines street harassment, as earlier discussed, as

when one or more strange men accost one or more women ... in a public place which is not the woman’s/women’s worksite. Through looks, words, or gestures[,] the man asserts his right to intrude on the woman’s attention, defining her as a sexual object and forcing her to interact with him.¹¹¹

Other definitions include those from work of other writers —

[Martha] Langelan ... defined harassment as ‘the use of words, gestures, bodily actions[,] or other means of verbal and nonverbal communication to insult, degrade, humiliate, or otherwise dehumanize women.’ Kissling and Kramarae have defined harassment as consisting of ‘both verbal and nonverbal behaviors, including []wolf-whistles, leers, winks, grabs, pinches, catcalls, and rude comments. The remarks typically comment on the woman’s physical appearance or her presence in public, and are often sexual in nature.’¹¹²

Under the proposed bill of Hontiveros, street harassment is defined as

constitutive of unwanted comments, gestures, and actions forced on a person in a public space without their consent[,] and is directed at them because of their actual or perceived sex, gender, gender expression, or sexual orientation and identity, including but not limited to unwanted cursing, wolf-whistling, cat-calling, leering, sexist, homophobic[,] or transphobic slurs, persistent requests for someone’s name, number[,] and destination after clear refusal, persistent telling of sexual jokes, use of sexual names, comments[,] and demands, following, flashing, public masturbation, groping, stalking, and all analogous cases of sexual harassment and/or

109. An Act Defining Gender-Based Street and Public Spaces Harassment, Providing Protective Measures and Prescribing Penalties Therefor, and for Other Purposes, S.B. No. 1326, 17th Cong., 1st Reg. Sess. (2017).

110. *Id.*

111. Di Leonardo, *supra* note 37.

112. Oshynko, *supra* note 48, at 26 (citing MARTHA LANGELAN & HUGH GARNER, BACK OFF! HOW TO CONFRONT AND STOP SEXUAL HARASSMENT AND HARASSERS 32 (1993) & Stranger Compliments, *supra* note 104, at 75-76).

assault; provided that legitimate expressions of indigenous culture and tradition with no intent to harass shall not be penalized. Public spaces shall include but are not limited to, streets and alleys, public parks, schools, government buildings, malls, bars, restaurants, transportation terminals, public markets, and public utility vehicles.¹¹³

As mentioned earlier, Bowman's definition in this study is adopted.

2. The Experience of Street Harassment in the Filipino Context

a. Filipino Women and Street Harassment

The Safe Cities Initiatives of the U.N., in cooperation with the SWS, conducted the only study focused on street harassment in the streets of the Philippines in 2016.¹¹⁴ Other than this, no other evaluation and recording of the experience of street harassment has been conducted. The Safe Cities Global Initiative is a new program launched by U.N. Women, which aims to eliminate sexual violence and harassment against women and girls in urban public spaces.¹¹⁵ In this sense, there is recognition that street harassment is both a form of sexual violence and a global social issue. The initiative was piloted in 25 cities worldwide, including Quezon City.¹¹⁶ The same initiative in Quezon City launched, in 24 May 2016, a "hackathon" where technology experts devised smartphone applications which may be used to protect women in the streets.¹¹⁷ The winning applications included an application that enables a woman to report harassment to an emergency contact within a push of a button on her phone's lock screen, and another application which guides a woman to the safest, i.e. most crowded, place to avoid being harassed.¹¹⁸

113. S.B. No. 1326, § 3.

114. See Safe Cities Quezon City, *supra* note 10.

115. U.N. Women, Creating safe public spaces, *available at* <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/creating-safe-public-spaces> (last accessed Nov. 30, 2018).

116. Fritzie Rodriguez, The streets that haunt Filipino women, *available at* <http://www.rappler.com/move-ph/124993-sexual-harassment-women-streets> (last accessed Nov. 30, 2018).

117. U.N. Women, Hacking to combat sexual harassment in Philippines, *available at* <http://asiapacific.unwomen.org/en/news-and-events/stories/2016/06/using-technology-to-address-sexual-harassment-of-women-in-public-places> (last accessed Nov. 30, 2018).

118. *Id.*

Despite the lack of empirical data, online platforms have begun an informal collection of street harassment experiences. The Facebook page “Catcalled in the Philippines” is an online medium where anonymous submissions of catcalling or street harassment experiences are posted and shared on the page.¹¹⁹ It presents itself as a support system for women who experienced street harassment.¹²⁰ In an interview conducted by Stop Street Harassment, the page manager stated that “his intention [is] to show that catcalling is not an isolated incident or [that it] happens because of the victim’s fault, but [it is] a social issue that is prevalent and must therefore be addressed.”¹²¹

Unlike other studies done in other jurisdictions, which make a caveat on women who enjoy remarks by strangers as compliments, there are no sources found in the Philippines that present the same sentiments. Articles, interviews, and studies done in Philippine context point to men’s perspectives and treatment when street harassment is discussed as a form of compliment.¹²² It is safe to say that, for women who actually experience them, catcalling and street harassment are inherently viewed negatively in the Philippines, and the difference in experiences lies in the social statuses of the victims and perpetrators. Gabriela, a women’s rights group in the Philippines, clarified in an interview that “[c]atcalling is improper. It is an uncalled-for act that is demeaning to women. In fact, ordinances in Quezon City and even in Davao City saw the need to address this offensive demeanor and included it as one form of sexual harassment[.]”¹²³

This was stated after President Rodrigo R. Duterte wolf-whistled one of the woman reporters present in a conference and after Gabriela party-list

119. See Catcalled in the Philippines, About, FACEBOOK available at <https://www.facebook.com/catcalledinthePH/about> (last accessed Nov. 30, 2018).

120. *Id.*

121. Ken Rodrigo, Philippines: It’s Not Fun to Get Catcalled in the Philippines, available at <http://www.stopstreetharassment.org/2017/02/philippines-not-fun-get-catcalled> (last accessed Nov. 30, 2018).

122. See Social Weather Stations, Baseline Study on the Safety of Women and Girls in Quezon City, at 87 (on file with Author).

123. Aries Joseph Hegina, *Gabriela clarifies: Catcalling ‘improper, demeaning’*, PHIL. DAILY INQ., June 5, 2016, available at <http://newsinfo.inquirer.net/789228/gabriela-clarifies-catcalling-improper-demeaning> (last accessed Nov. 30, 2018).

representative Luzviminda Ilagan stated that catcalling was not a form of street harassment.¹²⁴

b. Sexual Orientation and Street Harassment

Hontiveros' proposed bill identifies members of the lesbian-gay-bisexual-transsexual (LGBT) community as possible victims of street harassment.¹²⁵ Street harassment perpetrated against transmen, lesbian women, and bisexual women is yet an area to be explored in the Filipino experience of street harassment, but this is not to discount them as victims as well. When they are harassed, the effects are two-fold — they are psychologically and emotionally injured just like their women counterparts; at the same time, they are also denied their sexual identities, as they are automatically assumed heterosexual by men when they dress in a particular way.¹²⁶ On the other hand, lesbians who assume more masculine manners and ways of dressing up, experience more violent street harassment because it presents an even more stark reminder that they are not available to men — 86% of lesbians surveyed by theorist Gary Comstock reported that they have been the victims of anti-lesbian verbal harassment as a result of their sexual orientation.¹²⁷ “This harassment included name-calling, insults[,] and threats of violence.”¹²⁸

In 2017, lesbian couple Ymi Castel and Cha Roque shared their experiences of being harassed at a bar on social media —

He stayed beside Ymi even after countless times of telling him to transfer somewhere else. I took a photo of him. His friend, who seemed sober, asked why I was taking a photo when the guy is not doing anything. I told sober friend to just take [the] guy away but he did not respond. I called Kuya Pete's attention and asked him to tell the guys to leave[,] which he did[,] but [the] guy persisted on staying just to finish his beer[.]

Minutes after, he got into a heated discussion with Ymi when she confronted him directly and asked him to go. It was when Ymi threw a tissue at him that he snapped and threw two punches at her (during this time they were outside Saguijo's gate). I ran to them and tried to pull Ymi

124. *Id.*

125. S.B. No. 1326, § 3.

126. Oshynko, *supra* note 48, at 36.

127. *Id.* (citing GARY D. COMSTOCK, VIOLENCE AGAINST LESBIANS AND GAY MEN 41 (1991)).

128. *Id.*

away, he punched me on my left cheek before giving Ymi another punch. This was when roadies and other Saguijo people ran to us.¹²⁹

In an interview, they retorted that the problem was that men did not take lesbian relationships seriously — lesbian couples need to constantly “prove” their relationships in order to be legitimate, and the lesbians in the relationship always had the possibility of being “converted back” into a woman when the right man comes.¹³⁰

c. Class, Privilege, and Street Harassment

The experience of street harassment is undoubtedly intersected by social class and privilege. Different studies have noted that, more often than not, men who work in blue-collar jobs are those who harass women in the streets.¹³¹ This is because they tend to be on the streets more often and therefore have more access to women, than men of white-collar jobs.¹³² There are also studies that suggest that the harassment is a form of expression of hostility against affluent women from economically disadvantaged men.¹³³ Lastly, women tend not to consider comments from affluent men as harassment.¹³⁴

The U.N. Women Safe Cities Initiative in the Philippines was piloted in Quezon City. According to U.N. Women,

[w]ith more than [three] million inhabitants, Quezon [City] is one of the *most populous* of the 16 cities that make up Metropolitan Manila. It also has *one of the largest rates of urban poverty and a high population of informal settler families*. Sexual harassment is prevalent in many public spaces, including [] the [neighborhood] of Payatas, which has a *high level of poverty, unemployment, drug use, trafficking, and robberies*. When women and girls are

129. Aya Tantiangco, Lesbian couple Ymi and Cha, on getting punched for standing up for their rights, *available at* <http://www.gmanetwork.com/news/lifestyle/familyandrelationships/614947/lesbian-couple-y-mi-and-cha-on-getting-punched-for-standing-up-for-their-rights/story> (last accessed Nov. 30, 2018) (citing Cha Roque, Status Update, June 3, 2017, FACEBOOK, *available at* <https://www.facebook.com/cha.cherryred/posts/10155248485014336> (last accessed Nov. 30, 2018)).

130. *Id.*

131. Oshynko, *supra* note 48, at 37.

132. *Id.*

133. *Id.* (citing LANGELAN & GARNER, *supra* note 112, at 61).

134. Oshynko, *supra* note 48, at 37 (citing CAROL BROOKS GARDNER, *PASSING BY: GENDER AND PUBLIC HARASSMENT* 229 (1995)).

robbed in Payatas, they are often grabbed from behind and groped by male perpetrators during the robbery.¹³⁵

Most of the respondents in the survey come from the socio-economic class D (91%), while 7% come from class E.¹³⁶ Evidently, the piloting of the project was done in the area where such an initiative would make the most impact — that is, poverty-stricken Quezon City, specifically the barangay of Payatas. In the Philippines, however, based on the survey, there lies no difference in the incidence of street harassment regardless of educational backgrounds of the perpetrators.¹³⁷

More importantly, women in the lower strata of society, including the working class, more often ply through Philippine urban streets than those of the higher classes. Public transportation is rarely an option for women who have the resources to opt to drive or be driven to their destinations. The result is that street harassment likewise also becomes a class issue.

3. Catcalling

At this point of the Note, it is significant to also recognize that catcalling is the most common form of street harassment in the Filipino context. However, there are sources — periodicals, ordinances, and online articles — which use catcalling and street harassment interchangeably, given the former's commonality.

Catcalling is defined by dictionaries as, “a loud or raucous cry made especially to express disapproval (as at a sports event),”¹³⁸ or a remark of criticism.¹³⁹ Proceeding from these definitions, it is apparent that the word was not originally related to sexist remarks made toward women. Its etymology “denot[es] a kind of whistle or squeaking instrument used to express disapproval at a theater.”¹⁴⁰ It was an instrument, sounding like an

135. U.N. Women, To walk the streets of Quezon City without fear of violence against women, *available at* <http://www.unwomen.org/en/news/stories/2015/12/to-walk-the-streets-of-quezon-city-without-fear-of-violence-against-women> (last accessed Nov. 30, 2018) (emphases supplied).

136. Social Weather Stations, *supra* note 122, at 13.

137. *Id.* at 17.

138. Merriam-Webster Dictionary, Catcall, *available at* <https://www.merriam-webster.com/dictionary/catcall> (last accessed Nov. 30, 2018).

139. *Id.*

140. English Oxford Living Dictionaries, Catcall, *available at* <https://en.oxforddictionaries.com/definition/catcall> (last accessed Nov. 30, 2018).

angry cat as the name denotes, used to “express dissatisfaction in play-houses.”¹⁴¹

As the history of the term implies, catcalling is done in a context of an audience-performer relationship, whether in a sports event or a play.¹⁴² Catcalling is done when an audience is dissatisfied with what he/she sees and against a performer who is meant to be viewed or watched. Placing it in the context of the streets and street harassment, the voyeuristic theme of audience-relationship is translated into a situation where a stranger comments or makes a remark against a woman. However, in this new context, the remarks are not necessarily made out of criticism or dissatisfaction. Instead, it ranges from expressions of what seem to be compliments to threats of a sexual nature. Still, the idea of the performer/woman being the object of someone else’s pleasure or presentation is maintained. Several articles support this development of the term over the years.¹⁴³

a. Catcalling vis-à-vis Street Harassment

Bunkosal Chhun of the Thomas Jefferson School of Law describes catcalling as “a subcategory [of] street harassment.”¹⁴⁴ In this wise, it is relevant to delineate between catcalling and street harassment. The major distinction is the presence of physical danger, to wit —

[C]atcalling, unlike other forms of street harassment, contains no requirement of physical danger — [] although threat of physical danger may be present — [] because the catcaller may be across the street, on the other side of a fence, in a car, or on the second story of a building, with no real access to the target. On the other hand, street harassment often involves a sense of physical danger because the harasser could be walking

141. Online Etymology Dictionary, Catcall, *available at* <http://www.etymonline.com/index.php?term=catcall> (last accessed Nov. 30, 2018).

142. English Oxford Living Dictionaries, *supra* note 140.

143. *See, e.g.*, Shannon Currie, The History (and Future) of Catcall, *available at* <http://www.shedoesthcity.com/the-history-and-future-of-the-catcall> (last accessed Nov. 30, 2018) & Ariel Chates, Don’t Call Me Baby: The History of Catcalling, *available at* <http://gainesvillescene.com/dont-call-me-baby-the-history-behind-catcalling> (last accessed Nov. 30, 2018).

144. Chhun, *supra* note 64, at 276.

closely behind the target, in front of the target obstructing her path, or invading her personal space.¹⁴⁵

This is a relevant distinction, as Chhun continues, because available civil and criminal remedies are accessible to victims of sexual harassment, as opposed to those subject to catcalling.¹⁴⁶

This Note puts emphasis on the verbal elements of street harassment, or more properly, catcalling. In this line, it is also relevant to emphasize that, while the working definition of catcalling or other forms of verbal street harassment excludes the presence of physical danger, it does not exclude the threat thereof and other forms of dangers, such as those that are psychological and mental.

b. Catcalling, Definition, and Essential Elements

A definition of catcalling, again, involves the definition of street harassment. “[C]atcalling is the use of crude language, verbal expression, and non-verbal expression that takes place in public areas such as streets, sidewalks, or bus stops.”¹⁴⁷ Its essential elements include:

- (1) the occurrence in a public arena;¹⁴⁸
- (2) the involvement of non-physical elements of street harassment;¹⁴⁹ and
- (3) the “‘forced communication’ between the catcaller and his target that restricts a person’s behavior as she attempts to avoid further interaction.”¹⁵⁰

The novelty of the term is apparent as its definitions are mostly written in blogs, online news portals, and the like. It is, however, a developing subject, such that the legal world is beginning to define it through recent laws and ordinances. Later discussions explain each of these elements and explore the possibility of changing or adding to such in order to fit the Philippine social and legal context.

145. *Id.* at 278.

146. *Id.* at 276.

147. *Id.*

148. *Id.*

149. *Id.* at 277.

150. Chhun, *supra* note 64, at 277.

III. CONSTRUING EXISTING LAWS AS ANTI-STREET HARASSMENT LEGISLATION

A. *Anti-Sexual Harassment Act of 1995*

The law penalizes all forms of sexual harassment that occurs in the employment, education, and training environments. It presupposes a relationship of authority, influence, or moral ascendancy between perpetrator and victim.¹⁵¹ This is the gravamen of the special law. To fulfill the elements of the crime, the act must be:

- (1) committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, train[e]r, or any other person who, having authority, influence, or moral ascendancy over another;
- (2) in a work or training or education environment;
- (3) that the former demands, requests or otherwise requires any sexual favor from the other; and
- (4) regardless whether the favor is accepted or not.¹⁵²

In a work-related environment, it 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 of 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;
- (2) the above acts would impair the employee's rights or privileges under existing labor laws; or
- (3) the above acts would result in an intimidating, hostile, or offensive environment for the employee.¹⁵³

The first and second ways, Sections 3 (a) (1-2), of committing of the prohibited act are types of *quid pro quo* harassment, while the third, Section 3 (a) (3), may be categorized under the hostile work environment harassment.

On the other hand, in an education or training environment, sexual harassment is committed:

151. *Anti-Sexual Harassment Act of 1995*, § 3.

152. *Id.*

153. *Id.*

- (1) against one who is under the care, custody or supervision of the offender;
- (2) against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
- (3) 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
- (4) when the sexual advances result in an intimidating, hostile[,] or offensive environment for the student, trainee[,] or apprentice.¹⁵⁴

In this type of situation, the third way of committing the offense is *quid pro quo*, while the fourth one is a type of hostile environment harassment.¹⁵⁵

While street harassment may be committed by one having influence or moral ascendancy over another (a man's ascendancy over a woman), street harassment, as defined in this Note, is committed in public spaces, involving persons who do not necessarily have a relationship with one another. The law requires an unequal relationship between the perpetrator and the victim as a prerequisite to its commission. However, most of the time, street harassment is committed by strangers, as evidenced by the SWS Safe Cities Survey.¹⁵⁶ From this basis alone, for not fulfilling a central element, street harassment is outside the scope of the Anti-Sexual Harassment Act of 1995.

The law, moreover, is highly dependent upon the environment where such harassment occurred, such that "if an act which has the nature of sexual harassment is not committed within the environments mentioned, or within the context of the relationships created by these environments, then that act is not punishable under this law."¹⁵⁷

Furthermore, street harassment does not necessitate asking for any sexual favor or request, and it is enough that an unsolicited threat or discriminating remark is made against a woman. The law, additionally, penalizes both men and women. While it is not discounted that sexual harassment is a real threat against men also, the law fails to take into account the gender-based prejudices and violence committed against women, especially in a work or school setting. In a critique of the law, Chrysilla Carissa Bautista of the University of the Philippines College of Law argues that the law is gender-

154. *Id.*

155. Bautista, *supra* note 100, at 134.

156. Safe Cities Quezon City, *supra* note 10.

157. Bautista, *supra* note 100, at 133.

neutral and, therefore, “not enough.”¹⁵⁸ It fails to acknowledge our “grossly gender-biased society.”¹⁵⁹ In the same way, this actually works against an application of the law to street harassment in that it is acknowledged that women are the ones most vulnerable to street harassment.

B. Anti-Violence Against Women and Their Children Act of 2004

Violence against women and their children is the “act or a series of acts ... which result in[,] or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment[,] or arbitrary deprivation of liberty.”¹⁶⁰ It is considered a public crime such that any person may file a complaint.¹⁶¹ Penal provisions under the Anti-VAWC Act of 2004, similar to the Anti-Sexual Harassment Act of 1995, require a certain type of relationship between the perpetrator and the victim — specifically, the person against whom the crime is committed must be a woman who is the perpetrator’s “wife [or] former wife, or ... a woman with whom the [perpetrator] has or had a sexual or dating relationship, or [a woman] with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode[.]”¹⁶²

The law enumerates several ways of committing a criminal act. The violence or may be physical, sexual, psychological, or economic. Specific acts are also enumerated by the act whereby such violence or abuse may be committed. One of the acts under the same is psychological violence, which refers to “acts or omissions causing or likely to cause mental or emotional suffering of the victim such as[,] but not limited to[,] *intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity.*”¹⁶³ While street harassment may properly fall under this form of violence, specifically under the acts emphasized previously, the former is perpetrated in the streets by strangers who commit the acts aforementioned, as opposed to those who are described in the Anti-VAWC Act as perpetrators.

158. *Id.* at 151.

159. *Id.*

160. Anti-Violence Against Women and Their Children Act of 2004, § 3 (a).

161. *Id.* § 25.

162. *Id.* § 3 (a).

163. *Id.* § 3 (a) (C) (emphases supplied).

