

**ANTI-MAIL ORDER BRIDE LEGISLATION AND FEMINIST  
LEGAL THEORY:  
AN INQUIRY TOWARDS A RESCRIPT OF THE  
DIASPORIC FILIPINO BRIDE PHENOMENON IN THE  
PHILIPPINES\***

*Glenda T. Litong\*\**

**INTRODUCTION**

The tag “mail-order bride”<sup>1</sup> has often been associated with derision, stigma and illegality such that the bride herself would not dare claim such status, if only to avoid the unwarranted connotations and stereotypes that come with the label, regardless of the reasons why she entered into such a context. In a country where it is a reality that mail-order brides continue to proliferate, the question arises as to how the Philippines has protected the women who become part of the “mail order bride industry”. Where the mail order bride industry is illegal in the Philippines and legal in receiving countries like the United States of America, Japan and South Korea, to name a few, the appropriateness of the response of the Philippines to the context of Filipino mail-order brides comes into context.

---

\*Cite as Glenda T. Litong, *Anti-Mail Order Bride Legislation and Feminist Legal Theory: An Inquiry Towards a Rescript of the Diasporic Filipino Bride Phenomenon in the Philippines*, 86 PHIL. L. J. 142, (page cited) (2011).

\*\* The author is a member of the Philippine Bar. LL.B. (University of the Philippines) LL.M. (George Washington Law School)

<sup>1</sup> The author hesitates to use the label “mail order brides” and proposes that the term “diasporic Filipina bride” be used instead. However, for purposes of facilitating understanding of the phenomenon and consistency, the term “mail order brides,” as generally perceived, shall be used in this paper.

This paper attempts to revisit the track record of the Philippine Government in addressing the question of the mail order brides and the industry that generates income out of the transaction that “sells” the promise of the intangibles (e.g. love, romance, security) to individuals. The whole concept of mail order brides has its risks undoubtedly given the unique circumstances surrounding it, compared with any other kind of man-woman relationship. This paper focuses on the analysis of the institutionalization and relevance of the Philippine legal and regulatory system in so far as protecting the Filipino women including those in the mail order bride industry against discrimination that engenders violence, abuse and exploitation. The analysis would be assisted by an examination of feminist legal theories that interpreted the different aspects of this phenomenon, particularly woman's agency, the evolving concepts of relationships and marriage, and use of feminist methodologies towards articulating a critical approach to the phenomenon of mail order brides and proposing recommendations designed for law reform.

### **I. METHODOLOGY OF POSITIONALITY**

An attempt to raise critical challenge to a law from a feminist legal lens would necessarily proceed from insights, perceptions or understandings of truths, the content and substance of which, must undergo the rigor of feminist methods. In the Philippines, it is a crime to profit from the act of matchmaking, and when attended by exploitation or slavery, the mail-order bride business becomes trafficking. Analyzing laws, which meet both the demands of legal theory and feminist methodology, reveals that the typical “victim” treatment might not be the complete and objective truth. Certain truths that affect the woman might have been overlooked or ignored in the process of framing or adopting the laws. These facts or assumptions taken as truth by the laws should then be interrogated to see if they pass the feminist muster.

This paper utilizes the positionality feminist method. The positional researcher puts premium on the value of experiences, which inform original perceptions toward new understandings. The truth in this case becomes contextualized, hence, partially derived from the individual's own, special and unique relationships. The diversity of one's experiences from these relationships “define the individual's perspective and provide the location for

meaning, identity, and political commitment.”<sup>2</sup> To increase knowledge means to extend one's limited experience, but it does not require the accommodation of truths as one's own, nor to reconcile competing interests.<sup>3</sup> It calls for openness to other experiences, which could bring about other truths while being committed to one's understanding of truth, thereby giving rise to the possibility of plurality of truths. The results thereby achieved by the process of thinking are manifestations of concrete and actual human struggles given a particular social reality or context, not based on some “external, “discovered” moral truths or “essential” human characteristics, but by internal truths that make the most sense of experienced, social existence.”<sup>4</sup> These are the social truths arising out of social relationships that influence social actions. These are the facts or “truths” that must be surfaced to ground any law seeking to address social dilemmas or situations. By design therefore, positionality adheres to a continuing process of critical examination and improvement of “reliable, experience-based grounds for assertions of truth upon which politics should be based.”<sup>5</sup> It is in this light that the Philippine laws proscribing the mail order bride arrangements shall be revisited and re-scripted, if necessary.

## II. PERTINENT FEMINIST LEGAL THEORY AND CRITIQUES

Feminist discourse on women insofar as claiming their rightful place in the legal arena has towed the lines of two major legal thoughts. The several writings fall either under feminist liberalism or feminist radicalism, where the former focus on consent and the latter on women's disempowerment.

### *A. Feminist Liberal Theory*

The feminist liberal theory proceeds from the concept of the liberal self- the autonomous, consenting, self-directed, self-motivated individual, who is the traditional subject of the law, capacitated to enter into contracts to achieve value to his/her life. The liberal self presumptively applies to both man and woman. Just like a man, a woman, is “a subject whose humanity consisted in her theoretically unlimited potential, and her capacity to exercise

---

<sup>2</sup> Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 4, 880 (1990), available at <http://www.jstor.org/stable/1341478>.

<sup>3</sup> *Id.* at 881.

<sup>4</sup> *Id.* at 884.

<sup>5</sup> *Id.*

meaningful choice in the direction of her own life,”<sup>6</sup> where her relationship with the State is the same as that of the man and where man and woman “create value by satiating their subjective desires through consensual choices.”<sup>7</sup> Consent presupposes the existence of autonomy, typically understood as a precondition to agency, where man and woman are equally free to choose their own life plans, both concerning their public and private lives, and equally entitled to the respect from the state that freedom requires.<sup>8</sup>

Liberal thinking or the consent theory is confronted with several dilemmas. An aspect of this defined liberation or freedom refers to human individuation from status to contracts where the individual is the owner of one's self and where “full personhood was equated with the effective exercise of a property right in one's body.”<sup>9</sup> However, the history of consent with respect to contracts normally relates to the protection or the liberation of man over his property, his self, and not referring to a woman. Being a subject of contracts has been historically denied the woman, particularly in relations to sexual relations, where woman was considered appropriated for man, and where anything relating to sex, which is part of the private domain, is considered as not part of the conventions of society.<sup>10</sup>

Also, while consent is essential to the exercise of individual freedom and equality, the exercise of consent on the other hand, presupposes the existence of individual freedom and equality, which the feminists consider as non-existent in the context of women by reason of gender.<sup>11</sup> Consent further calls for an inquiry on the accessibility and nature of information supposed to be provided to the consent-maker,<sup>12</sup> and where the nature of information provided or surrounding women is conforming to the cultural script, then it

---

<sup>6</sup> Kathryn Abrams, *Sex Wars Redux: Agency and Coercion In Feminist Legal Theory*, 95 COLUM. L. REV. 304, 326 (1995).

<sup>7</sup> Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN'S L. J. 149, 160.

