

## **THE MOVEMENT FOR EQUAL RIGHTS: THE VALIDITY OF LEGISLATION BENEFICIAL TO WOMEN\***

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It has been traditional for a Malcolm lecture to open with a reference to that distinguished jurist. That is a norm that commends itself for his life and labors in the law have so much to teach us. This time, the person that comes to mind at the outset is his gracious lady, Mrs. Lucille Malcolm, possessed of considerable charm, intelligence, and wit. Undoubtedly she was blessed with the requisite talent and personality to convince the late Justice to put an end to a long bachelor existence. Now in her mature years, she is very much aware of what is going on in the world, is still conversant with matters and affairs of public interest, and quite hopeful and optimistic as to the turn of events. It was the good fortune of my wife and of myself to spend with her and her daughter, Dr. Mary Malcolm and her son-in-law, Counselor Fred Leydorf, an enjoyable dinner in October of last year. It was she who suggested that a lecture on women's rights would be in keeping with the times, 1975 being the International Women's Year.

Nor would Justice Malcolm, I dare say, be displeased by the tribute to his lady, not only because of the ties that bound them together in life but also because of his favorable opinion of and high regard for the Filipino women. In his work on the Commonwealth of the Philippines, published in 1939, he had the following to say: "The Filipino women are comely. In youth they are often young goddesses, erect in carriage, with clean golden-brown skin, dark flashing eyes, and possessed of black tresses long enough to reach the ground. The beauty of the women is not confined to the upper classes—those of the lower strata also have it. \* \* \* The position of Filipino women is rather of the Occident than of the Orient. They are as highly honored and well treated as are the women of America. This was relatively true even before the arrival of the Spaniards centuries ago. Legaspi, the first Governor-General, reported, 'They [the Filipinos] treat their women well and respect

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them.' After Spanish occupation we find the Dons of Castille according the Filipino women due honor and marrying the girls of the well-to-do families. Women are now shown every consideration by the men of the Islands. Recently, the Philippine Legislature empowered married women of age to dispose freely of their paraphernal property without the consent of the husband. \* \* \* In recent times the activities of the women of the Philippines have assumed many aspects, and in their social work, in their clubs, and in their federations, Filipino women have played leading roles in the Philippine community. \* \* \* The modern Filipina, though still lovely and outwardly demure is more outspoken and is the mainstay of her family. She is mistress of her home and safekeeper of her husband's income."<sup>1</sup> In a subsequent publication, he categorically stated: "The modern Filipino woman is 'the best man in the country.' Not only is she the mistress of her household but in certain respects, as in the acceptance of responsibility and in the display of practical business sense, the Filipino woman often ranks ahead of her man. The position of the Filipino woman in the community is akin to that in the West rather than the East. Unabashed and confident, Filipino women have entered the political arena to contest with men. They were the first of the feminine sex in Asia to win civil law emancipation and the right of suffrage."<sup>2</sup>

### 1. *The concept of equal rights*

It is quite appropriate to set forth as the basic theme of this lecture the belief so felicitously expressed in the opening paragraph of the First Lady, Imelda Romualdez Marcos, at the International Women's Year in Mexico City, June 20, 1975: "Let me begin by saying that, like all of you, I believe in the equality of the sexes. At this conference, we can surely take the principle of equality for granted. Otherwise we would not be here."

There is relevance to this excerpt from the paper of Dean Irene R. Cortes in the Sixth Albino Z. SyCip Lecture Series delivered at the College of Law, University of the Philippines on July 31, 1974. Thus: "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-

<sup>1</sup> MALCOLM, THE COMMONWEALTH OF THE PHILIPPINES 34-36 (1939).

<sup>2</sup> MALCOLM, AMERICAN COLONIAL CAREERIST 204 (1957).

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."<sup>3</sup> As was observed by Dean Cortes, the equal protection guarantee is not a novel concept. That such is the case is owed in a large measure to Justice George A. Malcolm, who, prior to the establishment of the Commonwealth, was its most authoritative expounder.