Moreover, the Anti-VAWC Act cannot respond to the fact that most of street harassment are done outside a relationship. “[S]tranger harassment has a more consistent and significant impact on women’s fears than non-stranger harassment: for example, it inspires fear while ‘walking alone at night [and] using public transportation.’”¹⁶⁴ The Anti-VAWC Act fails to acknowledge that harassment and violence may exist in a situation where the perpetrator is unknown to the victim. The reason for the law’s lack of awareness is unclear, evident from the absence of any explanation in the Act’s declaration of policy.¹⁶⁵ While the law is not an exclusive list of punishable acts,¹⁶⁶ under the principle of *ejusdem generis*, the relationship requirement remains to be indispensable.

C. Anti-Child Abuse Law

The Anti-Child Abuse Law punishes habitual or non-habitual maltreatment of children.¹⁶⁷ The said law defines “children,” and limits the victims “person[s] below [18] years of age[,] or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition[.]”¹⁶⁸ Punishable acts of child abuse include:

- (1) [p]sychological and physical abuse, neglect, cruelty, sexual abuse[,] and emotional maltreatment;
- (2) [a]ny act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) [u]nreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) [f]ailure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.¹⁶⁹

164. Shah, *supra* note 42, at 381 (citing Kimberly Fairchild & Laurie A. Rudman, *Everyday Stranger Harassment and Women’s Objectification*, 21 SOC. JUST. RES. 338, 341 (2008)) (emphasis supplied).

165. Anti-Violence Against Women and Their Children Act of 2004, § 2.

166. *Id.* § 3 (a).

167. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 3 (b).

168. *Id.* § 3 (a).

169. *Id.* § 3 (b) (1-4).

The law further provides a catch-all provision which includes being “responsible for other conditions prejudicial to the child’s development[.]”¹⁷⁰

At the outset, the act of street harassment, to fall under this law, must comply with the initial condition of the victim being legally identified as a child, as defined in a previously quoted passage. On this point alone, street harassment, whose victims are women, cannot altogether be protected from harassment, which may arguably fall under the second way of committing child abuse, i.e. “[a]ny act by deeds or words which debases, degrades[,] or demeans the intrinsic worth and dignity of a child as a human being[.]”¹⁷¹ While young girls and women who fall under the statute’s definition of children benefit from this law, it does not afford any protection against street harassment for those who do not qualify as children.

Furthermore, the street harassment must be of such nature as to deprive a child of a surrounding which will enable him or her to achieve the fullest development physically, mentally, emotionally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.¹⁷² This is the policy of the Anti-Child Abuse Law.¹⁷³ However, while street harassment may be recurring, repeated, or a series of acts, it does not dispense of the possibility of it being a one-time act only. As a result, the situation contemplated by the law — the deprivation of a healthy and safe environment as to foster development — may not necessarily be the effect of street harassment. This does not dispense of the fact that street harassment may cause emotional harm to a girl as to hinder development. However, the Anti-Child Abuse Law addresses, more specifically, a *recurring* impediment that would obstruct the healthy development of a child.

The difference of the setting and circumstances – street harassment being performed on the streets – as well as the limitations on repetition and frequency, effectively remove the same under the protection of the existing law.

170. *Id.* § 10 (a).

171. *Id.* § 3 (b) (2).

172. *See* Declaration of the Rights of a Child, G.A. Res. 1386 (XIV), U.N. Doc. A/4059 (Nov. 20, 1959).

173. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 2.

D. Crimes Under the Revised Penal Code

I. Rape and Acts of Lasciviousness

Both felonies — rape and acts of lasciviousness — provide strict parameters to qualify an act as punishable. For rape, carnal knowledge or sexual assault is necessary. Rape has already been amended by the Anti-Rape Law of 1997, which has made it applicable to men as well. Rape is committed:

- (1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - (a) Through force, threat, or intimidation;
 - (b) When the offended party is deprived of reason or otherwise unconscious;
 - (c) By means of fraudulent machination or grave abuse of authority; and
 - (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
- (2) By any person who, under any of the circumstances mentioned in paragraph [one] hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.¹⁷⁴

Acts of lasciviousness, on the other hand, has acts of lewdness as an element. Its elements are:

- (1) that the offender commits any act of lasciviousness or lewdness;
- (2) that it is done:
 - (a) by using force and intimidation or
 - (b) when the offended party is deprived of reason or otherwise unconscious, or
 - (c) when the offended party is under 12 years of age; and
- (3) that the offended party is another person of either sex.¹⁷⁵

174. The Anti-Rape Law of 1997, § 2.

175. *Sombilon, Jr., v. People*, 601 SCRA 405, 414 (2009).

Acts of lewdness, under the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases¹⁷⁶ include:

the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, *bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person*[.]¹⁷⁷

Both felonies also necessitate that the act be accompanied by any of the circumstances provided, else such act will not be punished under rape or acts of lasciviousness.¹⁷⁸ Moreover,

the intent of the offender to lie with the female defines the distinction between attempted rape and acts of lasciviousness. The felony of attempted rape requires such intent; the felony of acts of lasciviousness does not. Only the direct overt acts of the offender establish the intent to lie with the female.¹⁷⁹

In other words, if there is intent to have sexual intercourse, the crime committed may be attempted rape.¹⁸⁰ While sexual gratification may be a purpose of street harassment, it is certainly not an element for its commission. Street harassment may or may not be committed for the object of satisfying sexual gratification. Lastly, the RPC denotes that acts of lasciviousness may be committed with or without the consent of the victim; street harassment, however, is committed only without the consent of the victim.

2. Libel and Slander

The test of whether or not speech or publication is defamatory lies on the effect of such speech to the reputation of a person. Libel is “a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause

176. Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, § 2 (h).

177. *Id.* (emphasis supplied).

178. The Anti-Rape Law of 1997, § 2 & *Sombilon, Jr.*, 601 SCRA at 414 (2009).

179. *Cruz vs. People*, 737 SCRA 567, 571 (2014).

180. *Id.*

dishonor, discredit[,] or contempt of a natural or juridical person, or to blacken the memory of one who is dead.”¹⁸¹

The case of *De Leon v. People of the Philippines*,¹⁸² enumerates the elements of libel and defamation:

- (1) There [is] an imputation of a crime, vice, defect, act, omission, condition, status[,] or circumstance[];
- (2) [The imputation is made] *publicly*;
- (3) [The imputation must be *made*] *maliciously*;
- (4) [The imputation is] directed [against] a natural or juridical person or one who is dead; [and]
- (5) [The imputation] tends to cause [dishonor], discredit[,] or contempt of [a person] or ... tends to blacken the memory of one who is dead.¹⁸³

Its content must be malicious. The protection of reputation is not that which street harassment affects, although it does not preclude the same, depending on the content of the speech. Street harassment need not be malicious, nor does it need to besmirch the reputation of another person which is an essential element of libel and slander.

Street harassment, though done in public, is a “forced” communication with a woman in that, it may be committed even when there is no other person to witness such act. This is antithetical to the requirement that the communication, to be defamatory, must reach a third person or a stranger. In fact, it may even be argued that harassment in the streets happen more invasively when the woman is alone.

3. Unjust Vexation

Paragraph 2 of Article 287 states that “[a]ny other coercions or *unjust vexations* shall be punished by *arresto menor* or a fine ranging from ₱1,000 to ₱40,000, or both.”¹⁸⁴ Unjust vexation is not specifically defined under the RPC. Upon a survey of jurisprudence, however, the offense was applied to several differing punishable acts: a downgrade from offending religious

181. REVISED PENAL CODE, art. 353.

182. *De Leon v. People*, 779 SCRA 84 (2016).

183. *Id.* at 100 (emphases supplied).

184. REVISED PENAL CODE, art. 287 (as amended) (emphasis supplied).

feeling,¹⁸⁵ a downgrade from acts of lasciviousness,¹⁸⁶ a downgrade from light threats,¹⁸⁷ illegal padlocking of premises,¹⁸⁸ illegal taking without intent to gain,¹⁸⁹ and embracing and taking the wrist of a person,¹⁹⁰ among others. In *Maderazo v. People*,¹⁹¹ the Court expounds on the acts which may fall under unjust vexation —

[It] is broad enough to include any human conduct which, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person. Compulsion or restraint need not be alleged in the Information, for the crime of unjust vexation may exist without compulsion or restraint ... The paramount question to be considered is whether the offender's act caused annoyance, irritation, torment, distress[,] or disturbance to the mind of the person to whom it is directed. The main purpose of the law penalizing coercion and unjust vexation is precisely to enforce the principle that no person may take the law into his hands and that our government is one of law, not of men. It is unlawful for any person to take into his own hands the administration of justice.¹⁹²

Article 287 is primarily a law addressed to prohibit persons from taking the law into their own hands. The crime is a catch-all provision for acts not contemplated. Its nature as a catchall provision could not possibly address the pervasiveness nor provide sufficient relief, beyond criminal prosecution, of street harassment. The law and jurisprudence, considering the plethora of cases filed as unjust vexation, fails to provide a standard of annoyance and vexation necessary to convict under the paragraph two of Article 287. To be sure, annoyance and vexation are states of mind which need to be proven beyond reasonable doubt as elements of the crime.

Mere annoyance and vexation are insufficient to capture the grave psychological and possibly physical consequences of street harassment such as

185. See, e.g., *People v. Nanoy*, 69 O.G. 8043 (1972); *U.S. v. Tamarra*, 21 Phil. 143 (1912); *People v. Reyes*, 60 Phil. 369 (1934); & *Andal v. People*, 27 SCRA 608 (1999).

186. See, e.g., *People v. Gilo*, 10 SCRA 753 (1964).

187. See, e.g., *People v. Carreon*, 5 SCRA 252 (1962).

188. See, e.g., *Maderazo v. People*, 503 SCRA 234 (2006).

189. See, e.g., *People v. Reyes*, 98 Phil. 646 (1956).

190. See, e.g., *People v. Abuy*, 5 SCRA 222 (1962).

191. *Maderazo v. People*, 503 SCRA 234 (2006).

192. *Id.* at 247-48 (citing GUILLERMO B. GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE OF THE PHILIPPINES 565 (4th ed.); *People v. Reyes*, 60 Phil. 369 (1934); & *People v. Nebreja*, 76 Phil. 119 (1946)).

intimidation or prevention of access to public streets. According to Bowman, the test is whether or not the effect “rises above the ordinary annoyances” that people experience in the streets.¹⁹³

Lastly, while there are acts of street harassment which may be categorized as unjust vexation, unjust vexation is impotent as to capture the gender-based violence aspect of street harassment. Street harassment ultimately includes a sexual element and connotation, which is not necessarily required in the commission of unjust vexation. In brief, it does not work to deter discrimination against women which is the purpose of recognizing that street harassment is committed primarily against women.

E. Redress Through Civil Actions

Finding redress for injuries caused by street harassment is similarly ineffective because: (1) quasi-delicts and tort laws prescribe the existence of direct and material damage; (2) quasi-delicts and tort laws prescribe the existence of a direct causal relationship between the act and the injury; and (3) civil remedies tend to individualize the effect of the experience of street harassment.

The Civil Code provides for redress against damages caused by the commission of quasi-delicts, which is defined as “act[s] or omission[s] [which] cause[] damage to another, there being fault or negligence.”¹⁹⁴ According to *Chan, Jr. v. Iglesia ni Cristo*,¹⁹⁵ the elements of a quasi-delict are:

- (1) there must be an act or omission;
- (2) such act or omission causes damage to another;
- (3) such act or omission is caused by fault or negligence; and
- (4) there is no pre-existing contractual relation between the parties.¹⁹⁶

The forms of street harassment can produce injury amounting to both actual and moral damages against the victim. The only requirement is that she produces proof of such injury. Tort law also offers some kind of redress to a woman as a result of street harassment. However, similar to our criminal laws, they do not suffice. Under Canadian tort law,

193. Bowman, *supra* note 34.

194. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 2176 (1950).

195. *Chan, Jr. v. Iglesia ni Cristo*, 473 SCRA 177 (2005).

196. *Id.* at 186.

the tort of assault allows individuals to sue anyone who, by way of a direct and intentional act, causes them to reasonably apprehend the infliction of immediate, unlawful force. Unfortunately, as with uttering threats, the tort of assault requires both intent and reasonable apprehension of fear. An earlier discussion indicated that both of these criteria will prove difficult for women who have been harassed.¹⁹⁷

The same may similarly be said in the context of Philippine tort law as applied to street harassment. Because of the nature of street harassment, proof of material injury are not easily seen and proven. This is because, while there are physical forms, verbal forms are still the predominant modes of street harassment. The same can be said for the proof necessary to show the causal relationship between the act and injury.

Civil actions are actually more favored in our jurisdiction as opposed to filing criminal actions. This is because there is a lower quantum of evidence required in civil cases (preponderance of evidence), than in criminal cases (proof beyond reasonable doubt). Moreover, a private law is more beneficial to women as they have control over the litigation.¹⁹⁸ The drawbacks, however, outweigh its promises of personalized litigation:

- (1) Women with lesser means cannot easily afford filing civil cases; this is of particular importance in this jurisdiction as most of the women who access public spaces come from the lower classes of society;¹⁹⁹
- (2) Monetary damages as penalty offer little to change the attitudes of the harassers, and nominal damages may be hard to quantify;²⁰⁰ and
- (3) “[C]ivil law tends to individualize the systemic problem of sexual harassment” because tort law is a remedy for individual injury and violation of rights such that the recognition of street harassment as a social problem may not be successful.²⁰¹

The right to privacy is similarly protected under Article 26 of the Civil Code. Such provision of law

197. Oshynko, *supra* note 48, at 73 (citing ALLEN M. LINDEN, CANADIAN TORT LAW 42-45 (1993)).

198. Oshynko, *supra* note 48, at 81.

199. *Id.* at 82.

200. *Id.*

201. *Id.*

grants a cause of action for damages, prevention, and other relief in cases of breach, though not necessarily constituting a criminal offense, of the following rights: (1) right to personal dignity; (2) right to personal security; (3) right to family relations; (4) right to social intercourse; (5) right to privacy; and (6) right to peace of mind.²⁰²

The right is elaborated further in the following Chapter, but suffice to say that the same individualizing effect of the redress of an otherwise social problem will be encountered if street harassment can only be treated under such tort law.

IV. ANALYSIS: THE NEED FOR A LAW AGAINST STREET HARASSMENT FOR THE PROTECTION OF WOMEN

A. The Harms of Street Harassment Against Women

The harmful effects of street harassment may be classified into different levels. At the personal level, the effects of street harassment to the victim herself is discussed — these are the physical, emotional, psychological, and even intellectual effects of being harassed in public, as illustrated in different academic and scientific studies. At the relationship-level, the conflicts and the consequences on the relationship between men, the common perpetrators of the act, and the women, the victims, are discussed. Lastly, at the societal-level, the effects of unrestrained street harassment on society and culture are explored, taking into account the culture of rape and violence against women already in place. In this analysis, it is significant to note that effects of street harassment are not confined to effects to its victims but affects society as a whole and the treatment of women as well.

I. Personal-level

a. Initial Responses are Fear of Rape and Invasion of Privacy

In her article, Bowman states that there are generally two themes that recur when women are asked about their experiences with street harassment: (1) the intrusion of privacy, and (2) the fear of rape.²⁰³ In the spectrum of gender violence, women's fear of street harassment as a "precursor" to rape is not unfounded.²⁰⁴ Women have the tendency to view their harassers in the

202. *Gregorio v. Court of Appeals*, 599 SCRA 594, 606 (1999) (citing I ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, at 96 (1985)).

203. Bowman, *supra* note 34, at 535.

204. *Id.*

streets as a potential rapist because there is no way of knowing whether such stranger is an offender.²⁰⁵ It is also not unfounded because studies show that the incidence of rape or the attempt thereof is high.²⁰⁶ In the Philippines alone, based on police records, the Center for Women’s Resources reported that, last year, one woman or child is raped every 62 minutes.²⁰⁷ The Philippines Statistics Authority (PSA) also reported 4,605 cases of “rape, acts of lasciviousness, [and] attempted and incestuous rape in 2016.”²⁰⁸ The fear is also supported by the phenomenon of “rape-testing,” whereby perpetrators “test” their victims to see their vulnerability and intimidation by making lewd comments.²⁰⁹

The Philippine urban culture is one marked with comfort in unfamiliarity. There is an almost silent agreement that communication and interaction with strangers, while walking in the streets or taking the public transportation, is taboo. Unlike in the rural areas wherein the proximity among the residents makes it possible for people to know each other, and where familiarity allows for regular friendly greetings, it cannot be said to be the same in city streets. People mind their own businesses and avoid interaction with a passerby. Sociologists term this as “the norm of civil inattention.”²¹⁰ Privacy is invaded when there is a breach of this norm: “Central to the freedom to be at ease in public spaces is the capacity to pass through them while retaining a certain zone of privacy and autonomy — a zone of interpersonal distance that is crossed only by mutual consent.”²¹¹ When women are harassed in a public place and forceful communication is made, this zone of privacy and autonomy is broken, conveying to women

205. *Id.*

206. *Id.* at 536.

207. Center for Women’s Resources, With or without death penalty: Rape every 62 minutes will continue — CWR, available at <https://cwr1982org.wordpress.com/2017/03/07/with-or-without-death-penalty-rape-every-62-minutes-will-continue-cwr> (last accessed Nov. 30, 2018).

208. Yvette Morales, One person raped per hour in PH — report, available at <http://cnnphilippines.com/news/2017/03/07/One-person-raped-per-hour-in-PH.html> (last accessed Nov. 30, 2018) (citing Philippine Statistics Authority, Updates on Women & Men in the Philippines, available at https://psa.gov.ph/sites/default/files/FINAL%202016%20FS_29March2016%20%283%20%20%281%20%29%20FINAL_0.csv (last accessed Nov. 30, 2018)

209. Bowman, *supra* note 34, at 536.

210. *Id.* at 526 (citing Carol B. Gardner, *Passing By: Street Remarks, Address Rights, and the Urban Female*, 50 SOC. INQUIRY 328 (1980)).

211. *Id.*

that they do not belong in the public space, but only in the private confines of their homes.²¹²

Carole Sheffield, a Professor of Women's Studies in William Patterson University, has coined the term "sexual terrorism" to identify environments hostile to women.²¹³ These hostile environments work to "control women, construct gender difference and hierarchy, and reinforce women's traditional roles."²¹⁴ Street harassment is a form of sexual terrorism in that it seeks to reinforce the notion that women do not belong in the public sphere.²¹⁵

Further, sexual terrorism and violence play crucial roles in the ongoing process of female subordinations.²¹⁶ Violence is not one particular act, nor is it static; it is a continuum of behavior in which street harassment must be placed in order to understand the depth and pervasiveness of sexual terrorism.²¹⁷ With this, street harassment "frightens women and reinforces fears of rape and other acts of terrorism."²¹⁸

Spirit murder is another potential psychological effect of street harassment identified by feminist legal theory.²¹⁹ Similar to sexual terrorism, this effect is not one that presents harms at the exact instance the harassment is done, but, instead, goes into the cumulative effect of the act — "spirit

212. *Id.* at 526-27.

213. See Carole J. Sheffield, *Sexual Terrorism: The Social Control of Women*, in ANALYZING GENDER: A HANDBOOK OF SOCIAL SCIENCE RESEARCH (Beth B. Hess & Myra Marx Ferree ed., 1987).

214. Oshynko, *supra* note 48, at 15 (citing *Unwanted Attention*, *supra* note 104, at 8; *Language of Sexual Terrorism*, *supra* note 104, at 451; *Stranger Compliments*, *supra* note 104; *Speech Crimes*, *supra* note 104, at 84; *Harassment and Everyday Life*, *supra* note 104, at 100; Pam McAllister, *Wolf Whistles and Warnings*, HERESIES, Summer 1978, Vol No. 2, Issue No. 6, at 37; & Barbara Houston, *What's Wrong with Sexual Harassment*, ATLANTIS, Spring 1988, Vol. No. 13, Issue No. 2, at 44).

215. *Id.* (citing *Language of Sexual Terrorism*, *supra* note 104, at 451).

216. Deirdre Davis, *The Harm That Has No Name: Street Harassment, Embodiment, and African American Women*, 4 UCLA WOMEN'S L.J. 133, 140 (citing Sheffield, *supra* note 213, at 171).

