

**BREAKING THE BONDAGE OF DISCRIMINATION:
A SURVEY OF PROTECTIVE LEGISLATIONS
ADVANCING THE RIGHTS OF WOMEN**

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*"...[d]iscrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full developmental of the potentialities of women in the service of their countries and of humanity.***

I. INTRODUCTION

Women have always played an important role in the enrichment of our country's history and have helped build the emergence of the Filipino nation. The Philippine experience from the pre-Spanish *babaylan*² to the present-day democratic and republican system of governance, where two women have already served as heads-of-state,³ only prove that women can play roles other than in the realm of domestic matters. Filipino women have as much say on

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¹ The Convention on the Elimination of All Forma of Di3cnminadi?fi Against Women (1979) available at <http://www.un.org/womenwatch/daw/cedaw>(last accessed Oct 25, 2004) [hereinafter CEDAW].

² Women priestesses performing healing acts during the pre-Spanish era.

³President Corazon C. Aquino (1986-1992) and President Gloria Macapagal-Arroyo (2001-present).

domestic matters as men, can enter any profession they wish to,⁴ can advance in that profession as swiftly as men, and can participate in community affairs with equal vigor as men do.⁵

If the aforementioned premise is true, then why is there a need to legislate in favor of women? Studies done by sociologists show that there is, after all, a whale of a difference between what history books say and what is actually happening in the society. Results of social investigations disclose that Filipino women are more oppressed than men and this oppression appears to increase as communities urbanize.⁶ The apparent weakness of the physical constitution of women compared to that of men accidentally created a global fallacy that women are weak in everything.⁷

Going through the pages of our nation's colorful history would show that Filipino women during the Pre-Spanish era enjoyed a significant position not only in the family but also in the community. Unlike their Asian sisters, Filipino women have never been forced to hide themselves behind veils, to have bound feet, or to walk several paces behind their male companion. The arrival of the Spaniards and the introduction of the Civil Code only institutionalized the inequality that existed then between the sexes by the imposition of various restraints on women's behavior. The woman was subjected to her father, brother, or husband's power not only with respect to property matters but also as to what actions she could or could not take. As a consequence, Filipino women were assigned to stereotyped roles of daughter, sister, wife, and mother. The American rule from 1898 to 1946 introduced the principles of the English common law and influenced public law. They introduced a rather paternalistic attitude by considering women as special targets of protective legislation.⁸

⁴ Subject to the provisions of the Family Code specifically Article 73 which states, "Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious and moral grounds."

⁵ V.A. MIRALAO, *WOMEN AND MEN IN DEVELOPMENT: FINDINGS OF A PILOT STUDY* m (1980).

⁶ *Id.*

⁷ M.A. VILLABA-CuE, *THE MISSION OF WOMEN: A RETURN TO THEIR ORIGINAL ROLE* 5 (1975).

⁸ *LAWS ON WOMEN: AN ANNOTATED LIST VOLUME I* (MYRNA S. FELOANO AND FLODELIZA C. VARGAS-TRINIDAD, EDS., 2000)

After the American regime, various laws have been passed intended to protect women and to meet their special needs. Limited as these laws may be, they are nonetheless considered as victories for women and guideposts for future legislation.⁹ However, a call for women's liberation from this global fallacy of women's weakness is still very much necessary. And this liberation can only be effectively attained through legislation that would highlight the strengths of women rather than focus on their weaknesses.

This article then seeks to discuss various important legislations enacted throughout the years which were specially created to uphold and advocate the rights of women. Aside from statutes, various decisions enunciated by the Supreme Court will also be discussed. Although there have been many statutes enacted over the years with this noble aim, there are, however, still imperfections in these laws that must be addressed.

II. THE EQUAL PROTECTION CLAUSE OF THE 1987 CONSTITUTION

The 1987 Constitution brought forth a new and unique provision,¹⁰ since it is a right not enshrined in the 1935 and the 1973 Constitutions, in the United States Constitution nor in the constitution of other countries.¹¹ Article II, Section 14 of the 1987 Constitution is intended to serve a dual purpose: first, recognizing the role of women in nation-building and second, stressing that there exists a fundamental equality before the law between women and men. While there is no doubt as to the first purpose of the new provision, two Constitutional Commissioners¹² made clear that as to the second purpose, the intent was not to achieve sameness, because men are different from women, nor to achieve equality of rights, but only equality of protection coupled with recognition of real differences.¹³ Men, therefore

⁹ Mabuhay ang Filipina! Mabuhay ang Kalayaan! A Celebration of Herstory: Women in Legisktion, Women in Politics, <http://www.kababaihan.org/herstory/index.htm> (last accessed Oct30,2004).

¹⁰ CONST, art. II, §14. The provision states, "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."

¹¹ Mabuhay, *supra* note 9.

¹² Commissioners Felicitas Aquino and Adolf Azcuna

¹³ J. G. BERNAS, S.J., THE INTENT OF THE 1986 CONSTITUTION WRITERS 126 (1995) [hereinafter BERNAS, INTENT].

may be treated differently from women but such must be based on rational, relevant, or germane distinctions. Thus, for instance, women should be admitted to occupations where gender is not a factor in the performance of duties such as the practice of law¹⁴ or the practice of any other profession. This principle was affirmed by the Supreme Court in the case of *Philippine Association of Service Exporters, Inc. v. Hon. Franklin M. Drilon and Tomas D. Achaoso*.¹⁵

In the said *Philippine Association* case, the petitioner challenged the Constitutional validity of an order issued by the Department of Labor and Employment governing the temporary suspension of deployment of female Filipino domestic and household workers abroad. On the argument that such measure is a form of discrimination against females, the Court, applying the equal protection clause, ruled that the classification made on women is based on substantial distinctions. It held:

The petitioner has shown no satisfactory reason why the contested measure should be nullified. There is no question that Department Order No. 1 applies only to "female contractual workers," but it does not thereby make an undue discrimination between the sexes. It is well-settled that "equality before the law" under the Constitution does not import a perfect identity of rights among all men and women. It admits of classifications, provided that (1) such classification rest on substantial distinctions; (2) they are germane to the purposes of the law; (3) they are confined to existing conditions; and (4) they apply equally to all members of the same class. The Court is satisfied that the classification made ^{3/4} the preference for female workers ^{3/4} rests on substantial distinctions.

As a matter of judicial notice, the Court is well aware of the unhappy plight that has befallen our female labor force abroad, especially domestic servants, amidst exploitative working conditions marked by, in not a few cases, physical and personal abuse. The sordid tales of maltreatment suffered by migrant Filipina workers, even rape and various forms of torture, confirmed by testimonies of returning workers, are compelling motives for urgent Government

¹⁴*See Bradwell v. Illinois*, 83 US (16 Wall) L Ed 442 (1873) where the US Supreme Court upheld the decision of the Illinois Supreme Court refusing the admission of a married woman to the practice of law.

¹⁵*Philippine Association of Service Exporters, Inc. v. Drilon*, 163 SCRA 386 (1988).

action. As precisely the caretaker of Constitutional rights, the Court is called upon to protect victims of exploitation. In fulfilling that duty, the Court sustains the Government's efforts.

The same, however, cannot be said of our male workers. In the first place, there is no evidence that, except perhaps for isolated instances, our men abroad have been afflicted with an identical predicament. The petitioner has proffered no argument that the Government should act similarly with respect to male workers. The Court, of course, is not impressing some male chauvinistic notion that men are superior to women. What the Court is saying is that it was largely a matter of evidence (that women domestic workers are being ill-treated abroad in massive instances) and not upon some fanciful or arbitrary yardstick that the Government acted in this case.

Philippine Association was promulgated in 1988, a time when there were still no gender-sensitive legislations, policies, and programs protecting the women migrant workers. The Philippines, along with Indonesia and Sri Lanka, is but one of three countries in the Asian region where women comprise the majority of the migrant workers.¹⁶ The issue of protecting migrant workers, particularly women migrant workers, has placed the government in a bind due to the competing interests of promoting overseas employment on the one hand, and the difficulties of extending protection to overseas workers on the other. Given the strong demand for female migrant workers and because of the prospects of even greater demand in the future, the country finds itself in a difficult position of allowing the migration of women under circumstances which seemingly promote or allow "the comparative advantage of women's disadvantage."¹⁷ The Court was right in ruling in favor of the validity of the Department Order which sought to temporarily suspend the deployment of female workers at a time when abuses of our women workers abroad were rampant in the absence of measures to protect them. It was only in 1995 when the government applied gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers through Republic Act No. 8042.¹⁸

⁶ S.H. GUERRERO, WOMEN AND GENDER IN POPULATION AND DEVELOPMENT 70 (2001)..

⁷ Mat 75.

⁸ Migrant Workers and Overseas Filipino Act, Republic Act No. 8042 (1995).

III. POLITICAL RIGHTS OF WOMEN

A. Right to Citizenship: The Right to Have Rights

Citizenship is a person's basic right for it is nothing less than the right to have rights.¹⁹ It is a membership in a political community and denotes possession within that particular community of full civil and political rights subject to special disqualifications such as minority.²⁰ Thus, before a person could fully enjoy his or her political rights, it is an important prerequisite that he or she be a citizen of a particular political community and swear and observe allegiance to it.

