

## **USA\_Legal Explainers**

The United States of America (USA), commonly known as the United States (U.S.) or America is a federal republic with the world's largest economy by GDP, the foremost military power in the world and a leading, political, cultural and scientific force in the world. The United States has a presidential system of elections, and is one of the most powerful countries in the world.

However they continue to face trouble when it comes to protecting women from violence and harm. Crimes against women in the USA are either because of domestic violence, sexual violence, sexual harassment and hate crimes for gender and race.

With respect to laws governing gender based violence and harassment, there are federal laws, policies, and general legal frameworks in place. However, as is with any federation, unless individual states expressly adopt a federal legislation, its applicability is not uniform.

The laws explained here are those that apply to all of US i.e. they are federal in nature. Laws in US may differ state to state as well.

### **1. The U. S. Code**

**How does the US Code address rape and sexual assault?**

Title IX, Subtitle A, Part II, Chapter 47, Subchapter X, Paragraph 920 of the US Code deals with rape and sexual assault. It states that any person is said to commit rape if commits a sexual act on another person he uses unlawful force against another person, causes bodily harm to another person, threatens another person with kidnapping, grievous bodily harm or death, renders another person unconscious or administers them an intoxicating substance without their consent. A person is said to commit sexual assault when he places another person in fear, causes bodily harm, makes a false representation that the sexual act is for a professional purpose or induces another person to believe that the perpetrator is someone else. The section also defines aggravated sexual contact and abusive sexual contact.

The term 'sexual assault' means contact between the penis and the vulva or anus or mouth, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight or the the penetration, however slight, of the vulva or anus or mouth, of another by any part of the body or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

The term 'sexual contact' means touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any

person; or any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person.

### **How does the US Code address peonage, human trafficking and slavery?**

Title XVIII, Part I, Chapter 77, Paragraph 1581 of the US Code declares that whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined or imprisoned not more than 20 years, or both.

If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined or imprisoned for any term of years or life, or both.

Title XVIII, Part I, Chapter 77, Paragraph 1583 of the US Code deals with enticement to slavery and provides that whoever kidnaps a person to be sold into involuntary servitude, or held as a slave; or entices, persuades, or induces any other person to be held as a slave, or sends them out of the country into slavery; or obstructs, interferes with or prevents the enforcement of this section, shall be fined or imprisoned for not more than 20 years, or both.

Title XVIII, Part I, Chapter 77, Paragraph 1584 of the US Code deals with involuntary servitude and provides that whoever knowingly holds or sells another person into involuntary servitude, or brings into the United States a person held in involuntary servitude, shall be fined or imprisoned for not more than 20 years, or both. If such involuntary servitude results in death, kidnapping, attempt to kidnap, aggravated sexual abuse or the attempt to kill shall be fined or imprisoned for any number of years or life or both.

Title XVIII, Part I, Chapter 77, Paragraph 1585 of the US Code deals with seizure, detention and transportation of slaves and provides that whoever being a citizen of the United States and associated with a ship's crew or company, engages in slavery, or brings to the United States any slaves, or detains any slaves on the ship or other vessel, with the intention of selling, delivering or transporting such slaves shall be fined or imprisoned for not more than 7 years, or both.

Title XVIII, Part I, Chapter 77, Paragraph 1589 of the US Code deals with forced labour. It provides that forced labour is said to be obtained either by means of

- force, threats of force, physical restraint, or threats of physical restraint to someone; by means of serious harm or threats of serious harm;
- by means of the abuse or threatened abuse of law or legal process;
- or by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint

In the section, the term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

In the section, the term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

Whoever violates this section shall be fined, imprisoned not more than 20 years, or both. If this results in death, kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both. This section also punishes persons who knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means of forced labour described, knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means.

Title XVIII, Part I, Chapter 77, Paragraph 1590 of the US Code deals with trafficking with respect to peonage, slavery, forced labour or involuntary servitude. It provides that Whoever knowingly recruits, harbors, transports, provides, or obtains by any

means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If this results in death, kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

Title XVIII, Part I, Chapter 77, Paragraph 1590 of the US Code deals with sex trafficking of children or by force, fraud, or coercion. In this section, the term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

The term “coercion” means either threats of serious harm to or physical restraint against any person or any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of law or the legal process.

The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the

same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

If the offense was effected by means of force, threats of force, fraud, or coercion, the person is liable to be punished by a fine under this title and imprisonment for any term of years not less than 15 or for life.