217. Davis, *supra* note 216, at 140 (citing Sheffield, *supra* note 213, at 172).

218. Davis, *supra* note 216, at 140 (citing *Language of Sexual Terrorism*, *supra* note 104, at 456).

219. Davis, *supra* note 216, at 176.

murder is the cumulative effect” of both major and minor assaults that lead to the “slow death of the psyche, the soul[,] and the persona.”²²⁰

b. Physical, Emotional, and Psychological Responses to Street Harassment

Physical effects of street harassment include “muscle tension, stopped breathing, numbness, dizziness, nausea, constriction of the throat, trembling, rise in bile in the throat, and pounding heart.”²²¹ Certain incidents of street harassment can become “life-threatening,”²²² as, for example, when a woman either chooses to ignore or confront the harasser, the harasser may act violently for being ignored, or for being answered back —

[I]n January of 2013, a woman was walking through a San Francisco neighborhood when she was approached by a man making sexual comments towards her []. The woman responded to the man by rejecting him, and as a result, the man proceeded to slash her face[,] as well as stab her in the arm.²²³

More than the physical effects, the emotional and psychological effects prove to be more pervasive. The effects of sexual objectification on women have only been recently explored.²²⁴ Objectification theory, developed in 1997, proposes that “constant exposure to sexually objectifying experiences and images socializes women to internalize society’s perspective of the female body as their own primary view of their physical selves[.]”²²⁵ This means that the way society views women also becomes the way in which women perceive themselves because this perception is forced upon them,²²⁶ and it is where their self-value is (mis)placed. Women are seen — and appreciated — in body parts instead of a single whole, and as sexual objects rather than actual persons. Self-objectification results to shame, anxiety, and

220. *Id.*

221. Colleen O’Leary, *Catcalling as a “Double Edged Sword”: Midwestern Women, & Their Experiences, and the Implications of Men’s Catcalling Behaviors at 27* (March 2016) (published M.S. thesis, Illinois State University) *available at* <https://ir.library.illinoisstate.edu/cgi/viewcontent.cgi?article=1534&context=etd> (last accessed Nov. 30, 2018).

222. *Id.* at 104 (citing Chhun, *supra* note 64).

223. *Id.* at 28.

224. Emma Rooney, *The Effects of Sexual Objectification on Women’s Health*, *available at* <http://steinhardt.nyu.edu/appsyh/opus/issues/2016/spring/rooney> (last accessed Nov. 30, 2018).

225. *Id.*

226. Bowman, *supra* note 34, at 537.

depression.²²⁷ Shame and anxiety is brought about by the constant self-consciousness and self-monitoring of women's physical appearance.²²⁸ Anxiety is further aggravated by the fear of sexual assault, more commonly known as physical safety anxiety.²²⁹ Depression caused by objectification, moreover, has been seen to lead to eating disorders.²³⁰

In an experiment, an objectifying gaze is seen to decrease women's performance in solving math problems, but further increased the motivation to interact with their math solving partners who objectified them.²³¹

To the degree that the objectifying gaze arouses stereotype threat, math performance may decrease because it conveys that women's looks are valued over their other qualities. Furthermore, interaction motivation may increase because stereotype threat arouses belonging uncertainty or concerns about social connections. As a result, the objectifying gaze may trigger a vicious cycle in which women underperform but continue to interact with the people who led them to underperform in the first place.²³²

At some level, this is also related to the loss of productivity and focus which women experience because they tend to divert their energies to their physical appearances and to their personal safety.²³³

There are also studies that suggest that objectification increases victimization in situations of sexual assault. In a study, which analyzed 297 undergraduate women and their "sexual refusal assertiveness",²³⁴ it found

227. Rooney, *supra* note 224.

228. *Id.*

229. See Laurel B. Watson, et al., *Understanding the Relationships Among White and African American Women's Sexual Objectification Experiences, Physical Safety Anxiety, and Psychological Distress*, 72 *SEX ROLES* 91 (2015).

230. See Christine M. Peat & Jennifer J. Muehlenkamp, *Self-Objectification, Disordered Eating, and Depression: A Test of Mediation Pathways*, 35 *PSYCHOL. WOMEN Q.* 441 (2011).

231. See Sarah J. Gervais et al., *When What You See Is What You Get: The Consequences of the Objectifying Gaze for Women and Men*, 35 *PSYCHOL. WOMEN Q.* 5 (2011).

232. *Id.* at 5.

233. Rooney, *supra* note 224.

234. Stephanie Hallett, *New Study Reveals Scary Consequence of Catcalling*, available at <http://msmagazine.com/blog/2015/09/25/new-study-reveals-scary-consequence-of-catcalling> (last accessed Nov. 30, 2018) (citing Molly R. Franz,

that increased body surveillance and lower sexual assertiveness resulted to being more likely to be victimized —

Our results suggest that women who are recurrently objectified may increasingly define their bodies for the purpose of serving others. This internalization of another's perspective, in turn, may undermine one's ability to respond assertively during unwanted sexual encounters. Because the ability to assert one's sexual desires can serve as a protective factor against assault, passivity in unwanted sexual situations may increase risk for sexual victimization.²³⁵

In relation to catcalling, psychological effects as a result of catcalling may result to revictimization or being more prone to other forms of sexual abuse because there is lower agency to assert sexual preferences as a result of objectification.²³⁶

Street harassment also has an effect of “emotion-work” against women.²³⁷ Di Leonardo defines “emotion-work” as the process whereby a woman “forc[es] [her] emotions to correspond to what is expected.”²³⁸ In the process of her privacy being invaded, she tries to force a smile to acknowledge her harasser, to pretend to ignore the harasser, or to fight back.²³⁹ In any of these, the woman undergoes the stressful process of emotion-work.

c. Women's Responses to Street Harassment Perpetuate the Act

According to Bowman, street harassment is often met with women's silence.²⁴⁰ Silence, however, is “counterproductive.”²⁴¹ This is supported by a social experiment that tested the impact of sexual objectification on women's behavior in social interactions, and which found that women narrow their social presence, usually by speaking less frequently, specifically in their interaction with men, when they know they are being objectified.²⁴²

et al., *Sexual Objectification and Sexual Assault: Do Self-Objectification and Sexual Assertiveness Account for the Link?*, 6 PSYCHOL. VIOLENCE 262, 267 (2016)).

235. *Id.* (citing Franz *supra* note 234, at 267).

236. *Id.*

237. Oshynko, *supra* note 48, at 54.

238. *Id.* (citing di Leonardo, *supra* note 37, at 53).

239. *Id.*

240. Bowman, *supra* note 34, at 537.

241. *Id.*

242. Gervais, *supra* note 231.

The SWS Safe Cities Survey also shows that women prefer to ignore such harassment.²⁴³ Silence, then, can be either an unconscious effect of harassment or an intended response against such. This silence may be caused by several reasons —

Women who are harassed on the street typically do not respond to the harasser[,] but instead try to ignore him, or, more accurately, *pretend* to ignore him. Women may react this way because they are unwilling to admit their powerlessness in the situation, are afraid of physical attack, or are reluctant to draw attention to themselves or to be displeasing. In other circumstances, they are simply annoyed and do not want to reward the harasser with a response, or they are embarrassed to have been treated in such degrading manner.²⁴⁴

Regardless of the motive for keeping or being silent, the effects of ignoring such remarks, however, are self-defeating as more negative impacts are experienced. “When women take these evasive actions in an effort to mask feelings of invasion, anger, humiliation, and fear, they suffer a *psychological beating* in the form of emotional distress and feelings of disempowerment.”²⁴⁵ This is in contrast to rape victims who resisted the attacks against them — even if unable to prevent them — who are less likely to experience depression after the assault as they experience some degree of “psychic liberation.”²⁴⁶ The result is a vicious cycle of the non-response to avoid distress which actually causes a woman even more distress.

In contrast, when women respond to their catcallers with a comment, such as a “thank you” or the like, it “creates a dialogue which usually requires two subjects.”²⁴⁷ This frustrates the objectification caused by such act. By commenting, the woman is placed in a “subject” position, rather than a mere passive object. Men are frustrated by the expression of gratitude, and sometimes turn even more hostile after the comment because their goal to objectify is not achieved as the woman talks back.

2. Relationship-level

The effects of street harassment on the relationships between men and women can also be described as a cycle. At one level, it increases women’s

243. Safe Cities Quezon City, *supra* note 10, at 14.

244. Bowman, *supra* note 34, at 537.

245. *Id.* (emphasis supplied).

246. *Id.*

247. O’Leary, *supra* note 221, at 25 (citing Davis, *supra* note 217, at 139).

dependence upon men.²⁴⁸ This is because women tend to look for men to accompany them in public spaces to protect them and to avoid being harassed by other men. At another level, it creates distrust and hostility among men and women.²⁴⁹ Distrust ensues because men are unable to just approach women in the form of protection without evoking suspicion that he himself is a perpetrator, unless he makes an effort to show otherwise.²⁵⁰

Street harassment generates conflict and widens the divide between men and women. A study explores the effects of individual catcalling to bystanders who overhear such.²⁵¹ The bystander effect or bystander sexism is a tendency for women who overhear sexist and catcalling remarks made against fellow women to feel anger against men as a group.²⁵² The study shows that street harassment does not only affect the victim and the perpetrator, but men and women, and their relationships in general: “For men who are doing nothing wrong, these [harassers] may be shaping the ways that they’re being perceived as well.”²⁵³

3. Societal-level

Street harassment has the tendency to isolate women and to restrict their mobility. It places them out of the public sphere by “[restricting] her freedom of movement, depriving her of liberty and security[.]”²⁵⁴ This is counterproductive to the advances in women’s roles in society already achieved. This is largely due to the fear of getting raped, such that any form of harassment is placed in the context of such fear and reinforces the legitimacy of such fear, even if the harassment is “harmless.”²⁵⁵ How, then, does street harassment legitimize the fear of rape? This is done through the constant reminder to “women that they are vulnerable to attack” and that

248. Bowman, *supra* note 34, at 540.

249. *Id.*

250. *Id.*

251. Amanda Hess, Cat-calling, “Bystander Sexism,” and How Sexual Harassment Hurts Men, available at <http://www.washingtoncitypaper.com/columns/the-sexist/blog/13118784/cat-calling-bystander-sexism-and-how-sexual-harassment-hurts-men> (last accessed Nov. 30, 2018) (citing Stephenie R. Chaudoir & Diane M. Quinn, *Bystander Sexism in the Intergroup Context: The Impact of Cat-calls on Women’s Reactions Towards Men*, 62 SEX ROLES 623, 624 (2010)).

252. *Id.*

253. Hess, *supra* note 251 (citing Chaudoir & Quinn, *supra* note 251, at 631).

254. Bowman, *supra* note 34, at 539.

255. *Id.* at 540.

men “[can] choose to invade a woman’s personal space ... if he feels like it.”²⁵⁶ Also, as earlier discussed, it passes off as trivial because not much attention is paid to it, making it more insidious.

Moreover, specific to catcalling, our language creates our realities such that “language locates individuals within that reality and thus constructs their gender identities.”²⁵⁷ If women are constantly bombarded by unsolicited comments on their physical appearance, or by intrusions in their daily lives forcing them to make unwanted communication, they “learn their place in society ... and they learn that this place is not a public one.”²⁵⁸ The constant shame, fear, and humiliation teaches women that “they draw attention by their mere appearance”²⁵⁹ — a distraction, such that they belong only in the private sphere, or at home. The social role of harassment, specifically street harassment, then, is to ensure “that women will not feel at ease, that they will remember their role as sexual beings available to men and not consider themselves equal citizens participating in public life.”²⁶⁰ In normalizing this social role of street harassment and catcalling, society is reverted back into the outdated notion that a woman’s place is at home only.

B. Preponderance of Gender-Based Violence in the Philippines

Street harassment is a *gender-specific* harm, rather than individual, isolated instances of harm.²⁶¹ It is ironic that the Philippines, referred to as one of the most gender-fair countries in the world,²⁶² is also a country where

256. *Id.*

257. *Id.* at 541.

258. *Id.*

259. *Id.* at 541.

260. Bowman, *supra* note 34, at 542 (citing at Cheryl Bernard & Edit Schlaffer, *The Man in the Street: Why He Harasses*, in FEMINIST FRAMEWORKS: ALTERNATIVE THEORETICAL ACCOUNTS OF THE RELATIONS BETWEEN WOMEN AND MEN 72 (Alison M. Jaggar & Paula S. Rothenberg, eds., 2d ed., 1984).

261. Marc Tran, *Combating Gender Privilege and Recognizing a Woman’s Right to Privacy in Public Spaces: Arguments to Criminalize Catcalling and Creepshots*, 26 HASTINGS WOMEN’S L.J. 185, 188–89 (2015) (citing Deborah Tuerkheimer, *Street Harassment as Sexual Subordination: The Phenomenology of Gender-Specific Harm*, 12 WIS. WOMEN’S L.J. 167, 201 (1997)).

262. Richmond Mercurio, *Philippines No. 1 in gender equality; 7th in world*, PHIL. STAR, Oct. 26, 2016, available at <https://www.philstar.com/headlines/2016/10/26/1636897/philippines-no-1-gender-equality-asia-7th-world> (last accessed Nov. 30, 2018) (citing World Economic Forum, *Global Gender Gap Report 2016* (A Report by the World

gender-based violence, specifically violence against women, proliferates. In the 2017 Updates on Women and Men in the Philippines by the Philippine Statistics Authority, the previous year alone has seen 15.4% of women from age 15 experience some form of physical violence, 2.1% has experienced sexual violence, 4.2% has experienced physical and sexual violence.²⁶³ A total of 40,684 cases were reported to the PNP and 354,435 cases were reported to the DSWD.²⁶⁴ While a decrease in cases is seen, it is not reflective of a correlative decrease in actual violence as the records are only indicative of incidents reported. There is also a high record of experience of physical violence against women inside marital relationships.²⁶⁵

C. Women as Second-Class Citizens in Terms of Jurisprudence

1. Judiciary and Legislation Dominated by Men

In the Philippines, the legislative body is composed of six women senators out of 24 seats and 68 congresswomen out of the 238 total representatives.²⁶⁶ Men also dominate other local government positions. While a steady increase in women occupying elective positions is seen since 1998 until 2016, the proportion of occupied elective positions in total today is 21.5% women to 78.5% men.²⁶⁷ The percentage in Congress is still way below the 30% benchmark proposed by the U.N.²⁶⁸ In the judiciary, out of 15 justices, only three are women. The number of women justices has never been seen to surpass the number of male justices.

Economic Forum) at 10, available at http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf (last accessed Nov. 30, 2018)).

263. Philippine Statistics Office, Women and Men FactSheet 2017 — Revised (A Report by the Philippine Statistics Authority), available at <https://psa.gov.ph/content/women-and-men-factsheet-2017-revised> (last accessed Nov. 30, 2018).

264. *Id.*

265. ICF International, Philippines National Demographic and Health Survey 2013, available at <https://psa.gov.ph/sites/default/files/2013%20National%20Demographic%20and%20Health%20Survey-Philippines.pdf> (last accessed Nov. 30, 2018).

266. Philippine Statistics Office, *supra* note 263.

267. *Id.*

268. Antonia Crisanta Corinthia Naz, *The Political Participation of Women Legislators in Congress*, REV. WOMEN'S STUD., Volume No. 12, Issue No. 1-2, at 16.

The political systems of the country have always seen a low number of women participants, and this is not without effects to the types of laws created and rulings decided upon when men dominate the system. In the justice system, an exhaustive discussion on the “judicial construction of the Filipina” has been earlier discussed in this Note. Stereotypes are imposed upon women who are victims of rape, and stereotypes are used to determine whether such women are worthy of any legal redress. In the process, rape law is to be construed along with other requisites added by the Court, taking into consideration of what a typical Filipino woman should be.

With regard the increase of women legislators in Congress, Antonia Naz, in an article, assesses the participation of women in politics, and whether or not their participation affected significantly the political climate and the types of laws legislated by Congress — “Do more women mean more women’s bills?”²⁶⁹ An analysis of the proportional increase in women in Congress and number of bills filed showed that the answer is no: “The increase in the number of women legislators from the 8th to the 11th Congress did not necessarily translate to a greater number of bills on women’s concerns that were field and approved.”²⁷⁰ The problem, then, is two-fold: (1) there are less women than men participating in Congress and forwarding women’s concerns to turn them into laws, and (2) even with the steady increase of women in Congress, laws concerning women do not necessarily increase at the same rate.

According to Bowman, academics, judges, and legislators often overlook street harassment as a problem solvable by law because mostly male observers either never noticed the behavior or have considered it trivial ever since.²⁷¹ As an effect - the experience of catcalling and street harassment, so much as it is a gender-specific problem to women “it is not surprising that existing legal concepts, fashioned primarily by male judges and legislators in light of the experiences of men, fail to provide effective remedies for the peculiarly female-directed experience of street harassment.”²⁷²

269. *Id.* at 17.

270. *Id.* at 27.

271. Bowman, *supra* note 34, at 520.

272. *Id.*

D. Catcalling vis-à-vis Rights of Women

I. Constitutional and Statutory Policy on Women

a. 1987 Constitution

No more than the 1987 Philippine Constitution itself has incorporated the role of women in its policy. In Section 14, Article II it states that, “[t]he State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”²⁷³ A new provision introduced in the Constitution, Section 14 asserts (1) the role of women in nation-building, and (2) that there is a fundamental equality on men and women before the law.²⁷⁴ Compared to Section I, Article III of the Constitution on the equal protection of laws, Section 14, Article II uses the phrase “to ensure” which positively imposes an obligation on the part of the State.

Furthermore, Section 14, Article XIII — on social justice — states that, “[t]he State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”²⁷⁵ The special protection for women is due to the real differences which distinguish men from women.²⁷⁶

The Constitution is also replete with provisions recognizing the special needs of women. Section II, Article XIII on health provides that the needs of women, among others, are to be prioritized with regard to health services.²⁷⁷ In the legislative department, Section 5, Article VI on the composition of the House of Representatives, women are regarded as a special group to be accommodated with party representation in Congress.²⁷⁸

273. PHIL. CONST. art. II, § 14.

274. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 89 (2009 ed.).

275. PHIL. CONST. art. XIII, § 14.

276. BERNAS, *supra* note 274, at 1271.

277. PHIL. CONST. art. XIII, § 11.

278. PHIL. CONST. art. VI, § 5.

b. The Magna Carta of Women

The Magna Carta of Women was signed into law in 14 August 2009²⁷⁹ under the Arroyo administration. It is deemed the Philippines' equality law — legislating on women's human rights, elimination of discrimination, and the obligation to uphold women's rights.²⁸⁰ The policy of such law on women first recognizes that the condition of women is marked by certain contexts, which the law seeks to remedy through the empowerment of women to eliminate inequality, to wit —

Recognizing that the economic, political, and sociocultural realities affect women's current condition, the State affirms the role of women in nation building and ensures the substantive equality of women and men. It shall promote empowerment of women and pursue equal opportunities for women and men[,] and ensure equal access to resources and to development results and outcome. Further, the State realizes that equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality. To realize this, the State shall endeavor to develop plans, policies, programs, measures, and mechanisms to address discrimination and inequality in the economic, political, social, and cultural life of women and men.²⁸¹

The Declaration of Policy also relies upon women's rights as human rights in promoting equality in all aspects of participation in society, as such

The State affirms women's rights as human rights and shall intensify its efforts to fulfill its duties under international and domestic law to recognize, respect, protect, fulfill, and promote all human rights and fundamental freedoms of women, especially marginalized women, in the economic, social, political, cultural, and other fields without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status. The State shall provide the necessary mechanisms to enforce women's rights and adopt and undertake all legal measures necessary to foster and promote the equal opportunity for women to participate in and contribute to the development of the political, economic, social, and cultural realms.

The State, in ensuring the full integration of women's concerns in the mainstream of development, shall provide ample opportunities to enhance

279. The Magna Carta of Women, § 47.

280. Liway Czarina S. Ruizo, *A Preliminary Diction Study of the Philippine Magna Carta of Women: Words as Shapers of Filipinas' Rights*, REV. WOMEN'S STUD., Volume No. 21, Issue No. 1, at 28.

281. The Magna Carta of Women, § 2.

and develop their skills, acquire productive employment and contribute to their families and communities to the fullest of their capabilities.²⁸²

There is also recognition of the participation of women in national policy and programs for development, thus —

In pursuance of this policy, the State reaffirms the right of women in all sectors to participate in policy formulation, planning, organization, implementation, management, monitoring, and evaluation of all programs, projects, and services. It shall support policies, researches, technology, and training programs and other support services such as financing, production, and marketing to encourage active participation of women in national development.²⁸³

c. Anti-VAWC Act

The Anti-VAWC Act of 2004 was signed into law on 8 March 2004.²⁸⁴ It is a special law expanding the definition of violence committed against women and their children. Its policy on women focuses on dignity and human rights through protection from violence, as such —

It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child[,] and other international human rights instruments of which the Philippines is a party.²⁸⁵

The constitutionality of the law has been challenged in *Garcia v. Drilon*,²⁸⁶ with the Supreme Court unanimously upholding its constitutionality. The details of the case are discussed under the right to equal protection under the laws.

282. *Id.*

283. *Id.*

284. Anti-Violence Against Women and Their Children Act of 2004, § 50.

285. *Id.* § 2 (citing Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948)).

286. *Garcia v. Drilon*, 699 SCRA 352 (2013).

d. Women in Development and Nation-Building Act

The Women in Development and Nation-Building Act of 1992²⁸⁷ puts into law the integration of women in terms of assistance funds and government participation. Its policy states —

The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provide women rights and opportunities equal to that of men.

