WOMEN'S RIGHTS UNDER THE 1973 CONSTITUTION*

IRENE R. CORTES**

INTRODUCTION

The Albino Z. SyCip Lecture Series

In proposing the annual Albino Z. SyCip Lectures in this College, the organizers emphasized: "the need for stocktaking and assessment of such trends in various sectors of the law as have emerged or are in the process of emerging. The basic thought (being) that identifying these trends and appraising them in terms of both the larger and enduring ends of our society, as well as the more pressing contemporary requirements of a developing society, is a task that should be performed. The ultimate purpose would be to improve the capacity of law as an instrument for achieving those ends and fulfilling the functions demanded of it."[1]

Former Supreme Court Associate Justice Jose P. Bengzon opened the series in 1969 with two lectures on "Law as a Function of the Social Order." The following year the Board of Trustees of the lectureship invited me to deliver the next series of lectures. The subject I chose was "The Constitutional Foundations of Privacy." That was five years ago and since then because the lectureship was converted to a professorial chair to which I was appointed, I have attempted to identify emerging trends in law, explored and evaluated them for the annual lecture. My subjects have ranged from privacy, legal education, the governmental structure emerging from the proposals before the 1971 constitutional convention, population and law, to women's rights. Except for legal education, each lecture was a stocktaking of some aspects of constitutional law. The commitment to deliver these annual lectures is an invitation to explore new frontiers in law and a call to be in the vanguard of legal developments, if the mandate of the organizers of the lecture series is to be fulfilled.

The subject of this lecture is women's rights under the 1973 constitution. Is the Filipino woman indeed favored in Philippine law or has the assertion that in this jurisdiction women enjoy equal legal rights with

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**_Professor_ and _Dean_, U. P. College of Law; _Holder_, Albino Z. SyCip Professor of Law Chair.

[1]Letter of Alexander SyCip and Florentino P. Feliciano to then President Carlos P. Romulo of the University of the Philippines submitting the proposal of the SyCip, Salazar, Luna, Manalo and Feliciano Law Offices, dated July 8, 1967.

men been accepted without close scrutiny? The inquiry will principally be on the Filipino woman — as an individual capable of legal rights and performing obligations. To what extent she enjoys those rights and performs those obligations is, of course, dependent on other factors, non-legal in character, such as educational, political, economic and social. It would not be accurate to say, for example, that Filipino women present here today — professionals, highly educated, and enjoying economic and social advantages outside the reach of easily 90 per cent of the female population of the country, are typical of the Filipino woman. The legal rights they enjoy though theoretically open to every Filipino are not actually enjoyed by all.

That equality cannot be absolute need not be demonstrated. It is however, proposed that existing laws affecting women be reexamined to determine whether they conform to the 1973 constitution and its guarantees of due process and equal protection of laws and how other constitutional provisions — some new, others just reiterating existing laws — affect the legal status of women.

International Women's Year — 1975

Women from all over the world have been taking stock of their status under the laws of their respective countries. The resolution of the General Assembly declaring 1975 as International Women's Year, has accelerated their activities.[2] While in some countries women have steadily progressed towards a position of equality with men, as of December 1973 they still did not enjoy voting rights and eligibility for election in six countries.[3] Considering that they constitute at least one half of the population, their number in parliaments and in other high judicial, diplomatic or other government posts in most countries pales into insignificance when compared to that of men.

The observance of International Women's Year emphasizes the theme of equality, development and peace. These may appear unrelated, but equality of opportunity for women in various fields of human endeavor and the development of their full potential as human persons are essential to the attainment of peace.

Who needs liberating?

Historians say that before the advent of the Spaniards, women in the Philippines enjoyed equal rights with men — daughters could succeed to

[2]Gen. Assembly Res. 3010 [XXVII] 27, U.N.G.A.O.R. Suppl. 11 (Jan., 1973).
[3]Jordan, Kuwait, Liechstenstein, Nigeria, Saudi Arabia and Yemen, E/C.N. 6/5/71/ Add. 2, Dec. 7, 1973.

the headship of the barangay (at least two noted women rulers are named, Queen Sima and Princess Urduja) and could become priestesses. The Filipino legend on the origin of the human race unlike the Biblical version of Eve coming from Adam's rib has men and women simultaneously emerging from a huge bamboo.[4] That was equality to begin with.

But the colonizers, both Spanish and American, introduced their laws which cumulatively relegated women, particularly the married ones, to a subordinate position. Breaking down the legal shackles has taken time. That women should be subject to legal restrictions because of their sex has been of such long duration that the condition came to be regarded as in the natural order of things and imposed by divine ordinance.

The existence of unequal treatment may not even be realized. The not unusual reaction to the subject to women's liberation in this country is the facetious remark: "It is the men who need liberating." In support of this, it is pointed out that in the Filipino family, the wife holds the purse, husbands hand over their pay checks and get an allowance in return and the wife manages the affairs of the household.[5] The high position of the woman in Philippine society is also pointed out, as well as her activities in political, civic, social, religious, educational and other fields. The achievement of individual women in the professions, in government service, in business, in politics, etc. is also cited. And the famous statement attributed to Governor General Leonard Wood is repeated: "In the Philippines the best man is the woman."[6]

STATUS OF WOMEN IN PHILIPPINE LAW

Pedestal or Cage?

It is thus generally believed that the Filipino woman occupies a privileged position: that she has equal legal, educational, political, economic and social opportunities with men, and enjoys other privileges besides. According to the late Justice Malcolm, "her position in the family and in the community is that of the Occident rather than the Orient. They are as highly honored and well treated as are the women of America."[7]

But women of the West, particularly those of the United States have, as we all know, launched a liberation movement. Legal restrictions based on sex banned them from certain professions and means of livelihood, from

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[4]ALZONA, THE FILIPINO WOMEN; HER SOCIAL, ECONOMIC AND POLITICAL STATUS, 1565-1933, 16-7, (Rev. ed. 1934).

[5]The last by explicit provision of law, CIVIL CODE, art. 115.

[6]ALZONA, *supra*, note 4 at 4; MALCOLM, FIRST MALAYAN REPUBLIC; THE STORY OF THE PHILIPPINES 43 (1951).