<sup>8</sup> *Id.*

<sup>9</sup> Ngairé Naffine, *The Legal Structure of Self-Ownership: Or the Self-Possessed Man and the Woman Possessed*, 25 J. L. & SOC'Y, 193, 205 (1998), available at <http://www.jstor.org/stable/1410687>

<sup>10</sup> *Id.* at 207.

<sup>11</sup> Carole Pateman, *Women and Consent*, 8 Political Theory 149, 162 (May 1980) available at <http://www.jstor.org/stable/190792>.

<sup>12</sup> Matthew Weait, *Harm, Consent and the Limits of Privacy*, 13 Feminist Legal Studies 97, 106 (2005).

cannot be said that women would be in a position to give consent, or at the very least, informed consent.

For the feminist, this liberal concept presents both opportunity and challenge: the lack of autonomy can be the basis of challenges to the subordination and oppression of women brought about by patriarchal structures,<sup>13</sup> denying to the woman the opportunity of choice. Towards this end, legal reform tends to cater more to according women more choices as enjoyed by men<sup>14</sup> through equality challenges.

On the other hand, such strict equality framing has been critiqued as possible to mask the aspect of women's lives as being relational, interdependent and affective, where liberal theory deals with the objective truth, rather than the subjective.<sup>15</sup> The assumed objectivity of the autonomous and consenting woman in making choices has tended to overlook the extent to which women make choices, which may be different from the man perceived traditionally as the liberal subject, and how women exercise agency. This subjectivity thereby calls for an understanding of social constructivism that looks into a woman's context which would necessarily look into systematic gender-based oppression, within which the woman exercises her agency.<sup>16</sup> This would include the examination of underlying values that facilitate women's choices, which could be different from the self-centeredness of liberal autonomy, but might implicate a different value altogether, like the "giving self" embodied in women in particular contexts.<sup>17</sup> The discourse must include the "inescapable fact...that much of the misery of women endure is fully consensual."<sup>18</sup> If one is to take into account the phenomenological aspect of women's lives, it is a situation that concerns both objective danger and subjective fear, where "women re-constitute themselves to control the danger and suppress the fear as giving selves."<sup>19</sup> It is thus, proposed that "liberal feminism would be truer to liberalism and goals of feminism if it would aim to eradicate the fear that presently dominates women's choices rather than merely celebrating in the name of formal equality whatever choices we presently make." The approach then would be to "get rid of the danger, (so) we could

---

<sup>13</sup> *Id.* at 103.

<sup>14</sup> West, *supra* note 7 at 160.

<sup>15</sup> Weait, *supra* note 10 at 103.

<sup>16</sup> West, *supra* note 7 at 159.

<sup>17</sup> West, *supra* note 7 at 162.

<sup>18</sup> *Id.* at 161.

<sup>19</sup> *Id.* at 161.

get rid of the fear, . . . without fear, choices would take on great meaning; to be strengthened rather than weakened by the voluntary transactions.”<sup>20</sup>

The legitimacy of laws that seek to address the aspect of women's lives, particularly those that address harm, suffering and injury to women, must problematize and not ignore the issue of agency. Any injury or harm sought to be avoided for the protection of the woman must be carefully investigated, giving plural interpretations to it and must be based on the context within which harm, risk or injury would be prevented. It should look into the relationships of the injurer and the injured, the nature of the injury and the knowledge of such risk,<sup>21</sup> before the same can be considered a public wrong with which the law must concern itself.<sup>22</sup>

### *B. Feminist Radical Theory*

The other thread of feminist legal thought is radical feminism, where men and women are not equally autonomous, and assumes a definitional inequality between them.<sup>23</sup> Radical feminism is greatly influenced by Catherine McKinnon's dominance theory, which identifies the objective unequal distribution of power, where the State and male sovereigns define women's context, as causing women's disempowerment.<sup>24</sup> This includes the concept of expropriation of women's sexuality and women's false consciousness about her environment, which create the subjective suffering of women and gender oppression.<sup>25</sup> Legal reform therefore tends to be directed towards removing the hierarchy and sexual inequality that perpetuates the disempowerment.

Radical feminism's reliance on gender vulnerability has been critiqued as essentially precluding discourse that align itself with the consent theory, that men and women comprise the agency who can negotiate and contract for purposes of making their lives better, whether in terms of work or sexuality.<sup>26</sup> It has been articulated that stereotypes of women's oppression, if to be used to demand legal intervention, must be carefully presented to provide a complete

---

<sup>20</sup> *Id.* at 177.

<sup>21</sup> Weait, *supra* note 12 at 106.

<sup>22</sup> *Id.* at 108.

<sup>23</sup> West, *supra* note 7 at 180.

<sup>24</sup> West, *supra* note 7 at 180.

<sup>25</sup> West, *supra* note 7 at 180-184; Abrams, *supra*. note 6 at 308.

<sup>26</sup> West, *supra* note 7 at 316-8.

picture of women's understandings of their situations, towards formulating responses designed primarily to eliminate the stereotypes. This would necessarily call for the consideration of women's agency, which has not been taken into account by radical feminism in its legal excursion.<sup>27</sup>

Another area of critique lies in the fact that radical feminism, in attempting to use the law, refuses to credit the "phenomenological evidence that essentially descriptive claims that underlie the normative commitment to substantive equality may be false... (that) women on occasion take pleasure in their own submissiveness is simply a manifestation of their disempowered state, not a meaningful counter-example to the posited egalitarian ideal,"<sup>28</sup> or a case of false consciousness.<sup>29</sup> The underlying theme of unifying victimization of women grounding this line of feminism creating the passive stereotype contradicts the idea of a women's agency.<sup>30</sup> This approach led to the low priority in exploring the variety of women's sexual engagement or pleasure,<sup>31</sup> where neo-Victorian approaches retained the images of women's sex stereotypes as passive, thereby essentially denying the prospect of defining new, affirmative images of women's subjective pleasures and liberating understanding of women's sexuality.<sup>32</sup> State response through the law has been to repress women's agency insofar as sexuality is concerned, as well as the intimate and private aspects of their lives, and where emphasis is almost always on sexual danger.<sup>33</sup>

Critiques of this thread posit that enabling agency means enhancing women's power to interpret the different forces that cause their oppression,<sup>34</sup> which is critical to the alteration of the cultural script that plays out male dominance and female subordination.<sup>35</sup> Law must be used as a tool to reduce or eliminate the oppression and risks faced by women born out of this script towards facilitating women's definition,<sup>36</sup> enable empowering interpretations,

---

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 184.

<sup>29</sup> *Id.* at 186.

<sup>30</sup> West, *supra*. note 7 at 337.

<sup>31</sup> Abrams, *supra*. note 6 at 310.

<sup>32</sup> *Id.* at 313.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 337.

<sup>35</sup> *Id.* at 341.