To attain the foregoing policy:

- (1) A substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women;
- (2) All government departments shall ensure that women benefit equally and participate directly in the development programs and projects of said department, specifically those funded under official foreign development assistance, to ensure the full participation and involvement of women in the development process; and
- (3) All government departments and agencies shall review and revise all their regulations, circulars, issuances and procedures to remove gender bias therein.²⁸⁸

The law echoes that of the Constitution providing for the fundamental equality of women and men.

e. The Responsible Parenthood and Reproductive Health Act of 2012

The Responsible Parenthood and Reproductive Health Act of 2012²⁸⁹ also recognizes that special protection must be given to women in terms of reproductive health in pursuance of human rights and non-discrimination —

The State shall protect and promote the right to health of women especially mothers in particular and of the people in general and instill health consciousness among them.

...

287. An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation Building and for Other Purposes [Women in Development and Nation Building Act], Republic Act No. 7192 (1992).

288. *Id.* § 2.

289. An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health [The Responsible Parenthood and Reproductive Health Act of 2012], Republic Act No. 10354 (2012).

Moreover, the State recognizes and guarantees the promotion of gender equality, gender equity, women empowerment[,] and dignity as a health and human rights concern and as a social responsibility. The advancement and protection of women's human rights shall be central to the efforts of the State to address reproductive health care.²⁹⁰

In these statements, gender equality, gender equity, and women empowerment are treated as human rights concerns.

2. Right Against Discrimination

The root of street harassment is the inherent discrimination against women. Street harassment promotes the sexist roles imposed upon women, including the role to be a specimen to be sexually objectified. This perspective on catcalling may vary from different cultures. However —

Women whose family members grew up outside of the United States may perceive catcalling as a means of gender discrimination. Oftentimes, catcalling stems from traditional gender norms in societies where women continue to maintain marginalized positions. In countries such as Iran, women are essentially punished for stepping outside traditional boundaries. Various cultures have strong traditional rules that people, especially women, are supposed to follow ... Women's bodies are then exploited in various ways such as catcalling, which reinforces the spatial boundaries that encourage traditional values.²⁹¹

a. Domestic

The Magna Carta of Women provides for the policy on the elimination of discrimination in all fields including freedom in the political, economic, social, cultural, and civil fields.²⁹² This is done through the State's recognition of women's human rights.²⁹³ These rights include the amendment or repeal of laws discriminatory of women, equal access to education, sports, police, military, equal rights to family relations and marriage, non-discrimination in the workplace, and non-discrimination on the basis of pregnancy.²⁹⁴

290. *Id.* § 2.

291. O'Leary, *supra* note 221, at 116 (citing Abdolali Lahsaiezadeh & Elham Yousefinejad, *Social Aspects of Women's Experiences of Sexual Harassment in Public Places in Iran*, 16 *SEXUALITY & CULTURE* 1, 18 (2012)).

292. The Magna Carta of Women, § 2.

293. *Id.* § 5.

294. *See* The Magna Carta of Women, §§ 12–18.

The elimination of discrimination is recognized as a necessary precondition to the aspired equality between men and women, to wit —

The State condemns discrimination against women in all its forms and pursues by all appropriate means and without delay the policy of eliminating discrimination against women in keeping with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments consistent with Philippine law. The State shall accord women the rights, protection, and opportunities available to every member of society.²⁹⁵

In *Saudi Arabian Airlines (Saudia) v. Rebesencio*,²⁹⁶ the Court held —

The constitutional exhortation to ensure fundamental equality, as illumined by its enabling law, the CEDAW, must inform and animate all the actions of all personalities acting on behalf of the State. It is, therefore, the bounden duty of this court, in rendering judgment on the disputes brought before it, to ensure that no discrimination is heaped upon women on the mere basis of their being women. This is a point so basic and central that all our discussions and pronouncements — regardless of whatever averments there may be of foreign law — must proceed from this premise.²⁹⁷

To this end, the State realizes the elimination of discrimination against women through the abolition of structures and practices that perpetuate such discrimination and inequality.²⁹⁸ The abolition of such is premised upon the development of plans, policies, programs, measures, and mechanisms which aim to address discrimination and inequality.²⁹⁹

b. International

As mentioned in the previous section, the elimination of discrimination against women is in pursuance of the policies enacted under CEDAW. The CEDAW was signed in 1980 and ratified in 1981 by the Philippines.³⁰⁰ In *Saudi Arabian Airlines (Saudia)*, the Court mentioned that CEDAW may have become customary international law because of the widespread signing and ratification of such instrument around the world.³⁰¹ In our own jurisdiction,

295. *Id.* § 2.

296. *Saudi Arabian Airlines (Saudia) v. Rebesencio*, 746 SCRA 140 (2015).

297. *Id.* at 172.

298. The Magna Carta of Women, § 2.

299. *Id.*

300. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32, art 13.

301. *Saudi Arabian Airlines (Saudia)*, 746 SCRA at 171-72.

the CEDAW puts into effect the policy of fundamental equality between men and women enshrined in the Constitution.

Discrimination under the CEDAW is defined as

any distinction, exclusion[,] or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil[,] or any other field.³⁰²

In Justice Roberto A. Abad's separate concurring opinion in *Garcia v. Drilon*, he discusses the petitioner-husband's argument that the Anti-VAWC Act is "anti-male," "husband-bashing," and a "hate-men" law, discriminatory against men.³⁰³ To this argument, the Court held that, as the Philippines is a State Party to the CEDAW, it has bound itself

to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.³⁰⁴

In recognizing that the Anti-VAWC Act is a step toward the implementation of the CEDAW, the Court has upheld its validity.³⁰⁵

The CEDAW obligates State Parties to pursue by all appropriate means, without delay, a policy of elimination of discrimination against women.³⁰⁶ This includes, among others:

- (1) [adopting] legislative and other measures, *including sanctions when appropriate*, prohibiting all discrimination against women;
- (2) [establishing] *legal protection of rights of women on an equal basis with men* and to ensure through competent national tribunals and other public

302. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32, art. 1.

303. *Garcia*, 699 SCRA at 484 (J. Abad, concurring opinion).

304. *Garcia*, 699 SCRA at 420-21 (citing Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32, art. 5 (a)) (emphasis omitted).

305. *Garcia*, 699 SCRA at 433-34.

306. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32, art. 2.

institutions the effective protection of women against any act of discrimination;

- (3) [taking] all appropriate measures to eliminate discrimination against women by any person ... ;
- (4) [taking] all appropriate measures, including legislation, to modify, or abolish existing laws, regulations, *customs*[,] *and practices* which constitute discrimination against women.³⁰⁷

Discrimination is found not only in existing laws and institutions, but also in established customs and practices in the jurisdiction of the State Party.

Apart from the CEDAW, Article 26 of the International Covenant on Civil and Political Rights (ICCPR),³⁰⁸ to which the Philippines is also a State Party, states that

[a]ll persons are equal before the law and are entitled[,] without any discrimination[,] to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, [color], sex, language, religion, political or other opinion, national or social origin, property, birth[,] or other status.³⁰⁹

Article 2, Section 1 of the ICCPR states the principle of non-discrimination, which provides —

Each State Party to the present Covenant undertakes to respect and to ensure all individuals within its territory[,] and subject to its jurisdiction[,] the rights recognized in the present Covenant, without distinction of any kind such as race, [color], sex, language, religion, political or other opinion, national or social origin, property, birth[,] or other status.³¹⁰

Article 26 of the ICCPR, on the other hand, states the principle of equality, to wit —

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race,

307. *Id.* art. 2 (b), (c), (e) & (f) (emphases supplied).

308. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

309. *Id.* art. 26.

310. *Id.* art. 2, ¶ 1.

[color], sex, language, religion, political or other opinion, national or social origin, property, birth or[,] other status.³¹¹

The Philippines is also a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR).³¹² Article 2, Section 2 of the ICESCR states that “[t]he States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, [color], sex, language, religion, political or other opinion, national or social origin, property, birth[,] or other status.”³¹³

While the ICCPR, on the one hand, imposes negative obligations upon the State to uphold a policy of non-interference with the rights of a person and avoid abuse of power, the ICESCR, on the other hand, obliges States to take positive steps to protect and fulfill rights.³¹⁴

3. Right Against Gender-Based Violence

As previously discussed, street harassment and catcalling may be considered as specific forms of gender-based violence. Being considered violence against women — and seeing that our current laws fail to provide for an Anti-Street Harassment Law — the State has the responsibility to protect women against such.

a. International

In *Garcia v. Drilon*,³¹⁵ violence against women is discussed in the international context, specifically pertaining to instruments regarding violence against women as a human rights issue, in this manner —

The United Nations, which has long recognized [violence against women] as a human rights issue, passed its Resolution 48/104 on the Declaration on Elimination of Violence Against Women on December 20, 1993[,] stating that ‘violence against women is a manifestation of historically

311. *Id.* art. 26.

312. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3.

313. *Id.* art. 2, ¶ 2.

314. Programme on Women’s Economic, Social, and Cultural Rights, Human Rights For All: International Covenant on Economic, Social, and Cultural Rights, A Handbook *available at* http://www.pwescr.org/PWESCR_Handbook_on_ESCR.pdf (last accessed Nov. 30, 2018).

315. *Garcia*, 699 SCRA at 352.

unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions, compared with men.’³¹⁶

While the DEVAW³¹⁷ is a mere declaration with no binding effect, it is a strong statement of the principles embodied by the international community.³¹⁸ States are encouraged to develop programs to combat sexual harassment in all its forms, including better law enforcement and collection of statistics.

General Recommendation No. 35³¹⁹ on gender-based violence against women gives further guidance in the implementation of the CEDAW as applied to gender-based violence. It updates General Recommendation No. 19, earlier discussed, which has been catalytic in transforming the prohibition on gender-based violence against women into a principle in customary international law.³²⁰ One of the important imports of the said document includes the emphasis on the urgency of the fulfillment of States’ obligation to eliminate discrimination against women, as such —

Article 2 establishes that the overarching obligation of States parties is to pursue by all appropriate means[,] and without delay[,] a policy of eliminating discrimination against women, including gender-based violence against women. This is an obligation of an immediate nature; delays cannot be justified on any grounds, including on economic, cultural[,] or religious grounds.³²¹

General legislative measures are those that

[e]nsure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual, or psychological integrity, are criminalized and introduced, without delay, or

316. *Id.* at 412 (citing Declaration on the Elimination of Violence Against Women, *supra* note 57).

317. Declaration on the Elimination of Violence Against Women, *supra* note 57.

318. The Advocates for Human Rights, DEVAW, *available at* <http://www.stopvaw.org/devaw> (last accessed Nov. 30, 2018).

319. Committee on the Elimination of Discrimination Against Women, *CEDAW General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, U.N. Doc. CEDAW/C/GC/35 (2017).

320. *Id.* ¶ 2.

321. *Id.* ¶ 21.

strengthen legal sanctions commensurate with the gravity of the offence as well as civil remedies.³²²

Most importantly, it emphasizes that omission on the part of the State constitutes a violation of the obligations under the CEDAW —

The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women when its authorities know or should know of the danger of violence, or a failure to investigate, prosecute[,] and punish, and to provide reparation to victims/survivors of such acts, provides tacit permission or encouragement to acts of gender-based violence against women. These failures or omissions constitute human rights violations.³²³

A State, therefore, may be remiss in its obligations by failing to address street harassment which is a form of gender-based violence — which produces physical, mental, and sexual harm — and a form of discrimination under General Recommendations 19 and 35 to the CEDAW. This is because street harassment is one such practice constituting discrimination, which, under Article 2, Section F, must be modified through all appropriate measures including legislation. The Philippines, more specifically, is remiss in its obligation by failing to provide a measure to modify the social and cultural pattern of street harassment in the Philippines — a conduct prejudicial to and based on the inferiority of women and the superiority of men. Additionally, street harassment promotes traditional stereotyped roles for men and women, i.e. men belong in the public, and women have to stay in their homes. The result of this non-performance of obligations pertains not only to a violation of the CEDAW but a consequent violation of the fundamental rights of women.

Apart from the DEVAW and General Recommendation No. 35, the Universal Declaration of Human Rights (UDHR) and the ICCPR, despite not specifying women, have recognized the right to life, liberty[,] and security of a person.³²⁴

b. Domestic

322. *Id.* ¶ 29.

323. *Id.* ¶ 24 (b).

324. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948), art. 3 & International Covenant on Civil and Political Rights, *supra* note 308, art. 6, ¶ 1 & art. 9, ¶ 1.

The Bill of Rights provides for the protection of life, liberty, and property,³²⁵ and jurisprudence has provided for the hierarchy of rights placing the right to life as superior to the others.³²⁶

Currently, gender-specific laws protecting women from gender-based violence is limited to the Anti-VAWC Act discussed in the previous sections. This law puts forwards the goals of the DEVAW.³²⁷ However, it has limitations as to application, leaving women who experience violence outside of a relationship unprotected.³²⁸ While physical abuse and other forms of violence against women are predominant in the context of marriage and other forms of romantic relationships, it cannot be denied that street harassment does not work the same way. In fact, it has been discussed that street harassment is more frequently committed by strangers, as men would find it easier to objectify someone they do not know.

Moreover, research has shown that the effects of stranger harassment “lead to increased ratings of severity and negative emotions[,]”³²⁹ than sexual harassment, or that which occur in the workplace and the like. This is because when the harassment occurs in the latter, “the [woman] has access to information about the harasser[,] such as how consistent and distinct the harassment is.”³³⁰ The reactions, therefore, are less negative. The fear is compounded by the fact that men tend to commit street harassment more frequently in groups as a form of social bonding, rather than individually.³³¹

4. Right to Privacy

As discussed under the Chapter on the harms of street harassment, one of the initial reactions of women to street harassment includes classifying such as an intrusion to their privacy. This intrusion has the effect of reminding women that they do not belong in the public arena because they are subject to

325. PHIL. CONST. art. 3, § 1.

326. BERNAS, *supra* note 274, at 71.

327. *García*, 699 SCRA at 423-24 (J. Abad, concurring opinion).

328. *See* Anti-Violence Against Women and Their Children Act of 2004, § 3 (a).

329. O’Leary, *supra* note 221, at 15 (citing Megan K. McCarty, et al., *Stranger Danger: The Role of Perpetrator and Context in Moderating Reactions to Sexual Harassment*, 18 *SEXUALITY & CULTURE* 739, 743 (2013)).

330. O’Leary, *supra* note 221, at 15.

331. *Id.* at 15-16 (citing Christopher John Hunt & Karen Gonsalkorale, *Who Cares What She Thinks, What Does He Say? Links Between Masculinity, In-Group Bonding and Gender Harassment*, 70 *SEX ROLES* 14, 16 (2014)).

“markers of passage.”³³² Usually, the norm of non-intrusion or civil inattention is the accepted rule set in an urban city.³³³ This may only be breached when persons or events necessitate attention.³³⁴ These include those persons or things that are unusual or are “open” to attention, such as children and dogs.³³⁵ Men consider women as open subjects.³³⁶

Unlike men, women passing through public areas are subject to ‘markers of passage’ that imply either that women are acting out a role simply by their presence in public or that a part of their role is in fact to be open to the public. These ‘markers’ emphasize that women, unlike men, belong to the private sphere, the sphere of domestic rather than public responsibility. Ironically, *men convey this message by intruding upon a woman’s privacy as she enters the public sphere.*³³⁷

In this scenario, women’s right to privacy is diminished by street harassment and the failure to protect women from such.

a. Domestic

The 1987 Philippine Constitution provides for the right against unreasonable searches and seizures and the inviolability of the privacy of communication and correspondence.³³⁸ This right, however, is in relation to State actions and legislation such that no law shall be made breaching these rights. In the context of privacy in relation to private persons, the Civil Code is instructive:

Every person shall respect the dignity, personality, privacy[,] and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention[,] and other relief:

- (1) Prying into the privacy of another’s residence;
- (2) Meddling with or disturbing the private life or family relations of another;
- (3) Intriguing to cause another to be alienated from his friends; [and]

332. Bowman, *supra* note 34, at 526.

333. *Id.*

334. *Id.*

335. *Id.* (citing Gardner, *supra* note 210, at 331-33).

336. Bowman, *supra* note 34, at 526.

337. *Id.* (emphasis supplied).

338. PHIL. CONST. art. 3, § 3, ¶ 1.

- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.³³⁹

Although there have been no cases reaching the Supreme Court for street harassment and catcalling, more so where Article 26 of the Civil Code was applied, it is argued that this specific provision of law, specifically providing for the right to one's dignity, personality, privacy, and peace of mind, recognizes the right to privacy in the context of non-intrusion and peace of mind in accessing public places. Tort law on the invasion of privacy, however, provides for an exception rather than specific remedy to a specific harm. It is an individualized remedy for specific injuries inflicted upon a person — with minimal to no acknowledgment of street harassment as an experience of violence against women.

Women's right to privacy in public spaces has been discussed extensively by author, Marc Tran of the University of California Hastings College of Law . He argues that the failure to legitimize the harms of catcalling results to the refusal to acknowledge gender privilege, resulting to the trivialization of catcalling and its harms.³⁴⁰

b. International

The right to privacy is enshrined in the ICCPR, ratified by the Philippines. Article 17 thereof provides that, “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home[,] or correspondence, nor to unlawful attacks on his [honor] and reputation.”³⁴¹ Women's right to privacy is rarely recognized in the public sphere. Privacy is reserved to particular citizens of a State, and by denying privacy to a woman, she becomes a non-citizen.³⁴² Privacy is defined differently for men and women. For a man, his privacy is a public concern, while a woman's is of private concern.³⁴³ Examples of the latter include the traditional view of domestic abuse as a matter which cannot be legislated because it is within the realms of

339. CIVIL CODE, art. 26.

340. Tran, *supra* note 261, at 185.

341. International Covenant on Civil and Political Rights, *supra* note 308, art. 17, ¶ 1.

342. Davis, *supra* note 216, at 144.

343. *Id.*

private concern, and the denial of abortion rights, which reinforces a woman's role as a mother in the sphere of her home.³⁴⁴

It is argued, however, that a woman's "zone of privacy" is not confined to her private life. According to Tran, in a Minnesota Court of Appeals ruling, a woman's zone of privacy attached to her.³⁴⁵ This is in relation to the application of a statute providing for penalty to an invasion of privacy only when it is committed in a place where there is reasonable expectation of privacy.³⁴⁶ In this case, the act was committed in a shopping mall.³⁴⁷ The Court, "[r]ather than finding that the victim in that case could not have an expectation of privacy in the shopping mall where the crime took place, [] found there was a zone of privacy that was attached to the victim."³⁴⁸

5. Right to Travel and Freedom from Restraint

Street harassment impedes a woman's right to travel. More than the physical and mental harmful effects, street harassment also affects the freedom of women to travel with peace of mind. Furthermore, women's mobility is impeded because men infringe on their ability to access public place through street harassment — "Free access is often denied to women, which forces them to change the routes that they travel while also avoiding streets at night []. This limitation relegates women to the private sphere of the home, which Bowman [] calls the 'informal ghettoization of women [].'"³⁴⁹ The "informal ghettoization of women" refers to the effect of street harassment where a women's place is relegated to the private sphere, removing them from public participation and isolating them from the urban environment.³⁵⁰

344. *Id.*

345. Tran, *supra* note 261, at 205 (citing *State v. Morris*, 644 N.W.2d 114 (Minn. Ct. App. 2002) (U.S.)).

346. *Id.* at 204.

347. *Id.* at 205 (citing *Morris*, 644 N.W.2d, at 118).

348. *Id.*

349. O'Leary, *supra* note 221, at 30 (citing Olatokunbo Olikemi Laniya, *Street Smut: Gender, Media, and the Legal Power Dynamics of Street Harassment, or "Hey Sexy" and Other Verbal Ejaculations*, COLUM. J. GENDER & L., Vol. No. 14, Issue No. 1, at 107).

350. Bowman, *supra* note 34, at 520.

a. Domestic

Under the 1987 Constitution, the right to travel shall not be impaired, except in the interest of national security, public safety, or public health, as may be provided by law.³⁵¹ Section 6 of the Bill of Rights is collectively known as the right to freedom of movement.³⁵² It is argued that while this provision in the Constitution is a negative right, that is, that the State shall not do anything to restrain such right to travel, it can, in conjunction with international obligations, be construed as giving the State the obligation to make positive acts to secure such right.

b. International

Freedom of movement is a human rights concern. According to the UDHR, “[e]veryone has the right to freedom of movement and residence within the borders of each State[, and] [e]veryone has the right to leave any country, including his own, and to return to his country.”³⁵³ Under the UDHR, States parties are to respect and fulfill the rights of humans.³⁵⁴ More than refraining from the curtailment of these rights, States are to take affirmative action to fulfill such. Having signed and ratified the UDHR, the Philippines has incorporated the international treaty to its domestic laws. The UDHR is also based on general accepted principles of international law, which are applicable in the Philippines.³⁵⁵ As such, it has the duty to provide legal protection of such rights.