[7]*Supra*, note 6 at 43.

jury service, and limited their opportunity for employment; even laws intended to protect them proved to be repressive. Legislations and decisions handed down by male legislators and male judges reduced them to second class citizens. They had ample proof of discrimination as invidious as those based on race as decided cases will show.

It would interest this particular audience to know for example what an uphill struggle the women of the United States of America had in order to enter the legal profession. In one case, a state Supreme Court held that the word "person" used in a statute meant "man" and so denied a woman's application to practice law, and the Federal Supreme Court denied relief.[8] In another case decided in 1875 the Supreme Court speaking through Judge Ryan rejected the application of Lavinia Goodell for admission to the bar. In expressing the protectively paternal view of the times regarding women, Judge Ryan also articulated what may or may not have been the prevailing attitude regarding the legal profession thus:

> "Nature has tempered woman as little for judicial conflicts of the court-room, as for the physical conflicts of the battle-field. Womanhood is moulded for gentler and better things.*** It (the legal profession)... has essentially and habitually to do with all that is selfish and malicious, knavish and criminal, coarse and brutal, repulsive and otherwise obscene in human life. It would be revolting to all female sense of the innocence and sanctity of their sex, shocking to man's reverence for womanhood and faith in women on which hinge all the better affections and humanities of life, that women should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice*** Discussions are habitually necessary in courts of justice, which are unfit for female ears. The habitual presence of women at these would tend to relax the public sense of decency and propriety. If these things are to come, we will take no voluntary part in bringing them about."[9]

Because it was thought that the practice of law would degrade women, the Columbia Law School denied admission to three women applicants in 1870. No woman shall degrade herself by practicing law in New York, especially if I can save her, a member of the Board of Regents of Columbia University reportedly said.[10]

The U.S. Supreme Court in *Bradwell v. Illinois*[11] affirmed the State court's decision rejecting a woman's application for license to practice law on the basis of the privileges and immunities clause of the U.S. federal constitution. But, it is quite apparent that the application was denied because of the applicant's sex. The often-quoted concurring opinion of Mr. Justice Bradley on the subordinate position of women as the natural state of things, expresses what adds fuel to women liberationists' fire.

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[8] *In re* Lockwood, 154 U.S. 116, 14 S. Ct. 1082, L. Ed. 929 (1894).

[9] *In re* Goodell, 39 Wis. 232, 20 Am. Rep. 42 (1875).

[10] Note, *Progress of Women in the Law*, 4 J. Mo. BAR 164 (1948), as cited in Barnes, *Women and Entrance in the Legal Profession*, 23 J. LEGAL ED. 276, 283 (1970).

[11] 16 Wall. 130, 21 L. Ed. 442 (1873).

Among other things he said: (1) "the natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for the occupations of civil life." (2) "the constitution of the family organization, which is founded in the divine ordinance, as well as the nature of things indicates the domestic as that which properly belongs to the domain and functions of womanhood." (3) "the paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adopted to the general constitution of things and cannot be based on exceptional cases." While conceding that some women are unmarried and therefore not affected by "the duties, complications and incapacities arising out of the married state" he said these are exceptions to the rule.

While there is no similar judicial pronouncement of Philippine courts regarding women's entry into the legal profession, I have it on good authority that the first woman law student was not exactly made welcome and that in the discussion of certain subjects in criminal law, she used to be excluded from the classroom.*

Studies focusing on women's rights in the United States have revealed: "The law, (it seems) has done little but perpetuate the myth of the helpless female best kept on her pedestal. In truth, however, the pedestal is a cage bound by a constricting social system and hemmed in by layers of archaic and anti-feminist laws."[12] That "the major political, social, economic and religious institutions are firmly in the control of men;"[13] that "by and large the performance of American judges in the area of sex discrimination can be succinctly described as ranging from poor to abominable. With notable exceptions, they have failed to bring to sex discrimination cases those judicial virtues of detachment, reflection and critical analysis which have served so well with respect to other sensitive social issues"[14] and that "sexual inequality is the oldest and most intransigent form of discrimination in human culture; indeed it has provided models for the subordination of other oppressed groups. As in the case of racial bias, the individual's statues is defined at birth and legal and social disabilities are imposed by virtue of variable permanent characteristics which identify one's sex. For many purposes, law and social customs treat all women as a separate class inferior to that of men."[15]

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*Referred to is former Court of Appeals Associate Justice Natividad Almad-Lopez.

[12]Seidenberg, *The Submissive Majority: Modern Trends in the Law Concerning Women's Rights*, 55 CORNELL L. REV. 262, 272 (1970).

[13]Freeman, *The Legal Basis of the Sexual Caste System*, 5 VALPARAISO L. REV. 203, 207 (1971).

[14]Johnston & Knapp, *Sex Discrimination by Law; A Study in Judicial Perspective*, 46 N.Y.U.L. REV. 675 (1971).

[15]Murray, *Economic and Educational Inequality Based on Sex: An Overview*, 5 VALPARAISO L. REV. 23 (1971).

Whether based on "male chauvinism" or "romantic paternalism" which in practical effect put women "not on a pedestal but in a cage,"[16] these views have been challenged. The women urge the courts to regard statutory distinctions between the sexes like those based upon race, alienage, or national origin as inherently suspect and therefore subject to strict judicial scrutiny.[17]

American women have made significant strides towards achieving equality. Courts have begun to reconsider prior rulings.[18] One would not go so far as to say that all distinctions made in law between men and women violate the constitutional guarantees of equality. In employment, for example, where sex is a bona fide occupational qualification (as in the case of a wet nurse) the classification may be justified.

After about fifty years, an amendment to the U.S. federal constitution guaranteeing equality of treatment for women has finally passed the U.S. Congress. The operative provision of the Equal Rights Amendment submitted for ratification[19] reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." If the necessary three fourths vote of the 50 states is obtained, this amendment will become the 27th in the federal constitution. As of April 1973, 30 states had already ratified, but the end is not yet in sight. For Nebraska has rescinded its ratification and Idaho, Tennessee and Kansas, among others are considering the same step.[20]

The reason for this digression into the American experience is that we derive from it our constitutional concepts of equality and the status

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[16]Frontiero v. Richardson, 411 U.S. 677, 36 L. Ed. 2d 583, 41 L. W. 4609, 93 S. Ct. 1764 (1973).