<sup>36</sup> *Id.* at 337.

preventing domination of oppressive images of women<sup>37</sup> and avoid stigmatizing representations of oppression that women already endure.<sup>38</sup>

It can be said that legalism would expectedly ignore the phenomenological, contextual and highly particularized narratives particularly relating to women, but feminism cannot and must not. Hence, the norms that must underlie any feminist legal theory on any issue involving women must be drawn from a careful investigation into the stories and voices of women, which can be surfaced by consciousness-raising, and not the other way around.<sup>39</sup> One must not dismiss the other stories of women as false consciousness; rather, it must be enabled and examined to call for a more representative and relevant formulation of law that ensures equality and empowerment to all women, not the liberal or essential women as the definitional ideal of a woman.<sup>40</sup> Indeed, laws designed primarily to prohibit certain acts can be a medium to socially re-construct women's images, but law has other functions that can undertake the re-scripting of gender with the same efficacy, like in undertaking positive regulatory acts to change practices that perpetuate the dichotomy or binary of dominance/subordination between the sexes.

Taking all these academic and legal accounts, adherence to the phenomenological approach to women's legal disempowerment or inequality issues must always inform investigations into women's lives and integrated into the discourse. This contextual or phenomenological or narrative strain of legal theory must not only support the process of feminist legalism but must comprise its substance and content, if feminism is to contribute to the formulation of foundations of feminist legal pedagogy. The discourse can meanwhile take into account the emergence of a theory of partial agency, which respectfully recognizes the powerful value of and supplements the dominance theory by not repressing the element of agency.<sup>41</sup> It calls for what is termed as strategic flexibility, where "the goal would be to depict women as possessing a constrained but nonetheless salient capacity for self-direction, while addressing the underlying conditions of women's oppression."<sup>42</sup>

---

<sup>37</sup> *Id.* at 339.

<sup>38</sup> *Id.* at 344.

<sup>39</sup> West, *supra* note 7 at 187.

<sup>40</sup> West, *supra* note 7 at 180.

<sup>41</sup> Abrams, *supra* note 6 at 354.

<sup>42</sup> *Id.* at 355.



### III. A PHENOMENOLOGICAL APPROACH TO THE MAIL ORDER BRIDE PHENOMENON FROM A FEMINIST LEGAL THEORY

#### *A. A Face to the Phenomenon*

A story often told of Filipino mail order brides concerns their exploitation at the hands of criminal syndicates and often relates to acts of trafficking. Analyn, 20 years old at the time she was recruited to work in South Korea, was one of those mail-order brides.<sup>43</sup> Just like in the United States of America and Japan, the mail order bride industry in South Korea is legal.<sup>44</sup> She was recruited to work in South Korea, and to be able to enter the country, she was forced to marry a Korean twice her age. She was only able to report her case with the Commission of Filipinos Overseas (CFO) when she tried to secure from the latter a clearance certificate, a legal requirement for all those seeking work abroad. The CFO is now helping Analyn in her case against the traffickers. However, in view of the difficulty of proving the exploitation element regarding her trafficking, the judge wanted to try the case under RA 6955 or the 1990 Anti Mail Order Bride Law, rather than under the RA 9208, otherwise known as the 2003 Anti-Trafficking in Persons Act.<sup>45</sup>

Analyn's case can be clearly seen as one of trafficking and the mode of facilitating the crime is through a marriage ceremony. The difficulty however of prosecuting such a crime constrains the courts to rely on the tamer prohibitive law against mail order marriages. A clear understanding of the pertinent laws affecting Analyn's case is in order to appreciate the implications of said laws on the lives of diasporic Filipina women who enters into transnational or interracial marriages.

#### *B. Philippine Legal Environment Governing Mail Order Brides*

The former prevailing law in the Philippines affecting the mail order bride industry frames the protective mechanisms for Filipino women on the

---

<sup>43</sup> *Anti Mail-Order Bride Law Philippines Doesn't Limit Human Trafficking*, Women News Network, available at: <http://womennewsnetwork.net/2009/07/29/filipinattrafficking814/> (last accessed: 1 Jan. 1, 2011).

<sup>44</sup> Jonathan M. Hicap, *Filipina Mail-Order Brides Vulnerable to Abuse*, Korea Times, available at: [http://www.koreatimes.co.kr/www/news/nation/2009/10/211\\_53320.html](http://www.koreatimes.co.kr/www/news/nation/2009/10/211_53320.html) (last accessed: Jan. 1, 2011).

<sup>45</sup> *Anti Mail-Order Bride Law Philippines Doesn't Limit Human Trafficking*, *supra* note 43.

principle of protecting women's dignity while pursuing economic upliftment towards achieving decent standard of living.<sup>46</sup> Such law perceived that the marriage of a Filipino woman with a foreigner husband is a means by which the woman can secure for herself and her family material improvement given the rampant poverty in the Philippines. Such means however is also presumed to be disastrous to the well-being of the woman. Towards protecting the woman, Republic Act 6955 makes the following practices unlawful:

(a) For a person, natural or juridical, association, club or any other entity to commit, directly or indirectly, any of the following acts:

- (1) To establish or carry on a business which has for its purpose the matching of Filipino women for marriage to foreign nationals either on a mail order basis or personal introduction;
- (2) To advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flier or any propaganda material calculated to promote the prohibited acts in the preceding sub-paragraph;
- (3) To solicit, enlist or in any manner attract or introduce any Filipino woman to become a member in any club or association whose objective is to match women for marriage to foreign nationals either on a mail order basis or through personal introduction for a fee;
- (4) To use the postal service to promote the prohibited acts in subparagraph 1 hereof.

(b) For the manager or officer in charge or advertising manager of any newspaper, magazine, television or radio station, or other media, or of an advertising agency, printing company or other similar entities to knowingly allow, or consent to the acts prohibited in the preceding paragraph. ...<sup>47</sup>

The law was enacted as a reaction to the growing number of Filipino women leaving the country as mail order brides. As then Representative Lorna Verano Yap, main sponsor of the bill at the Lower House, argued:

---

<sup>46</sup> Rep. Act No. 6955 §1 (1990) entitled 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.

<sup>47</sup> *Id.* at §2.

Operated by unscrupulous and heartless individuals, the practice has not only cast shame on our women in the international community, but have also exposed thousands of impoverished Filipinas into further misery in the hands of their foreign spouses. ...

