

# Criminalizing Sexual Harassment Against Individuals Aged 16 and Above: Reasons and Recommendations for Vietnam

## Abstract

Sexual harassment is a serious violation of the victim's honor and dignity, which contributes to social instability. As a Southeast Asian country deeply influenced by Confucianism with its patriarchal traditions, Vietnam has long faced the problem of sexual harassment, especially against women. In recent years, Vietnam has made progress in raising awareness and using the legal framework to combat this behavior. Currently, Vietnamese law provides for administrative and labor disciplinary sanctions against sexual harassment, and criminal prosecution is available if the victim is under 16 years old. However, a gap exists in the Vietnamese legal system as there is no provision for criminal liability for sexual harassment against victims aged 16 and above. This creates limitations in the protection of victims and reduces the deterrent effect of sanctions. Without clear criminal sanctions, victims tend to remain silent and are reluctant to report, knowing that the perpetrator will face only minor administrative penalties that are not commensurate with the harm suffered. This study, based on international and Vietnamese legal frameworks and an analysis of the current situation in Vietnam, aims to assess the necessity of establishing criminal liability for sexual harassment against victims aged 16 and above. The study also offers recommendations that Vietnam should consider when implementing this provision.

**KEYWORDS:** sexual harassment, crime, criminalization, human rights, Vietnam

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# 1 | Introduction

Currently, there is increasing global awareness of issues of sexual harassment and gender-based violence. Studies indicate that sexual harassment is a violation of human freedoms and constitutes a form of discrimination.<sup>[1]</sup> Sexual harassment has adverse effects on victims, including psychological distress,<sup>[2]</sup> depression and post-depressed disorders,<sup>[3]</sup> trauma, and long-term consequences.<sup>[4]</sup> In response to the challenges posed by sexual harassment and the need to protect victims, many countries have enacted laws classifying sexual harassment as a criminal offense. “The war against sexual harassment requires an appropriate legal framework to combat it in all its forms.”<sup>[5]</sup> According to World Health Organization statistics, 115 out of 172 countries have laws establishing criminal liability for sexual harassment.<sup>[6]</sup> Criminalizing sexual harassment has several implications, including demonstrating the seriousness of the violation, increasing the deterrent effect of sanctions, and enhancing the protection of victims.

Vietnam, as a Southeast Asian country, deeply influenced by Confucianism with its patriarchal ideology, has long faced the issue of sexual harassment. According to research by Action Aid, 87% of Vietnamese women have experienced harassment, with rates ranging from verbal abuse to rape,

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<sup>1</sup> Mile Šikman, “Inkriminacija Seksualnog Uznemiravanja U Krivičnom Zakonodavstvu Republike Srpske,” *Trinaesta Međunarodna naučno - stručna konferencija*, (2022): 15.

<sup>2</sup> Ståle Einarsen and Morten Birkeland Nielsen, “Workplace bullying as an antecedent of mental health problems: A five-year prospective and representative study,” *International Archives of Occupational and Environmental Health* 88, no. 11 (2014): 135.

<sup>3</sup> Reiner Rugulies and Kathrine Sørensen, “Onset of workplace sexual harassment and subsequent depressive symptoms and incident depressive disorder in the Danish workforce,” *Journal of Affective Disorder* 277 (2020): 24.

<sup>4</sup> Vivien Birch, “Sexual Harassment Must End Once and For All,” *Vietnam Investment Review* 2023, <https://vir.com.vn/eliminating-sexual-harassment-86007.html>.

<sup>5</sup> United Nations, *Handbook for Legislation on Violence against Women* (New York: United Nations, 2010), <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20of%20for%20legislation%20on%20violence%20against%20women.pdf>.

<sup>6</sup> World Health Organization, *Sexual and Reproductive Health and Rights*, <https://platform.who.int/data/sexual-and-reproductive-health-and-rights/national-policies/srh/criminalize-sexual-harassment?themeId=8b2d362c-2d43-4fco-8812-9aed241753f>.

reportedly higher than in India, Cambodia, or Bangladesh,<sup>[7]</sup> countries known for prevalent sexual assault. Sexual harassment occurs in various forms and across different environments, from workplaces, public spaces, and schools.

In recent years, Vietnam has made progress in its awareness of and response to sexual harassment. Sexual harassment is prohibited in the workplace under the Labor Code, and violations are subject to disciplinary action. If this behavior occurs in public, it is subject to administrative penalties with an average fine of VND 7,500,000. Furthermore, if the victim of sexual harassment is under 16 years old, the perpetrator may be prosecuted for the crime of “molestation of a person under 16.” However, acts of sexual harassment against individuals of 16 years of age or older are not subject to criminal prosecution unless they constitute other sexual assault offenses.

