Sexual Harassment

Acoso sexual
Assédio sexual

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Abstract
Sexual harassment is a set of physical, verbal, or non-verbal behaviors of a sexual nature that has the effect of an affront to the dignity of a person by creating intimidation, hostility, humiliation, offense, or a degrading environment. The Colombian penal code requires as conditions to prove a case of sexual harassment: first, to demonstrate that the victim has been harassed, persecuted, or besieged; second, the sexual purposes in favor of the victimizer or third parties; third, there is no consent in the victim; fourth, a relationship of imbalance of power in favor of the victimizer and against the victim. The recommendations for the forensic evaluation include: Framing into the socio-cultural context of the evaluated person; Recollection of the story identifying the psychic trace and the emotional, social, and physical effects of the sexual harassment and the closing of the interview –closing the psychic wounds that could be opened with the psychological exploration and not revictimize– Make a succinct and clear expert report informing if there is a vital risk to the authority, the treatment recommendations and if you find fictitious sexual harassment.

Keywords: sexual harassment, stalking, forensic evaluation, psychiatric assessment.

Resumen
El acoso sexual es un conjunto de conductas físicas, verbales o no verbales de naturaleza sexual que tienen como efecto una afrenta a la dignidad de una persona creando intimidación, hostilidad, humillación, ofensa o un ambiente degradante. El código penal colombiano contempla cuatro condiciones para considerar una conducta como acoso sexual: primero, demostrar que la víctima ha sido acosada, perseguida, hostigada o ase-diada; segundo, los fines sexuales en favor del victimario o de otros; tercero, que no haya consentimiento de la víctima; cuarto, una relación de desequilibrio de poder a favor del victimario. Las recomendaciones propuestas para la evaluación forense incluyen el encuadre en el contexto sociocultural, la toma de un relato que evidencie la huella psíquica y los efectos emocionales, sociales y físicos del acoso sexual; el cierre de la entrevista donde se intervienen las heridas psíquicas consecuencia del acoso que pudieron abrirse con la exploración psicológica sin revictimizar; realización de un informe pericial sucinto y claro reportando a la autoridad si hay riesgo vital, las recomendaciones de tratamiento y si se sospecha de que el alegato de acoso sexual es ficticio.

Palabras clave: acoso sexual, acecho, evaluación forense, evaluación psiquiátrica.

Resumo
O assédio sexual é um conjunto de condutas físicas, verbais ou não verbais de natureza sexual que tenham por efeito afrontar a dignidade de uma pessoa, criando intimidação, hostilidade, humilhação, ofensa ou ambiente degradante. O código penal colombiano contempla quatro condições para considerar uma conduta como assédio sexual: primeiro, demonstrar que a vítima foi assediada, perseguida, assediada ou assediada; segundo, propósitos sexuais em favor do vitimizador ou de outros; terceiro, que não há consentimento da vítima; quarto, uma relação de desequilíbrio de poder em favor do perpetrador. As recomendações propostas para a avaliação forense incluem a ambientação no contexto sociocultural, a realização de uma história que mostre o cunho psicológico e os efeitos emocionais, sociais e físicos do assédio sexual; o encerramento da entrevista onde se intervêm as feridas psíquicas decorrentes do assédio que poderiam ser abertas com a exploração psicológica sem revitimização; elaboração de laudo pericial sucinto e claro informando à autoridade se houver risco de vida, recomendações de tratamento e se houver suspeita de que a alegação de assédio sexual seja fictícia.

Palavras-chave: assédio sexual, stalking, avaliação forense, avaliação psiquiátrica.
Introducción

The chapter 13 of the book of Daniel in the catholic bible describes a passage in which Susanne, a married woman in Babylon is stalked for many days by two old men and then she is harassed until they force her to have sexual intercourse with them. Susanna refuses and they frame her of committing adultery with a young man, so she is sentenced to death. However, Daniel intervenes and interviews the two old men separately, proving the false statement, which makes the assemble withdraw the death penalty for Susanne and sentence the two old men to the capital punishment. It’s remarkable that the two victimizers were judged for false statement and not for stalk neither for sexual harassment (1); probably the Babylonian laws, among them, the Code of Hammurabi, didn’t contemplate those crimes and for that reason, there was no penalty for punishing those acts. In 2008, sexual harassment was typified as a crime against the liberty, integrity, and sexual development in Colombia (2). In the research of sexual harassment, it is difficult to prove the fact, that is why a good psychiatric forensic assessment could be constituted as prove in these processes.