I'd like to make it a point here that whether some are happy or some are not happy, it's the entire practice that we are concerned about. They are treated like cattle. When you really come down to it, it's like prostitution.<sup>48</sup>

The Senate counterpart, on the other hand, supported the bill, and elaborated that:

By making Filipin[a] brides a marketable commodity and flaunting them as such like cattle in tawdry and revolting advertisements this business has gravely insulted all that we, as a nation, hold sacred.<sup>49</sup>

Republic Act 6995 does not prohibit the inter-marriage between foreign nationals and Filipino women. The ban does not criminalize the act of a woman who enters into such an arrangement through the mail order bride business, but targets those who profit out of the act of match-making<sup>50</sup>recognizingsuch actionsas facilitatorsof the trafficking of Filipino women. Another relevant law to consider is the Migrants Workers Act of 1995, or Republic Act 8042.<sup>51</sup>

In 2003, the industry of mail order brides has been understood as an act of trafficking in persons under RA 9208 or the Anti-Trafficking in Persons Act, when exploitation is proven. Section 4 of said law makes unlawful for any person, natural or juridical, committing the following acts:

---

<sup>48</sup> Matt Wilkie, Mail-order schemes used to traffic and abuse Filipino women, *available at*: <http://tropicalpenpals.com/blog/things-related-directly-about-the-philippines/archieve-news/mail-order-schemes-used-to-traffic-and-abuse-filipino-women/> (Accessed Jan. 1, 2011)

<sup>49</sup> Camille Reynaud, *Historic, Cultural, and Legal analysis of the 'Mail Order Bride' Industry Case Study: The United States and the Philippines*, UMI 1485457 (ProQuest LLC, 2010), quoting Xinhua General Overseas News Service, "Philippine Congress Urged to Outlaw Mail Order Bride Business," April 13, 1989.

<sup>50</sup> Wilkie, *supra* note 48.

<sup>51</sup> Rep. Act No. 8042 (1995). Migrant Workers and Overseas Filipinos Act of 1995.

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation; ...<sup>52</sup>

RA 9208 defines trafficking in persons as referring:

to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person *for the purpose of exploitation* which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs<sup>53</sup>(Emphasis supplied)

Under the law, the women of the mail-order bride industry shall “be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.”<sup>54</sup> Part of the authority of the government to protect the women is to include the crime of trafficking in persons as one of the extraditable offenses in extradition treaties.<sup>55</sup> This

---

<sup>52</sup> Rep. Act. 9208, § 4.

<sup>53</sup> *Id.* at § 3.

<sup>54</sup> *Id.* at § 17.

<sup>55</sup> *Id.* at § 26.

includes the authority to have extradition treaties amended to include trafficking, including, the practice of mail order brides match-making, as an extraditable offense. An Inter-Agency Council Against Trafficking (IACAT) was created to coordinate, monitor and oversee the implementation of laws regarding forced labor and slavery.<sup>56</sup> To complement the work of the IACAT, Executive Order 548-A was issued by the Office of the President towards enhancing coordination among agencies that deal with the problem of human trafficking through the Task Force Against Human Trafficking (TFHT) under the supervision of the CFO.

By 2009, the Philippines has institutionalized an elaborate system designed to combat the impact of the mail order bride industry, seen primarily as an act of trafficking. This protective system is primarily overseen and implemented by the CFO, an agency which was created in 1980 to formulate an integrated program for the promotion of the welfare of Filipinos overseas,<sup>57</sup> including prospective spouses of foreign nationals. It was essentially an office addressing the needs of the growing Filipino migrants. The CFO provides the following programs and services to emigrants:<sup>58</sup>

#### I. Migrant Social and Economic Integration Program

1. Pre-Departure Registration and Orientation Seminars: a requirement before departure where country-specific information is provided to assist Filipino emigrants in their adjustment in their destination countries, and includes topics like travel regulations, immigration procedures, cultural differences, settlement concerns, employment and social security concerns and rights and obligations of Filipino migrants.

2. Nationwide Guidance and Counseling Service: provided to the fiancées, fiancés and spouses of foreign nationals for the purpose of assisting Filipino Women involved in interracial marriages and migration as a pre-requisite to the

---

<sup>56</sup> *Id.* at § 20.

<sup>57</sup> B.P. Blg. 79 (1980). §3.

<sup>58</sup> See Philippine Report to the UN Committee on Migrant Workers (CMW/C/phl/Q/1); see also the website of CFO, at <http://www.cfo.gov.ph/>.

issuance of passports.<sup>59</sup> The service is intended to help the spouses reach informed decisions concerning their marriage through the provision of information concerning migration laws, welfare and support service available abroad, their rights, and ways of coping with difficult situations.

3. Foreign Sponsor Watch list System: for the purpose of facilitating access to information on foreign partners who have racist backgrounds or may have petitioned Filipino women more than once, especially those with a history of domestic violence.<sup>60</sup>

## II. Public Information and Education Program

1. Community Education Program: an annual nationwide information campaign to assist prospective migrants in making informed decisions regarding working or migrating abroad, as well as generate community involvement on migration concerns. It also aims to raise public awareness on various issues concerning migration, intermarriages and existing government policies and programs directed against illegal recruitment, documentation fraud and trafficking in persons, among others.

2. Case Monitoring System: part of the public assistance services of the agency to effectively document and monitor cases involving Filipinos overseas referred to CFO, which involve cases of trafficking, domestic violence, adoption, child support, sham marriages, blacklisting, whereabouts, document verification, immigration, repatriation, employment-related concerns, among others.

3. CFO Information System: providing a gender-sensitive system to generate sex-disaggregated data and to be able to respond to requests for emigrant data and statistics from the other government agencies, private sector, academe,

---

<sup>59</sup> Per Republic Act 8239 and Department of Foreign Affairs Order 28-94. *See also* Guidelines for the Registration of Filipino emigrants and departing spouses and other partners of foreign nationals (15 June 2004 and 8 February 2007).

<sup>60</sup> Philippine Report to the UN CMW, *supra* note 58.

and the public.

4. Pre-departure Briefings at the Foreign Service Institute: orientation provided to departing foreign service officers (FSOs) and employees and service attaches of various government agencies organized by the Foreign Service Institute, which includes topics on trafficking issues.

5. Migrants Advisory Information System: computer-based information tool that aims to address the information needs on the Country Profile of Filipino Migrants' Destination Countries, Profile of Migrants Support Groups and Welfare Organizations Overseas, Profile of Filipino Organizations Overseas and List of Philippine Embassies and Consulates.

The above programs are all aimed at addressing the informational needs of prospective migrants by making it readily available to enable the public “appreciate the realities of migration and guide them toward an informed decision.”<sup>61</sup>

However, despite the above efforts, the Philippines still continues to fall under Tier 2 of the US Watch List which describes it as not fully compliant with the minimum standards for the elimination of trafficking but is making significant efforts to do so. It explains that “the government did not show evidence of significant progress in convicting trafficking offenders, particularly those responsible for labor trafficking” nor “greater progress in prosecution and conviction of both labor and sex trafficking offenders.”<sup>62</sup> Furthermore, the Philippines has failed as well to curtail the practice of mail order brides.

*C. Philippine Mail Order Brides As a Continuing and Expanding Phenomenon: Facts and Figures*

In the Philippines, migration has been feminized, where the number of female overseas migrants has increased from 50% in 1992 to 70% in 2000-2001 based on the figures from the Philippine Overseas Employment

---

<sup>61</sup> Philippine Report to the UN CMW, *supra* note 58.

<sup>62</sup> *Trafficking in Persons 2010 Report*, US State Department, available at <http://www.state.gov/g/tip/rls/tiprpt/2010/142761.htm> (Accessed December 3 2010).

Agency.<sup>63</sup> This migratory tendency of the Filipino women was typically seen to be part of the desire to seek greener pastures, which includes the mail order bride phenomenon.