In practice, current sanctions are not sufficient to reflect the severity of sexual harassment against victims aged 16 and older and do not effectively deter perpetrators. Although some violations have been detected and penalized, the penalties have prompted public criticism, setting a precedent and making victims hesitant to report. Studies indicate that women in Vietnam are not adequately protected from sexual harassment. The Vietnam Women’s Union has also stated that the fines do not deter harassers and have created a negative precedent. It has been argued that Vietnamese law does not provide sufficient protection against sexual harassment.<sup>[8]</sup>

This article provides an overview of Vietnam’s legal framework for addressing sexual harassment and analyzes why the Penal Code should recognize sexual harassment of individuals aged 16 and older as a criminal offense. The study focuses on legal and practical grounds to demonstrate the necessity of criminalizing sexual harassment of those aged 16 and older, while offering recommendations for Vietnam to consider when developing regulations for this offense. The research aims to contribute to the improvement of the legal framework, enhance the effectiveness of responses to sexual harassment, mitigate this issue, and strengthen victim protection. Additionally, the study aims to provide a reference for

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<sup>7</sup> News Department, *87% of Vietnamese Women Have Been Harassed*, 2018, <https://nhandan.vn/87-phu-nu-tung-bi-quay-roi-tinh-duc-noi-cong-cong-post342310.html>.

<sup>8</sup> Michael Tatarsk, “What a \$9 Fine Says About Sexual Harassment in Vietnam”, *VICE*, 2020, <https://www.vice.com/en/article/what-a-dollar9-fine-says-about-sexual-harassment-in-vietnam/>.

the international academic community interested in the legal context and regulation of sexual harassment in Vietnam. The research findings can also serve as a point of reference for countries with legal contexts similar to Vietnam, especially those influenced by feudal regimes with patriarchal traditions, where women's rights are not fully protected.

## 2 | Research Methods and Materials

“Normative legal research is a process of identifying legal regulations, legal bases, and legal doctrine to examine the issues under study.”<sup>[9]</sup> Therefore, the research method used in this study is normative legal research. This research employs four main approaches: the statutory approach, the conceptual approach, the comparative approach, and the historical approach. This research draws on primary and secondary legal materials. Primary legal materials include, but are not limited to, the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 2015 Penal Code (amended in 2017), the 2019 Labor Code, Decree No. 144/2021/NĐ-CP of December 31, 2021, providing for sanctions against administrative violations in the fields of security, order, and social safety; prevention and combat of social evils; fire prevention, firefighting, and rescue; prevention and combat of domestic violence; and Decree No. 12/2022/NĐ-CP of January 17, 2022, providing for sanctions against administrative violations in the fields of labor, social insurance, and Vietnamese workers working abroad under contracts. Secondary materials include academic publications, statistical reports of specialized agencies, and related publications, especially scientific works discussing the criminalization of sexual harassment.

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<sup>9</sup> Theresia Anita Christiani, “Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object”, *Procedia – Social and Behavioral Sciences* 29 (2016): 210.

## 3 | Discussion Results

### 3.1. Definition of Sexual Harassment and Sanctions for Acts of Sexual Harassment in the Vietnamese Legal Framework

The definition of sexual harassment has been discussed for many years, but no common definition has been reached. “The reason behind this is variation of discernments and perceptions in societies.”<sup>[10]</sup>

In Vietnam, sexual harassment was first introduced into the legal system in the 2012 Labor Code. Accordingly, sexual harassment in the workplace is a prohibited act, and affected workers have the right to terminate their labor contracts without prior notice. This recognition marked an important step in Vietnam’s legal approach to addressing sexual harassment through specific regulations. However, the concept of sexual harassment was only formally recognized with the adoption of the 2019 Labor Code. Specifically, Clause 9, Article 3 of the 2019 Labor Code provides:

Sexual harassment in the workplace is an act of a sexual nature by any person towards another person in the workplace that the latter does not want or accept. The workplace is understood as any place where an employee performs work according to the agreement or assignment of the employer.

To provide guidance on and clarify the identification of acts of sexual harassment in the workplace, Decree No. 145/2020/NĐ-CP provides:

Sexual harassment in the workplace can occur in the form of exchanges such as proposals, requests, suggestions, threats, or coercion to engage in sexual relations in exchange for work-related benefits; or acts of a sexual nature not intended as an exchange, but which create an uncomfortable or insecure working environment, causing physical or mental harm and affecting work performance and quality of life of the affected person (Clause 1, Article 84).

<sup>10</sup> Maheen Salman, Fahad Abdullah and Afia Saleem, “Sexual Harassment at Workplace and its Impact on Employee Turnover Intentions,” *Business & Economic Review* 8, no. 1 (2016): 90. See also: Safoora Ahad and Sankar D., “Protection of Children Against Sexual Abuse. Analysis of Indian Legislation from an International Perspective,” *Prawo i Więź* 57, no. 4 (2025): 944.

Acts of sexual harassment in the workplace include the following (Clause 2, Article 84).

- a. Physical sexual harassment: this includes actions, gestures, contact, or physical interactions with sexual implications or suggestive elements.
- b. Verbal sexual harassment: this includes direct speech, phone conversations, or electronic communications containing sexual content or sexual insinuations.
- c. Non-verbal sexual harassment: this includes body language, the display or description of materials or images with sexual content, or references to sexual activities, either directly or via electronic means.

“The definition of sexual harassment in the workplace in Vietnamese legislation draws a distinction between *quid pro quo* harassment and a hostile working environment.”<sup>[11]</sup> The definition of sexual harassment in Vietnamese law is based on the “victim-centered” principle, meaning that all harassing behaviors are assessed based on the victim’s perception and rights. Accordingly, sexual harassment is not limited to physical acts but may also include verbal acts, actions, or gestures of a sexual nature that cause discomfort or threaten the victim’s safety, rights, and dignity. This behavior constitutes a legal violation when it occurs “against the will” of the victim or without their explicit consent.

