

Facts on the basic rights of Trans Women

An initiative of the **Rainbow Rights Project (R-Rights), Inc.**—a unique alternative lawyering non-governmental organization (NGO) catering to the marginalized sector of sexual minorities or lesbian, gay, bisexual, and transgender persons.

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General concepts in Criminal Law

1. There is no crime if there is no law. There are instances that arrests are on charges that have no legal basis. A law may only be a source of a crime if the law specifically says that a certain act is penalized by imprisonment the accused.
2. Criminal law is prospective in its application however laws that favor the accused are applied retroactively. A certain act cannot be penalized by a later law and a law cannot specifically punish an act before its implementation. An act today cannot be punished later on by virtue of a law passed the next day. However, any provision of a new law that favors the accused is applied retroactively.
3. All elements of the crime must be present to commit it. Elements of the crime can be discerned from how the crime is defined under the law.

CRIMES USUALLY IMPUTED TO TRANSWOMEN

Grave Scandal Art. 200, RPC	Elements 1. Act or acts performed are highly scandalous as offending against decency or good customs. 2. The acts are committed in a public place or within the public knowledge or view. 3. The conduct is not expressly falling within any other article of the RPC. Defense 1. The act is not highly scandalous (e.g. holding hands and kissing are not highly scandalous) 2. Acts not committed in a public place or within the public knowledge or view (e.g. enclosed spaces)
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Obscene Publications, Exhibitions; and Indecent Shows Art. 201, RPC	Literature, plays, scenes and acts which: 1. Serve no other purpose but to satisfy the market for violence, lust, or pornography, and are 2. Contrary to law, public order, morals, good customs, established policies, lawful orders, decrees, and edicts, among others. The persons liable are the authors, editors, and owners of establishment selling the literature. As for exhibitions, only those who exhibit or those who profit from these exhibitions. If the accused is not one of these, then the accused is not liable.
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Obscene Publications and Indecent Shows under the Child Abuse Law Section 9, R.A. 7610	Elements 1. Person hires, employ, use, persuade, induce or coerce a child. 2. The child performs in obscene exhibitions and indecent shows. Those who persuade, induce or coerce the child are also liable. This law bestows graver penalties if the child is below 12 years of age. "Children" refers to a person below eighteen (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.
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Vagrancy and Prostitution Art. 202, RPC	Vagrancy (bagansya) has been decriminalized. No one can be charged of vagrancy anymore. Elements 1. Person hires, employ, use, persuade, induce or coerce a child. 2. The child performs in obscene exhibitions and indecent shows. Defense Our archaic law only considers women as prostitutes. Another defense is the absence of profit making or habituality.
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Rape Art 266-A	1. Rape by sexual intercourse is committed by a man who shall have carnal knowledge of a woman (a) through force 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; (d) when the offended party is under 12 years old. Note Rape under this provision is only committed by a man against a woman. 2. Rape through sexual assault is committed by any person who shall insert: • His penis into another person's mouth or anal orifice, or • Any instrument or object, into the genital or anal orifice of another person The law distinguishes because it provides graver penalties for sexual intercourse than sexual assault.
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Acts of Lasciviousness Art. 336, RPC	The act of making a physical contact with the body of another person for the purpose of obtaining sexual gratification other than, or without intention of, sexual intercourse. Acts of lasciviousness must be accompanied by the circumstances enumerated in the first type of rape mentioned above.
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Use of Fictitious Name and Concealing True Name Art.178, RPC	Use of Fictitious Name 1. Offender uses a name other than the offender's real name 2. Used the fictitious name publicly 3. Purpose is any of the following: (1) conceal a crime; (2) evade execution of judgment; and (3) cause damage to public interest Defense Name is used without intention to cause damage to anyone or to the public.	Concealing True Name 1. Offender conceals name and all other personal circumstances 2. Purpose is to conceal identity Note Both name and all other personal circumstances must be withheld or concealed.
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Illegal Use of Alias Commonwealth Act 142	The use of unregistered alias is prohibited if: 1. The user must have held himself out as a person who shall publicly be known under the alias 2. The intent to publicly use the alias must be manifest	Exceptions Pseudonyms solely for literary, cinema, television, radio, or other entertainment purposes and in athletic events Defense Aliases that need to be registered are those used to conceal or hide the true name of the person. Usage of names other than the name given by the parents are allowed as long as these do not amount to an alias.
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Libel	1. Public imputation of a crime, vice or defect (real or imaginary), or any act, omission, condition, status, or circumstance (any malicious imputation) 2. Malice (generally presumed, accused must prove that there is no malice) 3. Directed to a natural or juridical person (GOCCs, SEC registered corporations and organizations, among others), or one who is dead 4. Tendency to cause dishonor, discredit, or contempt of the offended person 5. By means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means Under RA 10175 <i>Cybercrime Prevention Act</i> Libel committed through a computer system or any other similar means shall be penalized by a penalty one degree higher. Those who receive and react to libelous posts online cannot be charged with cyberlibel.	Slander Art. 358, RPC
		Slander by Deed Art. 359, RPC
		Same elements in libel but orally or verbally uttered 1. Act is not included in any other crime against honor 2. Performed in the presence of other person/s 3. Act casts dishonor, discredit, or contempt upon the offended party (not words)

