Liber Amicorum Reinhold Fahlbeck

Särtryck

Juristförlaget i Lund
2005

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Gender Aspects in Filipino Labor Law

> "I shall give the women all opportunities to improve themselves and to assume positions in our government. I subscribe to the idea of the late Governor Wood that the best men here are the women … When I want a job done efficiently and honestly, I shall call on a woman."
> President Manuel A. Roxas, 1946–1948[1]

1 Why the Philippines?

In 1960 the Philippine Supreme Court addressed the issue of a woman's honor in connection with a rape charge.

People vs. Tano et al., Oct. 31, 1960, 60 O.G. 8586. A woman was brutally raped. Though no gynecological examination was made, the woman's testimony was corroborated by contusions on her left thigh, and blood on her panties, that had been torn. The Court held: 'It is a well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor. We can not believe that the offended party would have positively stated that intercourse took place unless it did actually take place.' The perpetrators were sentenced to life imprisonment.

In 1986 the same issue was brought up:

People vs. Ramilo, Dec. 15, 1986, 146 SCRA 258. The Court found that a woman, aged eighteen, had been raped at gun point in her bed at night. Ramilo was found guilty beyond reasonable doubt and was sentenced to life imprisonment. The Court stated: 'It has long been held that no young Filipina of a decent repute would publicly admit that she had been criminally abused and ravished unless that is the truth. It is her natural instinct to protect her honor.'

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[1] Cit. from Tarrosa Subido, The Feminist Movement in the Philippines 1905–1955, A Golden Book to commemorate The Golden Jubilee of the Feminist Movement in the Philippines, National Federation of Women's Clubs of the Philippines, Publishers 1955, Second Printing 1989, p. 41.

The following judgment from 1995 follows the same tenet.

People vs. Padilla, March 23, 1995, 242 SCRA 629. The Court found that a young woman had been raped five times during a period of two years, when she was between twelve and thirteen years of age, by a man, thirty-nine years of age, when he either poked her with a knife, or threatened her verbally lest she should tell her parents. The accused was sentenced to life imprisonment. The Supreme Court held: 'We have repeatedly ruled that no young and decent Filipina would publicly admit that she was ravished unless that is the truth, for it is her natural instinct to protect her honor.'[2]

These rulings add certainly weight to the high status enjoyed by women in the Philippines.[3] If a Filipino woman claims that she has been abused, the courts attach great weight to her statement, especially if her honor is at stake.[4]

Someone may wonder why I have chosen the Philippines as the subject of my interest. The answer is that after reading the UN Report on Human Development of 1995, I became curious what the Filipinos had done in order to obtain such high international ranking as regards the gender-related indices concerning the status of women.[5] The UN Report found that the Philippines, together with a few other third-world countries, all located in tropical areas, ranked remarkably high in relation to the requirements laid down by the Report. After studies of Filipino gender law I still cannot claim that I have all

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[2] Similarly in *People vs.Villaneuva, Febr. 28, 1996, 254 SCRA 212* (the father had raped his daughter, 12 years of age, for almost two years, and had told her not to tell anybody or he would kill her, as well as her mother and her only brother).

[3] The severity of rape is demonstrated by the fact that death penalty may be imposed for compelling reasons involving 'heinous crimes', see The Philippine Constitution, Art. III, Section 19(1), see also Hector S. De Leon, Textbook on the Philippine Constitution, Rex Printing Company, Inc. 1994, Pr. Sept. 1996, p. 142. See Revised Penal Code, Art. 335 and R.A. No. 7659 (1993), An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for the Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes. In *People v. Echegaray, June 25, 1996, 257 SCRA 561,* death penalty was meted out when the father/step-father raped his ten-year old daughter. The case caused a lively debate and the execution was delayed, but the temporary restraining order by the Supreme Court was lifted in *Echegaray vs. Secretary of Justice, Jan. 19, 1999, 301 SCRA 96.*

[4] See Maximo M. Kalaw, An Introduction to Philippine Social Science, (Philippine Education Company 2nd ed. 1938) Filipiniana Reprint Series Book No. 14, 1986, p. 97: 'A woman's honor has from time immemorial been placed on the highest pedestal', and p. 99: the Filipino women do 'their utmost to protect their honor'.