“It is observed that the definition of ‘sexual harassment’ in Vietnamese legislation has been influenced by the approaches adopted in jurisdictions such as the United States and Japan.”<sup>[12]</sup> Additionally, international frameworks like the ILO Violence and Harassment Convention (No.190) and recommendations from the Committee of Experts on the Application of Conventions have played a role in shaping this definition.

The definition of workplace sexual harassment provided in the 2019 Labor Code is the only legal definition of this issue in the Vietnamese legal system. Although sexual harassment may be subject to labor disciplinary actions and may also be administratively sanctioned if it occurs in public, Vietnamese administrative law has not yet provided a clear definition

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<sup>11</sup> Pham Le Bao Ngoc, “Workplace Sexual Harassment in Vietnam: A Review of Current Legislation,” *Jurnal Undang-undang dan Masyarakat* 33 (2023): 100.

<sup>12</sup> Ryuichi Yamakawa, “We’ve Only Just Begun: The Law of Sexual Harassment in Japan,” *Hastings International and Comparative Law Review* 22 (1999): 560.

of sexual harassment in public spaces.<sup>[13]</sup> Therefore, the definition of workplace sexual harassment in the 2019 Labor Code is not only applicable within the workplace but also serves as a reference for applying sanctions in other legal fields, such as administrative law.

Under Vietnamese law, sexual harassment is subject to two main forms of sanction: labor disciplinary action and administrative penalties. Employees who commit sexual harassment in the workplace may be subject to one of the following disciplinary measures:

- (iv) reprimand;
- (v) extension of the salary increase period for a maximum of six months;
- (vi) demotion;
- (vii) dismissal.

In addition, sexual harassment may be administratively penalized under Decree No. 12/2022/NĐ-CP (if occurring in the workplace) and Decree No. 144/2021/NĐ-CP (if occurring in public), with the following penalties:

**Table 1: Forms of administrative sanctions for sexual harassment.**

Violation	Administrative sanctions	Legal basis
Sexual harassment in the workplace	Fine from 15,000,000 VND to 30,000,000 VND	Clause 3, Article 11, Decree No. 12/2022/ND-CP
Employer committing sexual harassment against a domestic worker	Fine from 50,000,000 VND to 75,000,000 VND	Clause 4, Article 30, Decree No. 144/2021/ND-CP
Molestation, sexual harassment	<ul style="list-style-type: none"> <li>- Fine from 5,000,000 VND to 8,000,000 VND</li> <li>- Mandatory public apology (unless the victim does not request it)</li> </ul>	Clause dd, Clause 5, Article 7, Decree No. 144/2021/ND-CP

Notably, if sexual harassment occurs against a person under 16 years of age, this act may be prosecuted as child molestation under Article 146 of the 2015 Penal Code (amended in 2017). Resolution No. 06/2019/NQ-HĐTP, Article 3, provides that the act of “child molestation under 16 years of age” is defined as follows:

<sup>13</sup> Cao Ngoc Anh Thi, “Perfecting the law on administrative sanctions for acts of sexual harassment in public places,” *Journal of Law and Practice* 54 (2023): 131.

Molestation in Clause 1, Article 146 of the Penal Code means an act committed by a person against another person of different or the same sex that involves direct or indirect physical contact, including through clothing, with a reproductive organ, private part, or other body part of a person under 16, which is sexual in nature but is not committed with the intention of engaging in sexual intercourse. To be specific:

- a) Using a reproductive organ or private part to touch (e.g., groping, rubbing, etc.) a reproductive organ, private part, or other body part of a person under 16;
- b) Using another body part (e.g., finger, toe, tongue, etc.) to touch (e.g., caressing, groping, squeezing, pinching, kissing, licking, etc.) a reproductive organ or private part of a person under 16;
- c) Using a sex aid to touch (e.g., groping, rubbing, etc.) a reproductive organ or private part of a person under 16;
- d) Enticing or forcing a person under 16 to use another body part to touch (e.g., caressing, groping, squeezing, pinching, kissing, licking, etc.) a private part of the offender or another person;
- dd) Other acts that are sexual in nature but are not committed with the intention of engaging in sexual intercourse (e.g., kissing the mouth, neck, ear, nape, etc. of a person under 16)."

Thus, under current regulations, sexual harassment may be considered a manifestation of the objective element of the crime of child molestation of persons under 16 years of age. Therefore, under Vietnamese law, any act of sexual harassment against a person under 16 may be prosecuted. However, for individuals of 16 years of age and older, current Vietnamese law does not provide for independent criminal liability for sexual harassment. This means that if an individual over 16 is sexually harassed, this act can only be criminally prosecuted if it constitutes a sexual offense such as rape. If the conduct does not meet the elements of the above offenses, the perpetrator may be subject only to administrative sanctions under Decree No. 144/2021/NĐ-CP or Decree No. 12/2022/NĐ-CP, primarily in the form of fines.

## 3.2. Reasons for the Criminalization of Sexual Harassment of Persons Aged 16 and Older in Vietnam

### 3.2.1. Compliance with International Gender Equality Commitments to Which Vietnam Is a Party

In the complex evolution of modern society, although the occurrence of men being victims of sexual harassment has increased, the evidence demonstrates that women and young girls remain the primary victims whose freedom and safety in sexual matters are violated.<sup>[14]</sup>

Therefore, to protect the safety of women, international law has established various legal frameworks requiring member states to implement appropriate measures.