In *Rubi v. Provincial Board*,<sup>4</sup> a 1919 decision, he had this brief summary of this right: "The pledge that no person shall be denied the equal protection of the laws is not infringed by a statute which is applicable to all of a class. The classification must have a reasonable basis and cannot be purely arbitrary in nature."<sup>5</sup> Thereafter, in *Smith, Bell and Co. v. Natividad*,<sup>6</sup> promulgated the same year, he was more expansive: "The guaranties extended by the Congress of the United States to the Philippine Islands have been used in the same sense as like provisions found in the United States Constitution. While the 'due process of law and equal protection of the laws' clause of the Philippine Bill of Rights is couched in slightly different words than the corresponding clause of the Fourteenth Amendment to the United States Constitution, the first should be interpreted and given the same force and effect as the latter. \* \* \* Classification with the end in view of providing diversity of treatment may be made \* \* \*, but must be based upon some reasonable ground and not be a mere arbitrary selection. \* \* \*"<sup>7</sup> The same thought found expression in *Kwong Sing v. City of Manila*,<sup>8</sup> handed down a year later: "Our view after most thoughtful consideration, is, that the ordinance invades no fundamental right, and impairs no personal privilege. Under the guise of police regulation, an attempt is not made to violate personal or property rights. The ordinance is neither discriminatory nor unreasonable in its operation. It applies to all public laundries without distinction, whether they belong to Americans, Filipinos, Chinese, or any other nationality. All, without exception, and each and everyone of them without distinction, must comply with the ordinance. There is no privilege, no discrimination, no distinction. Equally and uniformly the ordinance applies to all engaged in the laundry business, and, as may be, the same burdens are cast upon them."<sup>9</sup>

<sup>3</sup> Cortes, *Women's Rights Under the 1973 Constitution*, 50 PHIL. L.J. 1, 7 (1975).

<sup>4</sup> 39 Phil. 660 (1919).

<sup>5</sup> *Ibid.*, 707.

<sup>6</sup> 40 Phil. 136 (1919).

<sup>7</sup> *Ibid.*, 144-145.

<sup>8</sup> 41 Phil. 103 (1920).

<sup>9</sup> *Ibid.*, 109-110.

Both in the 1935 and the present Constitution, it is expressly provided: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."<sup>10</sup> Soon after the inauguration of the Commonwealth under the 1935 Constitution, Justice Laurel, like Justice Malcolm a constitutionalist of eminence, spoke of the equal protection clause in *People v. Vera*<sup>11</sup> in this wise: "This basic individual right sheltered by the Constitution is a restraint on all the three grand departments of our government and on the subordinate instrumentalities and subdivisions thereof, and on many constitutional powers, like the police power, taxation and eminent domain. \* \* \* Class legislation discriminating against some and favoring others is prohibited. But classification on a reasonable basis, and not made arbitrarily or capriciously, is permitted. \* \* \* The classification, however, to be reasonable must be based on substantial distinctions which make real differences: it must be germane to the purposes of the law; it must not be limited to existing conditions only, and must apply equally to each member of the class."<sup>12</sup>

Not too long ago, in another decision, *J. M. Tuason and Co. v. Land Tenure Administration*,<sup>13</sup> there is this restatement of the right to equal protection: "The assumption underlying such a guaranty is that a legal norm, whether embodied in a rule, principle, or standard, constitutes a defense against anarchy at one extreme and tyranny at the other. Thereby, people living together in a community with its myriad and complex problems can minimize the friction and reduce the conflicts, to assure, at the very least, a peaceful ordering of existence. The ideal situation is for the law's benefits to be available to all, that none be placed outside the sphere of its coverage. Only thus could chance and favor be excluded and the affairs of men governed by that serene and impartial uniformity, which is of the very essence of the idea of law. The actual, given things as they are and likely to continue to be, cannot approximate the ideal. Nor is the law susceptible to the reproach that it does not take into account the realities of the situation. The constitutional guaranty then is not to be given a meaning that disregards what is, what does in fact exist. To assure that the general welfare be promoted, which is the end of law, a regulatory measure may cut into the rights to liberty and property. Those adversely affected may under such circumstances invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the

<sup>10</sup> Art. III, Section 1, par. (1) of the 1935 Constitution, now art. IV, Section 1 of the present Constitution.