A 1998 US Study<sup>64</sup> on the Mail Order Bride industry (hereafter Scholes Report), which analyzed the industry and its impact on US immigration, describes the services offered as one where “women's names, photos, biographical sketches, and addresses are presented in hard copy brochures or on the Internet,” where the “agency provides the photos and descriptions of the women, who are not charged for this listing,” while “men who wish to obtain the mailing address of any of the women they would like to contact are charged a fee of from two dollars (\$2) to five dollars (\$5) for each of the mailing addresses.” Of the 100,000 to 150,000 women who were part of listings of the so-called mail order bride agencies under the study, a great majority came from Southeast Asia, including the Philippines, and Russia and other countries from the former Soviet Union. From the Asian listings, Filipinas provided a significant number.<sup>65</sup> In the Cherry Blossoms internet listing, 3,050 of the women came from the Philippines out of 6,000 women who advertised as seeking husbands. From the 1,400 Asian women in the Cherry Blossoms internet listing, 3,050 of the women came from the Philippines out of 6,000 women who advertised as seeking husbands. From 1,400 Asian women featured in five catalogues, Filipinos comprised seventy percent (70%), mostly engaged in “domestic” or “in-service” work. Sixty-one percent (61%) of the Asian women were under the age of twenty-five compared to their Soviet counterpart where only thirty-one percent (31%) were under the age of twenty-five.

The Scholes Report cited a CFO report<sup>66</sup> which stated that the mail-order brides constitute 10 percent of the marriages between Filipinos and foreign nationals, where forty-four percent (44%) of the foreign men who married Filipinos were US citizens. The CFO report also showed that 95,000 Filipinos were engaged to be married to foreigners between 1989 and 1994. Aside from this, it has been observed by the Coalition Against Trafficking of

---

<sup>63</sup> Leonora Angeles and Sirijit Sunanta, *Exotic Love at Your Fingertips: Inter-marriage Websites, Gendered Representation, and the Transnational Migration of Filipino and Thai Women*, 22 PHIL. J. Third World Studies 1, 8-9 (2007).

<sup>64</sup> Robert J. Scholes, *The “Mail-Order Bride” Industry and Its Impact on US Immigration*, 1998.

<sup>65</sup> *Id.* at 2.

<sup>66</sup> Citing Paredes-Maceda, *Report of Commission on Filipinos Overseas* (1995).



Women that since 1986, about 5,000 Filipino mail-order brides went to the US annually.<sup>67</sup>

The Scholes Report further suggested that other studies have intimated that women who joined these listings wanted a “better life” since most of them came from countries with low employment and wage opportunities. The responses of women however varied from the sources, which generally indicated an attraction to American men and aversion to native men, where “Americans... make good husbands while Filipino men do not. Americans are thought to be faithful to their wives, while the native men are cruel and run around with other women.”

The Report cited an earlier study conducted by Jedlicka in 1988<sup>68</sup> which profiled the American men accessing the listings as “generally white (94%); highly educated (50% with two or more years of college, 6% with M.D.'s or Ph.D.'s, only five did not complete high school); politically and ideologically conservative; and generally economically and professionally successful (64 % earned more than \$20,000 a year; 42 were in professional or managerial positions),” and their median age was 37. Despite such apparent profile, Jedlicka however emphasized that experience and other observations have shown that “those who have used the mail-order bride route to find a mate have control in mind more than a loving, enduring relationship.” The Scholes Report also cited the study conducted by Glodava and Onizuka which showed a wide age gap in most of the mail order bride couples of 20-50 years. The Glodava/Onizuka study then concluded that older men often wanted women they can mold and therefore do not want those who are too educated, and where power and control are the motivating factors for these older men.

Further, the Report also second guessed the motivations of women who advertise in the listings as wanting more to acquire permanent residency than to have a good husband or a good marriage, based on the women's self-description and “their willingness to marry men of advanced age and dubious character.” Lastly, it talked about the consequences of such business practices, where fraud and abuse were quite real. Fraud is committed by the women once legal status is gained and also, where women were recruited into prostitution, or the new form of slave trade, which however has not yet been shown to occur in the US at the time of the study. Abuse, on the other hand,

---

<sup>67</sup> Angeles, *supra* note 63 at 10.

<sup>68</sup> Scholes, *supra* note 64, citing Glodava and Onizuka, 1994.

cannot be discounted in view of the misplaced or unrealistic expectations of the men for submissive wives and the women for a better life, which would surely conflict.

The statistical portion of the Scholes Report continue to be validated by current Philippine data gathering, empirically showing that the trend in mail order brides has not diminished. As supported by the above studies, it is easy to detect through indicative variables that the phenomenon lingers and in fact is growing. For the period starting 1989 up to 2009, the CFO has reported on the number of Filipinos who sought guidance and counseling services required of fiancées, fiancés, spouses or partners of foreign nationals before issuance of their passports or their departure. There were a total of 372,718 spouses and other partners who underwent the requisite services, where 91.4% were women.<sup>69</sup>

31% of the spouses/partners were within the age bracket of 25-29, twenty-five percent (25%) from the ages of 20-24, and nineteen percent (19%) between 15 to 19 years of age, or seventy-five percent (75%) of them were between the ages of 15 to 29 years.<sup>70</sup> Insofar as their educational attainment is concerned, twenty-nine percent (29%) were college graduates and eighteen percent (18 %) reached college level, while 19.4% were high school graduates and 11.3% reached high school level.<sup>71</sup> Of these spouses/partners, thirty-five percent (35%) did not report their occupation, while fourteen percent (14%) were housewives and categorized as unemployed. Of the employed lot, the professional, technical & related workers and those employed in the service sectors both reflected fourteen percent (14%) each. In sum, sixteen percent (16%) of the spouses/partners were unemployed, thirty-five (35%) did not report any occupation, while forty-nine (49%) declared to be employed.<sup>72</sup>Forty-one percent (41%) of these spouses went to the US, twenty-nine percent (29%) to Japan, 7.86% to Australia, 4.12% goes to Canada, and the rest went to other countries, inc. South Korea.<sup>73</sup>

---

<sup>69</sup> Table re: Number of Filipino Spouses and Other Partners of Foreign Nationals by Sex: 1989-2009, Commission on Filipino Overseas, *available at* [http://www.cfo.gov.ph/pdf/statistics/FS%20BY\\_SEX.pdf](http://www.cfo.gov.ph/pdf/statistics/FS%20BY_SEX.pdf). (Accessed January 1, 2011),

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

As noted in the Scholes Report, the mail-order bride phenomenon has continued to grow despite the legal proscription in the Philippines.<sup>74</sup> As also shown in a blog cited earlier, the stories of women victimized by the industry and the laws that seek to prevent the mail order bride practice have not prevented the proliferation of the such marital arrangements. Such accounts “hardly helped in stopping Filipino women from allowing themselves—even praying—to be peddled as mail-order brides.”<sup>75</sup> “The move simply drove the mail order business underground without significantly affecting the international trade,” said Carmelita Nuqui, president of the Philippine Migrants’ Rights Watch (PMRW).<sup>76</sup>

Browsing through the data provided by the CFO website, there has not been a case reported on acts of trafficking, acts of promoting trafficking or qualified trafficking involving the mode of mail-order brides for the period 2005-2009.<sup>77</sup> No such case emerged while undertaking this research before 2005.