Article IV, Section 1 of the 1987 Constitution²¹ enumerates who are the citizens of the Philippines. It is provided in the enumeration that a person whose either parent is a Filipino shall also be a Filipino. The same rule was followed in and was adopted from the 1973 Constitution. Under the 1935 Constitution, however, only those whose fathers are citizens of the Philippines shall be Filipino citizens while those whose mothers are citizens of the Philippines but married to a non-Filipino still had to do a positive act to perfect their Filipino citizenship. In the latter case, the child, upon reaching the age of majority, still had to elect Philippine citizenship to become one.

The 1973 innovation was criticized during the deliberations of the 1986 Constitutional Commission by two of its venerable members, Commissioners Roberto Conception and Ambrosia Padilla. Commissioner Conception, looking at it from a nationalist perspective, saw the provision as a dangerous facilitation of the acquisition of citizenship which could open up the exploitation of natural resources to "half-breeds." Unstated in his argument,

¹⁹ See Chief Justice Warren's Dissenting Opinion in *Perez v. Brownell*, 356 U.S. 44, 64 (1958).

²⁰ J. G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 558 (1996) [hereinafter BERNAS, COMMENTARY].

²¹ The provision states, "The following are the citizens of the Philippines:

- (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
- (2) Those whose fathers or mothers are citizens of the Philippines;
- (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
- (4) Those who are naturalized in accordance with law."

however, was the chauvinistic fact that he would not object to citizenship of "half-breeds" provided that the Filipino half of the child came from the father. Padilla saw the 1973 rule as the fruit of a feminist movement which, he said, ignored real differences between children of a Filipino father and those of a Filipina mother. The latter most often must leave her country with her foreign husband to raise her child abroad. Commissioner Felicitas Aquino saw the arguments of Padilla as "blandishments of purism" and "monumental hypocrisy." In the end, only three voted to return to the male chauvinist 1935 rule.²² Now, a child borne by a Filipino mother or father is automatically a Filipino, without the need of performing any other act to perfect his or her citizenship.

Another aspect of our citizenship laws that was made to be non-discriminatory against women is the retention of the Filipino citizenship of women despite their marriage to foreign nationals.²³ It must be noted, however, that the present provision of the Constitution does not make any reference to gender, thus making the rule applicable to both males and females on the chance that some country might have a law which divests a foreign husband of his citizenship.²⁴ If this is the case, how then did this rule become in favor of women? It was provided in Commonwealth Act No. 63, Section 1 (7), that a Filipino woman loses her Philippine citizenship "upon her marriage to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality." The 1973 constitutional provision repealed the above statutory rule. The fact alone of marriage to an alien cannot anymore strip a Filipino woman of her Philippine citizenship. Only certain acts and omissions, as prescribed by Congress pursuant to Article III, Section 4, would constitute explicit or implicit renunciation of citizenship. The 1973 provision, therefore, like Section 1 (2) of the 1987 Constitution, placed the Filipino woman on the same level as the Filipino male.²⁵ A similar provision is also stated under Article 9, Part n of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).²⁶

²² BERNAS, *supra* note 20, at 561.

²³ CONST, art IV, § 1. The provision states, "Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it."

²⁴ BERNAS, *supra* note 20, at 574.

²⁵ *Id.*

²⁶ CEDAW, Part II, art. 9.

The CEDAW was adopted in 1979 by the UN General Assembly and is described as an "international bill of rights for women." It is a part of the commitment of the CEDAW that the State-Parties must undertake measures to incorporate the principle of equality of men and women in their legal system, *abolish all discriminatory laws and adopt appropriate ones*²⁷ prohibiting discrimination against women.²⁸ Through the CEDAW, it can be seen that it is not only our municipal laws which call for equal rights with men with respect to acquisition, changing, or retention of nationality, but an international concern as well.

B. Right of Suffrage: The Right to Participate in Public and Political Affairs

The right of suffrage is the right to vote in the election of officers chosen by the people and in the determination of questions submitted to the people. How else can citizens best experience the political rights granted to them by the State than through the exercise of the right of suffrage where they can get to choose and vote for the leaders who would chart their future.

The first Philippine Election Law, Act No. 1582, which took effect on 15 January 1907, provided for a highly elitist and, by the standards of the seventies, male-chauvinistic electorate.²⁹ Women were not allowed to vote for they were regarded as mere extensions of the personality of their husbands or fathers and that they were not allowed to participate in the affairs of the government.³⁰ Section 14 of the Act 1582 provided that: "Every *male person* twenty-three years of age or over who has had a legal residence for a period of six months immediately preceding the election in the municipality in which he exercises the suffrage, and who is not a citizen or subject of any foreign power..."

On 9 November 1933, the Philippine Legislature enacted Act. No. 4122, which extended the right of suffrage to Filipino women effective January 1,

²⁷ Emphasis supplied.

²⁸ CEDAW, Part I, art 2.

²⁹ BERNAS, *supra note* 20, at 580.

³⁰ See Justice Reynato Puno's Concurring and Dissenting Opinion in *Macalintal v. COMELEC*, 405 SCRA 614 (2003).

³¹ Emphasis Supplied.

1935. However, even before they could exercise this new right, the 1935 Constitution was adopted and once again limited the right of suffrage to male citizens, *viz*:

Suffrage may be exercised by *male citizens*³² of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the Municipality wherein they propose to vote for at least six months preceding the election. The National Assembly shall extend the right of suffrage to women, if in a plebiscite which shall be held for that purpose within two years after the adoption of this Constitution, not less than three hundred thousand women possessing the necessary qualifications shall vote affirmatively on the question.³³

As manifested in the report to the President of the Constitutional Convention dated 24 September 1934 by the Committee on Suffrage, the intent in withdrawing the women's statutory right to vote previously given "was that the sweet womanliness of the Philippine women should be protected from political strife and passion in order that sweet home may not lose any of its sweetness." The proponents of women suffrage argued that "it was necessary as matter of justice to extend the frontiers of our democracy to our women who had labored hard side by side with our men for the progress and development of the country." In a last ditch attempt to save the cause of women suffrage, women leaders distributed a petition to individual delegates, parts of which say:

It is not a matter of plebiscite nor specific numbers. It is a right earned, deserved and therefore claimed. *It is not a matter of sex.*³⁴ In a democratic government, all qualified citizens, men and women alike, can and should make their valuable contribution in deciding what their community will undertake to do through its government, by what means, and through what officials. Under the law, women suffer penalties, are summoned before the courts by law — laws they have had no voice in making — and pay taxes. "Taxation without representation is tyranny" and more so in 1934 than in 1776.

³² Emphasis Supplied.

³³ *Macalintal*, 405 SCRA at 672.

³⁴ Emphasis supplied.

In the end, a compromise was reached limiting the right of suffrage to male citizens and leaving the issue of women suffrage for the women to decide. In the plebiscite held on 30 April 1937, more than three hundred thousand women voted for women suffrage.³⁵ The votes in favor of women suffrage rounded up a full 447,725 against the 44,307 "no" votes. And so on 27 September 1937, Filipino women finally gained universal suffrage when it was signed by Manuel L. Quezon, President of the Philippine Commonwealth. This momentous event finally concluded the battle of the Filipino women against their deprived right to vote which led to their further participation in the affairs of the government. Such right has been carried over to the succeeding Constitutions of the country up to the present.

It is through women's exercise of right of suffrage that they are able to actively take part in the affairs, political and non-political, of the country, something which they should not and never be discriminated against. No less than the CEDAW itself provides for a proscription on the discrimination against women who seek to take active part in political and public life. The CEDAW pertinently provides that all appropriate measures shall be taken to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all election and public referenda; to participate in the formulation of government policy and the implementation thereof; to hold public office and perform all public functions at all levels of government; to participate in non-governmental organizations and association.³⁶

C. Right to Sectoral Representation: The Innovation of the Party-List System

The party-list system is a novelty introduced by the 1987 Constitution³⁷ in order to encourage the growth of a multi-party system. Those qualified to participate in the party-list system are "registered national, regional and sectoral parties or organizations." Explaining this phrase, Commissioner Christian Monsod said: "Any sector or any party may register provided it meets the criteria of the Commission on Elections and the Constitution on prohibited organizations and the requirements for registration."³⁸

³⁵ *Macalintal*, 405 SCRA at 674.

³⁶ CEDAW, Part H, Article 7.

³⁷ CONST, art. VI, §5.

³⁸ BERNAS, *supra* note 20, at 628.

In the case of *Ang Bagong Bayani-OFW Labor Party v. COMELEC*,³⁹ the Supreme Court through Justice Panganiban explained the novel party-list system. It said:

The party list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. It intends to make the marginalized and underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of representative democracy.

* * *

Republic Act No. 7941 xxx mandates a state policy of promoting proportional representation by means of a Filipino-style party-list system, which will enable the election to the House of Representatives of Filipino citizens,

1. who belong to marginalized and underrepresented sectors, organizations and parties;
2. who lack well-defined constituencies; but
3. who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.

The marginalized and underrepresented sectors to be represented under the party-list system are enumerated in Section 5 of Republic Act No. 7941,⁴⁰ which states:

"Sec. 5. Registration — xxx Provided, that the sector shall include labor, peasant, fisherfolk, urban poor, indigeneous cultural communities, elderly, handicapped, *women*⁴¹, youth, veterans, overseas workers, and professionals."

³⁹ *Ang Bagong Bayan-OIW Labor Party u. COMELEC*, 359 SCRA 698 (2001).

⁴⁰ An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor, Republic Act No. 7941, § 5 (1995).

⁴¹ Emphasis supplied.