Vietnam is the second country in the Asia-Pacific region to ratify the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Adopted on December 18, 1979, CEDAW is a key international legal instrument that lays the foundation for Vietnam's legal system in protecting women's rights. Since ratifying the convention, Vietnam has sought to develop and improve its legal framework to ensure gender equality. Specifically, Article 26 of the 2013 Constitution provides: "Male and female citizens are equal in all aspects; gender discrimination is strictly prohibited." Additionally, issues related to women's rights are addressed in other legal documents such as the Penal Code, the Code of Penal Procedure, the Law on Gender Equality, and the Law on Domestic Violence Prevention and Control.

However, despite these efforts, the CEDAW Committee has expressed concern about progress in eliminating discrimination against women in Vietnam. Specifically, the Committee noted that Vietnamese policymakers and government officials have yet to fully grasp and effectively apply the concept of "substantive gender equality," as harassment against women and children remains widespread, especially in public spaces. General Recommendation No. 19 of CEDAW states that Vietnam should amend the Penal Code and the Code of Penal Procedure to criminalize all forms of violence

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<sup>14</sup> Sundari Anitha and Susan B Marine, "Feminist responses to sexual harassment in academia: voice, solidarity and resistance through online activism," *Journal of Gender-Based Violence* 00, no. 0 (2020): 20.

against women, including sexual harassment.<sup>[15]</sup> Sara Valdes Bolano, Mexican Ambassador to Vietnam, and Kamal Malhotra, United Nations Resident Coordinator in Vietnam, stated that although Vietnam ratified CEDAW in 1982, the country has yet to fully address the core requirement of the convention, namely that all forms of sexual violence must be effectively punished. These experts called on Vietnamese National Assembly delegates to amend the Penal Code to better reflect the severity of sexual harassment in public spaces as a form of sexual violence.<sup>[16]</sup>

### 3.2.2. Consistency with the General Regulatory Trends in Other Countries

According to World Health Organization statistics on “laws criminalizing sexual harassment,” currently, 115 out of 172 responding countries have provisions criminalizing sexual harassment (accounting for 66%).

**Table 2: List of countries with laws criminalizing sexual harassment**

No.	Country	No.	Country	No.	Country
1	Albania	40	Denmark	79	Malta
2	Algeria	41	DR Congo	80	Marshall Islands
3	Andorra	42	Ecuador	81	Mauritius
4	Angola	43	El Salvador	82	Mexico
5	Argentina	44	Equatorial Guinea	83	Micronesia
6	Armenia	45	Eritrea	84	Moldova
7	Australia	46	Estonia	85	Monaco
8	Austria	47	Eswatini	86	Montenegro
9	Azerbaijan	48	Fiji	87	Morocco
10	Bahamas	49	Finland	88	Mozambique
11	Bahrain	50	France	89	Namibia
12	Bangladesh	51	Gambia	90	Nauru

<sup>15</sup> United Nations. Committee on the Elimination of Discrimination against Women. *Concluding observations on the combined seventh and eighth periodic reports of Viet Nam*. 2015. Convention on the Elimination of All Forms of Discrimination against Women.

<sup>16</sup> Sara Valdes Bolaño V- Kamal Malhotra, *Sexual Harassment in Public Places: Criminal or Administrative Violation?* 2021. Available from: [https://baophapluat.vn/quay-roi-tinh-duc-tai-noi-cong-cong-vi-pham-hinh-su-hay-hanh-chinh-post401234.html?utm\\_source=chatgpt.com](https://baophapluat.vn/quay-roi-tinh-duc-tai-noi-cong-cong-vi-pham-hinh-su-hay-hanh-chinh-post401234.html?utm_source=chatgpt.com). Viewed: 10.12.2024.

No.	Country	No.	Country	No.	Country
13	Belgium	52	Georgia	91	Netherlands
14	Belize	53	Germany	92	New Zealand
15	Benin	54	Greece	93	Nicaragua
16	Bhutan	55	Guyana	94	Niger
17	Bolivia	56	Haiti	95	North Korea
18	Bosnia and Herzegovina	57	Holy See	96	North Macedonia
19	Botswana	58	Honduras	97	Norway
20	Brazil	59	Iceland	98	Pakistan
21	Brunei	60	India	99	Palau
22	Bulgaria	61	Iran	100	Panama
23	Burkina Faso	62	Ireland	101	Papua New Guinea
24	Burundi	63	Israel	102	Paraguay
25	Cabo Verde	64	Italy	103	Peru
26	Cambodia	65	Jamaica	104	Philippines
27	Canada	66	Jordan	105	Pitcairn
28	Cayman Islands	67	Kenya	106	Poland
29	Chile	68	Kiribati	107	Portugal
30	China	69	Kuwait	108	Qatar
31	Colombia	70	Latvia	109	Romania
32	Comoros Costa Rica	71	Lebanon	110	Russia
33	Congo	72	Lesotho	111	Rwanda
34	Côte d'Ivoire	73	Libya	112	Saint Lucia
35	Croatia	74	Liechtenstein	113	Samoa
36	Cuba	75	Lithuania	114	Sweden
37	Cyprus	76	Luxembourg	115	Thailand
38	Cyprus	77	Madagascar		
39	Czechia	78	Maldives		