The CEDAW, furthermore, recognizes the right against discrimination, which includes those cultural patterns which “define the public realm as a man’s world[.]”³⁵⁶ Article 7 thereof states that, “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country[.]”³⁵⁷ The right to political and public life is significantly affected by street harassment which impedes women’s

351. PHIL. CONST. art. 3, § 6.

352. BERNAS, *supra* note 274, at 375.

353. Universal Declaration of Human Rights, *supra* note 324, art. 13.

354. *Id.* whereas cl. ¶ 6.

355. *Bayan Muna v. Romulo*, 641 SCRA 244, 318 (2011).

356. U.N. Women, Convention on the Elimination of All Forms of Discrimination Against Women, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro> (last accessed Nov. 30, 2018).

357. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32, art. 7.

movement. As a microcosm of society, the urban setting, and women's access to and participation in it, provide for the same limitations placed upon women in the political and public aspect of society.

V. ANTI-STREET HARASSMENT LAW ARGUMENTS AND COUNTER-ARGUMENTS

A. Arguments for the Criminalization of Street Harassment

1. The Harms of Catcalling and Street Harassment

The harms of street harassment cannot be further emphasized more. In Chapter IV, the physical, mental, psychological, relational, and social effects of the same were thoroughly discussed. While the argument put forth in the previous section is made in the context of American experiences, it is submitted that the same harms affect Filipino women in the context of the Philippines.

Despite the harms of sexual harassment in the workplace, and education or training environment are sufficiently recognized in law,³⁵⁸ street harassment's physical, and more pervasive psychological effects are not accounted for. Apart from these, because the issue of street harassment is easily trivialized along with other harms caused to women,

[they] suffer unpunished and uncompensated sexual assaults continually. Women who live in urban areas and walk[,] rather than drive or take taxis[,] endure tortious or criminal sexual assaults *daily*. Although we have a trivializing phrase for these encounters — 'street hassling' — these assaults are not at all trivial. They are frightening and threatening whispered messages of power and subjection. They are, in short, assaults. Yet, men who harass women on the street are not apprehended, they are not punished, the victims are not compensated, and no damages are paid. The entire transaction is entirely invisible to the state.³⁵⁹

Extreme situations of street harassment, furthermore, can easily escalate to other forms of sexual violence³⁶⁰ and even life-threatening experiences.³⁶¹ Women have no way of distinguishing which specific experience of street

358. See generally Anti-Sexual Harassment Act of 1995.

359. Bowman, *supra* note 34, at 522 (citing Robin West, *Pornography as a Legal Text*, in FOR ADULT USERS ONLY: THE DILEMMA OF VIOLENT PORNOGRAPHY 108, 111 (Susan Gubar & Joan Hoff eds., 1989)).

360. O'Leary, *supra* note 221.

361. *Id.* at 28.

harassment could potentially lead to the commission of rape. This is regardless of whether the sexual advances or catcall was ignored or confronted and regardless of whether responding the wrong way could anger the harasser even more.³⁶²

2. Importance of Naming the Harm and the Transformative Process of Legal Systems

Naming a phenomenon is advantageous to making sense of an experience.³⁶³ Language creates reality.³⁶⁴ If an experience is not named, it is possible that its harms and one's rights against such are not recognized. In terms of street harassment, the effect is two-fold: 1) being able to name street harassment makes it easier for its victims to know, feel, and say what to resist, to complain about and 2) naming the problem makes it visible, and therefore addressed by male culture which has continually trivialized and made it invisible.³⁶⁵ One of the most effective ways that a social harm is "named" is by turning it into law — "[L]aw [is a] transformative [mechanism] that, by the nature of the manners in which they operate, ha[s] the ability to change behavior and to shape perceptions, ethics, and values."³⁶⁶

When an act, on the one hand, specifically experienced by a minority is not regulated, criminalized, or otherwise recognized by law, a sense of powerlessness and inability to find redress arises.³⁶⁷ On the other hand, recognition in law elevates the sense of entitlement, which "shapes the transformation of a grievance into dispute."³⁶⁸

If one feels, and has been reassured through prior experiences, that one is entitled to a right, one will be more apt to act when that right is infringed upon. In this sense, the first transformation, naming, is conflated with the

362. *Id.*

363. Oshynko, *supra* note 48, at 24 (citing CATHARINE MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 57 (1979)).

364. See BENJAMIN LEE WHORF & JOHN CARROLL, *LANGUAGE, THOUGHT, AND REALITY* (1957).

365. Oshynko, *supra* note 48, at 24.

366. Olatokunbo Olikemi Laniya, *Street Smut: Gender, Media, and the Legal Power Dynamics of Street Harassment, or "Hey Sexy" and Other Verbal Ejaculations*, 14 *COLUM. J. GENDER & L.* 91, 93 (2005).

367. *Id.* at 98.

368. *Id.* (citing William Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*, 15 *LAW & SOC'Y REV.* 631, 643).

sense of entitlement — when a notion of entitlement exists, there is no need to recognize the harm; all that is left is to identify the perpetrator and demand a remedy. Based on this idea, we can see how law is a highly effective way of transforming ideology to create a sense of entitlement.³⁶⁹

This works the same way with street harassment. The creation of a law penalizing street harassment would be no different from penalizing the harms of sexual harassment in the workplace, educational, and training environments whose gravamen is moral ascendancy being abused,³⁷⁰ rather than the actual harms inflicted. Currently, the experience of street harassment is ambiguous. As discussed in the next section, many arguments against a law on street harassment focus on how the experience of street harassment is subjective, with some going to extents of arguing that street harassment is a compliment rather than a harm. This does not help a woman process the experience of street harassment. However, in the creation of a law, the issue will be settled and a right *against* street harassment is created, taking into consideration all the kinds of harms street harassment entails.

According to Bowman, , after establishing that laws inadequately protect women from street harassment, the next thing to do is to create

new legal concepts equal to this task[,] or reformulate existing legal categories[,] to make them apply to the experience of street harassment. This is one of the goals of what Robin West has called ‘reconstructive feminist jurisprudence[:]’ to ‘reconstruct the reforms necessary to the safety and improvement of women’s lives in direct language that is true to our own experience and our own subjective lives.’³⁷¹

Some critics would argue that such instrumentalist view of the law is ineffective in resolving hierarchies — specifically that of gender — because such are “invisible” and not widely recognized such that any effect the law would cause will be difficult to measure.³⁷² Because the most common form of street harassment is, first and foremost, speech, critics argue that the high regard given to speech renders it impossible to regulate street harassment.³⁷³ The first step, therefore, for Laura Beth Nielsen, sociology professor at Northwestern University, is a bottom-up approach where the experiences of street harassment are actually recognized as harm by those who experience

369. Laniya, *supra* note 366, at 98.

370. *Jacutin v. People*, 378 SCRA 453, 459 (2002).

371. Bowman, *supra* note 34, at 521-22 (citing Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, at 4 (1988)).

372. See NIELSEN, *supra* note 45, at 8.

373. NIELSEN, *supra* note 45, at 2.

the same.³⁷⁴ In the context of the Philippines, however, the Author submits that the harms of street harassment have sufficiently been established and its victims documented.

The same argument can be used in the cases of wife-beating and other forms of women abuse in the context of a relationship. Formerly, these acts were considered outside the reach of law and were private matters to be dealt with by the concerned parties — that is, between the husband and wife.³⁷⁵ Upon the enactment of the Anti-VAWC Act of 2004, domestic abuse was removed from the realm of the family; thus, law enforcement cannot easily dismiss cases of battered wives as only a family concern.³⁷⁶ In the same way, there is growing concern worldwide over the cases of street harassment, more so with globalization and the advancement of women's rights and their increasing roles outside and apart from being wives and daughters.³⁷⁷

In Mexico, how the law is looked upon by its citizens in curbing violence is seen to have a discursive and symbolic influence such that the enactment of a law penalizing street harassment has the effect of making street harassment socially and legally recognized.³⁷⁸ It is important, therefore, in this sense, to explore how law is perceived in the Philippines, and how such perception has the potential to show the effectiveness of an Anti-Street Harassment law. According to the SWS Safe Cities Survey, the numbers indicate that the enactment of an ordinance outlawing harassment in the streets has a dual effect: (1) it deters men who are street harassers from committing the same and (2) it encourages women who are victims to report the experience.³⁷⁹

374. *Id.* at 8.

375. See NIELSEN, *supra* note 45, at 122.

376. *Id.*

377. Marc Tran, *Combatting Gender Privilege and Recognizing a Woman's Right to Privacy in Public Spaces: Arguments to Criminalize Catcalling and Creepshots*, 26 HASTINGS WOMEN'S J. 185, 190 (2015).

378. See Lisane Thirsk, *Law and The Discursive Construction of Street Harassment as Violence in Mexico City*, available at <http://cerlac.info.yorku.ca/files/2016/06/Thirsk.pdf> (last accessed Nov. 30, 2018).

379. Safe Cities Quezon City, *supra* note 10.

3. Deterrence of Sexual Violence Against Women

In a utilitarian analysis of an Anti-Street Harassment law, a national law works to deter unacceptable behavior. While generally, the criminalization of an act does not mean greater deterrence, it gives the signal that a certain type of behavior is improper such that recognition in law works to elevate the position of street harassment from a normal occurrence to a social misbehavior amounting to a crime.³⁸⁰ Placing such act within the meaning of the law is one way of “naming” the harm of street harassment, which increases the visibility of the act and its effects, and opens up the possibility of redressing the harm.³⁸¹ This is in consideration of the grave harms it produces not only to its immediate victims, but to society as well.

B. Arguments Against an Anti-Street Harassment Law

1. Some Forms of Street Harassment can be Considered Compliments Depending upon the Subject of the Harassment

One of the arguments against penalizing street harassment is that they can be considered compliments to the woman it is addressed to, depending upon how a certain woman interprets the same. Some may even consider the act as harmless flirting. Some women themselves consider catcalling as complimentary rather than harmful. In a magazine published in the US, *Glamour*, an advice column stated that the proper response to being catcalled is to simply “smile in friendly acknowledgment and keep walking.”³⁸² Thus, penalizing such criminalizes something not intended to harm or is broadly open to interpretation.

This argument is more of a symptom of the problem rather than a weapon against the proposed solution — “Women are told to accept a man’s verbal or nonverbal behavior as complimentary without giving them a choice to interpret the behavior as an inappropriate intrusion into a woman’s space.”³⁸³ It is symptomatic of the invasive trivialization of women’s experiences. When trivialized, women opt not to speak about their experiences.³⁸⁴ Furthermore, it is argued that “[v]iewing stranger harassment

380. See Deirdre Davis, *The Harm That Has No Name: Street Harassment, Embodiment, and African American Women*, 4 *UCLA WOMEN’S L.J.* 133, 154 (1994).

381. *Id.*

382. O’Leary, *supra* note 221, at 5.

383. *Id.*

384. *Id.* at 6.

as a compliment is a coping mechanism that some women utilize in order to mitigate the negative effects that stranger harassment tends to have on a woman's sense of safety and well-being."³⁸⁵

In the experiment of Kimberly Fairchild, a psychology professor at Manhattan College, it was found that the responses to catcalling varied from being viewed as compliments to being threats, depending upon different factors such as time, location, age, and attractiveness of the perpetrator.³⁸⁶ However, the glaring conclusion is that, "[e]ven though women experienced less negative emotions as a result of certain contextual influences, across all conditions, women are equally fearful of the harassing behaviors and utilized passive coping strategies such as ignoring the harasser []."³⁸⁷ Additionally, even if the harassment is viewed as a compliment, women still experience negative emotions and resort to coping mechanisms.³⁸⁸ These coping mechanisms are signs that misogyny is internalized by victims, and include romanticizing street harassment, treating it as compliment.³⁸⁹ When coping mechanisms rationalize street harassment, it only leads to further victimization.³⁹⁰

Furthermore, Carol Brooks Gardner, Professor Emeritus of Sociology at Indiana University, posits that viewing street harassment as a compliment actually breaches the norms of complimenting a person as compliments usually come from someone familiar, rather than from a stranger in a public place.³⁹¹ Lastly, in whatever form, catcalling and street harassment ultimately breed sexual objectification.

In another train of argument, a writer also posits that theories on false consciousness, or that women are merely taught to enjoy street harassment, fail to account for the experience of every woman.³⁹² She argues that, on the one hand, an inclusive law takes into consideration that there are, actually, women who find catcalling beneficial, rather than harmful, and to brush

385. *Id.* at 17.

386. *Id.* at 18 (citing Kimberly Fairchild, *Context Effects on Women's Perceptions of Stranger Harassment*, 14 *SEXUALITY & CULTURE* 191, 192 (2010)).

387. O'Leary, *supra* note 221, at 18.

388. *Id.* at 18.

389. Oshynko, *supra* note 48, at 12 (citing CAROL BROOKS GARDNER, *PASSING BY: GENDER AND PUBLIC HARASSMENT* 160 & 229 (1995)).

390. *Id.*

391. *See* O'Leary, *supra* note 220, at 25 (citing GARDNER, *supra* note 389).

392. Oshynko, *supra* note 48, at 43-44.

their experiences aside defeats the purpose of recognizing everywoman's experiences.³⁹³ On the other hand, there are also men who genuinely intend to compliment the victims, only that they fail to realize the effect that such behavior entails on the part of the woman.³⁹⁴

The way to resolve this issue is to craft a law that is an objective test of street harassment, rather than a subjective one. An objective test focuses on the nature of the act itself rather than on the intent of the perpetrator. In this sense, street harassment is to be viewed as an intrusion upon the woman, the victim, rather than whether or not the harasser has intended or perceived his actions to be harmless.³⁹⁵ In this sense, Bowman is correct in stating that, in defining street harassment as a legal term, a set body of characteristics lays the grounds upon which the law is created.³⁹⁶ She further explores this in her recommendation.

2. Street Harassment is "Trivial" and a Normal Occurrence such that the Imposition of Penalties is Unnecessary

The common opinion is that to penalize street harassment is too harsh an approach.³⁹⁷ In an online article, it is stated that "[s]uch behavior should be considered socially unacceptable. But let's not get the law involved. Because while calling a passerby 'sexy' may be uncouth, it should not be illegal."³⁹⁸ Harms against women, including the effects of street harassment, are considered by the legal system as light offenses. In so doing, sexual violence committed against women is rendered trivial, and the laws covering such penalize them lightly.

According to Tran, this exact failure to acknowledge and downplaying of harms caused to women is a common thread.³⁹⁹ This is the same case as in domestic violence before it was rendered a criminal offense. According to Bowman, "[a] recurrent theme of feminist jurisprudence is that the law fails to take seriously events which affect women's lives. The law trivializes or

393. *Id.*

394. *Id.*

395. Bowman, *supra* note 34, at 524.

396. *Id.* at 523-24.

397. Tran, *supra* note 377, at 190.

398. *Id.* (citing Lizzie Crocker, Street Harassment Shouldn't Be a Crime, *available at* <http://www.thedailybeast.com/street-harassment-shouldnt-be-a-crime> (last accessed Nov. 30, 2018)).

399. *Id.*

simply ignores events that have a profound effect upon women's consciousness, physical well-being, and freedom."⁴⁰⁰ It is precisely this phenomenon which makes it difficult to legislate on gender-based violence.

In relation with the legitimizing effect of law, the laws made to penalize sexual harassment, without doing the same for street harassment, has rendered the latter as a matter not grave enough to be covered by law, unlike the former. By recognizing the harm of sexual harassment as a prohibited form of discrimination in a certain controlled setting, harassment in the public environment was seen as a "harmless, 'boys-will-be-boys' type of behavior that bothered many women for supposedly fictitious reasons[.]"⁴⁰¹

Moreover, the CEDAW itself prescribes the abolition of harmful customs and practices which promote discrimination against women.⁴⁰² Having been practiced for a substantial period of time does not justify a harmful act.⁴⁰³ In *Yamada v. The Manila Railroad Co.*,⁴⁰⁴ the Supreme Court held that "a practice[,] which is dangerous to human life[,] cannot ripen into a custom [that] will protect anyone who follows it."⁴⁰⁵ In the same vein, recognizing the potential harms that the commission of street harassment poses, the argument of such practice having ripened into custom or having been normalized is not a proper defense.

3. Difficulty in Enforcement and Prosecution

The practical difficulty in the enforcement of a law penalizing street harassment lies in the identity of its perpetrators. Because the law would be punishing strangers and since the interaction involves only a limited time, there is a possibility that women cannot identify their harassers.⁴⁰⁶ Another difficulty lies in how the police and the prosecution would take the matter when placed in their hands.⁴⁰⁷ There is a large chance that a violation would

400. Bowman, *supra* note 34, at 518.

401. O'Leary, *supra* note 220, at 21.

402. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32.

403. See *Yamada v. The Manila Railroad Co.*, 33 Phil. 8 (1915).

404. *Yamada*, 33 Phil.

405. *Id.* at 13.

406. Oshynko, *supra* note 48, at 94.

407. *Id.* at 95.

not be taken seriously, or that there would be a discriminatory application because of class differences, especially in the Philippine setting.⁴⁰⁸

As an answer to these issues of difficulty, Norma Anne Oshynko, a legal scholar whose body of work has focused on street harassment among other feminist issues, argues that crimes perpetrated by strangers are not limited to street harassment.⁴⁰⁹ Examples of these include snatch theft, hold-ups, pick-pocketing, transaction scams, and assaults, among others. There are crimes that are primarily committed by strangers and are pursued and investigated in order to identify the suspects.⁴¹⁰ On the issue of law enforcement trivializing the law, the simple act of enacting a law is enough to legitimize its harms.⁴¹¹ Formerly, sexual harassment and domestic abuse were treated as problems beyond the scope of the law, but the creation of laws penalizing them removed the perceived normality at which they occur.⁴¹² Finally, on the issue of classism, class has never been a deterrent in enacting laws which undoubtedly affects persons of a certain class more often.⁴¹³ As such, these difficulties do not present themselves as deterrents in enacting a law penalizing street harassment.

Nielsen, in her study, concluded that her subjects' legal consciousness regarding street harassment is that it might only burden the courts with women's concerns.⁴¹⁴ Women think a law on street harassment is impossible to implement and, as an effect, men continue harassing women.⁴¹⁵ Street harassment is viewed to be minor in relation to other forms of sexual violence such that street harassment is not an immediate concern.⁴¹⁶ This is in addition to difficulties in identifying perpetrators.⁴¹⁷ As a response to this, while street harassment is viewed as an act not punishable by law for practical reasons, a law to be proposed on the same must be responsive enough to

408. *Id.*

409. *Id.* at 96.

410. *Id.*

411. *Id.* at 97.

412. Oshynko, *supra* note 48, at 97.

413. *Id.* at 98.

414. O'Leary, *supra* note 220, at 27 (citing Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment*, 34 LAW AND SOCIETY REVIEW 1055, 1082).

415. Oshynko, *supra* note 48, at 94.

416. *Id.* at 95.

417. O'Leary, *supra* note 220, at 27.

consider these nuances — it has to be accessible enough and realistic enough. Just because the public perception on a harmful act leans towards deregulation and impossibility of prosecution does not mean that it should not be regulated, proceeding from the same argument, as was discussed, regarding domestic violence against wives.

4. Disempowerment

Deborah Tuerkheimer, a professor at Northwestern Law, has argued that a legal system may work to individualize social problems and fail to address gender-specific harms.⁴¹⁸ Subsuming gender-based injury may fail to account for the different experiences of women as the victim's experience of the injury must correspond to what the legal authorities have already defined.⁴¹⁹ More importantly, “[she] worrie[s] that defining women solely as victims may further disempower them.”⁴²⁰

The fear of disempowerment happening is real and present. Precisely, the call for the inclusion of street harassment in the legal system is the effect of the latter's failure to define and include the experience of street harassment.⁴²¹ In order not to exclude any experience of street harassment within the confines of a possible law, the law to be proposed must be accommodating enough to include everywoman, but specific enough such that it is not overbroad.⁴²²

The definition of women as victims is not new in Philippine law. The Anti-VAWC Act of 2004 is one such law in which only women and their children may be victims and who may find redress.⁴²³ The Author posits that, in order to be removed from the status of the victim, there must first be a recognition that there is, indeed, such victimization occurring. This can be most successfully done through legislation. Without first acknowledging that women are the victims of a specific harm — in this case, street harassment — then the act causing the harm continues to be trivialized and normalized in

418. Oshynko, *supra* note 48, at 21 (citing Deborah Tuerkheimer, *Street Harassment as Sexual Subordination: The Phenomenology of Gender-Specific Harm*, 12 WIS. WOMEN'S L.J. 167 (1997)).

419. Oshynko, *supra* note 48, at 21.

420. *Id.*

421. *Id.* at 55.

422. *See* Oshynko, *supra* note 48, at 101.