[5] Human Development Report 1995, Published for the United Nations Development Programme (UNDP), Oxford University Press 1995, pp. 72–98, in particular Table 3.5. I learned this when I was writing another article on Swedish sex equality law in the European context, see 'The Swedish Case – the Promised Land of Sex Equality?', in Sex Equality in the European Union (ed. by Tamara K. Hervey and Daniel O'Keeffe), 1996, pp. 337–356.

the answers, but many strong indications have emerged.[6] The first point that should be made straight away is that the issue under discussion does not have to do so much with law, but rather with history, culture and tradition, which seem to be much stronger determinants. Other researchers have discussed the rapid expansion of exploitation of women in Asia.[7] I have no intention or ambition to cover this or related topics in this article.

Another research method would be required to be able to analyze the achievements during the 1990s, following the coming into force of The Women in Development and Nation Building Act of 1992,[8] the epitome of which is Section 5, which provides that 'a woman of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances' (the Magna Charta for women), and further: 'In all contractual situations where married men have the capacity to act, married women shall have equal rights'.[9] Furthermore, The Women Engaging in Micro and Cottage Business Enterprises Act of 1995[10] is another major legislation, the objective being 'to

[6] The method used is probably similar to the one explained by Professor Reinhold Fahlbeck: 'to uncover facts, to learn those facts, to understand those facts and, finally, to try to make some sense out of these facts', in 'Pleasures and Torments of Comparative Legal Research', in Festskrift till Gunnar Karnell, 1999, p. 157. Cf. that of a private detective, Sue Grafton, 'E' is for Evidence, 1990, p. 84: 'I love information. Sometimes I feel like an archaeologist, digging for facts, uncovering data with my wits and a pen. I made notes, humming to myself. – Now I could go to work.' – My research was initially funded by the Cassel Foundation, Faculty of Law, Stockholm University in January 1997. I was lucky to have already established a few contacts with the Associated Labor Unions (ALU), affiliated to the TUCP, in Cebu City. Atty. Yolanda de los Santos and Regional legal counsel at ALU, Celso C. Reales opened for me the doors to the Filipino authorities. I conducted several interviews with key-persons in governmental agencies, where I also managed to collect relevant material on gender law. I collected more material at the University of San Carlos, College of Law, Cebu City, where Chief Librarian, Arlene Bacayo, was most helpful in the search of relevant material. The present Dean of the College of Law, Atty. Corazon Evangelista-Valencia, was also most helpful, as well as Atty. Geraldine Jorda, Director of the Law Center (Legal Alternatives for Women Center, Inc.) who both took pains in reading an earlier draft and gave valuable comments. I also got access to materials at the National Library and Department of Labor and Employment (DOLE) in Manila. Additional research material was collected in 1998, 2002 and 2004. Case law has been updated until 2004. The article uses the Filipino-English spelling (such as 'labor', instead of the British spelling of 'labour').

[7] See, e.g., Sylvia Chant and Cathy McIlwaine, Woman of a Lesser Cost. Female Labour, Foreign Exchange and Philippine Development, 1995, pp. 129–171, Frank B. Tipton, The Rise of Asia. Economics, Society and Politics in Contemporary Asia, 1998, pp. 337–403 and Louise Brown, Sex Slaves, The trafficking of women in Asia, 2001, to mention a few.

[8] R.A. No. 7192, An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation Building and for Other Purposes.

[9] Before the enactment married women could not enter into a contract and obtain a loan without the consent of their husbands.

[10] R.A. No. 7882, An Act Providing Assistance to Women Engaging in Micro and Cottage Business Enterprises, and for Other Purposes.

provide all possible assistance to Filipino women in their pursuit of owning, operating and managing small business enterprises'.[11]