The women sector, considered to be marginalized and underrepresented, is given the chance through the party-list system to have enough representation in Congress. Such representatives are presumed to be more knowledgeable and hence, more aware of the needs of the people they represent. Gone were the days when these sectors which are considered to have special needs would lobby in the halls of Congress in order to be heard and for their cause to be legislated on. Now, given enough votes⁴² to represent their respective sector, they can legislate themselves.

In the past elections, however, hundreds upon hundreds of party-list representatives have been vying for seats in Congress, from the big political parties down to the unknown ones. The lack of information campaign about the party-list system is one of the reasons why the purpose of this innovation have not been fully met. Many women out there could have used their right of suffrage to empower themselves. The lack of information on how the party-list system works has made the exercise useless for those who are unaware thereof.

IV. WOMEN'S ROLE IN NATION-BUILDING

Aside from the provision in the 1987 Constitution recognizing the role of women in nation-building,⁴³ the Philippine Congress on 12 February 1992 approved Republic Act No. 7192, otherwise known as the *Women in Development and Nation Building Act*.

During the period of sponsorship and interpellation of the Constitutional Convention, Commissioner Felicitas Aquino took the position that the intention was to formulate the provision in language that would be "self-implementing" and would repeal all discriminatory and anti-feminist laws in the Civil Code. During the period of amendment, however, Commissioner Aquino changed her position. Answering questions from the floor, she made it clear that the intent was not to achieve an *ipso facto* repeal of laws offensive

⁴² See A. B. NACHURA, OUTLINE/REVIEWER IN POLITICAL LAW 200 (2002). See also *Veteran's Federation Party v COMELEC* 342SCRA244 (2000).

⁴³ CONST, art. II, §14. The provision states, "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."

to equality but merely to give a push to statutory legislation that would eliminate the inequalities found in existing law.⁴⁴

R.A. 7192 is just one of the legislations enacted which seeks to implement the call for equality under Article II, Section 14 of the 1987 Constitution. Section 5 of R.A. 7192 specifically provides for the following:

Section 5. Equality in Capacity to Act - Women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances. In all contractual situations where married men have the capacity to act, married women shall have equal rights.

To this end:

- (1) Women shall have the capacity to borrow and obtain loans and executive security and credit arrangement under the same conditions as men;
- (2) Women shall have equal access to all government and private sector programs granting agricultural credit, loans and non-material resources and shall enjoy equal treatment in agrarian reform and land resettlement programs;
- (3) Women shall have equal rights to act as incorporators and enter into insurance contracts; and
- (4) Married women shall have rights equal to those of married men in applying for passport, secure visas and other travel documents, without need to secure the consent of their spouses.

In all other similar contractual relations, women shall enjoy equal rights and shall have the capacity to act which shall in every respect be equal to those of men under similar circumstances.

Aside from the provided enumeration on the equality for the capacity to act, R.A. 7192 also provides for the enjoyment of equal access to institutions from military or similar schools of the Armed Forces of the Philippines and the Philippine National Police⁴⁵ down to membership in all social, civic, recreational clubs, committees, associations and similar other organizations devoted to public purpose.⁴⁶

⁴⁴ BERNAS, *supra* note 20, at 81.

⁴⁵ Women in Development and Nation Building Act, Republic Act No. 7192, § 7.

⁴⁶ R.A. 7192, §6.

In the same law, Section 8 states that "married persons who devote full time to managing the household and family affairs shall, upon the working spouse's consent be entitled to voluntary PAG-IBIG, Government Service Insurance System, Social Security System coverage to the extent of one-half (1/2) of the salary and compensation of the working spouse." Although stated in general terms "married persons" and "spouse," this provision can still be construed to be enacted to favor the cause of women since traditionally, housewives are the supposed "non-working" housekeepers. It must be pointed out, however, that the consent of the working spouse must still be obtained.

In addition, the law also mandates as a policy the allocation of a substantial portion of official development assistance in support of programs for women, as well as directs all government departments to ensure full participation of women in the development process and projects, and to review and revise all regulations and procedures for the purpose of removing gender bias therein.⁴⁷

V. MARRIAGE AND FAMILY RELATIONS

Pervasive changes and development necessitated revision of the Civil Code with regard to marriage and family relations. The Family Code was enacted to meet these changes.⁴⁸ There can be no better statement of the reasons for the drafting of the Family Code of the Philippines than those contained in the brief submitted by the Civil Code Revision Committee to former President Corazon C. Aquino, together with the draft of the Family Code of the Philippines, *to wit*:

Close to forty years of experience under the Civil Code adopted in 1949 and changes and developments in all aspects of Filipino life since then have revealed an unsuitability of certain provisions of that Code, implanted from foreign sources, to Philippine culture; *the unfairness, unjustness*,⁴⁹ and gaps or inadequacies of others; and the need to attune them to contemporary developments and trends.⁵⁰

⁴⁷ R.A. 7192, § 2.

⁴⁸ LAWS ON WOMEN, *supra* note 8, at 15.

⁴⁹ Emphasis supplied.

⁵⁰ A. V. SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES xxxi (1995).

4. *Parental Authority in Separation Cases*

One provision of the Family Code which can be considered to have been made favorable to women is the reiteration of the Civil Code provision that in case of separation of parents, no child below seven (7) years of age should be separated from the mother unless the court finds compelling reasons.⁵¹

The above-stated Civil Code provision is not without basis as it is a scientific fact that it is important for a child to be cared for by the parents, especially the mother, in his formative years. According to Erikson's Stages of Psychosocial Development, the time from the birth of a child until seven years is a period when the child needs support, praise and encouragement. It is the time when the child builds confidence, which is the reason why the constant showing of affection is a must.⁵² Naturally, who else can give this kind of support and care but a child's own mother. This is further exemplified by the Code Commission:

The general rule is recommended in order to avoid many a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age. The exception allowed by the rule has to be for compelling reasons for the good of the child; those cases must indeed be rare, if the mother's heart is not to be unduly hurt. If she has erred, as in cases of adultery, the penalty of imprisonment and the divorce decree (relative divorce) will ordinarily be sufficient punishment for her. Moreover, her moral dereliction will not have any effect upon the baby who is as yet unable to understand her situation.⁵³

This rule has been followed not only by our municipal law but has also been recognized abroad. Foreign courts have reiterated such recognition in their own jurisdiction in the following cases:

⁵¹ The Family Code of the Philippines, Executive Order No. 209, art 213 (1988).

⁵² SUE C. DELAUNE, ET AL., FUNDAMENTALS OF NURSING: STANDARDS AND PRACTICE 310 (2002).

⁵³ Report of the Code Commission, at 12.

⁵⁴ M. S. STA. MARIA, PERSONS AND FAMILY RELATIONS LAW 697 (1999) citing *Cooke v. Cooke*, 70ALR3d255.

1) In the case of *Cooke v. Coofee*,⁵⁴ it was held that It is universally recognized that the mother is the natural custodian of her young. The proper application of the maternal preference rule neither denies nor abridges the equality of rights of the father because as previously stated, the rights of the parents are not the principal issues in a custody case but rather the best interest of the children.

2) In *Peavey v. Peavey*,⁵⁵ the Court stated: The law favors the mother if she is a fit and proper person to have custody of her children so that they may not only receive her attention, care, supervision and kindly advice, but also may have the advantage and benefit of a mother's love and devotion for which there is no substitute.

3) In *Horst. Mcclain*,⁵⁶ it was said: The preference favoring the mother over the father springs from the truth, well known by all men, that no other love is quite so tender, no other solicitude quite so deep, and no other devotion quite so enduring as that of a mother for the child. Generally, the love, solicitude, and devotion of a mother cannot be replaced by another and is worth more to a child of tender years than all other things combined.

The law recognizes the need of the child to be with his mother and vice versa in his formative years. It is only through "compelling circumstances" as enumerated by the Code Commission and by some of the decisions of the Court that the child can be taken away from the mother in case of separation of the parents.⁵⁷

B. Property Relations of Unions Without Marriage

Article 147 of the Family Code provides for the property relations when a man and a woman who are capacitated to marry each other live exclusively without the benefit of marriage.⁵⁸ For purposes of the said article, a party who did not actually participate in the acquisition of said properties shall be

⁵⁴ *Id* citing *Peaty v. Peavey*, 85 Nev. 571,460 P2d 110.

⁵⁵ *Id* citing *Horst. Mcclain*, 466 SW2d 187.

⁵⁷ See *Petition for Habeas Corpus of Angelie Anne Cervantes*, 169 SCRA 575 (1989) where the Court held that the open cohabitation of the mother and her common-law husband will not accord the minor that desirable atmosphere where she can grow and develop into an upright and moral-minded person.

⁵⁸ E.O.209,art147.

deemed to have contributed jointly in their acquisition if the former's efforts consisted in the care and maintenance of the family and the household.⁵⁹ It has been a part of the Filipino culture that the woman stays at home to attend to needs of the children and her husband. Although many women engage themselves in various professions, many still choose or are forced to stay at home. Article 147 then, although it does not explicitly state that it is the woman who is non-working, will work to a woman's advantage since if the woman would just stay at home to care for the family, she is still deemed to have actually worked and contributed in monetary terms for the acquisition of the properties. Hence, the rules of co-ownership would still apply.