[17]*Ibid.*

[18]Laws prohibiting women from employment as bartenders could not be sustained under the fourteenth amendment. (Patterson Tavern & Grill Owners, Assn. v. Borough of Hawthorne, 57 N. J. 180, 270 A. 2d 628 [1970]; Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 485 P. 2d 529, 95 Cal. Rptr. 329 [1971]).

Different sentencing laws for women and men constituted invidious discrimination against women (U.S. v. York, 281 F. Supp. 8 [1968]; Commenwealth v. Daniel, 430 Pa. 642, 243 A. 2d 400 [1968]); Exclusion of women students from state-supported "prestige" institutions was violative of the equal protection guarantee (Kirstein v. Rector and Visitors of University of Virginia, 309 F. Supp. [1970]).

Requirement that unmarried women under 21 live in the state college dormitory when there was no such requirement imposed on men was unconstitutional (Mollere v. Southeastern Louisiana College, 304 F. Supp. 826 [1969]). Exclusion of policewomen from examination required for promotion to sergeant solely because of sex was an impermissible denial of constitutonal rights (*In re* Shpritzer v. Lang, 234 N.Y.S. 2d 285 [1962] aff'd, 13 N.Y. 2d 744, 241 N.Y.S. 869, 191 N. E. 2d 919 [1963]). Statutory exclusion of women from jury service was discriminatory (White v. Crook, 251 F. Supp. 401 [1966]).

[19]U.S. Senate 84 to 55, March 22, 1972; U.S. House of Representatives, 354 to 23, October 12, 1971.

[20]Fishel, *Reversals in the Federal Constitutional Amendment Process: Efficacy of State Ratifications of the Equal Rights Amendments*, 49 INDIANA L. J. 147 (1973).

of the Filipino woman has been said to be more like the women of the West than of the Orient.

What is the status of the Filipino women *vis-a-vis* the men in family law, in employment, education, etc.? Do Philippine laws measure up to the United Nations Charter, which is anchored on the principle of the dignity and worth of the human person and in the equal rights of men and women; or the Universal Declaration of Human Rights which asserts the principle of non-discrimination and proclaims that everyone is entitled to the rights and freedoms set forth therein without distinction of any kind, including any distinction as to sex? More importantly, for the purposes of this inquiry, do they conform to the 1973 constitutional provisions on equality found in the preamble, the Declaration of Principles and State Policies, the due process and equal protection clauses and other pertinent sections?

The preamble of the 1973 constitution announces the aspiration of the sovereign Filipino people to secure the blessings of democracy under a regime of justice, peace, liberty and equality. Without equal treatment under the law, justice, peace and liberty may be illusory. The Declaration of Principles and State Policies in no uncertain terms expresses a commitment to equal opportunities in employment regardless of sex. But the preamble is not a source of right and an announcement of principles and policies is not self-executing.

Equal protection of the laws is not a novel concept. While the 1973 constitution more explicitly refers to equal employment opportunities regardless of sex, the earlier fundamental law was not wanting in its protection of working women.[21]

The concept of equality has no set meaning. It has evolved largely through the interpretation and application of the due process and the equal protection clauses of the constitution. It has not been understood to mean sameness or absolute equality. Under the law, classifications on the basis of substantial differences have been upheld and many court decisions have dealt with the constitutionality of laws making sex a basis for classification. Since obviously a difference does exist between males and females, courts have upheld the validity of various statutes providing a different treatment of women. These judicial pronouncements have since been placed under sharp scrutiny — and more stringent tests are now being applied to determine the validity of classification on the basis of sex because of the more assertive role women have taken, in the United States as in other places.

[21]Art. XIV Sec. 6 of the 1935 CONSTITUTION provided, "The State shall afford protection to labor, especially to working women and minors ... "

The present inquiry with the 1973 constitution as a frame of reference will look into the areas of the Filipino woman's political and civil rights, particularly in the field of family law, labor and welfare laws, as well as the penal laws.

Political Rights

The Filipino woman won the right to vote before the 1935 constitution was adopted. Act No. 4112 on woman suffrage was signed into law by Governor General Murphy in December 1933 but with the calling of the constitutional convention in 1934 the women had to work all over again in the convention, composed entirely of men, for women suffrage. The most that the convention could adopt was a conditional provision: Suffrage would be extended to women only if 300,000 of them voted for it at a plebiscite. This did not take place until 1936.

After more than 30 years of suffrage, considering that about 50 per cent of the population are women, their number elected to public office since 1936 constitutes but a small percentage of elective officials.[22] No woman in this country has ever been head of state, only a handful have been elected to the legislature, fewer still have sat in the cabinet.

Whether due to the limitations of language or to the habitual assumption that in the masculine pronouns "he/his," the female half of the citizenry are subsumed the provisions creating constitutional offices, prescribing the qualifications for Prime Minister, President, the Cabinet, the National Assembly, etc. are couched in masculine terms. Thus: "No person may be elected President unless *he* is at least fifty years of age on the day of his election as President."[23] "No person shall be member of the National Assembly unless *he* is a natural-born citizen ... [24] "The Prime Minister shall be commander-in-chief of all the armed forces of the Philippines and, whenever it become necessary, *he* may call out such armed forces ... [25] There is no need for more examples. A notable exception is the provision on the Commission on Audit which succeeds in avoiding the use of masculine pronouns.

Citizenship

An essential requisite for the exercise of suffrage and a qualification for numerous public offices is citizenship.

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[22]Only 12 women have been elected to the House of Representatives; 7 to the Senate; 13 to the Constitutional Convention. The highest ratio in th Senate membership at any one time was 3 out of 24 and in the House, 6 out of 104 members.

[23]Art. VIII, sec. 3.

[24]Art. VIII, sec. 4.

[25]Art. IX, sec. 12.