The National Commission on the Role of Filipino Women (NCRFW) was also set up in 1975.[12] The Commission can be seen as a response to the fact that the United Nations proclaimed 1975 the International Women's Year.[13] The Commission's activities have been criticized.[14] They were referred to as 'rather ambivalent', and blamed to 'reinforce the sexual division of labor and further lock women into a subordinate position'.[15] The NCRFW was given a wider mandate by President Aquino to spearhead the 1989 Philippine Development Plan for Women (1989-1992).[16] Later on President Ramos restructured the NCRFW.[17] In 1995 President Ramos approved and adopted the 'Philippine Plan for Gender-Responsive Development (1995 to 2025)'.[18] The NCRFW was given the task of monitoring the implementation of the Plan, and was instructed to 'conduct the period assessment and updating of the Plan every six years or upon every change in national leadership' (point 2.2). The 2002 'Framework Plan for Women 2001-2004' concretizes the primary goals of the Government towards the advancement of women. The Plan focuses primarily on three areas: 1) promoting women's economic empowerment; 2) protecting and advancing women's human rights; and 3) promoting gender-responsive governance.[19]

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[11] Section 1 of the Act. It is, however, difficult to reach the many women, especially those who live in rural areas; see De Leon, p. 72, and 'Framework Plan for Women', NCRFW 2002, pp. 11–12: ('Poverty continues to be the biggest concern of most Filipinos. [...] Government has identified women as among the poorest and most vulnerable group [...]. Majority of the poor are in the rural areas and are seldom, if ever, reached by public services.'

[12] PD No. 633 (1975), Creating a National Commission on the Role of Filipino Women. First Lady Imelda Marcos became the leader of the organization right from the start.

[13] See Chant and McIlwaine, p. 37.

[14] See The Filipino Women in Focus. A Book of Readings, Ed. Amaryllis T. Torres, 2nd ed. 1995, p. 227 (Aida Santos-Maranan), listing several reasons, such as the lack of consultation of women in the community, patronage and red tape and that the choice of target locations for support was premised on gaining political ground for Marcos's regime rather than on adequate response to the needs of the people.

[15] Elisabeth U. Eviota, 'Women, Work and Sex: Gender Relations and Social Transformation in the Philippines', 1985, p. 234.

[16] E.O. No. 348 (1989), Approving and Adopting the Philippine Development Plan for Women for 1989 to 1992, issued on the Women's Day.

[17] E.O. No. 208 (1994), Further Defining the Composition, Powers and Functions of the National Commission on the Role of Filipino Women.

[18] E.O. No. 273 (1995), Approving and Adopting the Philippine Plan for Gender-Responsive Development, 1995 to 2025. The time frame is deemed essential to completely transform the traditional misconception about women and their roles and status in society, says 'Framework Plan for Women', p. 2.

[19] 'Framework Plan for Women', p. 3.

Quota systems and distribution of seats between men and women in decision-making bodies are features that exist in the Philippines too. The *Local Government Code of 1991* provides that there shall be at least one female sector representative.[20] Further, the *Social Security Commission* must include women members.[21] One of three labor representatives and management representatives respectively shall be a woman. This means that there will be at least two women among the members of the Commission. Women shall also be represented under the law in the *Technical Education and Skills Development Authority.*[22] There shall be at least three female board members representing the employer/industry organizations, the labor sector, and the national associations of private technical-vocational education and training institutions.[23]

As held in a paper presented in 1998 '[t]he concern for Filipino women and their development found their way into the hearts of policy-makers in the mid 1970s'.[24] This is also partly reflected in my sources, dating from 1970s until late 1990s.

2 Remarks on culture, education and the labor market in the Philippines

A few words should be said about Philippine *culture* first. In the Philippines a wife is often "referred to as 'commander', half in jest and half in recognition of her powerful role".[25] The Filipino woman's culture has its roots in pre-Spanish patterns of gender roles. In pre-Spanish times a woman could become a priestess, or an animistic religious intermediary, and women in those roles were more popular than male priests.[26] Women were on equal footing with men.[27] The Filipino 'bamboo' legend explains why.[28]

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[20] R.A. No. 7160 (1991), An Act Providing for A Local Government Code, Section 41.

[21] The amendment came about in 1994, R.A. No. 7688 (1994), An Act Giving Representation to Women in the Social Security Commission, Amending for the Purpose Section 3(a) of Republic Act No. 1161, as amended.

[22] R.A. No. 7796 (1994), An Act Creating the Technical Education and Skills Development Authority, Providing for its Powers, Structure and for Other Purposes.

[23] Section 7 of the Act.