C. When the Husband's Decision Prevails

In the Family Code, where many matters are constituted jointly by both the husband and the wife, traces of the paternalistic nature of the Filipino family still lay bare. In cases of conflict between the decision of the husband and that of the wife, the law gives priority to the decision of the husband subject to recourse by the wife to the courts of proper jurisdiction. For instance, in the administration and enjoyment of property regime, specifically the absolute community of property⁶⁰ and the conjugal partnership of gains,⁶¹ the law provides that in case of disagreement, it is the decision of the husband which shall prevail. Another instance would be the joint exercise of parental authority over the common children.⁶² Again, in cases of disagreement, the decision of the husband shall prevail.

The law provides in the abovementioned instances that the wife has a remedy of seeking judicial relief to dispute the prevailing decision of the husband. Although the law gives such a remedy, it may be considered to be an impractical recourse. The wife still has to go through the tedious and expensive process of litigation and perhaps, even be confronted with disputes within the family. It is inevitable that the wife will just have to give way to the decision of the husband just to avoid the inconvenience of court proceedings.

⁵⁹ SEMPIO-DIY, *supra* note 50, at 231.

⁶⁰E.O.209,art. 96. ⁶¹E.O.209,art124.

"EX). 209. art 211.

D. *The Choice of Surname by a Married Woman*

The provisions of the Civil Code of the Philippines on Marriage and Family Relations have been superseded by the Family Code. However, the provisions on the use of surnames have not been repealed.⁶³

It is important to note that the Civil Code provision on the use of surnames by a married woman⁶⁴ is merely directory in character.⁶⁵ Because of the use of the word "may", the law in effect gives the married woman the option or the discretion on what surname to use.⁶⁶ As a general rule, the word "may" when used in a statute is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced.⁶⁷ This means that a married woman does not automatically lose the right to use her maiden surname by virtue of her marriage. This also means that, although not stated categorically, she may opt not to use her husband's surname nor append her husband's surname to her maiden surname.⁶⁸

Thus, a validly married woman has actually four alternatives on what surname to use. Let's take Corazon Cojuangco as an example. Being married to Benigno Aquino, Jr., she may use any of the following: Corazon Cojuangco; Corazon Cojuangco-Aquino; Corazon Aquino; or Mrs. Benigno Aquino, Jr.⁶⁹ In view of the foregoing, a married woman, therefore, is not compelled under the law to attach the surname of her husband to her surname. She is given the choice of what surname she wants to carry. However, once a married woman adopts her husband's surname, she cannot change or revert to her maiden surname.⁷⁰

⁶³ LAWS ON WOMEN, *supra* note 8, at 16.

⁶⁴ E.O.209, art. 370.

⁶⁵ STA.MARIA, *supra* note 54, at 797.

⁶⁶ LAWS ON WOMEN, *supra* note 8.

⁶⁷ N. C. DIAZ, STATUTORY CONSTRUCTION 92 (2001) *citing* *Di^pn v. Encarnadon*, 9 SCRA

714.

⁶⁸ LAWS ON WOMEN, *supra* note 8.

⁶⁹ STA.MARIA, *supra* note 54.

⁷⁰ *Laperala. Republic*, 110 Phil 672.

VI. CRIMINAL LAWS PROTECTING WOMEN

Several penal laws have been passed which seek to protect the welfare of women, from the Revised Penal Code to specially enacted penal statutes. These penal laws are a reflection of how the society perceives women to be, chaste and innocent. For example, premium is given by the law to virginity and good reputation of a Filipino woman. It is for these reasons that penal laws were specially enacted to address any and all forms of heinous act violating the chastity, innocence, and dignity of women. Through the years and through the advocacy of women's groups, there have been many changes. It is the hope that our penal laws in due time will be more responsive to the needs of women.⁷¹

A. Republic Act 8353: Reclassifying the Crime of Rape

The provisions in the Revised Penal Code concerning rape have been significantly amended by Republic Act No. 8353 or the *Anti-Rape Law*⁷² which took effect on 22 October 1997. Such amended provisions brought forth drastic changes in the old law which are considered to be beneficial to women and would further protect their rights. Rape now has been reclassified by R.A. 8353 as a crime against persons and, thus, may be prosecuted even without a complaint filed by the offended party. It can now be instituted by any person⁷³ unlike before when rape was still classified as a crime against chastity, the prosecution of the offense shall only be upon the complaint of the offended party or if she is incapacitated to do so, her parents, grandparents, guardian, or even the State itself if the offended party has no known parents, grandparents, or guardian.⁷⁴

B. Marital Rape: Does it exist under the law?

Prior to the enactment of R.A. 8353, a husband cannot be guilty of rape committed upon his wife.⁷⁵ It has been opined that, even if the husband uses force to have sexual intercourse with the wife, there can be no rape.

⁷¹ LAWS ON WOMEN, *supra* note 8.

⁷² The Anti-Rape Law of 1997, Republic Act No. 8353 (1997).

⁷³ L. B. REYES, THE REVISED PENAL CODE: BOOK Two 896 (2001).

⁷⁴ RULES OF COURT, Rule 110, § 5.

⁷⁵ REYES, *supranote* 73. at 530.

This is known as the matrimonial exemption to the crime of rape. The reason for the exemption is anchored on the following concepts:

- 1) That upon marriage a man and a woman no longer retained separate legal existence. As a result of this concept, some have argued that a husband could not be convicted of in effect, raping himself;⁷⁶
- 2) That upon entering the marriage contract a wife consents to sexual intercourse with her husband, and the law does not allow her to retract such consent Under this concept, a husband is legally incapable of raping his wife, since the existence of a marital relationship bears as an evidentiary matter upon the element in the rape statute of lack of consent A wife is irrefutably presumed to consent to sexual relations with her husband even if forcible and without consent⁷⁷

As to the first justification on matrimonial exemption, it has been argued that essentially, rape statutes have always aimed at protecting the safety and personal liberty of women. Especially during these modern times, women have been recognized as possessing certain rights and privileges completely separable from their husbands. Even Philippine laws on family relations have been amended to give wives certain rights which they did not have under the Civil Code.⁷⁸ As an argument against the second justification on matrimonial exemption, it has been said by the Supreme Court of New Jersey in the case of *State of New Jersey v. Smith*⁷⁹ that

[t]his implied consent rationale, besides being offensive to our valued ideals of personal liberty, is not sound where the marriage itself is not irrevocable. If a wife can exercise a legal right to separate from her husband and eventually terminate the marriage "contract," may she not also revoke a "term" of that contract, namely, consent to intercourse? Just as a husband has no right to imprison his wife because of her marriage vow to him, xxx he has no right to force sexual relations upon her will. If her repeated refusals are a "breach

⁷⁶ STA.MAMA, *supra* note 54, at 347 citing *State v. Smith*, 24 ALR 4th 90.

⁷⁷*Id.*

⁷⁸ *Id.* at 348.

⁷⁹*Id.*

of the marriage contract" his remedy is in a matrimonial court, not in violent and forceful self-help.

Although not explicitly provided in the words of R.A. 8353 that the husband can commit rape against his wife, such intent can be derived from the words of the law in Art. 266-C providing for the Effect of Pardon which states:

Art. 266-C- Effect of Pardon- The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed. *In case it is the legal husband who is the offender,*⁸⁰ the subsequent forgiveness" by the wife as the offended party shall extinguish the criminal action or the penalty: provided, that the crime shall not be extinguished or the penalty shall not be abated if the marriage is void *ab initio*.

From the wording of the law itself, the legal husband, being a possible offender, can commit the crime of rape against the wife. Marital rape then is a legally existing term punishable by law.

C. Significant Jurisprudence on Rape

It is not only the Legislative branch of the government which plays an active role in responding to the call for the protection of women. The Judiciary, specifically the Supreme Court, has articulated various decisions favorable to women's cause especially in the crime of rape, which is usually difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself.⁸¹

In cases of rape, virginity of the victim before the crime was committed is irrelevant. In one case,⁸² the Court ruled that whether the victim was a virgin or not at the time of the rape is irrelevant inasmuch as virginity is not an element of rape. The moral character of the victim is likewise immaterial in the prosecution and conviction of the accused.⁸³ Even a prostitute can be the victim of rape for she can still refuse man's lustful advances.⁸⁴

⁸⁰ Emphasis supplied.

⁸¹ *People v. Payot*, 107 SCAD 206 (1999).

⁸² *People v. Batooa*, 114 SCAD 966 (1999).

⁸³ *People v. Javier*, 109 SCAD 670 (1999).

⁸⁴ *Id.*

The Supreme Court has stated that the absence of external signs or physical injuries on the victim does not negate the commission of rape, especially in a situation where the complainant filed the rape case a year after the incident, when the injuries had healed.⁸⁵ Neither do errors in the testimony of the victim affect her credibility. It was held that an errorless recollection of a harrowing incident cannot be expected of a witness especially when she is recounting details of an experience so humiliating and so painful as rape.⁸⁶ Minor errors in the testimony of a rape victim tend to buttress, rather than weaken, her credibility since that would indicate that her testimony was not contrived.⁸⁷

The mere declaration of a woman that the crime of rape has been committed against her already gives her the benefit of the doubt that what she is saying is probably true. It is believed that no woman would want to go through the process, the trouble, and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice.⁸⁸ On the other hand, the inability to report the incident within a period of time does not necessarily mean that the crime has been fabricated. In one case, it was said that the mere failure to report the incident immediately will not cast doubt on the credibility of the charge.⁸⁹ Even if delay could not be attributed to death threats and intimidation made and exercised by the accused on the victim, such failure in making a prompt report to the proper authorities does not destroy the truth of the complaint *per se*.