The 1973 constitution removes some of the more apparent inequalities in the treatment of the Filipino woman as citizen. Previously, a Filipino woman lost her citizenship if she married an alien under the laws of whose country she acquired her husband's citizenship. The new constitution specifically provides that she retains her citizenship unless by her act or omission she is deemed, under the law, to have renounced that citizenship.[26]

As a citizen, a Filipino woman may now transmit her citizenship to her children without the latter being required to elect it upon reaching the age of majority. These children are considered natural born citizens under the new constitution *i.e.*, a citizen from birth without having to perform any act to acquire or perfect his Philippine citizenship. Unfortunately, this is meant to operate prospectively and the constitution creates a separate class of citizens: "Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty five," referring to children born before the 1973 constitution to a Filipino woman married to a foreigner. Depending on their date of birth, the children of a Filipino mother and an alien father may thus be natural-born or not natural-born. The new provisions on citizenship remove some but not all the effects resulting from the unequal treatment of Filipino citizens marrying an alien. They have not gone far enough, for the retention of the provision on election of citizenship under the 1935 constitution when applied to children below 21 when the 1973 constitution was adopted, of women who though married to aliens retain Filipino citizenship, partially negates the other provisions on citizenship. Those who had elected citizenship under the 1935 constitution could very well come under Section 1 paragraph 1 of the enumeration, namely: "those who are citizens of the Philippines at the time of the adoption of the constitution," without falling within the classification of natural-born citizens. But with the provision that a Filipino woman marrying an alien does not lose her citizenship except through an act or omission which under the law amounts to renunciation of that citizenship it should follow that when the 1973 constitution became operative, her children also became citizens without need for election.

The justification under the 1935 constitution for requiring children of a Filipino mother and an alien father to elect Philippine citizenship upon reaching the age of majority is the rule in international law that minor children follow the citizenship of the father. The 1973 constitu-

[26]The Secretary of Justice in a query regarding a Filipina who marries a Frenchman and does not choose to declare that she declines French citizenship or decides to accept it, opined that since under the French law she acquires French citizenship without necessarily losing her original one, thus acquiring dual citizenship, she retains Filipino citizenship. (Op. No. 52, s. 1974).

tion departs from this and recognizes in effect the dual citizenship of such children. This reason for requiring children to elect their mother's citizenship upon reaching the age of majority has been discarded by the 1973 constitution, but the effect of the unequal treatment of woman under the provisions of the 1935 constitution is allowed to continue as to children already born when the 1973 constitution went into effect.

Family Relations

The 1973 constitution incorporates the policy of the civil law regarding the family, and expands a similar provision in the 1935 constitution by providing:

> The State shall strengthen the family as a basic social institution. The natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the government.[27]

The provision is not new. The first part reinforces the Civil Code which provides that the family is an institution "which public policy cherishes and protects" by expressing in positive terms a mandate to strengthen the family and so manifests that whatever developments may be taking place in other parts of the world downgrading the family as a social institution, its basic character in Philippine society is retained.

The second part of the provision is taken from the 1935 constitution, with some modification in language. This provision should be taken with the principles of equality expressed in the preamble, in the guarantee of equal employment opportunity without regard to sex, in the provisions on equal protection and the due process clause, in the evaluation of women's rights under the 1973 constitution to determine whether existing laws governing family relations measure up to the constitution of 1973.

The special treatment of women in family law may be attributed to the role with which women are traditionally identified — that of wife and mother. Since this confines her activities to the home, in relation to her husband and children, the laws restricting her activities are taken to be measures intended to protect the family. That not every woman is a wife or mother has made little difference. A daughter will one day become one, therefore special rules are formulated for her. Furthermore, biological differences between men and women are taken to be sufficient basis for making legal distinctions; with the result that in family law, the woman occupies a subordinate position — she being considered the fair but weaker sex.

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[27]Art. II, sec. 4.

The Code Commission in drafting the present Civil Code proposed the removal of some of the more glaring inequalities under which women labored. But, while more liberal rules were introduced, the Civil Code still retains provisions discriminating against women. Can these provisions be sustained under 1973 constitution?

1. A person of age is qualified for all acts of civil life, with certain exceptions established by law in special cases.[28] But aside from insanity or imbecility, the state of being a deaf-mute, prodigality and civil interdiction which limit the capacity of both men and women to act, the law imposes additional restrictions on women. Thus, a daughter above 21 but below 23 cannot leave the parental home without the consent of the father or mother in whose company she lives except to become a wife, or when she exercises a profession or calling, or when the father or mother has contracted a subsequent marriage.[29] Sons of age do not labor under any such restriction. But a daughter may marry at age 14 while a son may not validly contract marriage until he is 16; parental consent for the marriage is required for females below 18 and for males below 20; and parental advice must be given for females above 18 and below 23 and males above 20 but below 25 years of age. Thus, while a daughter is old enough for the responsibilities of marriage two years earlier than a son and parental consent or advice for a son's marriage is necessary two years beyond the age requirement set for daughters, the same law restricts a daughter's choice of where to live two years beyond the age of majority.

There appears to be a lack of consistency in these provisions. However, when the law governing the relations between husband and wife is taken into account, the provisions are found to conform to a design — for the daughter becoming a wife passes from the authority of parent to that of the husband. The restriction may be motivated by a sense of chivalry — to protect the weaker sex (an assumption that is not unchallenged). But can this unequal treatment of sons and daughters stand the test of constitutionality when the guarantees of equal protection and the liberty of abode are invoked?

The Civil Code provisions governing mixed marriages between Christian and Muslim or pagan not only favors the Christian party but also makes sex a determining factor of what law will govern the solemnization of the marriage. Between a Christian male and a Muslim or pagan female, the general provisions of the Civil Code will govern, but when the mixed marriage is between a Muslim or pagan male and a Christian female, the special rules permitting marriages between Muslims or pagans who live in the non-Christian provinces to be performed in ac-

[28]CIVIL CODE, art. 402.
[29]CIVIL CODE, art. 43.

cordance with their customs, rites or practices may be applied, if so desired by the contracting parties. Why not a uniform rule giving the parties in such marriages a choice of what law to follow?

2. Until she contracts marriage a woman of age (not suffering from legal incapacity to act) may choose to exercise any profession or occupation, engage in business, enter into contracts, and be party to suits without being bound by law to seek anyone's permission. But let her contract matrimony, and these rights will become subject to restrictions which the law places on her but not on her husband.