<sup>11</sup> 65 Phil. 56 (1937).

<sup>12</sup> *Ibid.*, 125-126.

<sup>13</sup> G.R. No. L-21064, February 18, 1970, 31 SCRA 413 (1970).

attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason."<sup>14</sup> Further on this point: "It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest."<sup>15</sup>

There is, in addition, the express mention in the Preamble of the present Constitution of equality being one of the ideals of the fundamental law, where formerly under the 1935 Constitution only justice, liberty and democracy were mentioned. Accordingly, in the Article on Citizenship, a child born of a Filipino mother is a Filipino,<sup>16</sup> a modification of the provision found in the 1935 Constitution that only gave him the right to elect such citizenship upon reaching the age of majority.<sup>17</sup> Also, it is specifically provided that a Filipino, "who marries an alien shall retain her Philippine citizenship, unless by her act or omission she is deemed, under the law, to have renounced her citizenship."<sup>18</sup> Further reinforcement to the demand for equal rights comes from the Universal Declaration of Human Rights. It starts with this ringing pronouncement: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."<sup>19</sup> The first paragraph of the next article reads: "1. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>20</sup> The International Covenant on Economic, Social and Cultural Rights is equally specific: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present

<sup>14</sup> *Ibid.*, 434-435.

<sup>15</sup> *Ibid.*, 435.

<sup>16</sup> Art. III, Sec. 1, par. 2.

<sup>17</sup> According to art. IV, Sec. 1, par. 4 of the 1935 Constitution: "Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship."

<sup>18</sup> Art. III, Sec. 2 of the present Constitution.

<sup>19</sup> Universal Declaration of Human Rights, art. 1.

<sup>20</sup> *Ibid.*, art. 2, par. 1.

Covenant.”<sup>21</sup> The International Covenant on Civil and Political Rights has a similar provision: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”<sup>22</sup> That is to make more definite what is prescribed in a preceding article: “1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>23</sup>

The reference to the United Nations Declaration of Human Rights and the two Covenants gain added relevance considering that as early as 1951, in *Mejoff v. Director of Prisons*,<sup>24</sup> the Supreme Court, in ruling against the continued detention of aliens against whom the order of deportation had become final but unable to leave the Philippines because no country would accept them, relied on the Universal Declaration of Human Rights. It was so categorically set forth in the opinion of Justice Tuason: “Moreover, by its Constitution (Art. II, Sec. 3) the Philippines ‘adopts the generally accepted principles of international law as part of the law of Nation.’ And in a resolution entitled ‘Universal Declaration of Human Rights’ and approved by the General Assembly of the United Nations of which the Philippines is a member, at its plenary meeting on December 10, 1948, the right to life and liberty and all other fundamental rights as applied to all human beings were proclaimed. It was there resolved that ‘All human beings are born free and equal in dignity and rights’ (Art. 1); that ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, nationality or social origin, property, birth, or other status’ (Art. 2); that ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law’ (Art. 8); that ‘No one shall be subjected to arbitrary arrest, detention or exile’ (Art. 9); \*\*\*.”<sup>25</sup>

Thus, there is, on the whole validity to the strictures hurled by Dean Cortes in the paper earlier referred to<sup>26</sup> against certain

<sup>21</sup> International Covenant on Economic, Social and Cultural Rights, art. 3.

<sup>22</sup> International Covenant on Civil and Political Rights, art. 3.

<sup>23</sup> *Ibid.*, art. 2, par. 1.

<sup>24</sup> 90 Phil. 70 (1951).

<sup>25</sup> *Ibid.*, 73-74. To the same effect are the following decisions: *Borovsky v. Commissioner of Immigration*, 90 Phil. 107 (1951); *Chirskoff v. Commissioner of Immigration*, 90 Phil. 256 (1951); *Andreu v. Commissioner of Immigration*, 90 Phil. 347 (1951).