One of the most important doctrines laid down by the Court is the absence of the need of full penetration of the male organ to consummate the crime of rape. In the case of *People v. Mabinay*,⁹⁰ the Court held:

In proving sexual intercourse, it is not full or deep penetration of the victim's vagina; rather the slightest penetration of the male organ into the female sex organ is enough to consummate the sexual intercourse. The mere touching by the male's organ or instrument

⁸⁵ *People v. Villabina*, 103 SCAD 152 (1999).

⁸⁶ *People v. Calayca*, 102 SCAD 152 (1999).

⁸⁷ *Id.*

⁸⁸ *People v. Lopez*, 103 SCAD 214 (1999).

⁸⁹ *People v. Sagun*, 103 SCAD 37 (1999).

⁹⁰ *People v. Mabinay*, 103 SCAD 37 (1999).

of sex of the labia or the pudendum of the woman's private parts is sufficient to consummate rape.

D. Rape Crisis Center and Assistance to Victims

In 1998, Republic Act No. 8505 or the *Rape Victim Assistance and Protection Act of 1998*,⁹¹ was enacted by Congress in response to the need for assistance and protection to victims of rape. R.A. 8505, and the new *Anti-Rape Law* or R.A. 8353 have been widely considered as the one-two punch against rape, catering to the needs of rape victims. These two laws have been the answer to the worsening crime of rape, providing for the prosecution of the perpetrators therein, and affording much needed assistance to victims, with alternative modes to solutions and possible actions.

R.A. 8505 provides for the policy of the State, which is "to provide necessary assistance and protection for rape victims." Furthermore, the government commits itself to coordinate its various agencies with non-government entities. Thus, the Department of Social Welfare and Development (DSWD), the Department of Health (DOH), the Department of Interior and Local Government (DILG), the Department of Justice (DOJ), and a lead non-government organization (NGO), must collaborate in the establishment and operation of a rape crisis center in every province and city that shall assist and protect rape victims in the litigation of their cases and their recovery. The Rape Crisis Centers shall provide rape victims with psychological counseling, medical and health services, including their medico-legal examination; secure free legal assistance or service, when necessary for rape victims; assist rape victims in the investigation to hasten the arrest of offenders and the filing of cases in court; ensure the privacy and safety of rape victims; provide psychological counseling and medical services; develop and undertake a training program for law enforcement officers, public prosecutors, lawyers, medico-legal officers, social workers, and barangay officials on human rights and responsibilities, gender sensitivity, and legal management of rape cases; and adopt and implement programs for the recovery of rape victims.⁹²

⁹¹ An Act Providing Assistance and Protection for Rape Victims, Establishing for the Purpose a Rape Crisis Center in Every Province and City, Authorizing the Appropriation or Funds Therefore, and for other Purposes, Republic Act No. 8505 (1998).

⁹²R.A.8505,§3.

E. Battered Woman's Syndrome: An end to violence against women?

The problem of domestic violence and the lonely plight of millions of battered women briefly stirred national attention in January 2004 when the Supreme Court, in the controversial case of *People vs. Genosa*⁹³ spared the life of a wife after having been convicted by the trial court of parricide for killing her abusive husband and sentenced to death. While the Supreme Court upheld the conviction rendered by the trial court and the sentence meted by it, the Court nevertheless reduced the penalty to mere imprisonment after finding that the accused suffered from "Battered Wife Syndrome" or BWS for short, to such an extent that it mitigated her criminal liability. However, the Court made it clear that mere existence of the syndrome in a relationship does not give the woman the legal right to kill an abusive partner.⁹⁴

To better understand BWS, one must first understand how someone becomes a "battered woman." BWS can be traced to the concept of "learned helplessness" which focused on the victim's seeming inability to counter the violence directed at her. Dr. Lenore E. Walker, a noted American expert on cases involving battered women, suggested that a woman is deemed battered only when she has experienced at least two complete battering cycles, with each cycle consisting of three phases. The first is termed as the tension-building phase, followed by the explosion or acute battering incident, and culminating in the so-called honeymoon phase, which is a misnomer considering that this is but the lull before the cycle comes around.⁹⁵

But the question remains: what exactly is BWS? Jurisprudence describes it as a scientifically defined pattern of psychological and behavioral symptoms found in women living in battered relationships as a result of cumulative abuse. The law, however, specifically Republic Act No. 9262, otherwise known as the *Anti-Violence Against Women and their Children Act of 2004*, does not really provide for a clear-cut definition of what BWS is. Section 26 of the said law only provides BWS as a defense against criminal and civil liability, to wit

⁹³ The case of *People v. Genosa* will be discussed at length in the succeeding section.

⁹⁴ Teodorico Delfin, *Evolving Phenomenon*, at <http://www.medobserver.com/junjul2004/ifbattery.html> (last accessed August 6, 2004).

⁹⁵ *Id.*

SECTION 26. *Battered Woman Syndrome as a Defense*. - Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under die Revised Penal Code.

In the determination of the state of mind of die woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/ psychologists.

That states a lot without really saying much. Such vagueness could also be found in American jurisdiction, from where the definition appears to have been substantially lifted. Some American courts have described BWS as a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives.⁹⁶ The common thread, however, is that domestic violence constitutes a clear pattern of abusive physical, sexual, and psychological conduct employed to achieve some form of coercion or control over the victim.

F. The Promise of People vs. Genosa

In the controversial case of *People v. Genosa*,⁹⁷ the Supreme Court decided a parricide case in favor of the accused based on the novel theory of BWS. In this case, the accused, Marivic Genosa, admitted that she killed her husband (the victim) by stabbing him while he was asleep. The Court held:

The severe beatings repeatedly inflicted on appellant constituted a form of cumulative provocation that broke down her psychological resistance and self-control. This "psychological paralysis" she suffered diminished her will power, thereby entitling her to the mitigating factor under paragraphs 9 and 10 of Article 13 of the Revised Penal Code.

* * *

While new in Philippine jurisprudence, die concept has been recognized in foreign jurisdictions as a form of self-defense or, at the least,

⁹⁶ e.g. *Commonwealth v. Pike*, 431 Mass. 212,221 (2000).

⁹⁷ *People v. Genosa*, G.R. No. 13598, January 15,2004.

incomplete self-defense. By appreciating evidence that a victim or defendant is afflicted with the syndrome, foreign courts convey their "understanding of the justifiably fearful state of mind of a person who has been cyclically abused and controlled over a period of time.

* * *

A battered woman has been denned as a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without coercion for her rights. Battered women include wives or women in any form of intimate relationship with men, furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.

As previously stated, the Court clarified that the existence of the syndrome in a relationship does not establish the legal right of the woman to kill her abusive partner. Evidence must still be considered in the context of self-defense. It held:

From the expert opinions discussed earlier, the Court reckons further that crucial to the BWS defense is the state of mind of the battered woman at the time of the offense—she must have actually feared imminent harm from the batterer and honestly believed in the need to kill him in order to save her life.

Battered Wife Syndrome falling under Article 11 of the Revised Penal Code⁹⁸ constitutes self-defense. In order, then, to be able to invoke BWS as a valid defense to escape criminal liability, all the requisites of self-defense must concur

First, unlawful aggression

Second, reasonable necessity of the means employed to prevent or repel it;

Third, lack of sufficient provocation on the part of the person

defending himself.

⁹⁸ REV. PEN. CODE, Act No. 3815, art. 11.

The Court further held:

Unlawful aggression is the most essential element of self-defense. It presupposes actual, sudden and unexpected attack — or an imminent danger thereof- on the life or safety of a person. In the present case, however, according to the testimony of Marivic herself, there was a sufficient time interval between the unlawful aggression of Ben and her fatal attack upon him. She had already been able to withdraw from his violent behavior and escape to their children's bedroom. During that time, he apparently ceased his attack and went to bed. The reality or even the imminence of the danger he posed had ended altogether. He was no longer in a position that presented an actual threat of her life or safety.

Had Ben still been awaiting Marivic when she came out of their children's bedroom—and based on past violent incidents, there was a great probability that he would still have pursued her and inflicted graver harm — then the imminence of the real threat upon her life would not have ceased yet Where the brutalized person is already suffering from BWS, further evidence of actual physical assault at the time of the killing is not required. Incidents of domestic battery usually have a predictable pattern. To require the battered person to await an obvious, deadly attack before she can defend her life would amount to sentencing her to "murder by installment" Still, impending danger (based on the conduct of the victim in previous battering episodes) prior to the defendant's use of deadly force must be shown. Threatening behavior or communication can satisfy the required imminence of danger. Considering such circumstances and the existence of BWS, self-defense may be appreciated.

We reiterate the principle that aggression, if not continuous, does not warrant self-defense. In the absence of such aggression, there can be no self-defense—complete or incomplete—on the part of the victim. Thus, Marivic's killing of Ben was not completely justified under the circumstances.

From the words of the Court, it seems that if the batterer-husband, based on past violent incidents, would probably pursue and inflict danger on the victim-wife, it would then be justifiable for the victim-wife to invoke self-defense. Since the battery has already created a pattern and the further actuations of the batterer-husband have already been predictable, the abused wife would have already known what is in store for her.