Title XVIII, Part I, Chapter 77, Paragraph 1591 of the US Code deals with unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labour. It states that whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person in an attempt to violate any of the abovementioned sections to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person’s liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, shall be fined under this title or imprisoned for not more than 5 years, or both.

Title XVIII, Part I, Chapter 77, Paragraph 1593 of the US Code deals with mandatory restitution under which the defendant is liable to pay the victim(through

the appropriate court mechanism) the full amount of the victim's losses, as determined by the court.

As used in this section, the term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

Title XVIII, Part I, Chapter 77, Paragraph 1593A of the US Code deals with benefitting financial with peonage, slavery and trafficking in persons. It states that whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of section 1581(a), 1592, or 1595(a), knowing or in reckless disregard of the fact that the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section.

## **2. Violence Against Women Act**

The Violence Against Women Act of 1994 (VAWA) is a United States federal law (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act H. R. 3355) signed by President Bill Clinton on September 13, 1994 (codified in part at 42 U.S.C. sections 13701 through 14040). The Act provided \$1.6 billion toward

investigation and prosecution of violent crimes against women, imposed automatic and mandatory restitution on those convicted, and allowed civil redress in cases prosecutors chose to leave un-prosecuted. The Act also established the Office on Violence Against Women within the Department of Justice.

VAWA 1994 fostered community-coordinated responses to domestic violence and sexual assault (engaging the criminal justice system, social services, and NGOs), created a national domestic violence hotline and allocated substantial funds for a number of different kinds of initiatives and programs, including shelters and other services for battered women, judicial education and training programs, and programs to increase outreach to rural women.

In the 2000 reauthorization of VAWA, Congress expanded the scope to include crimes of dating violence and stalking, created a legal assistance program for victims, and established U- and T-visas for battered immigrants to allow them to remain in the U.S.

The 2005 reauthorization of VAWA provided further protections for immigrants; increased funding for victim outreach, assistance and prevention efforts; made it unlawful to evict a victim of domestic violence or stalking from federal housing on the basis of their status as a victim; and developed violence prevention strategies.

VAWA 2013 expanded housing protections to include additional federally-subsidized housing programs not included in the 2005 reauthorization, provided additional protections for students and immigrant survivors, and reauthorized critical

VAWA grant programs. For more information on VAWA, including grant programs, see the U.S. Department of Justice Office on Violence Against Women.

**What does the Violence Against Women Act address?**

One of the primary issues VAWA addresses is domestic violence. Clause 8 of Section 40002 defines domestic violence to include felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim. Such a person may have a child in common with the victim, cohabited presently or in the past with the victim, or may be a spouse or intimate partner of the victim.

Clause 28 of Section 40002 defines sex trafficking to mean any conduct proscribed by section 1591 of title 18, United States Code, whether or not the conduct occurs in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States.

Clause 29 of Section 40002 defines sexual assault to mean any non-consensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Clause 30 of Section 40002 defines stalking to mean engaging in a course of conduct directed at a specific person that would cause a reasonable person to either fear for his or her safety or the safety of others or suffer substantial emotional distress.

The VAWA has provisions which make it easier for the agencies of the federal government to tackle violence against women. The Act provides for law enforcement and prosecution grants to reduce violent crimes against women, assistance to victims of sexual assault, provision of safe homes for women, grants for battered women shelters, confidentiality for the protection of abused persons, rural domestic abuse and child abuse enforcement, civil rights for women victims, education and training for court personnel in state and federal courts and in the general reduction of violence against women.

### **3. Trafficking Victims Protection Act, 2000**

The purposes of this Trafficking Victims Protection Act, 2000 are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims. One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.

Section 105 provides for an interagency task force to monitor and combat trafficking. The Task Force shall coordinate the implementation of the legislation, measure and evaluate progress in trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, expand interagency procedures to collect and organize data, including significant research and resource information on domestic and international trafficking, engage in efforts to facilitate cooperation among countries of origin, transit, and destination, examine the role of the international 'sex tourism' industry in the trafficking of persons and in the sexual exploitation of women and children around the world, and engage in consultation and advocacy with governmental and nongovernmental organizations, among other entities, to advance the purposes of this division.

Section 106 provides for economic alternatives to prevent and deter trafficking such as microcredit lending programs, training in business development, skills training, and job counseling; programs to promote women's participation in economic decision making; programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking; development of educational curricula regarding the dangers of trafficking; and grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.

Section 107 provides for protection and assistance for trafficking victims in and out of the United States. It provides for the certification of such victims and the

investigation and prosecution processes that must be undertaken. It ensures protection for these victims in custody and for federal grants to be made for their benefit.