Source: World Health Organization

Thus, most countries have enacted laws establishing criminal liability for acts of sexual harassment. Some countries prescribe strict criminal sanctions for sexual harassment. For example, in California, USA, acts of harassment and sexual assault are subject to a prison sentence of 24 to 48 months, accompanied by a fine of USD 10,000 (approximately VND 200,000,000). Under federal law, sexual harassment may be punished with up to 20 years' imprisonment in serious cases, along with fines and compensation for the victim. In Malaysia, the law stipulates that anyone who insults the dignity

of women through words, gestures, or the display of images or objects with the intent that the victim perceive them may be imprisoned for up to five years, fined, or both. In France, if an individual abuses their power to threaten or coerce another person into sexual relations, they may be convicted of sexual harassment and face a maximum sentence of one year's imprisonment, along with a fine as prescribed by law. In China, Article 237 of the Criminal Law of the People's Republic of China (2020 Amendment) stipulates that acts of sexual harassment in crowded or public places may be punished with imprisonment for more than five years.

Although the penalties for sexual harassment vary among countries due to differences in legal systems and cultural perspectives, most countries share the view that sexual harassment, regardless of the victim's age, should be addressed through criminal law, including where the victim is an adult. For example, in judgment no. MA 72/2002 of September 17, 2022, the Supreme People's Court tried the defendant, Wong Soon Lee (44 years old), for touching the breast of victim, Nah Sze Ling (female, 24 years old), at the Paramount Shopping Center in Katong Road, Singapore. The court found the defendant guilty under Article 354 of the Penal Code and sentenced him to 12 months' imprisonment and three strokes of the cane. Similarly, in China, at approximately 6:30p.m. on July, 1, 2019, a man touched a woman's breast. The victim subsequently reported it to the police. On October 15, 2019, the Jing'an District People's Court in Shanghai conducted a closed trial and sentenced the defendant to six months' imprisonment for sexual harassment. These judgments reflect a broader trend in the international legal system toward the protection of human rights, not limited to age but extending to all individuals who may be harmed by sexual harassment.

In that context, Vietnam has made legislative progress by recognizing criminal liability for sexual harassment through the offense of "molestation of a person under 16 years of age" in Article 146 of the 2015 Penal Code (amended in 2017). This provision reflects the state's stance on combating sexual harassment. However, compared to prevailing legal trends in many countries, Vietnam retains a significant legal gap. Sexual harassment constitutes a violation of honor, dignity, and the inviolable right to bodily integrity, regardless of age. Therefore, such acts should be addressed through criminal law without age-based limitations on victim. Limiting criminal liability to persons under 16 creates a legal gap in the protection of adult victims from the harmful effects of such conduct.

In practice, some countries provide that sexual harassment against children or persons under a certain age constitutes an aggravating

circumstance, increasing the penalty, rather than limiting the scope of criminal prosecution to this group. For example, in the UK, under the Sexual Offences Act 2003, sexual harassment against adults is punishable by up to ten years' imprisonment, but if the act is committed against a victim under 16, the offender may be imprisoned for up to 14 years. The author supports this legislative approach, as it achieves two objectives. First, this approach ensures that all acts of sexual harassment may be prosecuted, regardless of the victim's age, thereby protecting the rights and dignity of all individuals. Second, the legal system maintains a higher level of severity for sexual harassment when the victim is a child or under a certain age, demonstrating additional protection for vulnerable groups. This approach ensures a comprehensive response to such conduct while allowing for a differentiated application of penalties that reflects the severity of the offense.

In conclusion, legislative trends in many countries have affirmed the necessity of establishing criminal liability for sexual harassment, regardless of the victim's age. Therefore, Vietnam should consider international practice when refining the provisions of the Penal Code to ensure a more effective protection mechanism for victims and to establish a coherent legal framework consistent with broader trends.

### 3.2.3. Overcoming the Weakening of the Deterrent Effect of Current Sanctions and Establishing Sanctions Commensurate with the Severity of the Violation

The issue of responding to sexual harassment has only recently received attention and been addressed through legislation; therefore, there are few official statistical reports from Vietnamese public authorities on handling sexual harassment. Most data is collected by human rights organizations and scholars within specific scopes and target groups. However, despite their limited scope, this data indicates the prevalence and severity of sexual harassment in Vietnam.

In Vietnam, most victims of sexual harassment are women (78.2%). Their ages range from 18 to 30, while men account for 21.8%.<sup>[17]</sup> Another study shows that: "In general, the group of women most vulnerable to sexual harassment are young, financially dependent, single or divorced,

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<sup>17</sup> United Nations General Assembly, *UN Committee on the Elimination of Discrimination Against Women (CEDAW) General Recommendation No. 19: Violence Against Women*, 1992.

and migrants.”<sup>[18]</sup> In a survey conducted in Hanoi and Ho Chi Minh City, 87% of women surveyed confirmed that they had been sexually harassed in public. According to the National Study on Violence against Women, one in ten women (11.4%) has experienced one or more forms of sexual harassment in their lifetime. Cases of sexual harassment against children and women in public places have been regularly reported in the media in recent years. Sexual harassment of students is also common in high schools. A separate study found that 60% of students from high school to university in four provinces of Vietnam reported being harassed at least once, with half reporting feelings of anxiety and fear following the incident.<sup>[19]</sup>

Beyond the workplace, sexual harassment is also prevalent in public spaces. According to statistics from the Ho Chi Minh City Department of Labor, Invalids and Social Affairs, 40.9% of men and 38.6% of women surveyed reported sexual harassment against women and girls in public places. 18.5% of the women interviewed reported experiencing sexual harassment and sexual violence, and 11.7% of the men interviewed admitted to engaging in such behavior.<sup>[20]</sup> Similarly, a survey by Plan International Vietnam found that 31% of the 1,128 girls surveyed had been sexually harassed on buses. The survey also revealed that only 13% of girls and 8% of boys report feeling consistently safe in public places.