For example, under the civil law her husband may accept gifts from anyone, but the wife cannot without her husband's consent, acquire any property by gratuitous title, except from ascendants, descendants, parents-in law, and collateral relatives within the fourth civil degree. Taken to extremes, I may not give a married woman a birthday gift without her husband's consent. But if husband and wife are public officials, they would both be subject to the prohibition against accepting gifts — that is equal treatment, at least.[30]

A husband may object to his wife's exercise of a profession or occupation or her engaging in business if his income is sufficient for the family according to its social standing or for serious or valid ground.[31] The married woman is thus supposed to find fulfillment, when the husband so disposes, in the home — when he does not need her help to support the family or when he has other reasons for objecting to her utilizing her talents outside the home. A married woman who has sufficient income to support the family cannot object to her husband's exercise of a profession, occupation or to his being in business. Why does the law make this distinction? The argument that woman's primary obligation is the home, in the rearing of children may be answered by citing the constitution which states categorically that the rearing of children is the natural right and duty of *parents,* not of the wife and mother alone. On the matter of providing for the family, this too is joint obligation of husband and wife who also owe each other support.[32] In *Tenchavez v. Escaño*[33] our Supreme Court held that a husband could recover damages from his wife for desertion and obtaining an invalid divorce.

The stereotype of husband-father-provider-protector; and of the wife-mother-dependent-protected does not give an accurate picture of the Filipino couple. A truer picture is one of the woman as an active participant in a partnership. From a Mrs. Aurora Aragon-Quezon who

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[30]Presidential Decree No. 46, promulgated on May 27, 1973.
[31]CIVIL CODE, art. 117.
[32]CIVIL CODE, art. 109.
[33]G.R. No. L-19671, November 29, 1965, 15 SCRA 355 (1965).

managed a family farm and made a going concern of it[34] while she undertook the multifarious activities of a gracious First Lady, to Mrs. Imelda Romualdez-Marcos who not only graces the ceremonial functions of state but has initiated and even more actively participated in civic, charitable, educational and other activities and national programs; to the numberless housewives in business, big and small; to the farmer's wife who with the husband, puts in a whole day in the blazing sun to plant rice or weed the farm — these are the women who take up family and other responsibilities with flair and competence.

Yet the law assigns women to a subordinate position. The constitution guarantees that the liberty of abode and travel shall not be impaired except for specified causes, but a wife's mobility is subordinate to her husband's choice of residence.[35] In a conjugal partnership of gains where each partner gets equal shares upon its dissolution, the rights of management are not equally shared. The husband is administrator of the conjugal property while the wife consistent with her assigned role of wife and mother is given management of the household. The preferential treatment of men in family law, does not stem from any empirical finding that they are the better managers or that they exercise family authority over the children with greater wisdom. It merely carries over the dominance of males in other activities — the warrior, the hunter, the ruler and the adventurer. But it is precisely because of these other male interests that the women assumed responsibility for the home and its concerns. It is not for lack of capacity of women to administer the conjugal property that the law does not confer it on her — because in specified instances the law may place the administration in her hands.[36]

Again, in the Filipino family the wife performs the functions of administering the conjugal partnership property, if not alone, jointly with the husband. She has a say not only when the law gives it to her as in the case of sale or disposition of the property, but also in the routine acts of administration. If such is the practice, is there a good reason for the civil law to retain its unequal treatment of the husband and wife in the matter of administration? Both spouses contribute to the property, upon its dissolution, they share equally, in actual practice they jointly administer it. Should not the wife's part in such administration be *de jure* as well as *de facto?*

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[34]QUEZON, THE GOOD FIGHT 185 (1946).

[35]De La Viña v. Villareal, 41 Phil. 13 (1920); Ching Huat v. Co Heong, 77 Phil. 988 (1947).

[36]Where the husband abuses his powers as administrator (Art. 167); where the husband expressly authorizes her in a public instrument to administer the property (Art. 168); or in cases where the wife becomes the guardian of her husband, of his absence judicially declared or his civil interdiction.

Parental Authority

(a) Over the person—

The constitutional recognition of a natural right and duty of parents in the rearing of children, does not by itself confer equal parental authority. The Civil Code places in the father and mother joint parental authority over their unemancipated legitimate children, but in case of disagreement, the father's decision prevails, unless the court orders the contrary.[37] This authority may be suspended where the father's incapacity or absence is judicially declared or in case of his civil interdiction[38] in which events the mother may have the final say, as also in case of legal separation when she has guardianship of her children.

(b) Over the children's property—

The father is not only the administrator of the conjugal partnership property, he is also legal administrator of the property of the children under parental care. Only in his absence does this authority devolve on the mother.[39]

Two cases involving parental relations recently decided in the United States illustrate the constitutional implications of statutes in which legislative classifications on the basis of sex were held to violate the equal protection clause.

In *Reed v. Reed*,[40] an Idaho statute provided: "of several person claiming and equally entitled to administer, males must be preferred to females; and relatives of the whole blood to those of the half blood." In that case the father and the mother both applied for appointment to administer the estate of their deceased son. The judge without any attempt to determine the relative capabilities of the competing applicants considered himself bound to give preference to the male candidate over the female. The Idaho Supreme Court considered the preference mandatory. The issue raised was whether a difference in sex of competing applicants for letters of administration bears a rational relationship to a state objective that is sought to be advanced by operation of the law in question. The United States Supreme Court held that even though the state's interest in achieving administrative efficiency is not without some legitimacy, to give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice, forbidden by the

[37] CIVIL CODE, art. 311.
[38] CIVIL CODE, art. 331.
[39] CIVIL CODE, art. 320.
[40] 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971).

federal constitution. By providing dissimilar treatment for men and women who are similarly situated, the challenged section violates the equal protection clause.