<sup>26</sup> Cortes, *op. cit.*, *supra*, note 3 at 1.

laws dealing with family relations,<sup>27</sup> parental authority,<sup>28</sup> legal separation,<sup>29</sup> family planning<sup>30</sup> and employment opportunities.<sup>31</sup> As she pointed out: "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."<sup>32</sup> She is enough of a realist to make this admission: "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."<sup>33</sup> Moreover, and rightly so, equality of treatment for the Dean, "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. It also provides for a citizen army and a corps of trained officers and 'men' in active duty status. 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 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."<sup>34</sup>

## 2. *The validity of laws favoring women*

What remains then, and this is the subject of this afternoon's lecture, is an inquiry into the implications of equal rights in those cases where the law favors women. Does the concept of equal rights preclude according a favored status to the female sex? That is the theme, in a more specific sense, of this afternoon's lecture. Legislation beneficial to women may be worded affirmatively, rights favorable to them being withheld from men, or, negatively, certain burdens being imposed on the latter with the women being exempt.

<sup>27</sup> *Ibid.*, 10-13.

<sup>28</sup> *Ibid.*, 14-16.

<sup>29</sup> *Ibid.*, 16.

<sup>30</sup> *Ibid.*, 17.

<sup>31</sup> *Ibid.*, 18-19.

<sup>32</sup> *Ibid.*, 23.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

### 3. *Civil Code provisions*

As to the former, the Civil Code contains provisions on the earlier age required for a female to be married,<sup>35</sup> the exemption from the requisite to have parental consent for such purpose for a female eighteen or above, a male being required to reach the age of twenty;<sup>36</sup> the same two-year difference in favor of the females for the necessity for advice upon the party seeking to contract marriage, the male above twenty having to await his twenty-fifth year, unlike a female above eighteen who can dispense with such requisite upon reaching the age of twenty-three;<sup>37</sup> the dispensation from a marriage license when the female can show that her habitual residence is at a place more than fifteen kilometers from the municipal building and there is no communication by railroad or by provincial or local highways between such places.<sup>38</sup> Moreover, the husband has the "responsibility [to] support \* \* \* the wife and the rest of the family," the expenses to be met from the conjugal property, then from his capital, and only in case of further need, from the wife's paraphernal property.<sup>39</sup> Also, while the fruits of the paraphernal property form part of the conjugal assets, the property itself is subject to the daily expenses of the family only in cases of insufficiency of the conjugal property and the husband's capital.<sup>40</sup> When liquidation time comes, even before paying the debts and charges, the paraphernal property has priority. Only then can the husband's capital be restored.<sup>41</sup> This is a sad note to inject in a gathering of

<sup>35</sup> According to art. 54 of the CIVIL CODE: "Any male of the age of sixteen years or upwards, and any female of the age of fourteen years or upwards, not under any of the impediments mentioned in articles 80 to 84, may contract marriage."

<sup>36</sup> CIVIL CODE, art. 61.

<sup>37</sup> According to art. 62 of the CIVIL CODE: "Males above twenty but under twenty-five years of age, or females above eighteen but under twenty-three years of age, shall be obliged to ask their parents or guardian for advice upon the intended marriage. If they do not obtain such advice, or if it be unfavorable, the marriage shall not take place till after three months following the completion of the publication of the application for marriage license. A sworn statement by the contracting parties to the effect that such advice has been sought, together with the written advice given, if any, shall accompany the application for marriage license. Should the parents or guardian refuse to give any advice, this fact shall be stated in the sworn declaration."

<sup>38</sup> CIVIL CODE, art. 72.

<sup>39</sup> Art. III of the CIVIL CODE reads in full: "The husband is responsible for the support of the wife and the rest of the family. These expenses shall be met first from the conjugal property, then from the husband's capital, and lastly from the wife's paraphernal property. In case there is a separation of property, by stipulation in the marriage settlements, the husband and wife shall contribute proportionately to the family expenses."

<sup>40</sup> Art. 138 of the CIVIL CODE reads in full: "The fruits of the paraphernal property form part of the assets of the conjugal partnership, and shall be subject to the payment of the expenses of the marriage. The property itself shall also be subject to the daily expenses of the family, if the property of the conjugal partnership and the husband's capital are not sufficient therefor."