However, from the surrounding circumstances of the Genosa case, the Court ruled that self-defense cannot be invoked. In any case, Marivic's criminal liability was still mitigated. The Court, from the testimonies of expert witness, considered that the repetitious, severe, and prolonged battering affected the mental capacity of the accused. It stated:

Based on the explanations of the expert witnesses, such manifestations were analogous to an illness that diminished the exercise by appellant of her will power without, however, depriving her of consciousness of her acts. There was, thus, a resulting diminution of her freedom of action, intelligence or intent Pursuant to paragraph 9" and 10.¹⁰⁰

The Court gave premium to the passion and obfuscation which was said to have been naturally produced by the abusive and violent acts directed at the lives of both the accused and her unborn child.

In the dissenting opinion of Justice Consuelo Ynares-Santiago, women afflicted by the Battered Women Syndrome are in constant fear for their life. She said that "the impending danger based on the conduct of the deceased in previous battering episodes are established, actual occurrence of an assault is no longer a condition sine qua non before self-defense may be upheld. Threatening behavior or communication can satisfy the required imminence of danger." Justice Ynares-Santiago believes that the deceased (the batterer-husband) could have killed the accused (the battered-wife) the night the crime happened due to the injury he inflicted on her and the continuous threats that the former made against the latter. She further opined that: "Appellant was not a normal married woman. She can never be in a state of natural equanimity as she was in a constant state of alertness and hypersensitivity to the next phase of acute battery."

The BWS is indeed a novel principle under Philippine jurisprudence. A woman suffering from battery is not in her proper state of mind as she is in a constant struggle to survive. If we are to apply the requisites of self-defense under Article 11 of the Revised Penal Code, it would put these battered women in the same category as those persons who are attacked under ordinary circumstances. Battered women are a class in itself. They

⁹⁹ Id., art. 13 (9).

¹⁰⁰ Id., art 13 (10).

are suffering from a continuous abuse, received from the people they love and trust The threat to their lives is constant. To give a strict interpretation to the BWS makes the principle inutile notwithstanding the recognition that has been given to the syndrome by the Supreme Court

G. Republic Act 9262: Breaking New Ground

In March 2004, two months after the promulgation of the Genosa case, Republic Act 9262 or the Anti-Violence Against Women and Their Children Act of 2004^m was approved to further address the countless and senseless violence committed against women and children by valuing their dignity, guaranteeing their rights, protecting their personal safety and security from violence and threats, in keeping with the Constitution, the provisions of the Universal Declaration of Human Rights, the CEDAW, and other international human rights instruments of which the Philippines is a party.¹⁰²

As provided for under RIA. 9262, the crime of violence against women is essentially committed through: causing or attempting to cause or threatening to cause physical harm; placing in fear of imminent physical harm; compelling or attempting to compel to engage in conduct which can be rightfully desisted or to desist from conduct which can rightfully be engaged in, restricting or attempting to restrict freedom of movement or conduct by force or threat of force, physical harm or other harm or threat of physical harm or other harm, or intimidation; inflicting or threatening to inflict physical harm on oneself to control actions or decisions; causing or attempting engagement in any sexual activity not constituting rape, by force or threat of force, physical harm, or intimidation; engaging in purposeful, knowing reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress; causing mental or emotional anguish, public ridicule or humiliation.¹⁰³ Commission of any of the aforementioned acts of violence would subject the perpetrators to the proper penalties, depending on the violent act involved, corresponding to that provided under the Revised Penal Code.¹⁰⁴

^m *An Act Defining Violence Against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefore, and for other Purposes, Republic Act No. 9262(2004).*

¹⁰² *RA. 9262, §2.*

¹⁰³ *RA. 9262, § 5.*

¹⁰⁴ *RA. 9262, art HI (a).*

This law serves to protect women against an abuser in almost all aspects of relationship which includes violence committed against the "wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child."¹⁰⁵

Moreover, it includes protection against all sorts of abuse—physical, sexual, psychological, and economic abuse. Physical violence refers to acts that include bodily or physical harm. Sexual violence refers to an act which is sexual in nature, committed against a woman or her child. Psychological violence refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim. Economic abuse refers to acts that make or attempt to make a woman financially dependent.¹⁰⁶

It is also provided that in cases of violations of the provisions of RA. 9262, a petition for protection order may be filed by the offended party and others like the parents or guardians; ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity; officers or social workers of the DSWD or social workers of local government units (LGUs); police officers, preferably those in charge of women and children's desks; Punong Barangay or Barangay Kagawad; lawyer, counselor, therapist or healthcare provider of the petitioner.¹⁰⁷ A protection order is defined under the law as "an order issued under this act for the purpose of preventing further acts of violence against a woman or her child as specified in Section 5 of this Act and granting other necessary relief." The purpose of the said protection order is for "safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."¹⁰⁸

¹⁰⁵R.A. 9262, art. III (a). The provision states,

"Violence against women and their children" refers to *any* act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty xxx

¹⁰⁶R.A.9262,§3.

¹⁰⁷ R.A. 9262, § 9.

¹⁰⁸R.A.9262,§8.

There are basically three types of protection orders, which are: the Barangay Protection Order (BPO), Temporary Protection Order (TPO) and Permanent Protection Order (PPO). The application for TPO or PPO may be filed in the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court with territorial jurisdiction over the place of residence of the petitioner provided that if there exists a family court in the place of residence of the petitioner, the application shall be filed with that court.¹⁰⁹ Applications for BPO shall follow the rules on venue under Section 409 of the Local Government Code of 1991 and its implementing rules and regulations.¹¹⁰ The law enumerates in Section 8 thereof the relief which may be availed of upon the issuance of the Protection Order.¹¹¹

Discussion of RA. 9262 will not be complete without touching on the controversial provision on BWS as a defense. It is significant to note that unlike in the ruling of the Supreme Court in *Genosa*, where the Court ruled that BWS falls under Article 11 of the Revised Penal Code as constituting self-defense and hence, all the requisites of self-defense must concur, RA. 9262 does not require all the elements of self-defense to be present as it pertinently provides that "Victim-survivors who are found by the courts to be suffering from battered woman syndrome *do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code*"¹¹² Another important distinction worth considering is that under the *Genosa* case, the Court classified BWS as being mitigating only, whereas under Section 26 of RA. 9262, BWS as a defense is complete and unconditional in that the battered woman will not incur any criminal nor civil liability at all. So because of R.A. 9262's description of BWS as a defense and in the event that another situation like that of *Genosa* comes up in the future, the Supreme Court may now rule differently, i.e. to rule for the acquittal of the battered woman rather than just mitigate her liability or punishment

RA. 9262 is a milestone and a major breakthrough in the effort to completely eliminate all forms of violence against women. Men out there

¹⁰⁹ R.A. 9262, §10.

¹¹⁰ An Act Providing for a Local Government Code of 1991, Republic Act No. 7160, § 409.

¹¹¹ R. A. 9262, §8.

¹¹² R.A. 9262, § 26 (Emphasis Supplied).

who still think that women are pushovers, whom they can just beat up black and blue whenever they feel like doing so, had better think again. For the days when women would just lay dormant in the face of male egoistic brutalities are over with the advent of RA. 9262, which is to be every woman's weapon and salvation against the tyrannical abuses and aggression of men,

H. Republic Act 9208: Eliminating Trafficking in Women

It is a well-known fact that the Philippines has, unfortunately, been described as the perennial source, transit, and destination country for internationally trafficked persons, according to the "Trafficking in Persons Report of the US Department of State in 2002." And the bulk of such trafficked persons are Filipino women, most of whom are supposed to be working as overseas contract workers but end up as sex slaves in Asia, Europe, and the Middle East. This problem of trafficking in women has been primarily attributed to labor migration, such that as the number of Filipino women forced to work as overseas foreign workers rises, the number of Filipino women who are victimized of human trafficking also increases. Seeing the need to alleviate the problem on women trafficking, as well as to provide for stricter measures to remedy the worsening problem, the Philippine Government came up with Republic Act 9208 or the *Anti-Trafficking in Persons Act of 2003*,^m which was enacted in May 2003.

RA. 9208 basically calls for the promotion of the human dignity, protection of the people from any threat of violence and exploitation, elimination of trafficking in persons, and mitigating pressures for involuntary migration and servitude of persons, not only for the support of trafficked persons, but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.¹¹⁴ The law lists down the acts constituting trafficking in persons,¹¹⁵ acts that promote trafficking in persons¹¹⁶ and qualified trafficking in persons.¹¹⁷

¹¹³ An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for other Purposes, Republic Act No. 9208 (2003).

¹¹⁴ R.A. 9208, § 2.

¹¹⁵ R.A. 9208, § 4.

¹¹⁶ R.A. 9208, § 5.

¹¹⁷ R.A. 9208, § 6.

The law also ensures the confidentiality, and recognizes the right to privacy of the trafficked person and even the accused through closed-door investigation, prosecution, and trial. The name and personal circumstances or information of the persons trafficked, as well as the investigation, prosecution, and trial of violators, shall be confidential and therefore, shall not be disclosed to the public, as to cause the publicity of the prosecution or trial is considered to be unlawful.¹¹⁸ This particular provision of the law may be considered a form of encouragement to victims to prosecute their case. Due to the fear of publicity brought about by unfounded shame, victims sometimes opt to suffer in silence, rather than have their reputation sullied or compromised. Hence, the law provides for procedural safeguards to guarantee the privacy of the victims.