The equal protection and the due process of law clauses were successfully invoked in another case, this time by a father, in order to support his claim for custody of his children. In this case[41] an unwed couple living together for some 18 years had three children. When the mother died, the Illinois law which does not recognize the rights of unwed fathers, made the surviving children wards of the state. No hearing was required at which the fitness of the father could be examined. The Court held that as a matter of due process the petitioner was entitled to a hearing on his fitness as a parent before his children were taken from him. Although the court in deciding this case ignored the whole concept of sex differentiation, the dissent of Mr. Chief Justice Burger and Justice Blackmun relied on the common human experience that unwed mothers are more interested and concerned over their children, thus supporting the concept of protective legislation for illegitimate children and indirectly for their mothers.

No example illustrates more clearly the unequal treatment of women and the extent to which it may be brought than the following provision of the Civil Code:

> The mother who contracts a subsequent marriage loses parental authority over her children, unless the deceased husband, father of the latter, has expressly provided in his will that his widow might marry again, and has ordered that in such case she should keep and exercise parental authority over their children.
>
> The court may also appoint a guardian of the child's property in case the father should contract a subsequent marriage.[42]

The provision is not only discriminatory against women, it also goes against Filipino traditions — for in the Filipino family it is the mother who keeps the family together. Again, the provision taken with related ones in the Code, falls into place because of the dominant role given the husband. Since by the second marriage, the mother becomes subject to the husband's authority, provision is made to keep children of the first marriage free of that authority.

Viewed from another angle the provision has the effect of assuring male dominance, not only during the existence of a marriage, but also after its termination by the death of the husband. Beyond the grave

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[41]Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 551 (1972).

[42]Art. 328. This was superseded by Article 17 of the CHILD AND YOUTH WELFARE CODE (Presidential Decree No. 603), which went into effect on June 10, 1975 giving the surviving spouse the right to exercise parental authority. The presidential decree was promulgated some four months after this lecture.

his authority reaches out to control his wife's action.

So pervasive is the concept of a husband's authority and so shaky a married woman's legal competence that in defining testamentary capacity specific provision is made that a married woman may make a will without the consent of her husband, and without authority of the court[43] and explicit provision in another statute is made that without her husband's consent she may provide that after her death her body or any part thereof may be utilized for medical, surgical or scientific purposes.[44]

Legal Separation

Another instance of discrimination on the basis of sex is the provision prescribing causes for legal separation. A husband has cause for legal separation in a single proven act of infidelity of his wife. But a wife cannot have a cause for legal separation even when her husband's *machismo* is such that acts of infidelity are his life style as long as these acts do not fall within what the penal laws define as "concubinage."[45] A double standard, long existing in Philippine society, permits men much more freedom from conjugal commitments than it is ready to concede to women.

But the statutory protection of the family as a basic social institution has now become a constitutional principle. This, together with the fundamental guaranty of equal protection of laws, demands that the unequal treatment of husband and wife under the Civil Code provisions on legal separation and the penal code provisions defining adultery and concubinage should be reviewed. For if a single act of infidelity is sufficient to convict a married woman and give cause for legal separation in favor of the husband, the same should be equally applied to a married man. This is not to brush aside completely the rationale heretofore offered as basis for the application of stricter rules on the female, *i.e.*, the possibility of spurious offspring being introduced into the family to bear the name of and be entitled to support by her husband. But aside from the fact that a wife who chooses to be unfaithful would in all likelihood also be knowledgeable as to birth control methods, it would seem that, consonant with the principle of equal treatment under the law and the policy of strengthening the family, the violation of the vows of mutual fidelity between husband and wife should be treated in the same manner. If one act of infidelity by the wife is sufficent cause for criminal liability or legal separation, it should be equally so when the husband is the unfaithful spouse.

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[43]CIVIL CODE, art. 802.
[44]Rep. Act No. 347 (1949), sec. 2 as amended.
[45]REV. PENAL CODE, art. 364.

Family Planning

The 1973 constitution is the first basic charter to include a provision on population making it the "duty of the state to achieve and maintain population levels most conducive to the national welfare."[46]

The present approach to the population problem is through family planning considered as a human right. But while it recognizes the right of couples freely and responsibly to determine the number and spacing of their children, the burdens of child-bearing pertain to the women. It is not surprising, therefore, that on the questions of contraception, abortion, etc., women's liberationists have chosen to take a stand.

Educational Opportunities

Much of the advance that the Filipino woman has achieved can be traced to the educational opportunities opened to her. The public school system makes no discrimination between the sexes, whether in admission of students or the employment of teachers.

The available figures on enrollment from the elementary, secondary, and collegiate levels in private schools from 1967 to 1972 show: (1) on the elementary level there is no significant difference in the number of male and female students enrolled except in 1971-1972 when girls enrolled in high schools outnumbered the boys by more than 6,000. (2) On the collegiate level during the period 1967-1971 the females outnumbered the males, and even as the number of college students increased, the gap widened. So that in 1970-1971 there were 104,926 females as against 80,494 males.[47]

The enrollment in public schools for the years 1966-1969 shows that in the primary, elementary and secondary schools the males outnumbered the females, but the difference lessened as the years of schooling increased.[48]

It is of course a well known fact that in this country there are more women than men in the teaching profession.

Although the University of the Philippines is far from typical it may be pertinent to state that during the last five years, except for the school year 1971-1972 the females exceeded the males in the total number enrolled and as of the fiscal year 1973-1974 (Los Baños excluded) there were

[46]Art. XV, sec. 10.
[47]Taken from the Bureau of Private Schools data.
[48]JOURNAL OF PHILIPPINE STATISTICS, Vol. 20, No. 3, 1969; Vol. 22, No. 1 1971 Vol. 23, No. 3, 1972.

745 female members of the faculty as against 564 males.[49]

In the various colleges of the University, while the males outnumbered females in the Colleges of Law, Engineering, Veterinary Medicine, Architecture, the Graduate Schools of Business Administration, Economics and in Cebu, in every other college including Medicine, Arts & Sciences, Business Administration, and Statistical Center, the females outnumbered the males this semester (1974-1975).

But the attainment by women of equality in the field of education is not to be confined to equal opportunity for school admission but should extend also to the kind of training made available. Thus, schools which train girls in the gentle art of home management and for little else, would not extend to them the training they will need so that they can develop their full potential as individuals. And the opportunity for education should also be related to opportunities for using the training obtained for gainful employment.