In summary, these figures illustrate the complexity of the sexual harassment problem in Vietnam. In response to this situation, several sexual harassment cases have been addressed recently. However, the handling of these cases has sparked controversy both domestically and internationally. For example, on November 23, 2020, the Police of District 2, Ho Chi Minh City, received a complaint that a woman, L., had been harassed by Mr. M.J. in an apartment building elevator (specifically, he slapped her buttocks). Following the incident, the victim was also subjected to racial discrimination and defamation by Mr. M.J. After investigating and reviewing camera footage, the police confirmed Mr. M.J.’s misconduct and imposed an administrative fine of VND 200,000. The victim of this

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<sup>18</sup> Thanh, “Sexual Harassment in the Workplace: Lack of Definition, Difficult to Handle,” 2016, <https://dangcongsan.vn/xa-hoi/quay-roi-tinh-duc-tai-noi-lam-viec-thieu-dinh-nghia-kho-xu-ly-390502.html>.

<sup>19</sup> Isds & Actionaid, *Sexual Harassment Among Adolescents in Schools*, (Hanoi, 2020), 201.

<sup>20</sup> Duc Hanh and Xuan Hoa, “18.5% of Women and Children Are Harassed in Public,” VTV, 2019, <https://vtv.vn/vtv9/185-phu-nu-tre-em-gai-tung-bi-quay-roi-noi-cong-cong-20190618083558515.htm>.

incident stated: “With all the pain and emotional distress I endured, the fine of VND 200,000 is inappropriate.” This penalty not only disappointed the victim but also raised concerns about the deterrent effect of Vietnamese law regarding sexual harassment. Ms. Khuat Thu Hong, Director of the Institute for Social Development Studies (ISDS), stated, “I think this fine is a joke. It’s like mocking the victim. This is completely useless in protecting the victim’s honor and protecting women from sexual harassment.” Echoing this sentiment, some argue that “such a penalty could set a precedent, encouraging other harassers to commit similar or more serious acts.”<sup>[21]</sup> Beyond domestic attention, the incident quickly spread internationally, drawing further criticism. An article in the *South China Morning Post* compared the fine for sexual harassment in Vietnam to the price of a pizza.<sup>[22]</sup> Following the public response, Deputy Prime Minister Truong Hoa Binh requested the Ministry of Public Security and the Hanoi People’s Committee to review the case.

Notably, this limitation stems from legal regulations rather than errors by law enforcement. Specifically, according to Clause 1, Article 5 of Decree No. 167/2013/ND-CP – the decree in effect at the time of the offense – the act of “having rude gestures, provocative words, teasing, insulting the honor and dignity of others” is subject to a fine from VND 100,000 to VND 300,000 (this decree did not directly address sexual harassment). Therefore, the police’s decision to impose a fine of VND 200,000 was not unlawful. Mr. Pham Tat Thang, Deputy Chairman of the Committee for Culture, Education, Youth, Adolescents and Children, stated: “The current regulations do not fully reflect the realities of life and are not deterrent enough for offenders.”<sup>[23]</sup>

Following the incident, the Vietnamese Deputy Prime Minister directed legal amendments to strengthen sanctions against sexual harassment. Consequently, Decree No. 144/2021/NĐ-CP was issued, providing for penalties

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<sup>21</sup> N. Dinh, “Vietnam’s Legal Impotence on Sexual Harassment Arouses Outrage,” *VnExpress International*, 2019, <https://e.vnexpress.net/news/life/trend/vietnam-s-legal-impotence-on-sexual-harassment-arouses-outrage-3897819.html>.

<sup>22</sup> South China Morning Post, “Here’s Why Vietnam Needs to Embrace #MeToo – Right Now, the Fine for Groping a Woman Is About the Cost of a Pizza,” 2020, <https://www.scmp.com/print/week-asia/politics/article/3112618/heres-why-vietnam-needs-embrace-metoo-right-now-fine-groping>.

<sup>23</sup> PNVN, “Sexual Abuse: Issues That Need to Be Fixed in the Law,” *Vietnam Women’s Union*, 2017, <https://hoilhpn.org.vn/tin-chi-tiet/-/chi-tiet/xam-hai-tinh-duc-nhung-van-%C4%91e-can-sua-tu-luat-24813-405.html>.

for “sexual harassment,” increasing the fines from VND 5,000,000 to VND 8,000,000, along with a requirement of a public apology (unless the victim declines). This was considered a step reflecting the state’s recognition of the severity of sexual harassment. However, despite this adjustment, the legal system has yet to establish an effective deterrent sanctioning mechanism. Merely increasing fines may not be sufficient to deter sexual harassment. According to the Press Release on Labor and Employment in Q4 and the last six months of 2024 issued by the General Statistics Office and the Ministry of Planning and Investment, the average monthly income of Vietnamese workers is VND 8,200,000.<sup>[24]</sup> With an average penalty of VND 7,500,000, this amount is equivalent to less than one month’s salary – insufficient to deter offenders. Furthermore, as the economy develops and average incomes rise, current penalties may become outdated and lose their deterrent effect. The law cannot continuously adjust penalties in response to inflation. Therefore, without more robust measures, efforts to combat sexual harassment will remain reactive rather than constituting a substantive reform.