Maria Regina Angela Galias, head of the Migrant Integration and Education Division of the Commission on Filipinos Overseas (CFO), believes that the mandatory counseling program are effective tools in detecting Filipino fiancées or partners of foreign nationals who are mail-order brides, where they required to talk to a counselor and fill out forms that elicit information on their relationships. That the women were mail-order brides can be detected since “they can’t even answer simple questions like the job of their husbands.”<sup>78</sup>

With all the data and experiences of those who have contacts with migrant partners, it would not be difficult to identify a Filipino mail-order bride. So the question arises as to why there is not a single case brought against the perpetrators? The case of Analyn would be a good test case both under RA 6955 and 9208, if the same will be sustained. However, Analyn is confronted with a lot of challenges that the Philippine state would not be in a

---

<sup>74</sup> Scholes, *supra.*, note 64.

<sup>75</sup> Wilkie, *supra.*, note 48.

<sup>76</sup> *Id.*

<sup>77</sup> See TFHT Tables on TIP Victims (National) by Type of Exploitation : 2005-2009, TIP Victims (International) by Type of Exploitation : 2005-2009 & TIP Victims by Gender by Age : 2005-2009, Commission on Filipino Overseas, *available at* <http://www.cfo-antitrafficking.org.ph/statistics.htm>. (last accessed at January 1, 2011).

<sup>78</sup> *Id.*

position to supplement or support. Institutionally, the Philippine set-up is not wanting in terms of appropriate mechanisms to run after the perpetrators.

*D. Feminist Interpretations of the Mail Order Bride Phenomenon*

Much have been written about the mail order bride phenomenon, which particularly analyzes the gender and social contexts that brought about the industry and how such constructs have impacted on the lives of the women. The discourses have illustrated the different levels of subordination which locates women, particularly those who come from the typical sending countries like the Philippines. Women are considered to be in several binds, where they are caught up in relationships that place them in situations of utter disempowerment. These relationships involve the mail-order bride agencies, the consumers/prospective husbands, the sending State and the receiving State.

Both mail order bride agencies and the prospective husbands are seen as feeding on racial and sexual stereotypes of Filipino women as those having “traditional values who seek to please men and who do not believe in divorce,”<sup>79</sup> while at the same time, trashing their Western female counterparts as too “liberated” and “feminist” that they are not ideal wives.<sup>80</sup> This is reflective of the tendencies of the dominant class to pit the subordinate class against each other.<sup>81</sup> Further, sexual and racial inequality underlie these relationships where Asian women are seen as subordinates both by reason of being women, dominated by men, and as being Asians, where the Western race is supreme.<sup>82</sup>

Beneath these relationships lie more layers of institutionalized subordination. One layer concerns the women's relationship with its own State. The mail-order bride industry also derives its existence from the economic and social contexts of the Filipino women. Poverty and gender have contributed to the “forced” option on the part of Filipino women to get

---

<sup>79</sup> Kathryn Lloyd, *Wives for Sale: The Modern International Mail-order Bride Industry*, 20 NW. J. INT'L. L. & BUS. 341, 347 (2000).

<sup>80</sup> Kate O'Rourke, *To Have and To Hold: A Postmodern Feminist Response to the Mail-Order Bride Industry*, 30 DENV. J. INT'L. L. & POL'Y 476, 479, (2002) quoting Scholes report.

<sup>81</sup> Sunny Woan, *White Sexual Imperialism: A Theory of Asian Feminist Jurisprudence*, 14 WASH. & LEE J. ON CIV. RTS. & SOC. JUST. 279 (2008).

<sup>82</sup> See O'Rourke and Lloyd., *supra* notes 80 and 81.

involved in the industry.<sup>83</sup> A country like the Philippines continue to be patriarchal, creating several layers of burden on the part of the woman, not to mention the growing unemployment in the country which contributed to the feminization of migration.

These relationships lie in a bigger, international context that is also burdened with power imbalance and ruled by a relationship of domination and subordination. The global economic inequality is a primary force that drives the industry.<sup>84</sup> It affects the ability of the developing country to be self-sufficient, thereby leaving it in an impoverished state, which engendered transmigration of women. It also affects how the prospective husband could economically dictate the fate of the woman, and how the woman perceives the prospective husband as wealthy, coming from a Western, developed country and her sure ticket out of poverty.<sup>85</sup> Economic colonialism clearly manifests this paternalistic attitude where developing countries and women are fitted into the perspectives and values of the dominant country and sex upon which the industry thrives.<sup>86</sup>

Another dimension driving the industry is Western sexual imperialism, which affects situations involving a White man and a non-white woman. This framing of the relationship takes into account the Western "White Man's burden" style of dominating the Orient without consideration of the impact on women. The style has utilized the twin pillars of war and rape, and where the experiences created by the military presence has been a significant contributor to the stereotypes attributed to the Asian women, based on limited exposure by the Western military men to said Asian women.<sup>87</sup> The historical predisposition have relegated Asians and diasporic Asians to continue living in a colonized experience.<sup>88</sup>

As synthesized,<sup>89</sup> the international mail-order bride industry involves the "politics of subordination perpetuated by the industry: the economic

---

<sup>83</sup> Lloyd, *supra* note 80 at 346.

<sup>84</sup> O'Rourke, *supra* note 80 at 480.

<sup>85</sup> O'Rourke, *supra* note 80 at 480.

<sup>86</sup> *Id.* at 480.

<sup>87</sup> Woan, *supra* note 81 at 284-5.

<sup>88</sup> *Id.*

<sup>89</sup> Lloyd, *supra* note 80, citing Christina S. Y. Chun, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. Pa. J. Int'l Econ. L., 1155, 1188-9 (1996).

inequality and racial and gender stereotypes relied upon to exploit developing countries and women for a profit.” All these underlying factors place the mail order brides in several binds and intersect in such a manner that locates her, including the Filipino woman, in such a disempowered context, prone to abuse and exploitation.

The same interpretation may be behind the motivations of the Philippine State in criminalizing the mail order bride industry and including it as a mode of trafficking. However, several countries, including the USA, have not defined or regulated the mail order bride industry as human trafficking in view of the aspect of consent on the part of the bride, and the presence of legitimizing social and religious force of marriage that plays into the relationships.<sup>90</sup>

Another prong of the discourse concerns the matters of consent and marriage and were duly addressed by Constable in her book<sup>91</sup> as a counter-interpretation of the experiences of mail order brides. The analysis though did not proceed from the perspective of legal liberalism. It presented a different take on the Asian mail order bride phenomenon, and addressed some of the issues raised in the studies of Glodava and Onizuka referred to in the Scholes Report.