Employment Opportunities

The 1935 constitution explicitly provided that the state shall afford protection to labor, especially to working women and minors. The 1973 constitution, departing from the policy of placing women in a special class, provides that the state shall afford protection to labor, promote full employment and equality in employment, ensure "equal work opportunities regardless of sex, race or creed, etc."[50] The policy thus announced is not self-executing. It requires implementation.

Statutes providing protection to working women are not new in this jurisdiction. It will be recalled that in 1924 our Supreme Court by unanimous vote held that a law requiring employers to give women employees paid maternity leaves was declared an unconstitutional encroachment on the freedom of contract.[51] The 1934 convention made sure that progressive social legislation would not again suffer the same fate. The *Pomar* decision cited American precedents[52] strangely enough including *Muller v. Oregon*[53] where the United States Federal Supreme Court relying on a Brandeis brief, upheld the constitutionality of an Oregon statute limiting the working hours of women in any mechanical establishment,

[49]Data supplied by the U.P. Academic Personnel Office.
[50]Art. II, sec. 9.
[51]People v. Pomar, 46 Phil. 440 (1924).
[52]Adkins v. Children's Hospital of the District of Columbia, 261 U. S. 525, 43 S. Ct. 394, 24 A.L.R. 1238, 67 L. Ed. 785 (1923); Adair v. U.S., 208 U.S. 161, 28 S. Ct. 277, 52 L. Ed. 436, (1908); Coppage v. Kansas, 236 U.S. 1, 35 S. Ct. 240, 59 L. Ed. 441 (1915); Lochner v. N. Y., 198 U. S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1907).
[53]208 U.S. 412, 28 S. Ct. 324, 52 L. Ed. 551 (1908).

factory or laundry to 10 hours day. This landmark decision on social legislation, however, has also been frequently quoted to support measures establishing classifications for employment on the basis of sex. Mr. Justice Brewer speaking for the court stated *inter alia*: "That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. This is specially true when the burdens of motherhood are upon her . . . history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior strength, and this control in various forms, with diminishing intensity, has continued to the present." According to this opinion even if the law were to give women equal rights they would still lean on the men.

From positions like this the American woman has struggled for liberation. One must admit that compared to the Philippine situation where except for the *Pomar* case and *Zialcita-Yuseco v. Simmons*,[54] our courts have not had much occasion to consider the unequal treatment in the employment of women there abounds in the American jurisdiction, cases involving women's right to equal treatment. The more recent decisions reveal that their struggle for "liberation" is bearing fruit.

The feminist movement has looked closely at laws regulating employment. There is no denying biologic differences between the sexes, as a result of which identical treatment in every instance may not be feasible. But if equal work opportunities regardless of sex are to be made real as the constitution commands, exceptions must be based as the U.S. Civil Rights Act provides on "bona fide occupational qualification." Thus, in *Weeks v. Southern Telephone and Telegraph Co.*[55] the Court held that the company had denied Mrs. Weeks a switchman's job because she was a woman, not because she lacked any qualification as an individual. The company failed to satisfy the court that under the applicable law there was factual basis for believing that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved. The court refused to assume on the basis of stereotype characterization that few or no woman can safely lift 30 pounds, while all men are treated as if they can. The court in rejecting the company's contention that switchmen could be called in emergencies to handle a 34-pound extinguisher or after midnight, said a speculative emergency like this could be used as a smokescreen to discriminate against woman. It referred to Title VII of the U.S. Civil Rights Act as rejecting this type of paternalism as unduly Victorian and instead vests individual women with the power to decide whether or not to take on unromantic tasks.

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[54]97 Phil. 487 (1955).
[55]408 F. 2d 228 (1969).

In another case[56] where an employer denied a woman promotion to a position requiring the lifting of 50-pound objects on a regular basis, the court found that being a male was not a reasonably necessary prerequisite to being able to lift 50 pounds. "On the contrary, there are without doubt a substantial number of women who could lift over 50 pounds and a large number of men who could not."[57]

Republic Act No. 679 provides *inter alia* that "(a) No woman, regardless of age, shall be employed in any shop, factory, commercial or industrial establishment or other place of labor to perform work which requires the employee to work always standing or which involves the lifting of heavy objects."[58] How heavy is heavy, the law does not say.

In *New York State Division of Human Rights v. N. Y. Pa. Professional Baseball League*[59] the court decided that the height requirement for baseball umpires could not be applied to deny the position to a woman, since it was not job-related and it "operated inherently to discriminate against woman."

It can be gathered from these cases that for sex to be the basis of classification for purposes of employment, it must be revelant to the job, as an occupational qualification. Reasonable classifications based on characteristics that are unique to one sex would not be objectionable.

Falling into the same category of unlawful discrimination were cases of an airline requiring that a stewardess be unmarried where male flight attendants and other employees were not required to be unmarried[60] or a company's refusal to accept employment applications from mothers with pre-school children when the rule did not apply to a man with pre-school children.[61]

If cases of a similar character were to be instituted in this jurisdiction would our courts decide in a similar manner? For example, the retirement plan rules and regulations of cabin attendants of Philippine Air Lines are covered by this provision in the Flight Attendants and Stewardees Association (FASAP) collective bargaining agreement for 1972-1975:

> The compulsory retirement is thirty-five (35) for Female Cabin Attendants and forty-five (45) for male cabin attendants***[62]

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[56]Local 246, Utility Workers' Union of America v. Southern California Edison Co., 320 F. Supp. 1262 (1970).

[57]*Id.* at 1265.

[58]Rep. Act No. 679 (1952), sec. 7(a).

[59]320 N.Y.S. 2d 788 (1971).

[60]Sprogis v. United Airlines, 444 F. 2d 1194 (1971).

[61]Philips v. Martin Marietta Corp., 400 U.S. 542, 27 L. Ed. 2d 613, 91 S. Ct. 496 (1971).

[62]Sec. 2, reported in Torrevillas-Suarez, *Women in Labor Pains, infra*, p. 24.

This represents a five-year increase compared to the 1969-1972 agreement but the age difference applied to male and female cabin attendants is still there.