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Violation of the Anti-photo and Video Voyeurism Act of 2009 Sec. 4, R.A. 9995	Without consent of the subject Taking a photograph or video a person or group of persons performing sexual act or any similar activity or to capture an image of the private area of a person in which the person has a reasonable expectation of privacy		Even with the consent of the subject, it is prohibited to (1) to copy or reproduce, or to cause to be copied or reproduced the photos or videos mentioned above; (2) to sell or distribute, or cause to be sold or distributed said photos or videos or copies of it and (3) to publish or broadcast said photos or videos in any form (shows, exhibitions, VCD/DVDS, internet, cellular phones and other similar means.
Cybersex Sec. 4(c), R.A. 10175	The willful engagement, main-tenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration. Note There must be favor or con-sideration. Attempts and aiding and abetting to commit cybercrimes are also punishable.	Unjust Vexation Art. 287, RPC	Includes any human conduct which, although not productive of some physical or material harm, would however unjustly annoy or vex an innocent person. The relative vagueness of this crime has made it a favorite by law enforcement to use against persons annoying to them. However, there must be an annoying act if there is no act or if one has not done anything, they cannot be charged with unjust vexation.

CRIMES PERPETRATED AGAINST TRANS WOMEN

Gender-Based Sexual Harassment Safe Spaces Act, RA 11313

Streets and Public Spaces Misogynistic, transphobic, homophobic and sexist slurs. <i>For full list, see Art. IV, Sec. 16.</i> Public spaces: Streets, alleys, public parks, schools, buildings, malls, bars, restaurants, transport terminals, public markets, spaces used as evacuation centers, govt offices, PUVs, private vehicles covered by app-based services, recreational spaces such as but not limited to cinemas, theaters and spas.	Online Sexual harassment online including those done through comments and even through direct and private messages. Online sexual harassment includes physical, psychological, and emotional threats, unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments, cyberstalking, incessant messaging, uploading and sharing of sexual content, any unauthorized recording and sharing of victim's photos, videos or any information online.	Impersonation Imitating the victim and spreading lies are also punishable as online sexual harassment. <i>For a full list, see Art. II, Sec. 12.</i>
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Gender-Based Sexual Harassment Safe Spaces Act, RA 11313 *continued*

Workplace In addition to sexual advances and favors with detrimental effects on the conditions of an individual's employment, education, job performance, opportunities, and those that create hostile or humiliating environments, conducts of sexual and other conduct-based on sex affecting the dignity of a person considered unwelcome, unreasonable, offensive to the recipient are punishable under the SSA. Advances, favors, contact may be done through text messaging, email or any other information/communication systems. Moral ascendancy is not required.	Educational and Training Institutions Sexual harassment committed by principals, school heads, teachers, instructors, professors, coaches, trainers, or any person who has authority, influence or moral ascendancy over another, students, and trainees (<i>Sec. 26, IRR of SSA</i>). The institution itself may be criminally liable if it does not implement its duties under the law such as information campaigns and creation of a Code of Conduct and a Committee on Decorum and Investigation. The institution is also liable for failure to act on reports of sexual harassment.
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Grave Coercion Art. 286, RPC	Elements 1. A person prevented another from doing something not prohibited, or compelled them to do something against their will 2. Through violence, threats, or intimidation 3. Without authority or right	Example A person who drives persons out of public areas under the threat of arrest or injury are committing the crime of grave coercion. Police acting in violation of constitutionally protected rights are deemed to be committing this crime.
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Child Abuse Section 10(a), RA 7610	Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Art. 59 of Presidential Decree No. 603 but not covered by the RPC shall suffer the penalty of prision mayor in its minimum period. Children refers to those who are below 18 or those who cannot fully protect themselves because of physical or mental disability or condition.	
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Gender-based Bullying Anti-Bullying Act of 2013, IRR	Refers to any act of a student against another student that humiliates or excludes a person on the basis of perceived or actual sexual orientation and gender identity. This may also be done through use of technology or electronic means (cyberbullying.)	Physical Injuries 1. Serious: Injury will be considered serious when it causes (1) insanity, imbecility, impotence, deformity; (2) blindness, loss of speech, loss of the power to hear or smell; (3) loss of any body part or the use thereof; (4) incapacity for labor for >30 days 2. Less Serious: Incapacity or requirement of medical attendance for 10-30 days 3. Slight: Incapacity or requirement of medical attendance for <10 days
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