/. Republic Act 6955: Stopping Mail-Order Bride Schemes

Republic Act No. 6955 or the Anti-Mail Order Bride Law¹¹⁹ is another form of measure intended to protect women from being exploited. The law enumerates the acts which are considered to be unlawful¹²⁰ and the corresponding penalties therefor.¹²¹ Pressing problems on the "mail-order bride scheme" however were said to have gone beyond the reach of the law due to the proliferation of websites featuring Filipino women through "e-mail order brides" in the Internet. Others say that it is not covered by the law. Senate Bill No. 1971 was even introduced by Senator Loren Legarda-Leviste which seeks to amend the Anti-Mail Order Bride Law.¹²² However, looking closely into the law, it is provided in the enumeration that it is punishable "for the manager or officer in charge or advertising manager or any newspaper, magazine, television or radio station, or other media,¹²³ or of an advertising agency, printing company or other similar entities to knowingly allow, or

¹¹⁸ R.A. 9208, § 7.

¹¹⁹ An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail Order Basis and other Similar Practices including the Advertisement, Publication, Printing or Distribution of Brochures, Fliers and other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefore, Republic Act No. 6955 (1990).

¹²⁰R.A. 6955, §2.

¹²¹ R.A. 6955, § 4.

¹²² Senate Bill No. 1971, <http://www.batasayti.freeservers.com/photo.html> (last accessed Sept 9,2004).

¹²³ Emphasis supplied.

consent to the acts prohibited in the preceding paragraph."¹²⁴ It can thus be inferred that even if the use of the Internet is not explicitly prohibited by the law, the Internet falls under "other media."

VII. DISCRIMINATORY PENAL LAWS

As much as there are laws enacted by Congress which primarily support the cause of women, there are also laws still in force which are discriminatory against women. And most of these discriminatory penal laws are found in the Revised Penal Code. It is rather ironic that as much as penal laws provide for the protection of women against horrendous acts, they are also one of the major sources of laws discriminatory against women.

A. *Prostitution: Why punish only women?*

The term *prostitute* has been defined in Article 202 of the Revised Penal Code as "*women* who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes." The law clearly tells us that only women who are engaged in prostitution are penalized. Men who are also engaged in prostitution as "call-boys" and the like are, however, not penalized. The act of prostitution is made illegal since such leads to the bastardization of the morals of the society. Whether such crime is committed by a man or a woman does not make a difference. Regardless of whether prostitution is committed by a man or a woman, there is still a derogation of social morals, and the risk of sexually transmitted disease is still high, which is detrimental to the public health and safety. So it does not make any sense at all why the law should discriminate against women by punishing only them for prostitution while men could go scot-free, when there are just as much men who engage in prostitution as there are women.

B. *Adultery and Concubinage: The Price of Double Standards*

The elements on the commission of adultery by a married woman in contrast with the elements of concubinage by a married man constitute yet another provision in the Revised Penal Code which is discriminatory against women. The Code provides for a heavier penalty for those convicted of

¹ R.A. 6955, § 2 (b).

adultery than that of concubinage.¹²⁵ Hence, a married woman found guilty of adultery may be imprisoned for the minimum period of two years, four months and one day to a maximum period of six years but a married man who is convicted of concubinage can be imprisoned only for a minimum period of six months and one day to a maximum period of four years and two months.

According to jurisprudence, the rationale of the law bearing a heavier penalty imposed on an adulteress is that "the infidelity of the husband does not bring into the family spurious offspring,"¹²⁶ while in adultery "there is a danger of introducing spurious heirs into the family, whereby the rights of the real heirs may be impaired and a man may be charged with the maintenance of a family not his own."¹²⁷ However, with technological advances, the establishment of the paternity of a child has become uncomplicated. An example would be the human leucocyte antigen (HLA) test which identifies inherited genetic markers in the white blood cells, making it possible to match a child with his biological father.¹²⁸ Therefore, once the paternity is established, the child will be considered as an illegitimate child of the guilty married man. Once recognized, the illegitimate child has rights under the law such as support and legitime.¹²⁹

Another factor showing that the penal laws on adultery and concubinage are discriminatory against women is the means by which both crimes are consummated. The means by which concubinage may be committed are far more difficult to prove than that of adultery. Concubinage may be committed in three ways. The first is by keeping a mistress in the conjugal dwelling. In the case of *People v. Hilao*,¹³⁰ the Court of Appeals held that if the mistress lives in the conjugal dwelling for any other reason, like if the concubine is the household helper, the illicit relation with the husband is not penalized. It gives the impression then that the bringing of the woman into the conjugal

¹²⁵ Act No. 3815, arts. 333-334.

¹²⁶ *People v. Santos*, 45 OG 2116 (1948).

¹²⁷ *US v. Mata*, 18 Phil 940 (1911).

¹²⁸ SEMPIO-DIY, *supra* note 50, at 237.

¹²⁹ E.O.209, art. 176. The provision states,

"Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each child shall consist of one-half of the legitime of a legitimate child."

¹³⁰ *People v. Hilao*, 52 OG 904 (1951).

dwelling must be with the intention that such woman would be a mistress. For if the woman was already living in the conjugal dwelling at the time the illicit affair developed, they cannot be penalized. Under the second mode, the sexual intercourse must be under "scandalous circumstances" or such as 'to offend public conscience, redound to the detriment of feelings of honest persons, or give occasion to the neighbors' spiritual damage or ruin."¹³¹ Any sexual intercourse by the husband with a woman, not his wife, in private is not an illegal act¹³² These modes are to be compared with adultery, wherein the law simply provides that adultery is committed by a married woman having sexual intercourse with a man not her husband. In adultery, the mere sexual intercourse by a married woman to another man, even if done in private, already consummates the crime. The third mode is when the husband cohabits with a woman not his wife as if they are husband and wife. Thus, even if the married man maintains a separate house with a concubine, so long as he does not stay there permanently, it is not punishable under the law.

The Constitution itself provides that the State recognizes the role of the Filipino family as the foundation of the society and marriage as an inviolable social institution. As such, there should be no inequality in the infliction of penalty imposed upon the erring spouse. A married man or a married woman found to be guilty of having an illicit affair should be penalized with the same weight of punishment. The circumstances by which the crime may be committed should also be the same.

VIII. WOMEN AND LABOR LAWS

The 1987 Constitution mandates the State to protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.¹³³ This particular provision of the 1987 Constitution essentially provides for the rights of working women, which is very much different from the general provision on women found in the Declaration of Principles

¹³¹ *People v. Santos*, SC-GRI-867,45 OG2116 (1948).

¹³² REYES, *supra* note 73, at 843.

¹³³ CONST. art. III, § 14.

found under Article n of the same Constitution.¹³⁴ The 1987 Constitution requires the State to afford full protection to labor and to promote full employment and equality of employment opportunities for all, including an assurance of entitlement to security of tenure for all workers. Similarly, Section 14 of Article XIII mandated that the State shall protect working women through provisions for opportunities that would enable them to reach their full potential.¹³⁵

The Philippines, as a signatory to the *Convention on the Elimination of the All Forms of Discrimination Against Women*, commits itself to ensure the equal rights of men and women in employment. Women have the same rights as men to free choice of profession and employment, job security, benefits, and vocational training and retraining, equal pay for equal value of work, and equal benefits. Protective legislation must be given to pregnant women. Not only that, discrimination on the ground of marriage or maternity is prohibited. Once again, the CEDAW comes at the forefront of this prohibition. The CEDAW, as it did with women's participation in political and public affairs, provides that appropriate measures should likewise be taken to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights, in particular: the right to work; the right to the same employment opportunities; the right to free choice of profession and employment; the right to promotion; job security and all benefits and conditions of service and the right to receive vocational and retraining; the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age, and other incapacity to work, as well as the right to paid leave; the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.¹³⁶

¹³⁴ BERNAS, INTENT, *supra* note 13, at 996.

¹³⁵ C. A. AZUCENA, JR., THE LABOR CODE: WITH COMMENTS AND CASES 305 (1999) *citing Philippine Telegraph and Telephone Company v. NLR.C*, G.R. No. 118978, May 23, 1997.

¹³⁶ CEDAW, Part III, art III.

A. Presidential Decree 442: Protecting Women Laborers

To stress the need and the significance of protecting the interests of women laborers and employees, the country's Labor Code or Presidential Decree No. 442 adopted a whole chapter dealing with and addressing specifically the needs of women.¹³⁷ It enumerates various prohibited acts which constitute discrimination against women, provides for the facilities for the use of female employees, and lays down the benefits which must be afforded to them.

1. Maternity Leave Benefits

The provisions of the Labor Code on Maternity Leave Benefits have been amended by Republic Act No. 7322¹³⁸ and Republic Act No. 8282¹³⁹ which provide for the following qualifications for entitlement to maternity leave benefits:

- 1) The female member should be employed at the time of delivery, miscarriage or abortion.
- 2) She must have given the required notification to the SSS thru her employer.
- 3) Her employer must have paid at least three (3) months of maternity contributions within the 12-month period immediately before the semester of contingency.¹⁴⁰

Pregnant women employed in the private sector, whether they be married or unmarried, are entitled to maternity leave benefits. The law does not distinguish whether the woman is married or unmarried, thereby eliminating the discrimination of the married from unmarried women. The law also limits the number of deliveries or miscarriages covered per employee to four. This is in line with the government's program of family planning and thus, serves as a discouragement for pregnancy beyond the covered number.

¹³⁷ A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice, arts. 130-138 (1974).

¹³⁸ An Act Increasing Maternity Benefits in favor of Women Workers in the Private Sector, Amending for the Purpose Section 14-A of Republic Act No. 1161 as Amended and for other Purposes (1992).