[24] 'Gender and Lifelong Learning: Enhancing the Contributions of Women to SMEs in RP for the 21st Century', prepared by the Bureau of Labor and Employment, published in Philippine Labor Review, Vol. 25, January–December 2001, p. 103 [cit. Gender and Lifelong Learning].

[25] Alfredo and Grace Roces, Culture shock!, 1996, p. 27. See also Chant and McIlwaine, pp. 6–7, 125–127.

[26] Kalaw, pp. 89, 119, see also Eviota, p. 32.

[27] See, e.g., Kalaw, p. 87, Subido, p. 1 and The Filipino Woman in Focus, pp. 6, 31–32 (Amaryllis T. Torres and Ma. Luisa T. Camagay).

[28] Sources: Sonia M. Zaide, The Philippines: A Unique Nation, Manila 1994, p. 31, Kalaw, pp. 87–88, Thomas D. Andres, Understanding the Filipino, 6th impr. 1994, p. 61.

While the Westerner learns from the Bible that Eve emerged from Adam's rib, which signifies women's inferiority, Filipino mythology explains the creation of man differently. The first man and the first woman emerged simultaneously. According to the myth a clever bird pecked on a bamboo trunk. As the bird continued pecking, the trunk began to split lengthwise. Out of the first nodule emerged a man, and out of the second nodule a woman – *Lalake* and *Babae* – the first man and the first woman in the world.[29] They married and had many children. From these children originated the Filipinos.

Kalaw writes about the Filipina: 'Her undoubted power in household as co-partner in the business and mistress of home affairs can be traced chiefly to pre-Spanish culture. The Malay has very much of the matriarchal instinct.'[30] Another classic work on Filipino history explains: "Customary law gave [the women] the right to be the equal of men, for they could own and inherit property, engage in trade and industry, and succeed to the chieftainship of a *barangay* in the absence of a male heir. Then, too, they had the exclusive right to give names to their children. And a sign of respect, the men, when accompanying women, walked behind them.'[31]

In the years following the Spanish conquest in 1565 the Malay tradition of equality between men and women began changing drastically. The Spaniards would not let the women hold formal positions in the political administration of village affairs, which laid the ideological foundation for a sexual division of labor in colonial society. The Spanish clergy rather than the Spanish civil officials were more rigorous in their penetration of the interiors. The Catholic church quickly discredited the native female religious functionaries, and less wealthy parents were also reported to have encouraged their daughters to become mistresses of the Spanish friars.[32] The code of Roman law underlined men's superiority over women. In accordance with the current laws the father is still acknowledged as the head of the family.[33] Despite that, the Filipino woman enjoys a higher degree of autonomy than the law actually accords her.

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[29] *Lalake* and *Babae* in Tagalog means *man* and *woman.*

[30] Kalaw, p. 112. See also Marivir R. Montebon, Retracing our roots. A journey into Cebu's Precolonial and Colonial Past, 2000, p. 79 with respect to women in the past ('Gender relations and division of labor in the domestic and agricultural spheres were equally shared.').

[31] Theodore A. Agoncillo, History of the Filipino people, 8 ed. 1990, p. 36. A *barangay* is the smallest unit of government and consisted of 30 to 100 families in pre-Spaniard times, Agoncillo, p. 40.

[32] Eviota, pp. 35–42.

[33] Family Code of 1987, E.O. No. 209 (1987), Articles 96, 124 and 211 of the Civil Code of the Philippines. See also Tomas D. Andres, Positive Filipino Values, 4th impr. 1994, p. 22.

It is women who hold the purse strings, and they freely engage in business.[34] A Filipino woman has remarkable skills in small entrepreneurship.[35] In a book on Filipino history it is held: 'Filipino women enjoy the greatest freedom and the highest status among the women in Asia. Economically, politically, and socially, they are considered as the equal of men. They were the first Asian women to enjoy the right of suffrage – to vote in elections and to be voted into public office in 1937. All professions are open to them, and in some ways, they even enjoy a decisive advantage over males due to the high status and respect accorded women in the Philippines.'[36]