In this context, many domestic experts have proposed the criminalization of sexual harassment against individuals aged 16 and older. Dr. Khuat Thu Hong, Director of the Institute for Social Development Studies, suggested incorporating sexual harassment into the Penal Code, as it is closely related to sexual assault and rape.<sup>[25]</sup> Lawyer Dang Van Cuong (Hanoi Bar Association) suggested criminalizing certain forms of conduct associated with sexual harassment to recognize them as criminal offenses. Sharing this view, Master Tran Thanh Thao, lecturer at the Criminal Law Department, Ho Chi Minh City University of Law, stated that the 2015 Penal Code’s omission of addressing acts of kissing and touching individuals over 16 is a flaw.<sup>[26]</sup> Lawyer Nguyen Anh Thom, Head of Nguyen Anh Law Office, Hanoi Bar Association, asserted the need for criminal sanctions against acts of molestation and sexual harassment of women to limit this conduct.

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<sup>24</sup> General Statistics Office of Vietnam, *Report on the Economic and Social Situation in Q4 and 2024*, 2025, <https://www.gso.gov.vn/bai-top/2025/01/bao-cau-tinh-hinh-kinh-te-xa-hoi-quy-iv-va-nam-2024/>.

<sup>25</sup> PNVN, “Sexual Abuse: Issues That Need to Be Fixed in the Law,” *Vietnam Women’s Union*, 2017, <https://hoilhpn.org.vn/tin-chi-tiet/-/chi-tiet/xam-hai-tinh-duc-nhung-van-%C4%91e-can-sua-tu-luat-24813-405.html>.

<sup>26</sup> Hoang Lam, “Penalties Needed to Deal with Sexual Harassment after Elevator Groping Incident,” *Zing News*, 2019, <https://zingnews.vn/can-che-tai-xu-ly-hanh-vi-quay-roi-tinh-duc-sau-vu-sam-so-o-thang-may-post927377.html>.

Despite numerous amendments, the Penal Code still does not stipulate criminal liability for sexual harassment of individuals aged 16 and older, notwithstanding the prevalence of such conduct, expert recommendations, and public demand. The reason for legislators' hesitation in criminalizing sexual harassment appears to lie in the difficulty of defining which acts should give rise to criminal liability and in the challenges proving such violations. Mr. Le Hong Son, former Director of the Department of Legal Document Inspection (Ministry of Justice), stated:

To incorporate it into Vietnamese law, social morality must be considered to ensure harmony. Considering only the legal perspective can be extreme. Therefore, only certain acts should be criminalized, rather than encompassing all.<sup>[27]</sup>

However, criminal conduct does not await the “harmony” of the law but continues to evolve and become more sophisticated. Delays in refining the law may constitute not merely a regulatory gap but a failure to protect human rights. Amidst the increasing prevalence of sexual harassment and public demand for a fair and effective legal framework, legislators' avoidance of the issue may weaken confidence in the justice system. A robust legal system does not avoid difficult issues but confronts complex regulatory challenges. Without timely adjustments, the law risks becoming outdated and may fail to prevent misconduct effectively, while victims remain reluctant to report violations.

### 3.3. Several Recommendations for Vietnam Regarding the Criminalization of Sexual Harassment against Individuals Aged 16 and Above

Given the increasingly complex nature of sexual harassment and the international trend towards stricter sanctions, the criminalization of sexual harassment against individuals aged 16 and above is no longer optional but may be regarded as a necessary legal development. Delays in completing the legal framework may render the legal system outdated and may indirectly facilitate violations by allowing legal gaps to persist. A legal system

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<sup>27</sup> Huy Thanh, “Concerns About Handling Sexual Harassment,” *Nguoi Lao Dong*, 2019, <https://nld.com.vn/thoi-su/ban-khoan-xu-ly-quay-roi-tinh-duc-20190316215109499.htm>.

should not respond solely to emerging forms of misconduct but should establish mechanisms aimed at preventing human rights violations at an early stage. Therefore, it is submitted that Vietnam should consider the criminalization of sexual harassment against individuals aged 16 and above. To ensure feasibility and effectiveness of criminalizing sexual harassment, several issues require consideration:

First, it is necessary to clearly define the acts of sexual harassment subject to criminal prosecution.

Currently, the Labor Code is the only legal document in Vietnam that defines sexual harassment. However, this definition is limited to the workplace and regulates harassment that may occur between employees and employers, as well as among employees. In other contexts, the law lacks a specific definition of sexual harassment, leading to situations in which authorities rely on the definition provided in the Labor Code when addressing violations. Applying a definition limited to the workplace to conduct occurring outside that context may create difficulties, including challenges in determining the violation, the absence of a clear legal basis, and reduced effectiveness in protecting the victim's rights.