423. Anti-Violence Against Women and Their Children Act of 2004.

society.⁴²⁴ In this sense, a law *recognizing women as victims* instead of one *victimizing* women is most effective when it rests upon substantial distinctions and concrete legislative intent.⁴²⁵

In the worst scenario where street harassment is both difficult to enforce and continue to treat women as victims, “a law prohibiting street harassment may not alleviate the problem altogether, it would have symbolic value and would raise the issue in public consciousness.”⁴²⁶

VI. ANALYSIS: LEGAL CHALLENGES

A. Free Speech

1. The Criminalization of Street Harassment Violates Free Speech

Harassers argue that a law regulating street harassment impede upon their freedom of expression.⁴²⁷ This comes from the fact that most forms of street harassment are verbal in nature, as evidenced by the SWS Safe Cities Survey.⁴²⁸ The right to freedom of speech is protected under Article 3, Section 4 of the Philippine Constitution, which states that “[n]o law shall be passed abridging the freedom of speech, of expression, or of the press[.]”⁴²⁹ Fr. Joaquin G. Bernas, S.J., an eminent constitutionalist, has outlined three purposes for this provision:

- (1) Freedom of expression is necessary for the search of truth;
- (2) Freedom of expression is necessary for a working democracy; [and,]
- (3) Freedom of expression promotes individual self-realization and self-determination.⁴³⁰

424. O’Leary, *supra* note 220, at 6.

425. Tuerkheimer, *supra* note 418, at 180.

426. Oshynko, *supra* note 48, at 20 (citing Deborah Thompson Eisenberg, *The Woman in the Street: Reclaiming the Public Space from Sexual Harassment*, 6 YALE J.L. & FEMINISM 313 (1994)).

427. See NIELSEN, *supra* note 45, at 3.

428. Social Weather Stations, Baseline Study on the Safety of Women and Girls in Quezon City, at 65 (on file with Author).

429. PHIL. CONST. art. 3, § 4.

430. BERNAS, *supra* note 274, at 233.

a. Restraints to Freedom of Speech and Unprotected Speech

There are two general types of constitutional prohibitions in relation to the right to freedom of speech. The first is the prohibition on prior restraint which pertains to the “official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.”⁴³¹ The second type is subsequent punishment, whose rationale is to protect any unrestrained punishment after the speech is disseminated, which would effectively be equivalent to a prior restraint.⁴³² The test of validity of the restraints is, primarily, the “clear and present danger” rule which evolved from the “dangerous tendency” rule.⁴³³ According to the clear and present danger rule, there must be a reasonable connection between the speech and the evil to be prevented.⁴³⁴ The clear and present danger test is worded in jurisprudence, as follows —

The question in every case is whether the words used are used in such circumstance and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.⁴³⁵

This test does not only apply to speech which intends to overthrow the government, but also to other evils which the State has the right to prevent.⁴³⁶ The other test of validity is the “balancing of interests” test where the speech is not susceptible to measurement of proximity and degree.⁴³⁷ This test considers two interests where the protected speech is attacked in a more general way: the right to freedom of expression versus the interest of public order.⁴³⁸

In relation to street harassment, two writers propose arguments whereby the criminalization of street harassment may be removed from the mantle of protection of the Constitution. The first of the two writers argue in the line of a necessary infringement of the right.⁴³⁹ In this argument, the right to freedom of speech is necessarily infringed upon in order to protect another

431. *Id.*

432. *Id.*

433. *Id.* at 249.

434. *Id.*

435. *Id.* at 249 (citing *Schenck v. United States*, 249 U.S. 47, 52 (1919)).

436. BERNAS, *supra* note 274, at 250.

437. *Id.* at 251 (citing *Gonzales*, 27 SCRA at 899 (J. Castro, separate opinion)).

438. BERNAS, *supra* note 274, at 250.

439. Bowman, *supra* note 34, at 547-48.

right or interest⁴⁴⁰ — reminiscent of the balancing of interests test in relation to police power. The second argument states that the regulation of street harassment poses no violation to the right to freedom of expression at all — this, in turn, relies upon the exceptions to speech, which may be protected by the Constitution.⁴⁴¹

In order that the speech may fall under the protection of the right to freedom of expression, it must first be considered as a type of protected speech.⁴⁴² “Communication is an essential outcome of protected speech.”⁴⁴³ Communication exists when

- (1) a speaker, seeking to signal others, uses conventional actions because he or she reasonably believes that such actions will be taken by the audience in the manner intended; and
- (2) the audience so takes the actions.

[I]n communicative action[,] the hearer may respond to the claims by ... either accepting the speech act’s claims[,] or opposing them with criticism or requests for justification.⁴⁴⁴

Speech is not limited to vocal communication, because “conduct is treated as a form of speech sometimes referred to as ‘symbolic speech[,]’” such that “‘when ‘speech’ and ‘nonspeech’ elements are combined in the same course of conduct,’ the ‘communicative element’ of the conduct may be ‘sufficient to bring into play the [right to freedom of expression].’”⁴⁴⁵

Freedom of expression is not an absolute right, and admits of exceptions.⁴⁴⁶ Protected speech is defined in the negative, that is, in *Chaplinsky v. New Hampshire*⁴⁴⁷ discussed as follows: “There are certain well-defined and narrowly limited classes of speech, the prevention and

440. *Id.* at 545-46 & Shah, *supra* note 42, at 394.

441. See NIELSEN, *supra* note 45, at 34.

442. *The Diocese of Bacolod v. COMELEC*, 747 SCRA 1 (2015).

443. *Id.* at 72.

444. *Id.* at 72 (citing Heidi M. Hurd, *Sovereignty in Silence*, 99 YALE L.J. 945, 954 (1990) & Hugh Baxter, *System and Lifeworld in Habermas’s Theory of Law*, 23 CARDOZO L. REV. 473, 499 (2002)).

445. *Diocese of Bacolod*, 747 SCRA at 72-73 (citing Joshua Waldman, *Symbolic Speech and Social Meaning*, 97 COLUM. L. REV. 1844, 1847 (1997) (citing *U.S. v. O’Brien*, 391 U.S. 367, 376 (1968))).

446. BERNAS, *supra* note 274, at 283.

447. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942).

punishment of which has never been thought to raise any Constitutional problems.”⁴⁴⁸ Furthermore, the same case enumerated certain types of speech not protected by the Constitution: “the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.”⁴⁴⁹ *Snyder v. Phelps*⁴⁵⁰ also added the exception of speech which tends to cause “intentional infliction of emotional distress.”⁴⁵¹ In *Hustler Magazine v. Falwell*,⁴⁵² this exception is further discussed in this wise —

Generally speaking the law does not regard the intent to inflict emotional distress as one which should receive much solicitude, and it is quite understandable that most if not all jurisdictions have chosen to make it civilly culpable where the conduct in question is sufficiently ‘outrageous.’ But in the world of debate about public affairs, many things done with motives that are less than admirable are protected by the First Amendment.⁴⁵³

In the Philippine jurisdiction, it has been held that “unprotected speech or low-value expression refers to libelous statements, obscenity or pornography, false or misleading advertisement, insulting or ‘fighting words,’ [or] those which by their very utterance inflict injury or tend to incite an immediate breach of peace and expression endangering national security.”⁴⁵⁴ These exceptions are discussed in the subsequent sections.

b. Freedom of Speech in Relation to the Criminalization of Street Harassment

In this portion of the Note, the two arguments in furtherance of the stand that the criminalization of street harassment is not violative of the Constitutional protection of the freedom of expression is discussed. However, on the subject of the balancing of interests test, the justification for the possible infringement of the right to speech is further discussed under the due process Section as police power is more aptly discussed thereunder.

448. BERNAS, *supra* note 274, at 283 (citing *Chaplinsky*, 315 U.S., at 571-72).

449. *Chaplinsky*, 315 U.S. at 572.

450. *Snyder v. Phelps*, 562 U.S. 443 (2011).

451. *Id.* at 445.

452. *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988).

453. *Id.* at 53.

454. *Soriano v. Laguardia*, 587 SCRA 79, 100 (2009).

Nielsen categorizes street harassment as a type of “street speech,” along with begging and racist street speech.⁴⁵⁵ In her study, she discusses the premium placed by the American courts upon the protection of speech so that the classification of sexist or racist comments has worked “to normalize and justify such behavior.”⁴⁵⁶ Because speech can only be regulated as an exception to the general rule, her study, argues that there is a disjoint between the “problem of street harassment” and the “legal intervention to control it.”⁴⁵⁷ In an article written by The Advocates for Human Rights, it explains that street harassment is difficult to legislate in that it contains speech elements or public speech as to present issues against the First Amendment of the US Constitution.⁴⁵⁸

c. Balancing of Interests Tests: Right to Freedom of Speech v. Women’s Rights

The fundamental question to ask is why men commit street harassment in the first place. In the previous Sections, the Author discussed the social purpose and effect of street harassment. This Section discusses more of the personal reasons men have for committing street harassment. In one study where men were asked why they harassed women, “most of the men responded that harassment alleviated boredom, was ‘fun,’ and gave them a feeling of camaraderie with other men; many added, defensively, that it [did not] hurt anybody.”⁴⁵⁹ These reasons point to the “self-fulfillment”⁴⁶⁰ of the perpetrators at the expense of the self-fulfillment of the victims.

Other reasons included: intent for such to be a compliment, “male-bonding,”⁴⁶¹ intent to anger or humiliate victims,⁴⁶² and, as earlier discussed, to test-rape.⁴⁶³ All-in-all, however, how these reasons weigh against the threats to a woman’s liberty, security, and equality, must be examined: “Protecting half the population from the fear of violence and protecting

455. NIELSEN, *supra* note 45, at 4.

456. *Id.* at 3.

457. *Id.*

458. The Advocates for Human Rights, Law and Policy on Street Harassment, available at http://www.stopvaw.org/law_policy_street_harassment (last accessed Nov. 30, 2018).

459. Bowman, *supra* note 34, at 542-43.

460. Oshynko, *supra* note 48, at 117.

461. O’Leary, *supra* note 220, at 16.

462. Laniya, *supra* note 366, at 108.

463. O’Leary, *supra* note 220, at 31.

individuals and our society from this type of disruption is arguably important enough to curtail some speech that lacks redeeming social value.”⁴⁶⁴ In this line of argument, Sopen B. Shah, Judicial Clerk at the US Court of Appeals, argues that street harassment has no redeeming social value.⁴⁶⁵ Social value is another layer in the attempt to balance interests.

The balancing of interests test must be used as opposed to the clear and present danger test because precisely, the harm caused by street harassment cannot be measured in an exact way. In *Gonzales v. COMELEC*,⁴⁶⁶ which questioned a law prohibiting early nomination and limiting the period for partisan political activity,⁴⁶⁷ the main decision used the clear and present danger test in ruling that there is no danger proximate and clear enough to warrant the infringement of the right to freedom of speech and assembly.⁴⁶⁸ In a separate opinion by Former Philippine Supreme Court Chief Justice Fred Ruiz Castro, he stated that the balancing of interest test is used “where the legislation under constitutional attack interferes with freedom of speech and assembly in a more generalized way and where the effect of speech and assembly in terms of the probability of realization of a specific danger is not susceptible even of impressionistic calculation.”⁴⁶⁹ While there are harms of street harassment which may be clear and proximate to the speech, street harassment is, moreover, penalized as a gender-specific harm against women, which harm forms part of the continuous victimization of women and trivialization of their concerns. The realization of such harm or danger cannot be quantifiably measured.

i. Street Harassment as Hate Speech

Hate speech in itself is not unprotected by the right to freedom of expression.⁴⁷⁰ Such speech must first inflict emotional distress, or furthermore constitute an assault even if verbal or not.⁴⁷¹ Hate speech is

464. Shah, *supra* note 42, at 395.

465. *Id.*

466. *Gonzales*, 27 SCRA.

467. *Id.*

468. *Id.*

469. BERNAS, *supra* note 274, at 251 (citing *Gonzales*, 27 SCRA at 898-99 (J. Castro, separate opinion)).

470. *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377, 402 (1992) (J. White, concurring and dissenting opinion).

471. Bowman, *supra* note 34, at 543-44.

“speech expressing hatred of a particular group of people[.]”⁴⁷² On why hate speech exists, Nielsen explains that it “is but one mechanism of subordination that ‘usually includes a complex, interlocking series of acts, some physical, some verbal, some symbolic[,] and creates ‘an atmosphere of fear, intimidation, harassment, and discrimination.’”⁴⁷³ This definition of hate speech fits squarely with street harassment. Verbal street harassment, or street harassment as a whole, is but one form of violence against women in a series of acts of violence committed against them on the basis of sex.⁴⁷⁴ While some might say that it is the mildest form, the Author argues that being a “gateway” act, its harms cannot be passed upon — “[A] message that reduces a woman to nothing more than a sexual object available to any man is a message of hate.”⁴⁷⁵ Street harassment promotes a society whereby gender-based violence becomes easier to commit.⁴⁷⁶ Hate speech is, therefore, intimately connected to hate crimes.⁴⁷⁷

According to Oshynko, however, street harassment is not similar to hate speech in terms of the content of speech because while hate speech is a type of political speech targeted at a certain group, street harassment is more individualized.⁴⁷⁸ On the contrary, however, this Author argues that while the content of street harassment is not political in nature, the over-all effect is nonetheless political, that is, the deprivation of democratic participation of women in the public space. Similarly, street harassment is committed against a specific marginalized social group — women.

ii. Street Harassment as Fighting Words

Fighting words are “those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.”⁴⁷⁹ Traditionally, it would refer to “words which would likely make the person [to] whom they are

472. Merriam-Webster, Hate speech, available at <https://www.merriam-webster.com/dictionary/Hate%20speech> (last accessed Nov. 30, 2018).

473. NIELSEN, *supra* note 45, at 6.

474. Shah, *supra* note 42, at 380.

475. NIELSEN, *supra* note 45, at 36.

476. Shah, *supra* note 42, at 381.

477. *Id.* at 382.

478. Oshynko, *supra* note 48, at 117.

479. *Chaplinsky*, 315 U.S. at 572.

addressed commit an act of violence.”⁴⁸⁰ “Fighting words are a category of speech that is unprotected by the First Amendment.”⁴⁸¹

According to Bunkosal Chhun, whose study focused specifically on catcalling, a broadening of the “fighting words” exception to the constitutional guarantee of free speech is necessary to include catcalling into the exception, thus —

[Oftentimes], a catcaller’s purpose, especially when crude and vulgar language is involved, is to *force the target into communicating or to invoke a response when the target has no desire to interact with the catcaller*. Because forcing interaction upon an unwilling communicant is not traditionally thought of as being a valuable form of discourse, the type of verbal expression used in catcalling has little to no social value.⁴⁸²

Forcing a communication is anything but peaceful: “The ‘fighting words’ men utter at women on the street are sufficient to incite in them a very real (and reasonable) fear of physical violence [—] a ‘fight’ they would likely lose [—] but do not inspire them to escalate the conflict.”⁴⁸³ Chhun argues that, in the balancing of interests, the interest of maintaining social civility in public speech has more weight over the social value (self-fulfillment and male-bonding) that catcalling provides.⁴⁸⁴ Moreover, he suggests a development of the fighting words doctrine to focus on the speaker/perpetrator’s action instead of the addressee/victim’s reactions.⁴⁸⁵ This is because the fighting words doctrine is premised upon an interaction between two men, presupposing relatively equal power,⁴⁸⁶ whereby an inciting speech from one would cause another man to retaliate.⁴⁸⁷ In the case of street harassment, however, because the addressee is a woman — and as discussed earlier, a woman’s response to street harassment is to typically

480. Aditi Mukherji, What Are “Fighting Words?”, *available at* <http://chicagopersonalinjurylegalblog.com/2014/03/what-are-fighting-words.html> (last accessed Nov. 30, 2018).

481. Cornell Law School, Fighting Words, *available at* https://www.law.cornell.edu/wex/fighting_words (last accessed Nov. 30, 2018) (citing *Chaplinsky*, 315 U.S. at 573).

482. Chhun, *supra* note 64, at 289 (emphasis supplied).

483. Shah, *supra* note 42, at 391.

484. Chhun, *supra* note 64, at 294.

485. *Id.* at 292–93.

486. *Id.* at 290.

487. *Id.*

pretend to ignore it and remain silent⁴⁸⁸ — no violent reaction against the speech is ordinarily expected. Men are traditionally socialized to react to insults with violence; with women, the “appropriate” response is to accept it and carry on, more so because street harassment is more often stated in the form of a compliment, rather than an insult or challenge.⁴⁸⁹ Chhun, however, concludes that, even if women are not socialized to react violently, it does not mean that they are any less harmed or insulted, especially when a violent reaction can incite even more threatening responses from men.⁴⁹⁰

iii. Other Established Exceptions to the Right to Freedom of Expression

1. *Obscenity and Libel*

Some forms of street harassment are outside the protection of the right of expression. One example is speech that is inherently obscene by nature. Obscenity in jurisprudence is discussed in terms of the Miller test from *Miller v. California*,⁴⁹¹ which is applied to publication materials.⁴⁹² Similarly, it is argued that such test may also be used to qualify verbal street harassment as a form of expression, scrutinized under community standards:

- (1) whether ‘the average person, applying contemporary community standards’ would find that [it], ‘taken as a whole,’ appeals to ‘prurient interest’
- (2) whether [it] depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
- (3) whether [it], ‘taken as a whole,’ lacks serious literary, artistic, political, or scientific value.⁴⁹³

In the SWS Safe Cities Survey, this comes in the form of lascivious language.⁴⁹⁴ As earlier discussed, in defining communication, jurisprudence has provided that communication includes non-verbal or symbolic speech.⁴⁹⁵ From this line of argument, it can also be said that some of the worst forms

488. *Id.*

489. *Id.*

490. Chhun, *supra* note 64, at 290–91.

491. *Miller v. California*, 413 U.S. 15 (1973).

492. *Id.*

493. Legal Information Institute, *Obscenity*, available at <https://www.law.cornell.edu/wex/obscenity> (last accessed Nov. 30, 2018).

494. Social Weather Stations, *supra* note 379.

495. *Diocese of Bacolod*, 747 SCRA at 72.

of street harassment — flashing and public masturbation⁴⁹⁶ — may, as well, fall under the obscenity exception. The problem again, however, is that contemporary community standards tend to treat street harassment lightly because of how it is already normalized. Such perspective fails to account for the experiences of every woman. Arguments against this are further discussed in the last section of this Chapter.

Defamation is another form by which street harassment may fall under unprotected speech. In Bowman’s study she states that, “if a harasser shouts ‘[y]ou whore’ at a woman in the presence of an overhearing passerby, for example — the harassment may constitute defamation.”⁴⁹⁷ In the Philippines, however, rarely are these types of street harassment committed. This might be due to the lack of documentation or studies on the Filipino experience of street harassment, but suffice it to say that verbal forms of street harassment in Philippine urban settings range from wolf-whistling, lascivious language, catcalling, and indecent gestures. More and more cases of online sexual harassment⁴⁹⁸ may properly fall under the defamation exception, but this is for another, more focused study.

2. *Low-value Speech*

Low-value speech is subject only to minimal judicial scrutiny.⁴⁹⁹ In Bowman’s study, she classifies street harassment as a form of low-value speech, as such —

Low-value speech may include the following:

- (1) speech that is far afield from the central concern of the First Amendment — effective popular control of public affairs;
- (2) speech that has purely non[-]cognitive appeal; and
- (3) speech that is not intended to communicate a substantive message.⁵⁰⁰

Fr. Bernas outlined the three purposes for the protection of the right to freedom of expression, as previously discussed.⁵⁰¹ Street harassment can only

496. NIELSEN, *supra* note 45, at 44-45.

497. Bowman, *supra* note 34, at 544.

498. Cecille Lardizabal & Lara Tan, Senator files bills amid increasing incidents of online sexual harassment, *available at* <http://cnnphilippines.com/news/2016/11/22/risa-hontiveros-files-bill-amid-increasing-incident-of-online-sexual-harassment.html> (last accessed Nov. 30, 2018.).

499. *Id.* at 545.

500. *Id.*

fall under the third purpose, that is, for the promotion of self-realization and self-determination. But this is still to be qualified because it only satisfies such in a small degree because the self-realization of men harassing women is at the expense of the self-realization of women.

2. A Criminal Law Similar to Anti-Violence Against Women and Their Children Act of 2004 and Anti-Sexual Harassment

a. Harms, Abuses, and Threats in Relation to the Anti-Violence Against Women and Their Children Act of 2004

Verbal abuse resulting to psychological or sexual harm or suffering is a proper subject of penalty under the Anti-VAWC Act of 2004. As earlier discussed in Chapter IV, psychological harm under the Anti-VAWC Act of 2004, specifically intimidation, harassment, public ridicule, and humiliation,⁵⁰² are similar to the commission of street harassment. In the Anti-VAWC Act of 2004, however, verbal abuse must be *repeated*, and not a mere single occurrence.⁵⁰³ While street harassment may happen repeatedly over a period of time, most of the acts are committed in a single occurrence by an unknown perpetrator, such that the element of regularity seems to be lacking. Street harassment, is experienced by a woman multiple times by multiple harassers so that the harmful effect of verbal abuse in the Anti-VAWC Act of 2004 is simulated. The fear of harm is even more pervasive because, unlike the Anti-VAWC Act of 2004, where the perpetrator is known and easily identified, the harasser in street harassment is most likely a stranger. Stranger harassment produces more fear, among other negative impacts, upon the victim.⁵⁰⁴

b. Economic Coercion in Relation to the Anti-Sexual Harassment Law

Another argument for excepting street harassment from the coverage of the right to free expression is because the effects of street harassment can be similarly situated with the effects of verbal street harassment in the workplace, education, or training environment.⁵⁰⁵ “Regulation of sexual harassment in the workplace has been described as falling within the ‘captive

501. BERNAS, *supra* note 274.

502. Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (C).