This text aims to make a proposal of a psychiatric-forensic assessment of sexual harassment victims in Colombia, considering the penal normativity available and the review of the scientific literature.

Definition of sexual harassment

As defined by the spanish Real Academia de la Lengua, stalk is "chase without truce nor rest to an animal or to a person" (3). Etymologically, the word comes from the archaic word cosso which means race. This global definition that isn’t specific for the forensic field, evokes an action of chasing, putting the victim in a position of disadvantage towards his victimizer, and then it refers to “without truce nor rest”, which gives this behavior the characteristic of causing discomfort to the victim.

Sexual harassment is a heterogeneous set of physical, verbal and nonverbal behaviors of sexual nature that affects the dignity of a person by creating intimidation, hostility, humiliation, offense or a degrading environment (4).

Sexual harassment is a specific expression of sexual violence (5). It’s an extended phenomenon and it has become a mental health, social and working issue (6) and it is considered a gender violence phenomenon, because women have more risk of enduring it (7). It is the way of reaffirmation of the symbolic dominance over women invisibilized and legitimized of a prevailing patriarchal system. The incidence
varies from country to country, maybe in consequence to the increasing conscience of social rejection to those behaviors in some cultures (8).

In Colombia, sexual harassment was typified as a crime by the 1257 of 2008 law appended by the Penal Code in the Article 210 that says: “Sexual Harassment. The one that for own benefit or in benefit for a third and using their manifest superiority or relations of authority or of power, age, sex, work, social, family, or economic position harasses, pursues, or physically or verbally assaults, for non-consensual sexual purposes, another person, will incur a prison term of one to three years”. The ruling verbs of this norm are “harass, persecuted, hound and besiege” with sexual aims not consented by the other person. The legal assets covered are the integrity, development, and sexual freedom. The Colombian penal code demands as a condition to prove a sexual harassment case: first, to demonstrate that the victim has been harassed, persecuted, hounded or besieged; second, the sexual aims in favor of the victimizer or third parties; third, that there is not consent from the victim; fourth, that the victimizer has a clear superiority, power relationship or authority over the victim, in terms of age, sex, working roles, social, familiar or economic status. It means, it’s necessary to prove that a relationship of imbalance of power exists in favor of the victimizer and against the victim (2). Then, for the Colombian penal code, sexual harassment is an abuse of power with sexual intentions in which the victim has little alternatives to reject, because there is a tacit or manifest threat of causing harm or lose benefits related to that sexual intention. It’s important to highlight the difference between sexual harassment, defamation, and sexual acts: the materialization of the sexual act against the victim in the latter (9).

Psychiatric-Forensic assessments of sexual harassment are limited because in these cases there are little complaints in the courts, working and academic environments, or for the perception that the sexual harassment isn’t a cause of mental and emotional harm. One of the main reasons to avoid complaint is the lack of recognition of this behavior by the victim as crime (8) since this type of violence is socially naturalized and is minimized by the victims and the victimizers. The reasons are: The stigmatization, the fear to the consequences of disadvantages for the complaint, not to expect help or support, the concern for the opinions of other people, to not have proofs, to not have the courage, feel some sympathy towards the perpetrator or to feel personally responsible (10). The fear of exclusion, the loss of working or academic opportunities and the fear of re-victimization are other causes of the lack of complaint in working and academics environments.
Proposal to perform a psychiatric-forensic assessment of a sexual harassment victim

The objective of a psychiatric-forensic assessment from a sexual harassment victim is to establish if, based on the researched facts, there is a psychiatric trail, a victimization process with sexual goals, if there was power asymmetry and its consequences in the mental health of a person, with the purpose of letting the judging authority count with proof that contributes to get to a conclusion beyond the reasonable doubt.