<sup>41</sup> According to art. 181 of the CIVIL CODE: "The inventory having been completed, the paraphernal property shall first be paid. Then, the debts and

this character, but reference must be made to the Civil Code providing that the mourning apparel of the widow shall be paid for out of the estate of the deceased husband. No mention is made of the widower.<sup>42</sup> Then, too, while on questions of the care, custody, education and property of the children, it is their welfare that is paramount, it is explicitly provided that no mother "shall be separated from her child under seven years of age, unless the Court finds compelling reasons for such measure."<sup>43</sup> Under the Youth and Welfare Code that took effect in 1975, it is provided that in case of separation of his parents, no child under five years of age shall be separated from his mother unless the Court finds compelling reasons to do so."<sup>44</sup>

#### 4. *Labor Code provisions*

The same partiality in favor of women is evident in the present Labor Code.<sup>45</sup> Night work is prohibited: "No woman, regardless of age, shall be employed or permitted or suffered to work, with or without compensation: a) in any industrial undertaking or branch thereof between ten o'clock at night and six o'clock in the morning of the following day; or b) in any commercial or non-industrial undertaking or branch thereof, other than agricultural, between mid-night and six o'clock in the morning of the following day; or c) in any agricultural undertaking at night time unless she is given a period of rest of not less than nine (9) consecutive hours."<sup>46</sup> There are certain exceptions: "The prohibitions prescribed by the preceding Article shall not apply in any of the following cases: a) in cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disasters or calamity, to prevent loss of life or property, or in case of force majeure or imminent danger to public safety; b) in case of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer; c) where the work is necessary to prevent serious loss of perishable goods; d) where the woman employee holds a responsible position of managerial or technical nature, or where the woman employee has been engaged to provide health and welfare services; e) where

charges against the conjugal partnership shall be paid." Art. 182 reads in full: "The debts, charges and obligations of the conjugal partnership having been paid, the capital of the husband shall be liquidated and paid to the amount of the property inventoried."

<sup>42</sup> According to art. 186 of the CIVIL CODE: "The mourning apparel of the widow shall be paid for out of the estate of the deceased husband."

<sup>43</sup> CIVIL CODE, art. 363.

<sup>44</sup> Pres. Decree No. 603 (1974), art. 17.

<sup>45</sup> Cf. Title III, Chapter 1 of the Presidential Decree No. 442 (1974), herein referred to as the LABOR CODE.

<sup>46</sup> LABOR CODE, art. 128.

the nature of the work requires the manual skill and dexterity of women workers and the same cannot be performed with equal efficiency by male workers; f) where the women employees are immediate members of the family operating the establishment or undertaking; and g) under other anomalous cases exempted by the Secretary of Labor in appropriate regulations."<sup>47</sup> There is a specific provision for facilities for women: "The Secretary of Labor shall establish standards that will insure the safety and health of women employees. In appropriate cases, he shall by regulations require any employer to: a) provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficiency; b) establish separate toilet rooms and lavatories for men and women and provide at least a dressing room for women; c) establish a nursery in a workplace for the benefit of the women employees therein; and d) determine appropriate minimum age and other standards for retirement or termination in special occupations such as those of flight attendants and the like."<sup>48</sup> As it was under the former Women and Child Labor Law,<sup>49</sup> women enjoy maternity leave benefits: "(a) Every employer shall grant to any pregnant woman employee who has rendered an aggregate service of at least six months for the last twelve months, maternity leave of at least two weeks prior to the expected date of delivery and another four weeks after normal delivery or abortion, with full pay based on her regular or average weekly wages. The employer may require from any woman employee applying for maternity leave the production of a medical certificate stating that delivery will probably take place within two weeks. (b) The maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion, or miscarriage, which renders the woman unfit for work, unless she has earned unused leave credits from which such extended leave may be charged. (c) The maternity leave provided in this Article shall be paid by the employer only for the first four deliveries by a woman employee after the effectivity of this Code."<sup>50</sup> Of related interest is an article on family planning services: "Family planning services; incentives for family planning. —a) Establishments which are required by law to maintain a clinic or infirmary shall provide free family planning services to their employees which shall include, but not limited to, the application or use of contraceptive pills and intra-uterine devices. b) In coordination with other agencies of the gov-

<sup>47</sup> LABOR CODE, art. 129.