503. *Id.*

504. Shah, *supra* note 42, at 381.

505. Bowman, *supra* note 34, at 544 (citing Marcy Strauss, *Sexist Speech in the Workplace* 25 HARV. C.R.-C.L. L. REV. 1, 12-13 (1990)).

audience' exception to the First Amendment."⁵⁰⁶ "Captive audience" refers to when speech is forced upon an unwilling listener, conflicting the speaker's right to expression with the listener's right to privacy.⁵⁰⁷ Comparing street harassment to sexual harassment,

[p]ower relationships in the workplace are based both upon institutional hierarchies and upon economic coercion: a woman is not genuinely free to leave unless she is indifferent to the loss of wages and possible impact upon her career. This same reasoning can extend to harassment of women in the street, where women are also required to be present in order to reach places of employment, and where power is exercised against them in such manner as to restrict their liberty.⁵⁰⁸

The gravamen of our Anti-Sexual Harassment law is the moral ascendancy, influence, or authority of the perpetrator against the victim.⁵⁰⁹ This relationship of power is always present if one is to argue the marginalized position of women against men.

B. Police Power

I. Due Process

a. Lawful Subject and Lawful Method

As discussed in the first section of this Chapter, under infringement of rights, one of the inherent powers of the State is police power. The question to be answered is: when is the infringement of rights, in this case, the right to free expression, valid? As already established, in the balancing of interests, a woman's psychological and physical sense of security outweigh the self-realization of men at the expense of harms against women. Proceeding from this, a law penalizing street harassment, having established the weight of its harms, must also pass the standards of police power.

Police power is that "inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society."⁵¹⁰ It is the "power vested in the legislation by the [C]onstitution to make, ordain, and establish, either with penalties or without, not repugnant to the [C]onstitution, as they shall judge to be for good and welfare of the

⁵⁰⁶ Bowman, *supra* note 34, at 544.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* at 544-45.

⁵⁰⁹ See Anti-Sexual Harassment Act of 1995.

⁵¹⁰ BERNAS, *supra* note 274, at 101.

commonwealth, and of the subjects of the same.”⁵¹¹ The State and the public have the right to self-protection.⁵¹² The curtailment and regulation of certain rights such as the right to property and the freedom to contract, among others, are rendered valid on the basis of public health, public safety, public morals, and general welfare.⁵¹³

While the exercise of police power is granted the presumption of validity, this presumption may be overcome when it is proved that the power is not exercised within the bounds of the Constitution.⁵¹⁴ The primary tests to overcome are (1) the due process clause and (2) the equal protection clause.⁵¹⁵ The right to due process, specifically the concepts of vagueness and overbreadth, are discussed in the subsequent Section. This is in relation to the Author’s proposal of a penal law that may necessarily curtail the right to freedom of expression.

For a law to be valid, it must have a lawful subject and a lawful method.⁵¹⁶ Police power is validly exercised when: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals.⁵¹⁷ In the same way, a law covering street harassment must satisfy both of these requirements.

As to the lawful subject, the welfare of women through the protection against the harms of street harassment is enough to justify such law. In *Soriano v. Laguardia*,⁵¹⁸ the Supreme Court stated that the jurisprudential exceptions are not the only allowable exceptions to the right to freedom of expression.⁵¹⁹ They are merely generalized categories, and censorship is sanctioned when, in this particular case, there is a necessity to protect the welfare of children.⁵²⁰ In this case, the Movie and Television Review and

511. *Id.*

512. *Id.*

513. *Id.* at 102-03.

514. *Id.* at 104-05.

515. *Id.* at 105.

516. Department of Education, Culture and Sports v. San Diego, 180 SCRA 533, 537 (1989).

517. *Id.*

518. *Soriano*, 587 SCRA.

519. *Id.* at 109.

520. *Id.* at 105 & 110.

Classification Board subjected a television show to restraint and regulation through preventive suspension of the show after stating cuss words in the broadcast.⁵²¹ The case also applied the balancing of interests test, as opposed to the clear and present danger test, because of the proximity and degree of the danger brought about by the nature of the broadcast, such that they cannot be quantifiably measured.⁵²² Here, the welfare of children who *could have*⁵²³ heard or seen the show is (1) appreciated as a lawful subject of regulation and (2) weighed more than the freedom of expression claimed by the petitioner.⁵²⁴

In terms of the lawful method, the question to be answered is whether or not the method employed is reasonably necessary to attain the object.⁵²⁵ Some of the factors outlined in *Gonzales* for the balancing of interests are instructive:

- (1) the social value and importance of the specific aspect of the particular freedom restricted by the legislation;
- (2) the specific thrust of the restriction, *i.e.*, whether the restriction is direct or indirect, whether or not the persons affected are few;
- (3) the value and importance of the public interest sought to be secured by the legislation [—] the reference here is to the nature and gravity of the evil which Congress seeks to prevent;
- (4) whether the specific restriction decreed by Congress is reasonably appropriate and necessary for the protection of such public interest; and
- (5) whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom.⁵²⁶

It can be surmised that these factors break down the lawful subject and lawful method test to justify the results of the balancing of interests. Criteria (a), (b), and (c) pertain to the subject, while (d) and (e) point to the method. In terms of the method, the appropriateness, necessity of, and the options for less restrictions are the factors to be considered.

⁵²¹ *Id.* at 108.

⁵²² *Id.* at 106.

⁵²³ *Id.* at 110.

⁵²⁴ *Soriano*, 587 SCRA at 105.

⁵²⁵ *Ynot v. Intermediate Appellate Court*, 148 SCRA 659, 671 (1987).

⁵²⁶ *Gonzales*, 27 SCRA at 900.

The criminalization of abuses and harassment against women is not novel. As earlier discussed, acts prohibited by the Anti-VAWC Act of 2004 and the Anti-Sexual Harassment Law, which have similar elements to street harassment, have already been criminalized with sufficient safeguards to ensure that the methods by which the acts are punished are necessary and not excessive.

b. Vagueness

The void-for-vagueness doctrine states that a law “must give notice of what it commands.”⁵²⁷ If it is utterly vague, it is deemed defective.⁵²⁸ According to *People v. Nazario*,⁵²⁹ a law must have comprehensible standards that men of common intelligence need not guess its meaning.⁵³⁰ The purpose of the doctrine is two-fold: 1) to fulfill due process through fair notice and 2) to remove unbridled discretion from law enforcers in the implementation of the law.⁵³¹ Philippine case law on the application of the vagueness doctrine on penal statutes present a liberal tendency to rule in favor of the validity of the statute.⁵³² In the invalidation of the law, the act “must be utterly vague on its face, [such that] it cannot be clarified by either a saving clause or by construction.”⁵³³

In *Estrada v. Sandiganbayan*,⁵³⁴ which questioned the Plunder Law⁵³⁵ on the ground of vagueness, the Court placed paramount importance upon the presumption of validity of a statute. In *Romualdez v. Sandiganbayan*,⁵³⁶ the Court held that, “[a] statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word

527. BERNAS, *supra* note 274, at 132.

528. *Id.*

529. *People v. Nazario*, 165 SCRA 186 (1988).

530. BERNAS, *supra* note 274, at 132-33 (citing *Nazario*, 165 SCRA at 195).

531. *Id.* at 133.

532. Raoul D. Atadero, *A Mandate Against Hate: Finding and Founding a Philippine Law on Hate Crimes* (published J.D. thesis, on file with the Professional Schools Library, Ateneo de Manila University) at 192.

533. BERNAS, *supra* note 274, at 133 (citing *Nazario*, 165 SCRA at 195).

534. *Estrada v. Sandiganbayan*, 369 SCRA 394 (2001).

535. *An Act Defining and Penalizing the Crime of Plunder*, Republic Act No. 7080 (1991) (also known as the Plunder Law).

536. *Romualdez v. Sandiganbayan*, 435 SCRA 371 (2004).

we use.”⁵³⁷ In the same case, it was held that so long as the legislative will of Congress is clear, the failure to define each word would not result to vagueness or ambiguity.⁵³⁸

Given that the words to be used in the criminal statute covering street harassment uses simple and plain words, relying upon an elemental list of requisites, with sufficient examples in such a way that it can apply analogously to different acts, construction of the law would present no hurdle in legal or statutory construction of the said statute. In *Romualdez*, it is stated that, “words of a statute will be interpreted in their natural, plain[,] and ordinary acceptance and signification[.]”⁵³⁹

c. Overbreadth

Harassers would also argue that street harassment law, in relation again to freedom of speech may be overbroad and thus produce a “chilling effect.” The doctrine on overbreadth “decrees that ‘a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.’”⁵⁴⁰ In *De La Cruz v. Paras*,⁵⁴¹ where an ordinance prohibiting and closing night clubs, cabarets, and dance halls was declared to be overbroad, the Supreme Court held that

[t]he objective of fostering public morals, a worthy and desirable end can be attained by a measure that does not encompass too wide a field. Certainly[,] the ordinance on its face is characterized by overbreadth. The purpose sought to be achieved could have been attained by reasonable restrictions rather than by an absolute prohibition.⁵⁴²

The consequences of having an overbroad statute is that it can be challenged on its face because of such chilling effect.⁵⁴³

Applying this doctrine to a street harassment law, such law would be declared overbroad when it penalizes acts that do not qualify as street

537. *Id.* at 387 (citing 82 C.J.S. 68, at 113 & *People v. Ring*, 70 P.2d 281, (1937) (U.S.)).

538. *Romualdez*, 435 SCRA at 387.

539. *Id.* (citing *Mustang Lumber Inc. v. Court of Appeals*, 257 SCRA 430, 448 (1996)).

540. *Estrada*, 369 SCRA at 441 (citing *NAACP v. Alabama*, 377 U.S. 288, 307 (1958) & *Shelton v. Tucker*, 364 U.S. 479 (1960)).

541. *De La Cruz v. Paras*, 123 SCRA 569 (1983).

542. *Id.* at 578.

543. *Estrada*, 369 SCRA at 443.

harassment.⁵⁴⁴ In the proposed law, the prohibition covers forced communication from strangers with sexual meaning or undertones, similar to Oshynko's proposal.⁵⁴⁵ However, borrowing from the discussions under the vagueness doctrine, it is unlikely that the Court would misinterpret words from a statute, given that jurisprudence provides construction in the simple and plain meaning of words.⁵⁴⁶ Given also that the Supreme Court shies away from invalidating laws on their faces,⁵⁴⁷ it is unlikely that it would accept a challenge to street harassment law on the basis of overbreadth.

d. Mens Rea

Mens Rea — “*actus reus non facit reum, nisi mens rea* [—] a crime is not committed if the mind of the person performing the act complained of be innocent.”⁵⁴⁸ It is elementary in criminal law that the criminal act must be accompanied by a criminal mind. In the street harassment law to be proposed, is it necessary that the perpetrator intended to *offend* the victim through the unwelcome remarks? It is argued that it is sufficient that the perpetrator intended to *utter* the words or commit the act which are intrusive. Furthermore, it is possible to make a person liable under a penal statute even if such person did not intend the consequences of the act — “he who is the cause of the cause is the cause of the evil caused[.]”⁵⁴⁹ The evil in this case is the harassment and fear caused to a woman by the intended act.

It is also imperative that the commission of street harassment is considered from the objective rather than the subjective view. The Author agrees with Bowman when, in defining street harassment, a leaning towards a focus on the harasser's words or actions, rather than his intentions or perceptions is preferable, commenting on the foregoing definition earlier quoted —

Street harassment occurs when one or more strange men accost one or more women [...] in a public place which is not the woman's/women's

544. Oshynko, *supra* note 48, at 125.

545. *Id.* at 126.

546. *See e.g.*, Security Bank Corporation vs. Commissioner of Internal Revenue, 499 SCRA 453 (2006); Binay vs. Secretary of Justice, 501 SCRA 312 (2006); & Lambino vs. Commission on Elections, 505 SCRA 160 (2006).

547. *See e.g.*, Estrada, 369 SCRA & Lacson vs. Executive Secretary 301 SCRA 298 (1999).

548. Amora, Jr. v. Court of Appeals, 115 SCRA 388, 393 (1982) (citing U.S. v. Catolico, 18 Phil. 504, 507 (1911)).

549. People v. Ural, 56 SCRA 138, 144 (1974).

worksite. Through looks, words, or gestures the man asserts his right to intrude upon the woman's attention, defining her as a sexual object, and forcing her to interact with him.⁵⁵⁰

This definition, according to Bowman, highlights the intrusion that street harassment entails.

2. Right to Equal Protection Under the Laws

The 1987 Constitution's Bill of Rights states that "no person shall be denied the equal protection of laws."⁵⁵¹ What this provision provides is "legal equality" or "the equality of person under the law."⁵⁵² This equality, however, does not mean that the State cannot provide for classifications from which to act upon.⁵⁵³ This classification, however, must be a valid one. Tests provided by jurisprudence make sure that the classifications made by law are valid.

a. US Cases on the Equal Protection Clause

Two US cases, *Goesaert v. Cleary*⁵⁵⁴ and *Reed v. Reed*⁵⁵⁵ show how the equal protection clause applies in the context of the equality between men and women. They illustrate the shift in perspectives taken by the US Supreme Court. In *Goesaert*, the US Court upheld a piece of legislation prohibiting women from bartending as a profession with the exception of women who are wives and daughters of the bar owners.⁵⁵⁶ The decision stated that "[t]he [US] Constitution does not require legislature to reflect sociological insight (referring to women's indulgence in formerly men-only activities), or shifting social standards, any more than it requires them to keep abreast of the latest scientific standards."⁵⁵⁷ It also said that the law is premised upon a rational basis — to protect the women in their jurisdiction from the social and moral issues that may arise from a bartending job. In a dissenting opinion, Justice Wiley Blount Rutledge averred that although the equal

550. Bowman, *supra* note 34, at 524.

551. PHIL. CONST. art. III, § 1.

552. BERNAS, *supra* note 274, at 139 (citing 2 BERNARD SCHWARTZ, THE RIGHTS OF A PERSON, 487-8 (1968)).

553. BERNAS, *supra* note 274, at 139.

554. *Goesaert v. Cleary*, 335 U.S. 464 (1948).

555. *Reed v. Reed*, 404 U.S. 71 (1971).

556. BERNAS, *supra* note 274, at 163 (citing *Goesaert*, 335 U.S.).

557. *Id.* (citing *Goesaert*, 335 U.S. at 466).

protection clause does not require a classification that is as accurate as *abstract symmetry* or *mathematical nicety*, it should nonetheless avoid “invidious discrimination” such as the provision of the assailed law.⁵⁵⁸ Thus, the statute should have been declared invalid for violating the equal protection clause.⁵⁵⁹

In *Reed v. Reed*,⁵⁶⁰ the Court invalidated a provision of law which gives mandatory preference to men over women who apply as administrator of an estate where they both have equal interest in the estate.⁵⁶¹ The Court reasoned that laws which classify based solely on gender is violative of the equal protection clause, and laws prescribing classifications must rest on reasonable and substantial grounds in relation to the subject of the regulation.⁵⁶²

b. Philippine Cases on the Equal Protection Clause

In the Philippines, the decision of the Supreme Court in *Philippine Telegraph and Telephone Company v. NLRC*⁵⁶³ invalidated a company policy which prescribed the non-acceptance or disqualification of a woman worker who contracts marriage.⁵⁶⁴ Being a private corporation and a company policy, the decision is based on Article 32 of the Civil Code, which provides that

[a]ny public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

...

(8) The right to the equal protection of the laws;

...

In any of the cases referred to in this article, whether or not the defendant’s act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for

558. *Goesaert*, 335 U.S. at 468 (J. Rutledge, dissenting opinion).

559. *Id.*

560. *Reed v. Reed*, 404 U.S. 71 (1971).

561. BERNAS, *supra* note 274, at 163 (citing *Reed*, 404 U.S.).

562. *Id.*

563. *Philippine Telegraph and Telephone Company v. NLRC*, 272 SCRA 596 (1997).

564. *Id.* at 600.

damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.⁵⁶⁵

In *Saudi Arabian Airlines (Saudia)*, where respondents, who were flight attendants, were terminated on account of their pregnancy. The Court therein held that their termination was illegal.⁵⁶⁶ The decision stated that there is no valid reason for the termination since the provision, which deems the contract of employment void at the instance a woman gets pregnant, is against public policy, thus —

Article II, Section 14 of the 1987 Constitution provides that ‘[t]he State [...] shall ensure the fundamental equality before the law of women and men.’ Contrasted with Article II, Section 1 of the 1987 Constitution’s statement that ‘[n]o person shall [...] be denied the equal protection of the laws,’ Article II, Section 14 exhorts the State to ‘ensure.’ This does not only mean that the Philippines shall not countenance nor lend legal recognition and approbation to measures that discriminate on the basis of one’s being male or female. It imposes an obligation to *actively engage* in securing the fundamental equality of men and women.⁵⁶⁷

With pregnancy being a condition that can only pertain to women, the airline policy was deemed to be a restriction on employment on the basis of sex.⁵⁶⁸

In *Garcia*, the constitutionality of the Anti-VAWC Act of 2004 was questioned.⁵⁶⁹ The Supreme Court, however, extensively discussed the rational basis upon which the substantial distinctions rest upon.⁵⁷⁰

c. Unequal Power Between Men and Women

Violence against women is closely linked to the unequal power between men and women.⁵⁷¹ Because society recognizes traditional roles between the

565. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 32 (1949).

566. *Saudi Arabian Airlines (Saudia)*, 746 SCRA at 179.

567. *Id.* at 171.

568. *Id.* at 172.

569. *Garcia*, 699 SCRA at 383.

570. *Id.* at 402-09.

571. *Id.* at 411.

two sexes — men taking dominant roles and women subordinate roles — men gain more power over women.⁵⁷² Violence against women works to control such power and to remind women of their place in society.⁵⁷³ These perceptions are historically and socially contextualized as women are traditionally seen to be inferior to men — history sanctioned violence against women.⁵⁷⁴ Roman and English principles and laws gave legal basis to the infliction of physical harm on women for the protection of property and the family.⁵⁷⁵ These outdated notions are only recently struck down through different laws and international conventions recognizing the equality between men and women.⁵⁷⁶ In our own jurisdiction, this has come in the forms of incorporating the policy of the fundamental equality of men and women in the Constitution, the ratification of the CEDAW and the Convention of the Rights of the Child, and the legislation of the Anti-VAWC Act of 2004.⁵⁷⁷

When the Bill on the Anti-VAWC Act of 2004 was presented in Congress, women comprised 90% of all forms of abuse and violence.⁵⁷⁸ Furthermore, the Philippine Commission on Women (PCW), more recently, showed statistics on violence against women presenting that violations against the Anti-VAWC Act of 2004 ranked first among the categories of violence against women.⁵⁷⁹ This is in comparison with male spouses who experience less to no fear of spousal violence. In ruling for valid classifications, the Supreme Court held that, “[t]he mere fact that the legislative classification may result in actual inequality is not violative of the right to equal protection, for every classification of persons or things for regulation by law produces inequality in some degree, but the law is not thereby rendered invalid.”⁵⁸⁰

572. *Id.* at 411-12.

573. *Id.*

574. *Id.* at 412-13.

575. *Garcia*, 699 SCRA at 413.

576. *Id.* at 415.

577. *Id.* at 415-16 (citing PHIL. CONST. art. II, § 14; Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 32, art. 1; Convention on the Rights of the Child, pmb., *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3; & Anti-Violence Against Women and Their Children Act of 2004).

578. *Garcia*, 699 SCRA at 417.

579. *Id.*

580. *Id.* at 419.

Crimes against women have always been treated differently and less seriously than other crimes. This can also be seen in how catcalling has always been dismissed as trivial, both by law and academic research. In the US, “the widespread gender bias in the US has institutionalized historic prejudices against victims of rape or domestic violence, subjecting them to ‘double victimization’ [—] first at the hands of the offender and then of the legal system.”⁵⁸¹ In the context of spousal abuse, the police have always treated such as a private or family matter, out of reach of the law.⁵⁸² In making violence against women and their children a public offense, the Anti-VAWC Act of 2004 seeks to remove such acts from the realms of the private and into the hands of more responsible responses from law enforcement agencies, the police, vigilant prosecutors and a credible justice system.⁵⁸³

VII. CONCLUSION AND RECOMMENDATION

A. Conclusions

This last Chapter summarizes the arguments and analyses set out in the previous chapters to arrive at a responsive Anti-Street Harassment Law.