The sexual harassment victim’s assessment must be done in the framework of threatened and violated rights by this behavior that is how they should evaluate the freedom, integrity and sexual formation depending on the victim’s vital cycle.

Framing: At the beginning of the process of a psychiatric-forensic assessment it’s necessary to set a sociocultural framing of the person being evaluated, because sexual harassment is a complex and multi-faceted phenomenon (11). This aspect is very important due to studies that point out the existence of nonconsensual sexual behaviors accepted in some cultures and not others (12) and to make visible sexual harassment in some societies or special populations is still viewed as a taboo (11), that is why in these cases it is necessary to use a different approach, even get support from social anthropology. Given that is expected that sexual harassment threatens or violates the human dignity, it’s important to be careful with the approach made to victims of this type of harassment, since through the verbal or physical approach it’s possible to recreate the harassment phenomenon and, in consequence, it’s necessary to be careful with the verbal and nonverbal language that is used when performing a psychiatric-forensic assessment.

Taking of the narration: It’s recommended to perform a semi structured interview like the one described in the “Protocole for Basic assessment in Forensic Psychiatry and Psychology” of the Colombian National Institute of Legal Medicine and Forensic Sciences (13) to get the information about the facts narrated by the victim, revealing the asymmetric power relationship, the interaction victim-victimizer, the dynamics of victimization, emotions and feeling, the context in which occurred the facts and its compatibility with the traumatic effects of the process of sexual harassment linked to the narration which has to give account of the psychic mark that is found in the evaluated person as result of have been submitted to a process of victimization or, in psychodynamic terms, the reification for the pleasure of the victimizer (14). The interview to the victim must be oriented to find the psychic trail, the victimization process, the power asymmetry, and the psychological impact. To clarify, a psychiatric-forensic assessment does not seek to find the truth about researched facts since this
corresponds to the judging authority from the case. In the narration is necessary to identify three elements: the factual aspects of the sexual harassment which includes frequency, duration, and intensity, because when the frequency increases the damaging effects also increase, as well as the difficulty for the victim to exit the dynamics of victimization; the second elements are the contextual or psychosocial factors related with the tolerance of the organizations where the sexual harassment occurred (this can be extrapolated to public places, schools and universities), the negative to accept complaints, backgrounds of retaliation to people who had made complaints and lack of penalty to the harasser; and the third and last elements constitutes the individual factors: previous victimization, personality features, personal resources (personal strategies of coping) and attitudes (6). Also, the assessment must tell which is the most adequate treatment, the prognosis, and vital risk indicators from the sexual harassment victim (15).

The cases of single events are more complex and paradoxically are the more frequent ones. The difference between courtship, flirtation and sexual harassment is subtle and, in general, conditions of asymmetry and power are less explicit. In Colombia, the Supreme Court of Justice advocates the thesis in which sexual harassment is not a single act but a series of repetitive acts that doesn't necessarily have a determined time, “but persistence from the harasser” (9). Nonetheless, there may exist cases of single event with persistence of the harasser, for example: a person exposed to the fact that his/her superior makes gestures with his tongue to her on several occasions during a reunion. In the cases of multiple events, it is possible to identify patterns of occurrence: one of stable occurrence and other of increasing occurrence (in crescendo), which means, the approaches, behaviors, or comments of sexual content increase in intensity and frequency.