It is therefore no wonder that Mrs. Corazon Aquino, a former housewife, could be catapulted into the highest position in the land when she became the first female President in February 1986, after the infamous assassination in 1983 of her husband, former Senator Benigno Aquino Jr. She reorganized the national administration and the Philippines became open to new ideas, exhibiting a new approach to gender and development in general.[37] In the years after 1996 women's groups continued to emerge, strengthen themselves and exert pressure and influence on government policies and programs.[38]

In the traditional division of family labor in the Philippines the man is a breadwinner and the woman is the treasurer, being in charge of the household duties and the upbringing of children.[39] The husband is expected to hand over his paycheck to his wife, who gives him in turn a small allowance.[40] A Filipina occupies a unique position among other Asian women.[41] It has been held that: 'Of all the chores which comprise the woman worker's household responsibilities, budgeting is the task which they are least prone to delegate to

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[34] Irene R. Cortes, 'Discrimination Against Women and Employment Policies', in The Philippine Law Journal (June 1982), pp. 158–159.

[35] Roces, p. 196, see also Hunt et al., p. 238 ('The Filipina is known for her competence as a small business entrepreneur.'), and a more general reflection with respect to women in the third world, Hilka Pietilä and Jeanne Vickers, Making Woman Matter. The Role of the United Nations, 1990, p. 25: ['I]n the developing world trade is the major occupation that allows women to make a living outside the agricultural sector [...].'

[36] Zaide, pp. 21, 320. A fuller account of the 25-year fight of suffrage for Filipinas, see Subido, pp. 15–33. Already in 1935 Filipino women exercised the right of suffrage with respect to the 1935 Commonwealth Constitution, see Zaide, p. 318.

[37] See Gender as A Crosscutting Theme in CIDA's Developemt Assistance – An Evaluation of CIDA's WID Policy and Activities, 1984–1992, 'WID Country Case Study: Philippines.' Working Paper Number 2F (December 1992), p. 1.

[38] 'Philippine Plan for Responsive Development 1995–2005' (mimeographed), undated, p. 15.

[39] See, e.g., Hector B. Morada and Mylene A. Llaneta, 'Working Couples in the Philippines', in Philippine Labor Review. Vol. 25 (January–December 2001), p. 76.

[40] See, e.g., Thomas D. Andres, Understanding Filipino Values on Sex, Manila 1987, p. 31.

[41] Kalaw, p. 96, Hunt et al., p. 239.

someone else.'[42] In a recent report it was found that 73 % of husbands handed over all their earnings to their spouses, whereas 85 % of women controlled their own earnings.[43] The report discusses the situation when women 'consult' their spouses about minor and major decisions with respect to the household. Only 17 % of women always 'consult' their spouses when minor decisions are to be taken (defined as, *inter alia*, buying shoes and clothing for the children, schooling for the children, or taking the child to a doctor). 47 % of women always 'consult' their spouses when major decisions are to be taken (defined as, *inter alia*, making an expensive purchase, buying or selling land, working outside the home, family planning and traveling outside Cebu).[44] Joint decision-making is, however, more typical.[45] Accordingly, decision-making patterns are more egalitarian rather than patriarchal.[46]

1t has been argued that Filipino women also know how to exploit the fact that they are considered to be the weaker sex. A Filipina is smart enough to look incapable of doing something in order to be attended to by men. As Andres puts it: 'Here lies the difference between the Filipino women and women of the Western World. Filipino women have mastered the art of hiding their stronger qualities underneath the softer ones.' [47] The Filipino woman tends to be domineering in a very subtle way, thus taking advantage of the male sex (hen-pecking). She may pamper the Filipino male's ego, but it is she who rules and runs the affairs; '[s]he has the guts of getting what she wants by feminine maneuvers, tears, lotions and potions', submits Andres.[48]

Let us now take a short look at the issues connected with *education* in the Philippines.

Filipinos have a passionate love for education. The Philippines has become

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[42] Lucina C. Alday, 'Status of Filipino Working Women: An Overview', in 1976 Philippine Labor Review, Vol. 1 No. 3, p. 64.

[43] See 'Exploring the Complexity of Women's Lives. Family Planning, Children, Decision-Making, Domestic Work, and Labor Force Participation in Cebu, Philippines', Office of Population Studies, University of San Carlos, October 15, 1997 (henceforth Metro Cebu Study 1997), pp. 60, 68.