Constable approached the mail-order bride phenomenon from a contemporary feminist ethnographic approach and presented unpublished stories of couples, which included Filipino women, who went through the experience of mail order marriages or what she termed as correspondence relationships. She strived to present gendered heterogeneity and differences among women, and its inter-sectionality with other factors as well as the complexity of gender relations and rendition of power, which is not limited to the binary contemplation of male domination and female subordination.<sup>92</sup>

Her book noted that early critique of mail order brides are grounded on gender inequality and part of traffic in women and are economic and sexual slavery,<sup>93</sup> which deviates from the traditional, essentialist, Western concept of

---

<sup>90</sup> Lloyd, *supra* note 80 at 344-5.

<sup>91</sup> NICOLE CONSTABLE, ROMANCE ON A GLOBAL STATE: PEN PALS, VIRTUAL ETHNOGRAPHY AND “MAIL ORDER” MARRIAGES (2003).

<sup>92</sup> *Id.* at 5.

<sup>93</sup> *Id.* at 64.

gender equality regarding equality in marriage, and a liberated household.<sup>94</sup> The greater the deviation from this understanding of gendered labor, the greater the room for exploitation. Mail order brides who agree to this possibility are therefore victims. They are women who do not fit this Western ideal and belong to the class of the “Third World Woman,”<sup>95</sup> who is incapable of making her own decisions and is a passive victim. The critique to this approach is that it has often overlooked the “variety of ways in which women in different sociocultural contexts might define liberation.”<sup>96</sup>

Another issue implicated in the mail order bride phenomenon is the understanding of marriage, a culturally-bound concept, which prevents acceptance of these kinds of correspondence marriages. One has to allow the appreciation of all the possible stimuli or reasons that inform women in engaging in a correspondence relationship at the first instance, which could be as diverse and plural, and finally deciding to marry the person, which is another level of interrogation that a woman enters into. These reasons are for sure influenced by one's experiences. And also, there are as several reasons why foreign men would want to marry an Asian. Generalizations of these motivations run the risk of framing women and the men in a box, devoid of diversity and capacity.

The consensual nature of mail order marriages is lost in the investigation when the fact of agency and consent are seen in the context of “buying” and “selling” of brides and decisions derived by the couple, like those based on complementarity of their characters or beings, are devolved into issues of “forced option” and “victimization.”<sup>97</sup> This essentially denies a deeper analysis of the more complex nature of gender and power relations.<sup>98</sup>

Constable then critiqued the study conducted by Glodava and Onizuka as expressing “many of the most common over-generalizations and misunderstandings about correspondence relationships, many of which are echoed in other popular sources and in trafficking literature,”<sup>99</sup> like the Scholes Report. Their analysis of inherent inequalities between the men and mail order wives as translating into assertions of control by the men over their wives

---

<sup>94</sup> *Id.* at 65.

<sup>95</sup> *Id.* at 65, 215.

<sup>96</sup> *Id.* at 65.

<sup>97</sup> Constable, *supra* note 91 at 69.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

thereby creating exploitative conditions, fail to consider the variations in every case, and that the larger political economic context does not necessarily become an issue of control.<sup>100</sup> The Glodava and Onizuka study denies any amount of agency to the women, which however is very much present in Constable's own study. Constable further highlighted the fact that some women even from professions like medicine, could actually engage in such relationships, and noted the patronizing way by which Filipino mail order brides were profiled as victims "by reason of her assumed youth, innocence, lack of education, and presumed class," despite the fact that most of them were educated.<sup>101</sup> This understanding of women as victims in effect reified the very concepts of the essential oriental images of Asian women that feminists are supposed to seek liberation from.

The general description presented above, according to Constable, "reflects a highly problematic orientalist, essentialist, and universalizing feminist approach and makes false assumptions about the determining role of material factors and political economy," and thereby conflating mail order brides with prostitution.<sup>102</sup> Feminist studies on prostitution could very well inform the analysis of the mail order brides phenomenon, but which must take into account the distinction between the two. This concerns providing attention to the woman's agency, to enable the mail-order bride, just like the commercial sex worker, to share their experiences and be heard, "to uncover resistances to, and contestations of, oppressive and exploitative structures and regimes as well as the visions and ideologies inscribed in women's practices"<sup>103</sup> and place them in the arena of discourse as capable of making choices and decision towards transformation of consciousness and everyday lives.<sup>104</sup>

### ANALYSIS

As a paper that adopts the positional approach, the law shall be interrogated to take into account the phenomenon that women experience and desiring to achieve the plural truths that may be out there that need to be taken into account in advancing women lives and well-being. It will undertake the task with full respect to all that have been written by feminists in the struggle

---

<sup>100</sup> *Id.* at 71.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 88.

<sup>103</sup> *Id.* at 89, *citing* KEMPADOO, SLAVERY OR WORK.

<sup>104</sup> *Id.*



to achieve the ideal of equality that has long been elusive not only in the Philippines but in the world today. As earlier expounded, the analysis seeks to arrive at the plurality of truths in women's lives that should support a law seeking to support them.

Republic Act (RA) 6955 penalizes profiteering from the matching of Filipino women either on a mail order basis or personal introduction. The rationale being that such an act is tantamount to prostitution, where women are treated as cattle and where women have been victimized, casting shame on the Filipinos. It argued that the practice commodifies women and insults what the nation has held sacred.

RA 9208, on the other hand, declared the mail order bride as a route to facilitate trafficking. A mail order bride has been branded as akin to a "prostitute" and the objection to such has obviously proceeded from the fact that the body of the woman is commodified, an act that is essentially against public morals and an insult to the nation. The law was clearly influenced by the radical feminist perspective, where the business and the resulting abuse and exploitation feed on the several levels of subordination being experienced by Filipino women. As in any other argument supporting the banning of prostitution, the law seeks to highlight the victimization of women, rather than the issue of agency on the part of the woman that seeks to avail of this avenue of entering into relationships for whatever reason she deems needed for her to achieve pleasure or end her suffering. The objective truth that the law accepts is the fact of danger to the women who are the "objects" of such trade or business, and thereby presumes that women would not enter into such relationships and are actually victims in view of the injury or harm that they surely would encounter. The response then was the law against mail order bride industry.

The treatment of mail order brides has not really taken into account the subjective aspect of women's decision-making processes- why women participate in such activities, nor the different narratives of women who joined the practice. A careful investigation into such realities could very well give us insights that would depict the nature of consent when women engaged in such context, whether it concerns the "liberal self" or the "giving self," as earlier postulated, which would be material in formulating a more appropriate response to the injury sought to be avoided.

Even if taken into account, the law does not validate the narratives that differ from the preferred narratives as sufficient to acknowledge legitimacy in a woman's action. By such legal fiat, women who enter into such a relationship are relegated to invisibility, since the law has proclaimed them to be "prostitutes" and "an insult to the nation." Such has been the actual consequence of the law's pronouncements, notwithstanding the fact that the women are supposed to be protected and that they are not to be penalized under the law.