Assessment of the effects of sexual harassment to the health

According to the scientific literature available, the effects of sexual harassment are emotional, social, and physical (17). To be able to understand the effects in the psyche of the victim, it's necessary consider that sexual harassment creates a hostile, intimidating, and frightening environment. Especially, if there are many harassers that act as a group; in this situation the sensation of imminent danger increases as well as the sensation of displeasure in the victim or her/his psychological discomfort. The immediate intrapsychic reactions might be: bewilderment, fear, hypervigilance,
anger, disgust, displeasure, sensation of vulnerability, and anxiety. And as immediate responses: paralysis, escape, reject and, on some occasions, anger, dissociation, and confrontation of the victimizer. The looks of the people cause in the victim the sensation of being invalid, of being limited and to have been objectified, in other words, her/ his body or parts of it, are valued for the consumption of others (the body as a sexual object), generating in some assessed people corporal shame through the vigilance of their own bodies (18). This sexual objectification is the common core of the acts of sexual violence against women (19). The mediates answers included avoidance behavior (concur to certain places or relate with some groups), modified routines, dressing change, social isolation, social activities or outdoors restrictions and feeling of insecurity (10). At last, sexual harassment causes implicit psychiatric suffering which affects long-term mental health and it’s been associated to high levels of stress, depression, and anxiety (20), increases alcohol and psychoactive substances intake (21), psychological distress, irritability (22), postraumatic stress (6), negative perception of the own body and low self-esteem.

The social effects can be different according to the context in which the event occurred: when the sexual harassment happens in the working environment the person can exhibit guilty thoughts or self-reproach, submission behaviors, decrease in the work productivity and in the work satisfaction, increase in the health-related absences and withdrawal from work (23). When it happens in an academic environment it can cause decrease in school achievements, and damage in social relationships (24).

Closure of the interview

Even though it’s true that the forensic psychiatric interview doesn’t have therapeutic aims, when topics that affect the human dignity, freedom, development, and sexual integrity are addressed, it’s necessary to make a closure of the psychic wounds resulting from the harassment, that may have been opened during the psychological assessment, having particular care of avoiding revictimization through blaming the victim, either in an active way from the interviewer or in a passive way through keeping silence.

Making of the expert report

The procedures for collecting information, of comparison and the processing of the information acquired from the victim evaluated and the information sent by the
authorities are complex and demand time, sensibility, empathy, and great experience for the assessor. These expert reports are product of a complex process in the mind of the assessor that must inform in succinct and clear report, much more that the damages in the psychic of the assessed (25) and it has to be written with simple and clear language that can be comprehended by a judicial operator who is unfamiliar with the medical science of psychiatry.

The report should focus in describing the characteristic elements of the victimization phenomenon, highlight if a power relationship exists or existed between the accused and the victim (26), the description of the allegations, the frequency of the acts and the psychic mark found, making a rich description of cognitions, emotions, and feelings related to the alleged and investigated events. Having in mind that during the assessment is made an exploration in the intimate life of the person, it’s necessary to ponder if some personal information is needed in the report considering if it’s appropriate for the case and having the previous consent of the assessed person to report it, considering that the purpose is to expose even more the intimacy of a person after being invaded in her/his privacy for another person (the aggressor). In the cases where vital risk for the victim is perceived, it must be informed to the judicial authority, even it’s possible to respectfully suggest some protection measures for the victim. As well as to suggest recommendations to enhance the resilience ability in the victim (27). Finally, the assessor must inform to the petitioner authority if she/he finds hints of fictitious sexual harassment or false allegations of sexual harassment (28, 29).

Underpinning the expert report based in the expert opinion to be controverted in a hearing

To contribute in the leading of the judicial authority that judges the case beyond the reasonable doubt is necessary to orientate the answers to show the elements of the narration of the investigated events, the emotional reactions, and its correlations with the harmed and violated rights.

Conclusions

The psychiatric-forensic assessment from sexual harassment felony victims implies the challenge of getting information from the facts, avoiding the damage of the human dignity and the revictimization.
There is scientific evidence about sexual harassment that guides the psychiatric to the moment of planning and making a forensic assessment from the victims. The psychiatric-forensic assessment from victims of sexual harassment allows to obtain a fundamental proof in the judicial research that can show the victimization process, the psychiatric trail, and the power asymmetry.

Doing a psychiatric-forensic assessment from sexual harassment felony victims like the one proposed here facilitates the acquisition of useful information for the judicial process and to midterm it achieves to get a list of comparable cases that will facilitate the scientific investigation.

**Conflict of interest:**
The authors denied any conflict of interest.

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