The only case which squarely raised the issue of discrimination based on sex is *Zialcita-Yuseco v. Simmons*[63] where a woman employed by the National City Bank of New York, a foreign banking corporation doing business in the Philippines, sued its general manager for allegedly forcing her to sign a letter of resignation in implementation of the contract of employment she had with the company. The contract included the following clause:

> "I understand that I am being hired as a single female employee. In the event of my marriage you may terminate this employment in which case I shall be entitled to no other benefits except my salary through the last day on which I worked."

The plantiff started work in June 1952, got married on July 13, 1952, filed her "letter of resignation" on July 7th effective August 15, 1972. She brought action on August 18, 1972 demanding damages.

On the technical ground that she had sued the wrong party, the bank manager instead of the bank itself, the courts dismissed her suit. The Supreme Court stated that the issue extensively discussed in the briefs on the validity of the clause in the employment contract, was a proper subject for debate in a proceeding against the Bank. [Whether the plaintiffs proceeded against the bank, we do not know.]

But what would the decision be if that case had been brought today against the appropriate party? The constitution guarantees equality of work opportunities regardless of sex, and the contract would be patently violative of that clause. The Labor Code of 1974 makes stipulations against marriage unlawful.

The absence of any decision showing discrimination against women in employment does not serve to prove that equal treatment has been achieved. A cursory look at want ads indicates the limited opportunities open to women as compared to men. Until lately these ads stated in bold type: "MALE WANTED". Although this preference is no longer as frequently stated, it has not disappeared. Even when vacancies for women are advertised, the ads specify "single, age 18-25, pleasing personality" among other qualifications. It is seldom that any such qualification is required of male applicants.

Bureau of Census and Statistics data show that for the period 1968 to 1972 of the total population 10 years old and over, more than 50 percent

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[63]*Supra*, note 45.

were women, but on the average they made up only 33 percent of the labor force and of this total female population only 38.6 percent were in labor force as compared to the 66.9 percent of the male population within the same age group who were in the labor force.

The preference of employers for males or unmarried females is understandable, considering the requirements of the law regarding maternity benefits, and other conditions, like hours of work and facilities for female employees.[64] The new labor code[65] also provides that no woman, regardless of age, shall be employed or permitted or suffered to work with or without compensation in the enumerated classes of employment at certain hours of the night — but there follows after the enumeration such numerous exceptions that one wonders why the prohibition was made in the first place. Since I have neither the expertise nor the time to discuss this in detail, I hope this can be taken up in later workshops. The protective legislation has resulted in making it more difficult for women to find employment. The suggestion that maternity leaves be part of a social scheme similar to those provided by the Social Security System and the Government Service Insurance System is worth considering.[66] In some jurisdictions, to place men and women on equal footing, paternity benefits are extended to the men.[67]

Not only is there a mandate in the constitution of 1973 for equality in employment, it also imposes a duty on "every citizen to engage in gainful work to assure himself and his family a life worthy of human dignity.[68] Though the latter provision uses the masculine pronoun, it is directed to every citizen in this country. The law likewise guarantees equal pay for equal work. This is more easily adopted as a rule of law than implemented in employment practices. The many ways in which apparent compliance with the requirement may be shown while the actual practice may be something different are not infrequently mentioned, but hard data to prove this have yet to come forth. There is much to be done to achieve equal employment opportunities for them.

CONCLUSION

The feminist movement in this country has progressed without sac-

[64]See Presidential Decree No. 148 amending certain provisions of the Women and Child Labor Law.

[65]Arts. 128-129.

[66]Director Ricardo Castro, Bureau of Labor Relations as reported in Torrevillas-Suarez, *Women in Labor Pains*, 3 PHIL. PANORAMA, July 14, 1974, p. 6.

[67]Presidential Regulation No. 31 of 1954, State Gazette No. 567, article 6 as cited in INDONESIAN PLANNED PARENTHOOD ASSOCIATION, LEGAL ASPECTS OF FAMILY PLANNING IN INDONESIA, 27 (1971).

[68]Art. V, sec. 3.

rifice of femininity or arousing male antagonism. There have been no strident voices nor bra-burning, but there have been male champions of women's rights. The low-key struggle for recognition of their cause has at times been taken for acquiescence in the state of things, but the Filipino woman, knowing her own milieu chooses to effect change in her own way. Not for her the aggressive, abrasive stance, but the more subtle approach. They impress men into the feminist cause — men are reasonable creatures after all, but the Filipino women do not expect them to hand over on a silver platter what society has long conceded to men.

The 1971 constitutional convention of whose 312 members, 13 were women, incorporated into the charter provisions intended to remedy some of the inequalities imposed on the women so that through such provisions and other constitutional guarantees they may be assured fullest development as individuals.

The equality of treatment should be understood to apply not only in the matter of rights and privileges but also of duties and responsibilities. Thus the constitution imposes on all citizens, male or female, the duty to defend the state and in the fulfillment of this duty the law may require them to render personal military or civil service.[69] It also provides for a citizen army and a corps of trained officers and "men" in active duty status.[70] In some countries women serve in citizen armies. The general character of these 1973 constitutional provisions despite the use of the term "men", make them equally applicable to all citizens regardless of sex. Should the need arise for Filipino women are to be impressed into the citizen army, their response will no doubt be as patriotic as it was in the past; and another step will have been taken towards equality of treatment.

Many of the laws I have referred to have been in the statute books for some time. But the 1973 constitution and developments affecting the status of women, particularly the observance of International Women's Year, require a fresh look at them so that they can be measured by the yardstick of the standards suggested in the 1973 constitution, the United Nations Charter, the Universal Declaration of Human Rights and the Declaration on the Elimination of Discrimination against Women.

Although the constitution and laws may command equal treatment, the inferior status of women may continue because practices and attitudes remain unchanged and women themselves accept them.

The elite among women who lead the movement for equality of treat-

[69]Art. II, sec. 2.
[70]Art. XV, sec. 13 par. (1) and (2).

ment can well take care of themselves. But they constitute only a small portion of the women population. There is a need for this small group to look more closely into the problems of their less fortunate sisters — in the farm, in the factories, in the rural and urban areas and to make these problems their own. For so long as there remains a single woman exploited or discriminated against because of her sex, so long will inequality remain.