

Sports Law-for-All

No. 1

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Bawal Bastos sa Sports **Anti-Gender-Based Harassment in Sports** A sports-based primer on the Safe Space Act

What is the “Bawal Bastos” Law or Anti-Gender-Based Harassment Law?

Bawal Bastos Law is the popular reference to Republic Act No. 11313 or the Safe Space Act (SSA). This law, which took effect on August 3, 2019, expands the definition of sexual harassment under the Anti-Sexual Harassment Act or RA 7877 (1995), which is still subsisting, by defining personal places of safety. Now, anyone can be an offender, not just persons in authority, and can be held liable for misogynistic, transphobic, homophobic and sexist remarks and slurs, and SSA-specified actions in public places and cyberspace.

What are the prohibited acts under the SSA?

Fine and/or imprisonment and community service, the amount or duration of which shall depend on the severity and repetition, shall be imposed on those who commit:

1. Gender-Based Streets and Public Spaces Sexual Harassment (GSH);
 - a) Gender-Based Streets and Public Spaces Sexual Harassment;
 - b) Gender-Based Sexual Harassment in Restaurants and Cafes, Bars and Clubs, Resorts and Water Parks, Hotels and Casinos, Cinemas, Malls, Buildings and Other Privately-Owned Places Open to the Public;
 - c) Gender-Based Sexual Harassment in Public Utility Vehicles; and
 - d) Gender-Based Sexual Harassment in Streets and Public Spaces Committed by Minors;
2. Gender-Based Online Sexual Harassment (GOSH);
3. Gender-Based Sexual Harassment in the Workplace; and
4. Gender Based Sexual Harassment in Educational and Training Institutions.

What is the meaning of Gender-Based?

Under the SSA, “Gender” refers to a set of socially ascribed characteristics, norms, roles, attitudes, values and expectations identifying the social behavior of men and women, and the relations between them. “Gender identity and/or expression” refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with physiological characteristics of the opposite sex, in which case this person is considered transgender.

How are GSH and GOSH perpetrated under the SSA?

Elements	GSH	GOSH
<i>Offender</i>	Any person, even a minor (s/he need not be a person in authority)	
<i>Offended Party</i>	Any person	
<i>Nature</i>	Unwanted and uninvited sexual actions or remarks regardless of the motive which threatens one's sense of personal space and physical safety	<ul style="list-style-type: none">● Online conduct targeted at a particular person that causes or likely to cause another mental, emotional or psychological distress, and fear of personal safety● Use of information and communications technology in terrorizing and intimidating victims through physical, psychological, and emotional threats
<i>Types</i>	<ol style="list-style-type: none">1. Verbal Remarks or Slurs which are misogynistic, transphobic, homophobic and sexist in nature:<ul style="list-style-type: none">● Cursing● Wolf-whistling● Cat-calling● Leering and intrusive gazing● Taunting● Making unwanted invitations● Making persistent unwanted comments on one's appearance● Making relentless requests for one's personal details● Using words, that ridicule on the basis of sex, gender or sexual orientation, identity● Persistent telling of sexual jokes● Using sexual names, comments and demands● Making any statement that has made an invasion on a person's personal space or threatens the person's send of personal safety2. Non-Verbal<ul style="list-style-type: none">● Making offensive body gestures at someone● Exposing private parts for the sexual gratification of the perpetrator with the effect of demeaning, harassing, threatening or intimidating the offended party● Flashing of private parts, public masturbation, groping, and similar lewd sexual actions3. Physical<ul style="list-style-type: none">● Stalking● Offensive sexual harassment● Touching, pinching, or brushing against the genitalia, face, arms, anus, groin, breasts, inner thighs, face, buttocks or any part of the victim's body	<ul style="list-style-type: none">● Public or through direct and private messaging● Invading victim's privacy through cyber stalking and incessant messaging● Uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content● Unauthorized recording and sharing of any of the victim's photos, videos, or any information online● Impersonating identities of victims online● Posting lies about victims to harm their reputation and filing false abuse reports to online platforms to silence victims
<i>Place Committed</i>	Public Places <ul style="list-style-type: none">● streets and alleys● public parks● schools● buildings● malls● bars and restaurants● transportation terminals● public markets● evacuation centers● government offices● public utility vehicles● private vehicles covered by app-based transport network services● cinema halls and theaters● spas	Cyberspace/ Online

Are persons also protected in workplaces and schools under SSA?