<sup>48</sup> LABOR CODE, art. 130.

<sup>49</sup> *Cf.* Rep. Act No. 679 (1962), sec. 8.

<sup>50</sup> LABOR CODE, art. 131.

ernment engaged in the promotion of family planning, the Department of Labor shall develop and prescribe incentive bonus schemes to encourage family planning among female workers in any establishment or enterprise."<sup>51</sup> Then, there is the protection accorded to women employed in nightclubs, cocktail lounges, bars, massage clinics or similar places: "Any woman who is permitted or suffered to work, for a substantial period of time under the effective control or supervision of the employer, with or without compensation, in any night club, cocktail lounge, bar, massage clinic, or any similar place, shall be considered as an employee of such establishment for purposes of existing labor and social legislations."<sup>52</sup> Similarly, the employer is prohibited "to require as a condition of employment or continuation of employment that a woman employee shall not be married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage."<sup>53</sup> Lastly, it is made unlawful for an employer "(1) to deny any woman employee the benefits provided for in this Chapter or to discharge any woman employed by him for the purpose of preventing her from enjoying any of the benefits provided under this Code; (2) to discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy; or (3) to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant."<sup>54</sup>

##### *5. The Revised Penal Code provisions*

Legislation that discriminates against men may be found in the Revised Penal Code. Thus rape "is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."<sup>55</sup> Then there is the offense of qualified seduction on "a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, \* \* \*."<sup>56</sup> A lesser

<sup>51</sup> LABOR CODE, art. 132.

<sup>52</sup> LABOR CODE, art. 136.

<sup>53</sup> Present LABOR CODE, art. 134.

<sup>54</sup> Present LABOR CODE, art. 135.

<sup>55</sup> REV. PENAL CODE, art. 335.

<sup>56</sup> REV. PENAL CODE, art. 337.

offense is the "seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, [punishable] by *arresto mayor*."<sup>57</sup> Also, forcible abduction may be committed only with a woman as the victim. In the language of the Code: "The abduction of any woman against her will and with lewd designs shall be punished by *reclusion temporal*. The same penalty shall be imposed in every case, if the female abducted be under twelve years of age."<sup>58</sup> Abduction with consent takes place when the offended party is "a virgin over twelve and under eighteen years of age, carried out with her consent and with lewd designs, \* \* \*."<sup>59</sup>

#### 6. The National Defense Act provisions

Under the National Defense Act,<sup>60</sup> it is the obligation of all citizens to preserve the state and the "freedom, independence, and perpetual neutrality or the Philippine Republic [is] guaranteed by the employment of all citizens, without distinction of age or sex, and all resources."<sup>61</sup> Military service "shall be obligatory for all citizens of the Philippines, \* \* \*."<sup>62</sup> All Filipinos "are liable to military service."<sup>63</sup> Preparatory military training "is compulsory upon the youth attending school and upon others when they shall become eighteen years of age."<sup>64</sup> While these provisions speak of all citizens, only the young men are referred to in the law's later sections. Thus: "Each young man who shall undergo training and service shall, for the duration of his training and service, receive a monthly base pay of not less than ten pesos for the first ten months, and an additional five pesos per month for service longer than ten months, in addition to meals and barracks accommodation, medical and dental attendance, clothing and transportation: \* \* \*."<sup>65</sup> Then, it is specified that a "male citizen of the Philippines between eighteen and thirty years of age, ablebodied, free from disease, of good moral character and habits, of average intelligence, and possessed of such educational attainments as may be prescribed, may be enlisted in the Regular Force," the enlistment being "for a term of three years, and may be made by the recruiting officers at stations of the Regular Force: \* \* \*."<sup>66</sup> Also: "Young men who complete their trainee in-

<sup>57</sup> REV. PENAL CODE, art. 338.

<sup>58</sup> REV. PENAL CODE, art. 342.

<sup>59</sup> REV. PENAL CODE, art. 343.

<sup>60</sup> Com. Act No. 1 (1935).

<sup>61</sup> *Ibid.*, Sec. 2(a).

<sup>62</sup> *Ibid.*, Sec. 3.

