

FOREWORD

GENDER EQUALITY AND JUSTICE IN THE LAW*

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The 1987 Philippine Constitution affirms the equality of men and women before the law and recognizes the role of women in nation-building. Despite these constitutional mandates, much remains to be done before our society truly breaks down all forms of gender barriers and attains gender equality as envisioned in our Charter.

Many women continue to be victims of discrimination in society, at home and in the workplace. Oftentimes, their special needs are overlooked, even ignored, particularly in the areas of health, job promotion and employment opportunities, political and economic opportunities and especially in times of disasters. This is partly due to customs and traditions that are discriminatory and continue to exist, a lack of information, and the fact that in this day and age, women still constitute a minority in policy- and decision-making, both at the local and national levels.

Gender imbalances also persist in many of our laws despite breakthroughs in recent decades to advance women's rights, including the passage of pro-women legislation. Concerted efforts from various sectors are

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therefore needed if we are to achieve gender equality and justice before the law.

This issue of the Philippine Law Journal is a step towards that direction. It offers scholarly discussions on relevant and timely gender issues such as discrimination, domestic violence and reproductive rights. It also explores issues that conservatives in the legislature would consider taboo, including divorce, abortion, and the rights of lesbians, gays, bisexuals and transgenders (LGBT).

First, 'Concerns and Emerging Trends in Related Laws on Family and Children' by Justice Florida Ruth P. Romero, tackles emerging trends in family laws brought about by modernization, increased urbanization, and impact of high-tech devices.

Next, Senator Miriam Defensor-Santiago's 'Responsible Planning and Reproductive Health' provides an in-depth look into the reasons why the Reproductive Health (RH) Bill should be passed. The article closely examines the reasons behind the Philippine Catholic Church's opposition, and provides counter-arguments to justify the Bill's passage. The author also extensively discusses principles in constitutional and international law which mandates the passage of the RH Bill.

Third, 'Revisiting Supreme Court Decisions On Marriage and Property,' reexamines certain decisions of the Supreme Court, which due to some 'mutancy,' have brought adverse impact on marital and property relations of spouses. Written by Katrina Legarda, the article shows the sharp conflict among certain decisions of the High Court, and puts forward the need for the courts to rectify and shed light on these matters.

Following this, in 'Legal and Conceptual Framework of Battered Women Syndrome as a Defense,' author Rowena Guanzon discusses the legal concepts and problems of Battered Women Syndrome as a legal defense, as well as the role of psychiatrists, psychologists and counselors.

The next article is entitled, 'Anti-Mail Order Bride Legislation and Feminist Legal Theory: An Inquiry Towards a Rescript of the Diasporic Filipino Bride Phenomenon in the Philippines.' Authored by Glenda T. Litong, the article reviews the government's track record in protecting the right of

Filipino women against discrimination and violence in the context of the 'mail order bride' phenomenon.

In the final article on gender entitled, 'Sex in the Workplace: Approaches to Sexual Orientation and Gender Identity Discrimination in the Workplace Absent an Anti-Discrimination Law,' wherein author Michael B. Ocampo argues that the Labor Code should be read differently in order that its anti-discrimination provisions be viewed to include the rights of lesbian, gay, bisexual and transgender individuals.

We are hopeful that these articles succeed in stirring scholarly discussions towards making our laws and current policies more relevant and responsive to the Charter's mandate to end gender discrimination and attain genuine gender equality.

[Editor's Note: To complement this issue, the editorial board has decided to include articles describing the legal atmosphere that makes gender reform plausible in our jurisdiction. Gender equality and justice is not possible without examining law and society. The first additional article is penned by Dean Merlin Magallona, in which he discusses the post-colonial legal structure and its imperviousness to social change due to the historical influence of the "rule of law" of our former colonizers. The modern legal structure was designed mainly to protect the colonizer's economic interests and has not accommodated the various nuances of our pre-colonial cultures. His legal theory could accommodate the fact that prior to the arrival of Spaniards, women enjoyed a status in society that is equal to men.¹ The challenge now is to transgress this inherent structural limitation to accommodate reforms to improve gender and sexual issues.

In addition to Dean Magallona's insightful article, Al Parreño's 'Constructing the Past: Legal Documents as Historical Artifacts' examines how legal documents are historical artifacts and how each tell a story of the rise and fall of the Filipino people. Gender issues are one of the stories that have been embodied in such artifacts, but so far, the stories have not given a satisfactory

¹ TEODORO AGONCILLO, HISTORY OF THE FILIPINO PEOPLE 36 (1990, 8th ed.).

conclusion in our systems of law. Maybe this is partly because the legal profession has been dominantly male since time immemorial. However, due to the emergence of more female lawyers, the discourse even in legal archives could expand to cater to these issues. Atty. Parreño's theory was already witnessed in the case of *People v. Genosa*², wherein contributor Atty. Katrina Legarda interposed the novel defense of Battered Women's Syndrome prior to the enactment of the Anti-Violence Against Women and Children Act, which contains the same defense. The power of lawyers to direct gender legislation is even bolstered with this idea that social trends are captured as artifacts through legal documents.]

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² G.R. No. 135981 (Sept. 29, 2000, Jan. 15, 2004). Also cited by Prof. Rowena V. Guanzon's in her article on Battered-Women Syndrome in this issue.