In Chapter III, it was established that current Philippine law on street harassment does not exist. While there are, arguably, laws which can capture certain experiences of street harassment, such laws are inadequate for failing to consider street harassment as a gender-based form of violence, specifically committed against women. In the same Chapter, each law, criminal or civil, was analyzed to consider whether or not street harassment, as experienced by women, was covered. Special laws such as the Anti-VAWC Act of 2004 and the Anti-Sexual Harassment Law were seen to place certain conditions and qualifications not found in the commission of street harassment, including the necessity of a relationship between the offender and offended and the existence of a controlled environment. Felonies under the Revised Penal Code also do not provide remedies for street harassment. Specifically, unjust vexation does not work to deter street harassment as its coverage is too wide to appreciate the gender-based nature and violence committed against women through street harassment. Lastly, while civil remedies are available,

581. *Id.* (citing Joseph R. Biden, Jr., *The Civil Rights of the Violence Against Women Act: A Defense*, 37 HARV. J. LEGISLAT’N. 1 (2000)).

582. *Garcia*, 699 SCRA at 419.

583. *Id.* at 421.

the classification of street harassment as a public crime works better to deter such kind of behavior, as is discussed in the subsequent sections.

In Chapter IV, after having established the insufficiency of laws on street harassment or the lack thereof on street harassment, the need for the legislation of one was established. The Chapter focused on two arguments: (1) the need for legislating a street harassment law based on the specific harms caused by the act against women, and (2) the need for legislating a street harassment law based on (a) policy declaration of the State regarding women, (b) women's rights and other rights which need protection from being violated by street harassment and State inaction, and (c) State obligation dictated by international conventions and general principles of law to which the Philippines adheres to. It was established that apart from being trivialized and normalized by society, street harassment furthermore results to physical, psychological, and emotional harms against women, which are underpinned by a constant fear of rape. These harms are related to the culture of sexual objectification, sexual terrorism, and cyclical trivialization of women's concerns. Not only this, the same acts have impacts on the relationship between men and women, and to society as well. These acts create distrust and conflict between men and women, and teach society that a woman's place is only in the confines of their homes, and not in the democratic public space.

On the other hand, the policy on women enshrined in the Constitution⁵⁸⁴ and other statutes⁵⁸⁵ ensure the fundamental equality of women and men, and the role of women in nation-building. In line with this, violence against women in any form is condemned, and women's rights are recognized as human rights. *Garcia* provides for the historic inequality and bias against women, resulting in their constant victimization, and serves as the basis for upholding a law specifically protecting women. Lastly, international obligations under the CEDAW, the DEVAW, the ICCPR, and the International Covenant on Economic, Social and Cultural Rights,⁵⁸⁶ require States to recognize the discriminatory acts, and even customs,

584. PHIL. CONST. art. II, § 14.

585. See, e.g., An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation Building and for Other Purposes [Women in Development and Nation Building Act], Republic Act No. 7192 (1991); Anti-Violence Against Women and Their Children Act of 2004; & An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2009).

586. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3.

committed against persons (specifically women in the case of the CEDAW), and work to apply all means to eradicate such discrimination.

Chapter V proceeds to enumerate arguments, other than a harms- and rights-based approach to support the criminalization of street harassment. It also provided counterarguments to positions against criminalization of street harassment. Apart from the pervasive harms that the harassment of women in public spaces cause, providing for a penal statute covering such acts is necessary in order to initially recognize that, indeed, these cause harm. This is to remove street harassment from being perceived as normal and a trivial experience women undergo on a regular basis. Criminalization also works to deter further acts of sexual violence against women. And while there are those who argue that some forms of street harassment are compliments, or the criteria by which street harassment is to be determined are too subjective, or that enforcement of such law is practically difficult, such arguments are mere symptoms of the constant trivialization of violence committed against women.

Lastly, in Chapter VI, it was concluded that sufficient safeguards and legal bases exist to uphold the validity of a law penalizing street harassment. The challenges of violating the right to free expression, the right to due process, and the equal protection of rights are argued to be inapplicable to an Anti-Street Harassment Law, or that such law is exempted from the legal barriers enumerated.

Thus, based on the foregoing, not only is an Anti-Street Harassment Law a necessary piece of legislation, it is also proven that such legislation is able to pass the test of constitutionality. In line with this, it is recommended that an Anti-Street Harassment Law be enacted by Congress, in addition to other several remedies to be outlined in the following subsections.

In the formulation of such law, the Author keeps in mind the importance of the sense of entitlement a marginalized sector realizes when the plight of their marginalized sector is reiterated in law.⁵⁸⁷ This formulation is with the goal of behavior-setting and deterrence of street harassment, using “realistic and effective remedies.”⁵⁸⁸ The law takes consideration of the arguments set out, proceeding from the discussions above, and is guided by a modification of Bowman’s criteria for a street harassment law as follows:

- (1) not define the offense or liability in terms of the intent of the harasser;

⁵⁸⁷. Laniya, *supra* note 366, at 98.

⁵⁸⁸. Bowman, *supra* note 34, at 574.

- (2) incorporate a *reasonable woman standard* both as to the offensiveness of the conduct and the reasonableness of the woman's reaction to it;
- (3) apply to both verbal and non-verbal conduct;
- (4) not require repetition or a course of conduct;
- (5) apply to behavior in public spaces but be limited to speech that is not public discourse;
- (6) specify, if possible, that it applies to street harassment, so that the judiciary may not opt out of applying it to this situation;
- (7) be worth the trouble and expense to pursue, either because it is 'cheap' for victims to employ (for example, involving a simple procedure and/or free attorney), or because it has the potential for a substantial damage recovery; and
- (8) 'hurt' enough to provide general deterrence.⁵⁸⁹

B. What Kind of Anti-Street Harassment Law to Enact

1. Examples of Street Harassment Laws in the Philippine Setting as Model Laws

a. *Philippine Commission on Women: Expanding the Anti-Sexual Harassment Law*

The PCW recommendation embodied in its Policy Brief No. 5 puts forward a law which would amend the existing Anti-Sexual Harassment Law to include harassment in public spaces as "hostile environments" which are potential spaces for gender-based violence against women.⁵⁹⁰ The proposal is based on the same SWS Safe Cities Survey, and mentions the Quezon City Ordinance penalizing street harassment. The proposal to amend reads as follows —

- (1) Expanding the scope of acts constituting sexual harassment by redefining sexual harassment as:

⁵⁸⁹ *Id.* (emphasis supplied).

⁵⁹⁰ Philippine Commission on Women, Women's Priority Legislative Agenda for the 17th Congress — Strengthening Law Enforcement and Protection Against Sexual Offenses: Expanding the Anti-Sexual Harassment Law, *available at* <http://pcw.gov.ph/wpla/strengthening-law-enforcement-and-protection-against-sexual-offenses-expanding-anti-sexual-harassment-law> (last accessed Nov. 30, 2018).

- (a) an act or series of acts involving any unwelcome sexual advances, requests or demand for sexual favors or any act of a sexual nature, whether done verbally, physically or through the use of technology, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;
 - (b) a conduct of a sexual nature and other conduct based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient; and
 - (c) a conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient
- (2) Including in the definition of the law the following:
- (a) sexual harassment between peers and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee, and;
 - (b) sexual harassment committed in public spaces and public transportations by any person
- (3) Ensuring the right of the offended party to privacy in all stages of the investigation, prosecution and trial and protection from retaliatory acts by the offender such as: termination, denial of promotion, threats, unjustified negative evaluations, or retaliatory suits against the offended party.
- (4) Strengthening the monitoring mechanism to ensure that public and private offices create and operationalize a Committee on Decorum and Investigation (CODI) tasked to handle cases on sexual harassment.
- (5) Prescribing penalties for non-compliance or violations of the provisions of the law.⁵⁹¹

However, a mere amendment to the Anti-Sexual Harassment Law, or any amendment of any law as to include street harassment, does not appropriately protect women from such, for two reasons. One, the Anti-Sexual Harassment Law, having been legislated for over 20 years, including its roots in the US, is accompanied by a set of meanings and definitions⁵⁹² which make it difficult for street harassment to enter the picture. The law's history is embedded with discrimination and inequality, particularly in the workplace, in line with other forms of disability. The problem is not encountered when the amendment is confined to the expansion of who may

591. *Id.*

592. Anti-Sexual Harassment Act of 1995, § 3.

perpetrate sexual harassment in the workplace. But to include strangers in the definition of the perpetrator is too far removed from the necessary familiarity and proximity that the Anti-Sexual Harassment Law embodies.

The same argument can be used to justify lobbying against an amendment of the Anti-VAWC Act of 2004 to accommodate street harassment. The Anti-VAWC Act of 2004 has always been construed, in its most basic sense, to apply to forms of domestic violence against women. The individual recognition of street harassment as another form of violence against women, committed in another type of setting and relationship with the perpetrator, is a necessary precondition for such an act, and the harms it entails, to be treated seriously in law and society.

Second, the Anti-Sexual Harassment Law is not seen as a gender-based law. This is argued in a previous Article calling for the recognition of sexual harassment as a gender-based offense.⁵⁹³ To place street harassment, which predominantly is experienced by women, in the same law as sexual harassment is to deny women of their experiences of being harassed in the streets. The legal bases mentioned in the PCW Policy Brief, including the CEDAW and the SWS Safe Cities Survey are rendered ineffective if a law on street harassment is to be made applicable also to men.

b. Senator Risa Hontiveros' Safe Streets and Public Spaces Act of 2017

The Senate Bill⁵⁹⁴ was passed by the same senator on the same basis such as the SWS Safe Cities Survey. A national law is arguably an appropriate piece of legislation to cover street harassment. In line with this, portions of the Bill, specifically the included punishable acts and levels of violations (light, medium, and severe) are adopted into the proposed law.⁵⁹⁵

Curiously, however, while the Declaration of Policy mentions the role of women in nation-building,⁵⁹⁶ the law itself is gender-neutral. It defines gender-based street and public spaces harassment as —

593. Chryssilla Carissa Bautista, *Sexual Harassment: Bridging the Gender Divide*, 73 PHIL. L.J. 122, 151 (1998).

594. An Act Defining Gender-Based Street and Public Spaces Harassment, Providing Protective Measures and Prescribing Penalties Therefor, and for Other Purposes [Safe Streets and Public Spaces Act of 2017], S.B. No. 1326, 17th Cong., 1st Reg. Sess. (2017).

595. *Id.* § 4.

596. *Id.* § 2.

constitutive of unwanted comments, gestures, and actions forced on a person in a public space without their consent[,] and is directed at them because of their actual or perceived sex, gender, gender expression, or sexual orientation and identity, including but not limited to unwanted cursing, wolf-whistling, cat-calling, leering, sexist, homophobic or transphobic slurs, persistent requests for someone's name, number and destination after clear refusal, persistent telling of sexual jokes, use of sexual names, comments and demands, following, flashing, public masturbation, groping, stalking, and all analogous cases of sexual harassment and/or assault; provided that legitimate expressions of indigenous culture and tradition with no intent to harass shall not be penalized.⁵⁹⁷

The law includes homophobic and transphobic slurs to the list of acts of street harassment impliedly making the law applicable to the LGBT Community.⁵⁹⁸ While the elements of intrusion and public spaces are met, the specification of women as offended parties is not fulfilled.

It further defines public spaces to “include but are not limited to, streets and alleys, public parks, schools, government buildings, malls, bars, restaurants, transportation terminals, public markets, and public utility vehicles.”⁵⁹⁹

Other features of the law include (1) mandatory Gender Sensitivity Seminars as penalty;⁶⁰⁰ (2) non-absorption of administrative sanctions;⁶⁰¹ (3) empowerment of local government units to pass local ordinances imposing heavier penalties;⁶⁰² (4) disputable presumption of absence of consent when the victim is a stranger;⁶⁰³ (5) the “No Means No” principle rendering conclusive the presumption;⁶⁰⁴ (6) deputization of enforcers of the law from the MMDA and PNP;⁶⁰⁵ (7) qualified gender-based and public spaces harassment;⁶⁰⁶ (8) responsibilities for owners of privately-owned places;⁶⁰⁷ (9)

597. *Id.* § 3.

598. *Id.*

599. *Id.*

600. S.B. No. 1326, § 4.

601. *Id.*

602. *Id.*

603. *Id.*

604. *Id.* § 5.

605. *Id.* § 6.

606. S.B. No. 1326 § 7.

607. *Id.* § 8.

gender-based harassment in schools and PUVs;⁶⁰⁸ (10) submission of complaints to existing PNP Women and Children's desks;⁶⁰⁹ (11) educational modules;⁶¹⁰ and, (12) safety audits.⁶¹¹

2. Pros and Cons of Either a Civil or Criminal Remedy

a. Criminal Law

A law covering street harassment may be in the form of a special law whereby the commission of the offense is treated as a public offense, similar to the punishable acts under the Anti-VAWC Act of 2004. The advantages of criminalizing and providing for a penalty against street harassment are that it “send[s] a strong message about the harms of street harassment and violence against women.”⁶¹² A criminal law may also provide for mandatory sensitivity talks that a civil law may not be able to require “mandatory sensitivity training for first-time offenders would be far more likely to persuade a harasser that his actions were harmful than forcing him to write a che[ck].”⁶¹³ According to Oshynko, a criminal law is accessible to a woman with no economic cost to herself. This, however, cannot hold absolutely true in Philippine criminal law. Court congestion and unavailability of public prosecutors plague the justice system such that the ease at which street harassment may be prosecuted in other jurisdictions may not be the case in the Philippines. Prosecution by law enforcers and the State of harassment against women who actually enjoy being complimented poses problems because it is “counter-intuitive to many feminist theorists who are concerned about bestowing even more power on a patriarchal state.”⁶¹⁴ Lastly, the fault requirement, also present in our criminal justice system, makes it hard for harassment to be prosecuted since intent, specifically the intent to harass or offend in this case, is hard to prove. Additionally, the inherent biases are present against women, as demonstrated in the Philippine rape cases previously discussed.

608. *Id.* § 10.

609. *Id.* § 11.

610. *Id.* § 12.

611. *Id.* § 13.

612. Oshynko, *supra* note 48, at 79 (citing Tuerkheimer, *supra* note 418, at 199).

613. *Id.* (citing Bowman, *supra* note 34, at 576).

614. *Id.* at 80.

b. Civil Law

The advantages and disadvantages of civil law in redressing street harassment have been elucidated in earlier chapters. Because the ultimate goals of an Anti-Street Harassment Law are to deter further incidences of street harassment and to change the common notion of street harassment as trivial, an individual case filed for compensating injury of street harassment is not effective in meeting these goals. While civil cases are proven to be more accessible and effective in the Philippines for compensating injury caused by negligent or intentional acts or omissions, they are only as good as redressing those damages which can be materially proven. As discussed, actual damages in a street harassment incident may be difficult to quantify and prove; at most, the compensation is through nominal damages.⁶¹⁵

Taking into consideration the benefits and burdens that both a criminal and civil remedy on street harassment entail, the Author proposes a special penal law that classifies street harassment as a public crime. With this, the proposed law also provides that the criminal action shall not prejudice any independent civil action the victim may bring as proper compensation for the actual and moral damages she may have suffered.

c. Ordinances

Another path which an anti-street harassment legislation might take is a local government ordinance. This has already been done in Quezon City⁶¹⁶ and Davao City⁶¹⁷ through amendments of their respective Gender Codes. Bowman favors municipal ordinances as the form that an anti-street harassment law should take.⁶¹⁸ Her proposal is as follows —

It shall be a misdemeanor, punishable by a fine of \$250, to engage in street harassment. Street harassment occurs when one or more unfamiliar men

615. *Id.* at 82.

616. Ordinance No. SP-2501, S-2016, *Sangguniang Panlungsod* of Quezon City, An Ordinance Amending Ordinance No. SP-1401, S-2004, Entitled “An Ordinance Providing for a City Gender and Development Code, and for Other Purposes,” to Harmonize with the Provisions of Republic Act No. 9710, Otherwise Known as “The Magna Carta of Women,” and to Adopt the UN Women’s Safe Cities and Safe Public Spaces Initiative [Gender and Development Code of Quezon City] (May 16, 2016).

617. Ordinance No. 5004, *Sangguniang Panlungsod* of Davao City, An Ordinance Providing for a Women’s Development Code of Davao City, and for Other Purposes [Women Development Code of Davao City] (Oct. 4, 1997).

618. *Id.* at 86.

accost one or more women in a public place, on one or more occasions, and intrude or attempt to intrude upon the woman's attention in a manner that is unwelcome to the woman, with language or action that is explicitly or implicitly sexual. Such language includes, but is not limited to, references to male or female genitalia or to female body parts or to sexual activities, solicitation of sex, or reference by word or action to the target of the harassment as the object of sexual desire, or similar words that by their very utterance inflict injury or naturally tend to provoke violent resentment, even if the woman did not herself react with violence. The harasser's intent, except his intent to say the words or engage in the conduct, is not an element of this offense. This section does not apply to any peaceable activity intended to express political views or provide public information to others.

A woman's dress and prior sexual history are irrelevant to the issue whether the harassment was welcome or unwelcome to her.⁶¹⁹

For the purposes of the Author's proposed law, some of the forms of harassment enumerated in the above-stated ordinance is also used. Moreover, the provisions of the harasser's intent, exclusions of types of speech, and irrelevance of the woman's dress and sexual history are also taken into account. The language of intrusion and unwelcome communication are incorporated as this brings out the invasive nature of street harassment.

C. Recommendations

In the Recommendation section, the remedies are divided into short-term, medium-term, and long-term. Short-term remedies include those remedies already existing which may provide temporary protection to women harassed in public places. Recognizing, however, through the previous discussions that these remedies are insufficient to deter street harassment in the long run, the Author also recommends the legislation of municipal and city ordinances as a medium-term remedy, and a national Anti-Street Harassment Law as a long-term remedy. The last remedy borrows heavily from the available Senate Bill, but modifications are made in order to take account of the various aforementioned arguments and points in the Bowman criteria.

619. Bowman, *supra* note 34, at 575.

I. Short-term Remedies: Litigation and Enforcement

a. Civil Actions and Torts

Because independent civil actions provide for a faster compensation for injury, it is recommended that, at the outset and while no law covers street harassment yet, women suffering from harm caused by street harassment be able to collect moral and exemplary damages under the Civil Code. The basis is the abuse of right doctrine under Articles 19, 20, and 21 of the Civil Code, providing that,

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs[,] or public policy shall compensate the latter for the damage.⁶²⁰

Torts under Article 26 of the Civil Code, as earlier discussed, may also apply to redress any injury.⁶²¹ Moral damages may be claimed upon evidence of distress and severe psychological harm. Exemplary damages, the Author argues, is proper in cases of compensating harassment in public places, especially when women are involved, to serve as both a penalty and an example to deter wrongdoers from committing the act. Actual damages, however, may be difficult to assess because the injury cannot be quantified. Instead, nominal damages are awarded.⁶²²

b. Enhancement of Law Enforcement

In the short-term, law enforcement agencies which deputize officers in public areas, including private security in privately-owned areas, may undergo gender sensitivity trainings and seminars such that a report on street harassment does not go unnoticed. The tendency is that while women report such incidents of street harassment to authorities, they are told to ignore or are blamed for the harassment. A mandated gender sensitivity seminar to be provided to the officers who are actually on the streets aids in 1) understanding the harmful effects, both immediate and long-term, of

620. CIVIL CODE, arts. 19–21.

621. *Id.* art. 26.

622. Oshynko, *supra* note 48, at 82.

street harassment; 2) not resorting to victim-blaming; 3) providing assistance to the woman such that her concerns are not rendered trivial; and, lastly, 4) preparing an incidence report in order to support the long-term remedy of an anti-street harassment law.

2. Medium-term Remedy: Ordinances⁶²³

The legislation of street harassment, as a medium-term remedy, comes in the form of an ordinance. The Quezon City and Davao City Gender Code Amendments serve as good models for such a municipal or city ordinance. Ordinances are recommended because it is impossible to legislate on every context that a certain city or municipality has. In the Philippines, most especially, towns and cities range from the lower- to upper-classes such that the extremity of street harassment in one might not be the same for the other, taking into consideration the discussions on class and privilege earlier. Translating this to the proposed bill, the Anti-Street Harassment Law of 2017 contains a clause providing for the allowance of higher penalties to be imposed in ordinances.

3. Long-term Remedy: “The Anti-Street Harassment Law”

The above-stated remedies are made components of the proposed special law in the following bill, “The Anti-Street Harassment Law”. Such proposed law is modeled after the Safe Streets and Public Spaces Act of 2017, which admits of modifications 1) to accommodate policies embodied in The Magna Carta of Women and the CEDAW; 2) to classify street harassment as gender-based sexual violence on the basis of such law and treaty; 3) to incorporate Bowman’s and Oshynko’s definitions and criteria in characterizing street harassment; and 4) to incorporate other elements such as presumptions, exclusions, and qualifications from the same feminist legal theorists.

623. Bowman, *supra* note 34, at 574.