<sup>63</sup> *Ibid.*, Sec. 51, art. I, Title III.

<sup>64</sup> *Ibid.*, Sec. 82, art. VII, Title III.

<sup>65</sup> *Ibid.*, Sec. 19, art. III, Title II. There are provisos in this section dealing with the allowances the trainee may receive in accordance with the rules and regulations issued by the Secretary of National Defense.

<sup>66</sup> *Ibid.*, Sec. 27, Art. III, Title II.

struction and are selected for additional training to qualify them as noncommissioned officers of the Reserve Force shall pursue a prescribed course of three months. Upon satisfactory completion thereof they shall be warranted in the noncommissioned officer grade for which they shall have qualified, and then transferred to the Reserve Force and assigned to an organization thereof."<sup>67</sup> The young men are "required to register for (military) training and service in the Armed Forces of the Philippines—Philippine Army, Philippine Constabulary, Philippine Air Force, Philippine Navy, and separate Armed Forces of the Philippines units—in the calendar year in which they will attain twenty years of age. The period of such training and service shall be for eighteen consecutive months. Each such person shall receive military training for a period of at least six months. After such training, he may be assigned for duty and service with elements of the Regular Force."<sup>68</sup>

*7. Statutory provisions mentioned not necessarily invalid*

On the assumption that the concept of equality as known to Philippine Law corresponds to the section of the proposed amendment on equal rights in the United States, all that is prohibited is that there be no denial or abridgment thereof on account of sex.<sup>69</sup> It is my submission that the provisions favoring women found in the Civil Code can stand the test of validity under such standard, except perhaps that according preference in case of liquidation to the wife's paraphernal property. Even the earlier age required by law to enable the woman to contract matrimony may be justified on the ground that the state has an interest in requiring a certain degree of maturity on the part of the men before entering into such a lasting and permanent relationship. Again, where the mother is given custody of a child under the age of seven under the Civil Code, now until five under the Youth and Child Welfare Code, it is not on the basis on sex but rather on the welfare of the child that the law is premised. As for the mourning apparel of the widow being paid out of the estate of the deceased husband without a corresponding provision for the widower, this may come under the heading of that oft-quoted legal maxim, *de minimis non curat lex*. It could be likewise that the basis for such a provision is that women on the whole tend to outlive men. Again, not much difficulty should be encountered

<sup>67</sup> *Ibid.*, Sec. 44, art. VI, Title II.

<sup>68</sup> *Ibid.*, Sec. 53, art. I, Title III.

<sup>69</sup> The proposed Equal Rights Amendment to the United States Constitution, would, if approved, be the 26th amendment. It provides that 1) equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex, 2) the American Congress shall have power to enforce, by appropriate legislation, the provisions of this article, and 3) the amendment shall take effect two years after the date of ratification.

where the rights of working women are much more amply protected than those of the men. It is not because of their sex as such but because of their role as mothers and possibly the danger to their morals that, to my mind, led to the enactment of such norms.

The Revised Penal Code provisions referred to above would pose greater difficulty. The basic premise is that such offenses could be committed only against the female sex. Literally then they do allow what under the concept of equality should be prohibited. That is though only one side of the question if consideration be paid to the objective sought to be attained, namely the basic concern for chastity in accordance with the prevailing mores. It could be plausibly argued then that it is not due as such to their sex but the desire to promote a legitimate public end that lies at the basis of such offenses being attributable solely to men.

In the case of the National Defense Act provisions limiting military service to male citizens, it would be difficult to deny its objectionable character. Dean Cortes said as much in the Article previously cited.

May I bring this lecture to a fitting close with these remarks from the First Lady. "The demand for equality has too often had overtones of revenge; the venting of grievances, the acquisition of advantage, the aggression of concealed hatred and envy. But the feminist movement should not and need not be antimasculine. Women are not adversaries, the enemies of men, but their equal partners. We are not surrogates of men, their substitutes; for we have our own role to play, a different one, surely, but an equally important one."<sup>70</sup>

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<sup>70</sup> Imelda Romualdez Marcos, *The Mystique of the Oriental Woman*, 7 PHIL. QUARTERLY 9-10 (1975).