Yes, they are. Workplaces and schools are treated as safe spaces in two levels – as public spaces and also as unique environments where sexual harassment may result in alteration of working or learning conditions.

Elements	Workplace GSH	School GSH
<i>Offender/ Offended Party</i>	Employer or Employee/ Co-worker	School Authority, Faculty Member or Student
<i>Acts</i>	<ul style="list-style-type: none">● Unwelcome sexual advances, requests or demand for sexual favors that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities● Conduct of sexual nature and other conduct-based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient● Conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient	<ul style="list-style-type: none">● SSA does not expressly define the acts but since schools are public places, the acts under GSH are the same acts for School GSH● These acts are also considered sexual harassment under the Anti-Sexual Harassment Act

What are the policies behind the SSA? What does this law aim to promote and protect?

Under the Declaration of Policies of the SSA, the State:

1. Values the dignity of every human person;
2. Guarantees full respect for human rights;
3. Recognizes the role of women in nation-building;
4. Ensures the fundamental equality before the law of women and men; and
5. Affirms that both men and women must have equality, security and safety not only in private, but also on the streets, public spaces, online, workplaces and educational and training institutions.

Is this law applicable in sports?

Definitely. Since sports can be played:

1. by anyone, an adult, minor, senior, able-bodied or para-athlete,
2. regardless of the format, competitive, for fun, as a form of exercise, structured or not,
3. almost anywhere and in public places, and
4. moreso now, because of quarantine restrictions, online or in cyberspace,

gender-based harassment can happen. The SSA is thus applicable in and around sports.

Who can be the gender-based harassers in sports?

The possible offenders under the SSA are the coaches, athletes, parents, school officials, students, physical education teachers, employers, employees, co-workers, officials and members of the national sports associations, leagues and clubs, advertisers, gym owners and patrons, and government officials, among others.

How is Safe Space in Sports related to Safe Sports?

While Safe Space in Sports under the SSA and Safe Sports in general promote the same set of values and are anchored on the protection of human rights, the SSA only covers gender-based harassment and does not encompass all other forms of “unsafe sports” acts or all other breaches of the ethics of safety.

Safe Sports is thus broader as it includes protection against harassment, discrimination or bullying based on race, ability, religion, poverty, status, position, education, ethnic background, opinion and differences. There must be zero tolerance against these.

What are the relevant declarations and guidelines on Safe Sports?

These are:

(1) *United Nations Universal Declaration of Human Rights (1948):*

“Article 1: All human beings are born free and equal in dignity and rights. xxx
Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. xxx
Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. xxx”

(2) *International Olympic Committee Athlete 365 (2018):*

“Athletes’ Rights No. 1: Practise sport and compete without being subject to discrimination on the basis of race, colour, religion, age, sex, sexual orientation, disability, language, political or other opinion, national or social origin, property, birth or other immutable status.
Athletes’ Responsibilities No. 5: Respect the rights and well-being of, and not discriminate against, other athletes, their entourage, volunteers and all others within the sporting environment, xxx.”

(3) *World Players Association Universal Declaration of Player Rights (2017):*

Article 3: (1) Every player is entitled to equality of opportunity in the pursuit of sport without distinction of any kind and free of discrimination, harassment and violence.
(2) A player's right to pursue sport cannot be limited because of his or her race, colour, birth, age, language, sexual orientation, gender, disability, pregnancy, religion, political or other opinion, responsibilities as a career, property or other status.

(4) *World OCR Guidelines for Prevention of Sexual Harassment and Abuse in Sports:*

Sexual abuse and sexual harassment are completely incompatible with the intrinsic values of sports. Within obstacle course racing and related sports there is zero tolerance for discrimination and harassment irrespective of gender, ethnic background, religious faith, sexual orientation and disability. xxx Ensuring an open and inclusive sport is a primary policy or World OCR. A condition for achieving this goal is that children, youngsters and adults are happy and feel safe in the sport and related activities. It is therefore necessary to develop tolerance, understanding and establish recognition of people's equality in order to avoid discrimination, harassment and bullying.

How should duty-bearers address Safe Sport?

These four steps and activities would be a good start in promoting safe spaces and safe sport and combatting harassment and discrimination:

1. Undertake awareness activities on Safe Spaces and Safe Sports;
2. Adopt clear-cut policies and guidelines;
3. Set-up functional Safe Sport Committees within organizations; and
4. Outline a grievance procedure to handle complaints.

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