Since the reasons why the practice is considered an insult is not clear, one can only guess that the insult relates to the gender construct of the Filipino woman as restrained and traditional, who waits for her knight in shining armor to woo her, even if that means that that knight is a man believing in the traditional roles of women. It can also relate to the social construct of traditional notions of relationships and marriage as understood by Philippine society, where women goes through the socially or culturally constructed processes in such relationships, which could actually include the practice of arranged marriages. The law thus takes on the cultural script that Philippine society has relegated women in terms of relationships and marriage. Those women who seek out pleasure that would be derived from better conditions and perhaps better relationships, which could include better sexual relationships with foreign partners, are considered as not assuming the Filipino women's image, thereby "prostitutes." Such a woman is therefore under a false consciousness, thereby making consent impossible, and is in need of protection from the State. Thus, the sovereign State has again dictated what women's experiences are and what her interpretations of her context should be, affirming further the cultural script which contributes to her continuing gender oppression.

The law did not particularize the women who enter into such relationships and instead lumped them up in one category, as has always been the case, where there is no individuation and where they are all grouped under a unifying victimization- the passive victims. Instead of removing the cultural script of women as passive victims, the law perpetuated it and placed women anew in a box laden with gender stereotypes.

The absence of disaggregated data in view of the invisibility of this women do not allow direct evidence of the profile of women who indeed agree to be part of this mail order bride industry. If we rely on the indirect indicators provided by the CFO, an area which could be inquired into would be the fact

that a large part of the women who enter such services are from the educated class, mostly coming from the highly productive age bracket, and cannot be said to be bereft of understanding of what they are engaging in. The laws do not take their agency into account, and what could be their narratives in terms of these relationships. This effectively excluded them from the construction of probably liberating images and identity that can be worked out of this persistent trend in relationships that cross borders. The law merely presented perhaps a fraction of the diverse experiences that women encounter in terms of engaging in correspondence relationships. The stories of women who have a different kind of experience are thus foreclosed and not considered as truths. Eliminating the aspect of consent and capacity in the investigations of the mail order bride phenomenon clearly prevents a holistic understanding of the reasons why they continue to proliferate. Due to these reasons, political development of responsive laws have not squarely addressed, much less eliminated, the drivers that contribute to the most abusive and exploitative conditions women could face in these contexts.

### CONCLUSIONS AND RECOMMENDATIONS

Despite the illegality of the business, Filipino women continue to engage the system that allows them to meet foreign men. As mentioned, there is not a single prosecution under RA 6955, and under RA 9208 using this mode in trafficking women. The case of Analyn cited earlier is clearly a case of trafficking, and for which reason, the accomplices should be prosecuted. Given that trafficking calls for a higher degree of proof in terms of the *mens rea*, a prosecution under RA 6955 would be more likely. However, the case also represents how the laws are not responsive as tools to combat trafficking through the mail order bride system. It was a typical “after the fact” remediation- the harm has been done. Analyn was already placed in a context of exploitation, a situation which the laws should be in a position to minimize, if not eliminate. It is thus imperative to be open-minded about an interrogation of the laws to enable a more responsive legal and regulatory framework that would protect and prevent further oppression for the diasporic Filipina bride. That the risk is real is not ignored in this paper.

This paper is hesitant of a full agency criterion in view of the reality that women continue to suffer from systematic gender-based oppression. It adopts the approach of partial agency, which must take into account woman's context of gender oppression while not repressing totally her agency.

The stigma that attached to the label mail order bride has pushed, and will continue to push, the trafficking of women underground, where they will continue to remain invisible. If they are, then the protective mantle of the laws would not be able to reach them. The law must first and foremost be the tool to remove these disempowering labels and stereotypes, and revise the cultural script that has in the first instance placed the women in such constructs.

Given the affirmation of the cultural script, there is no way that the women can be viewed away from the stereotypes that were being propagated by those who are in the business of mail order brides or correspondence relationships. These businesses operate in a regime of legitimacy and they are only illegal in the Philippines. Unless the Philippines seeks out those who engage in such businesses extraterritorially and seek extradition of those they find to be criminals under these laws, then the laws would continue to be toothless. A reframing of the protective direction of the laws might call for a re-scripting of who the Filipino woman should be. It is said that one of the reasons why there is violence and exploitation in relationships coming from this practice is the unjustified expectation of the men who views Asian women as your stereotypical “good wife” as well as those succumbing to the “Asian fetish.” Since it is illegal for the Philippine State to even recognize the existence of such a practice, it is just impossible for the State to counter such stereotypes and construct images of women's lives according to the plurality of experiences and contexts that should inform gender, towards reducing the injury or harm caused by existing societal construction of Filipino women.

The prohibitive mechanism does not augur well for the improvement of trafficking efforts that seek to prevent women from being in contexts of exploitation using the mode of mail order brides. The fact that they are “invisible” prevented the women to seek protection from the State, so much so that they will lie about their situations.

The Philippines has already institutionalized the support system that could very well address some of the needs of these women, yet inaccessible in view of the label attached to them and the consequential stigma. The education campaign that seeks to address informational needs of partners in general is a good start, but may still be wanting to capacitate the woman to make an informed decision. Considering that women will “lie” to avoid being detected as mail order brides, the informational service would then be ineffective.

Perhaps, the more appropriate question is what other information would the women need to enable them to better arrive at an informed decision. The educational program of the CFO for migrant partners could be enhanced to integrate the liberating script for Filipino woman who has the agency to decide and where the State would undertake to remove the danger or risk of exploitation. Focus should be on being more compliant with standards towards preventing trafficking of women.

That mail-order brides are not illegal in other countries, at least until now, must be incorporated in the formulation of the appropriate legal response. The regulatory framework and protective mechanisms being adopted by the Philippines insofar as protecting rights of migrants can very well be used in ensuring that the diasporic Filipino bride would be protected when they reached the receiving country. Bilateral agreements with receiving countries must be enhanced towards putting into effect the re-scripting and protection of the diasporic Filipino brides.

This paper, given its limitations, cannot present all the possible interpretations of the lives of the diasporic Filipino bride and the ramifications of the structures and institutions that impact on their lives. It however presents a partial, subjective, and contextualized “truth” that needs to be accounted in reviewing and revisiting the over-all drive to stop trafficking of women. The law, as a tool for women's liberation and empowerment, must re-interpret its objectives, substantive content and the processual considerations in achieving protection for the diasporic Filipino bride against violence and exploitation. There is no pretension that the road towards arriving at the plurality of truths would not be easy, especially in light of competing ideologies. However, one-sided interpretations will neither contribute nor enhance protection in the most tangible way. Labeling and stigmatization would render the mail order brides invisible and underground. Hence a more practical, objective and open-minded approach would perhaps provide a solution: where the woman's pleasure and motives are surfaced, understood, accepted, re-scripted and met, and the factors that breed the risk, hazard, injury or harm to the woman are eliminated. This would call not just for legal prohibitions but more importantly, affirmative and positive actions that eliminate the drivers that place women in situations of danger.