¹³⁹ Social Security Act of 1997, Republic Act No. 8282 (1997).

¹⁴⁰ AZUCENA, *supra* note 135, at 309.

Pregnant women who are employed in the government service are also given maternity leave benefits through Commonwealth Act No. 647.¹⁴¹ However, the law gives a qualification that only married women can enjoy the said benefit. This law is discriminatory against unmarried pregnant women who choose to have children without the benefit of marriage.

C.A. 647 further provides that the following conditions shall be met for the entitlement to the benefit:¹⁴²

- 1) Permanent and regular employees who have rendered two or more years of continuous service, shall be entitled to maternity leave with full pay;
- 2) Permanent and regular employees who have rendered less than two years of continuous service, shall be entitled to half pay; and
- 3) Temporary employees shall be entitled to maternity leave without pay and shall be readmitted to the service at the end of their leave. No employee shall be refused readmission to the service on the ground of absence on account of maternity.

2. Discrimination by Reason of Marriage

The Labor Code expressly prohibits discrimination against any woman employee solely on account of her sex. Any employer who commits this discriminatory act shall be criminally liable under the Labor Code, but it does not preclude the filing of a separate action for damages or money claims. The law provides for the acts constituting discrimination:

- 1) payment of a lesser compensation, including wage, salary or other form of remuneration, and fringe benefits, to a female employee as against a male employee, for work of equal value; and
- 2) favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.¹⁴³

¹⁴¹ An Act to Grant Maternity Leave to Married Women who are in the Service of the Government or any of its Instrumentalities(1941).

¹⁴² C.A. 647, § 1

¹⁴³ P.D. 442, art 135.

The law does not arbitrarily assert equality of men and women. One should also look into the value of the work done. Justice calls for giving one what is his or her due.

Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival.¹⁴⁴ The freedom to marry has long been recognized as one of the "basic civil rights of man," fundamental to our existence and survival.¹⁴⁵ Another non-discrimination policy enacted to protect women would be the unlawfulness of requiring as a condition of employment or continuation of employment that a woman shall not get married. One of the leading cases in this aspect is that of *Zialcita v. PAL*¹⁴⁶ where it was held:

Of first impression is the incompatibility of the respondent's policy or regulation with the codal provision of law. Respondent is resolute in its contention that Article 136 of the Labor Code applies only to women employed in ordinary occupations and that the prohibition against marriage of women engaged in extraordinary occupations, like flight attendants, is fair and reasonable, considering the peculiarities of their chosen profession.

* * *

Moreover, we cannot agree to the respondent's proposition that termination from employment of flight attendants on account of marriage is a fair and reasonable standard designed for their own health, safety, protection and welfare, as no basis has been laid therefor. Actually, respondent claims that its concern is not so much against continued employment of the flight attendant merely by reason of marriage as observed by the Secretary of Labor, but rather on the consequence of marriage—pregnancy.

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¹⁴⁴ STA.MARIA, *supra* note 54, at 95 *citing Skinner v. State of Oklahoma*, 316 US 535,62 Ct. illO,86L.Ed.1655.

¹⁴⁵ *Id. citing Loving v. Virginia*, 388 US 1,87 S. Ct. 1817,18 L. Ed. 20.

¹⁴⁶ *Zialcita « PAL*, Case No. Ro4-3-3398-76, Feb. 20,1977 which was decided by the Office >f the President

In a vain attempt to give meaning to its position, respondent went as far as invoking the provisions of Article 52 and 216 of the New Civil Code on the preservation of marriage as an inviolable social institution and the family as a basic social institution, respectively, as bases for its policy of non-marriage. In both instances respondent predicates absence of a flight attendant from her home for long periods of time as contributory to an unhappy married life. This is pure conjecture not based on actual conditions, considering that, in this modern world, sophisticated technology has narrowed the distance from one place to another. Moreover, respondent overlooked the fact that married flight attendants can program their lives to adapt to prevailing circumstances and events.

Article 136 is not intended to apply only to women employed in ordinary occupations, or it should have categorically expressed so. The sweeping intendment of the law, be it on special or ordinary occupations, is reflected in the whole text and supported by Article 135 that speaks of non-discrimination on the employment of women.¹⁴⁷

3. Sexual Harassment

Republic Act No. 7877 or the *Anti-Sexual Harassment Act of 1999*¹⁴⁸ denounces all forms of sexual harassment in the employment, education or training environment. The law provides for how and by whom work, education, or training-related sexual harassment is committed, to wit

Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person, who having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from another, regardless of whether the demand, request or requirement for submission is accepted by the object of said act¹⁴⁹

¹⁴⁷ AZUCENA, *supra* note 135, at 312.

¹⁴⁸ An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for other Purposes, Republic Act No, 7877 (1995).

¹⁴⁹ R.A. 7877, § 3.

Based from the foregoing, it is shown that those who are punishable by the law are those who exercise authority over the victim, which makes the latter vulnerable to do what is being asked. However, such definition seems to be inadequate as various women-groups clamor that the definition of sexual harassment be extended to co-employees or even to subordinates.

The law provides for the various circumstances where sexual harassment is said to have been committed, such as when sexual favor is made as a condition in the hiring or in the employment that would impair the employee's rights or privileges under existing labor laws and would further result in an intimidating, hostile, offensive environment for the said employee.¹⁵⁰ Any violation of the provisions of R.A. 7877 shall subject the person to the corresponding penalties provided therefor.¹⁵¹ Given the gravity of the offense of sexual harassment, the penalties must be harsher than what the law actually provides. The period of imprisonment taken with the value of the penalty is rather too light, especially for a person in authority and power. Lacking harsher penalties, the law may not be able to serve its purpose of deterring the further commission of the crime.

Although not strictly practiced, the law makes it mandatory, as the duty of the employer, or head of office in a work-related, education, or training environment or institution,¹⁵² as a form of deterrence, that there should be promulgation of appropriate rules and regulations prescribing the procedure or the investigation of sexual harassment cases. Also, there must be a committee on decorum and investigation of cases on sexual harassment. Due to the lack of information on what the law is, many victims do not obtain justice due to them and remain to be intimidated by their aggressor-superiors.

4. Night Work Prohibition and Exceptions

Article 130 of the Labor Code provides for the *Night Work Prohibition*¹⁵³ and the exceptions to these prohibitions.¹⁵⁴ At first glance, it may seem that these provisions of the Labor Code provide for the noble intention of

¹⁵⁰ R.A. 7877, §3.

¹⁵¹ R.A. 7877, § 7.

¹⁵² R.A. 7877, §4.

¹⁵³ P.D. 442, art. 130.

¹⁵⁴ P.D. 442, art. 131.

promoting the health and security of women. At present, however, the law is not strictly observed. This may be due to the impracticality of the provision and it does not respond to the urgent needs of the working women. Many women may want to keep jobs at night for various reasons. They must not be deprived of their freedom to engage in gainful and lawful employment, even if this would mean working at night. The government must come up with more responsive measures to protect the security of women workers rather than curtail their right to engage in undertakings which they could perform just as well as men do, notwithstanding the fact that these would involve working at night.

IX. CONCLUSION

A survey of existing laws on women would show that there have already been significant advances in the quest to protect and respect the rights and needs of women. The rise of various women's groups and activists and the coming forth of men and women feminists should, however, further urge the legislators to pass more laws that would completely, and not only partially, protect and advance the rights and cause of women. And such laws should have long-term effects and not only short-lived ones. Although credit must be given to the Philippine society on how it looks upon the active role of women in terms of politics, economy and the sciences, it must not be forgotten that many Filipino women, especially in the rural areas, are still being abused and exploited, with impunity and incessantly, without their even knowing it. The Philippine society has been so used to treating women as second class citizens that it has already become a part of our culture and is now treated as nothing but ordinary. The disease called "double standards" that plagues all women must be eradicated absolutely and completely. Each year, Congress brings legislative gains for women with the hope of erasing this bad side of the Philippine culture. Sad to say, many of these laws are just trapped in paper, mere drawings of what should be or how things should be; more of theories rather than realities, as most of them have remained unimplemented, gathering dust and cobwebs in the corners of injustice and prejudice. The Philippine government, the private sector, and the rest of mainstream society must do their civic duty and rally for the actual execution and implementation of these laws, so that in the process of doing so, they may be put to good use. Otherwise, these laws would be rendered nugatory and inutile, as how they have always been.

HERstory is a much greater teacher than history itself as it tells of the hardships, frustrations, pains, and tribulations of the millions of women *who* have been time and again discriminated against by reason of their sex. There are still many lessons to be taught, obstacles to be hurdled, challenges to be tackled, and gains to be reaped. There are persistent and unending demands for electoral reforms and further democratization of a political system that seem to favor men and the socio-economic elite in terms of political positions. There is also that age-old plea for legislative reforms that seek to amend, if not repeal, laws discriminatory against women. Furthermore, there is still so much poverty and underdevelopment among majority of our women. Worse, rampant domestic violence has not been totally eliminated and has in fact become a common feature in the lives of an increasing number of women, toiling and suffering in a paternalistic society dominated by egoistic men. It is the dream of every woman to live in an era where there will be equality in terms of opportunities, which, however, have remained great and unfulfilled to this very day. There is still so much to be done. And it is for the women legislators and politicians of today to respond to the expectations and needs of every woman. Every woman dreams of living in a world where she will be judged not by her sex but by the character, determination, and passions of her spirit. It is the fervent hope of this author, therefore, that such dream would one day become a reality.