Therefore, when considering the criminalization of sexual harassment in the Penal Code, it is necessary to avoid using overly general or vague definitions. Instead, the Penal Code should establish a clear legal framework that defines which acts of sexual harassment may be prosecuted. This approach ensures transparency in the application of the law, facilitates law enforcement in addressing violations, and enhances the protection of victims' rights.

In fact, the current Penal Code already adopts a relatively clear approach to describing the objective elements of sexual offenses, thereby enabling the specific identification of criminal conduct rather than relying on general definitions. Therefore, this legislative technique should be further developed and applied when introducing provisions on sexual harassment against individuals aged 16 and above in the Penal Code.

Second, the offense of sexual harassment against individuals aged 16 and older should be classified as an offense prosecuted upon victim's request.

Under Vietnamese law, certain offenses allow victims to decide whether to initiate criminal proceedings (Article 155 of the 2015 Code of Penal Procedure). These offenses primarily concern infringements upon the victim's health, honor, and dignity. This provision reflects the principle of respecting the victim's right to self-determination and seeks to avoid further harm due to procedural pressure or public scrutiny during investigation

and trial. In this context, when considering the criminalization of sexual harassment against individuals 16 years of age or older, it is appropriate to consider placing this offense within the category prosecuted upon the victim's request. This proposal stems from the nature of sexual harassment as a violation of personal freedom and human dignity, the impact of which may vary depending on the perception of each victim. Imposing mandatory criminal proceedings in all cases may make victims hesitant to report due to stigma, affecting their work, family life, or psychological well-being. By granting victims the right to decide whether to initiate prosecution, the law enables them to exercise autonomy while limiting adverse effects that may occur if they are compelled to participate in proceedings against their will. However, the application of this mechanism also poses challenges. If prosecution is initiated only at the victim's request, victims may be threatened, coerced, or subjected to social pressure, discouraging reporting and resulting in violations not being addressed. In addition, if a complaint is made at a later stage, evidence may be lost or difficult to obtain, thereby affecting the effectiveness of the investigation and trial. To ensure the effective application of prosecution upon the victim's request in cases of sexual harassment, appropriate legal adjustments are required. It is recommended that exceptions be considered whereby the prosecuting authority may initiate proceedings where harassment occurs in contexts involving clear power imbalances, such as the workplace or educational institutions, or when the conduct is serious, including coercion or threats. In addition, safeguards should be established to ensure that victims are not pressured to waive their right to initiate proceedings such as closed hearings to protect their identity and limit public exposure.

Third, it is necessary to consider the application of the circumstance "having been administratively sanctioned for this act but continuing to violate" as a constitutive element of the offense of sexual harassment against individuals aged 16 and older.

Vietnam's current Penal Code stipulates that the circumstance of "having been administratively sanctioned for this act but continuing to violate" serves as a defining element in 63 provisions, accounting for approximately 15% of the total 427 provisions. This regulation reflects the principle of a tiered approach to handling violations, whereby less severe offenses are initially subject to administrative sanctions. Criminal prosecution may be considered if the offender repeats the act after being sanctioned.

This method enhances the efficiency of legal enforcement and resource allocation. Given the limited capacity of the criminal justice system,

allowing administrative sanctions for certain minor violations helps prevent an overburdening of investigations, prosecutions, and trials. By imposing administrative measures, authorities can focus their resources on more serious cases while establishing a legal basis for prosecuting repeat offenders. Singapore's Protection From Harassment Act follows a similar model: minor sexual harassment cases may result in administrative penalties or civil compensation orders, but criminal prosecution may follow if violations persist or escalate.

Furthermore, this tiered enforcement mechanism plays an important role in education and prevention. Administrative penalties serve as a warning, making offenders aware of the legal consequences of sexual harassment and encouraging behavioral change before facing stricter sanctions. This also creates a deterrent effect in society, reinforcing the importance of respecting human dignity and personal rights.

Based on this framework, the author proposes that when criminalizing sexual harassment against individuals aged 16 and older, Vietnam's Penal Code should include the circumstance of "having been administratively sanctioned for this act but continuing to violate" as a defining criterion for criminal liability. This means that if a person has previously been fined for sexual harassment under Decree No. 144/2021/ND-CP but continues to engage in such conduct, they should be subject to criminal prosecution.

## 4 | Conclusion

The criminalization of sexual harassment against individuals aged 16 and older is an important step toward establishing a more effective legal framework to protect victims and deter offenders. While Vietnam has made progress in recognizing and addressing sexual harassment through legal measures, the absence of criminal sanctions for victims aged 16 and older remains a legal gap.

Based on this study's findings, it is recommended that Vietnam recognize sexual harassment against individuals aged 16 and older as a distinct criminal offense in the Penal Code. Furthermore, this offense should be prosecuted upon the victim's request and include repeated violations following administrative sanctions as a criterion for criminal liability.

Due to certain limitations, this study does not provide comprehensive nationwide statistical data on sexual harassment. Additionally, it does not address the drafting of detailed legal provisions for criminalizing sexual harassment against individuals aged 16 and older. Therefore, further research is necessary, including comprehensive data collection, legal analysis, and policy recommendations. It is recommended that researchers, legislators, human rights organizations, and the international community continue to engage in research, propose legal reforms, and strengthen Vietnam's legal framework for addressing and preventing sexual harassment.

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