[44] Op. cit., pp. 58–69.

[45] Op. cit., p. 66 (Table 44).

[46] The Filipino Woman in Focus, p. 45, 123 (Judy C. Sevilla, and Isabel R. Aleta, Teresita L. Silva and Christine P. Elerazar, respectively).

[47] Andres, Understanding the Filipino, pp. 43, 49–50. An Australian journalist, Louise Williams, Wives, Mistresses and Matriarchs, Asian Women Today, 1998, gives a similar account, pp. 37–39.

[48] Andres, Positive Filipino Values, p. 71, likewise Andres, Understanding Filipino Values on Sex, p. 7.

the most literate country in Southeast Asia.[49] In 2000 the literacy rate was 92.7 %, without any important differences between men and women.[50] The public education system has proved to be the greatest contribution of the United States to Philippine civilization.[51] The right to education is safeguarded by the Philippine Constitution, where Article XIV, Section 1 provides: 'The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.' Article XIV, Section 2(2) of the Constitution provides further: 'The State shall establish and maintain a system of free public education in the elementary and high school levels.' Basic education consists of six years of elementary school and four years of high school. Between 2000 and 2001 more women than men participated in higher education.[52] Women dominate in studies in the fields of education, health sciences, commerce, business, management and accountancy. The overall proportion of graduates in the country is 63 % for women and 37 % for men.[53] The women also constitute the majority of the faculty staff in the higher education sector.[54] It is very tragic, though, that a large number of Filipinos move to other countries (as overseas contract workers, OCWs). This includes also persons with advanced skills in fields such as engineering, medicine, etc.[55] One of the main reasons is that these persons are unable to find suitable jobs in their own country.[56]

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[49] Protection and Enhancement of Women Rights in ASEAN Labor Law. Ed. Carmelo V. Sison, 1989, p. 41.

[50] Source: www.ncrfw.gov.ph, Info Resource (Facts and Figures), 2004-12-27. Cf. Kalaw, p. 264 where it is alleged that literacy during the Spaniard times 'was very common and that men as well as women read and wrote with ease'.

[51] See, e.g., Kalaw, p. 230: 'It is conceded by most observers that the greatest work of the United States in the Philippines is the establishment of a public school system from the first grade up to the university'.

[52] Source: www.ncrfw.gov.ph, Info Resource (Facts and Figures), 2004-12-27. Women accounted for 55.5 % and men for 43.5 %.

[53] CHED (Commission on Higher Education) Statistical Bulletin. School year 1994–95, Tables 6, 8 and 13.

[54] CHED, Table 16. The statistics do not show what positions women hold.

[55] 32 % of Filipinos working overseas have an undergraduate college degree, a B.A. or a B.Sc. degree, or a post-graduate university degree; see Philippine Statistical Yearbook 2003, National Statistics Coordinating Board, Table 11.15.

[56] See Ma. Teresa M. Soriano and Ma. Luisa Gigette S. Imperial, 'Philippine Labor Market Trends', in Philippine Labor Review, Vol. 25 (January–December 2001), pp. 14–16, Table 10a. The number of overseas deployment has almost doubled from 446,000 workers in 1990 to 842,000 workers in 2000. Close to 10 % of the Filipino population or more than 7 million Filipinos work or live abroad; see Walden Bello et al., The Anti-Development State. The Political Economy of Permanent Crisis in the Philippines, Department of Sociology, College of Social Sciences and Philosophy, University of the Philippines 2004, p. 3.

Now a few more words need to be said about the *labor force* in the Philippines.

In 2002, the Filipino labor force was composed of 33.7 million workers, of which 61 % were men (20.5 million), and 39 % were women (13.2 million).[57] In April 2003, 17.4 million worked full-time, while 12.3 million persons worked part-time (i.e. less than 40 hours per week).[58] In comparison, in 1996 the Filipino labor force totaled 30.7 million workers of which 62 % (19 million) were men and 38 % (11.7 million) were women.[59] At that time 15.1 million workers worked full-time, and 11.7 million worked part-time (i.e. less than 40 hours per week).[60] The number of part-time workers is high, and the most remarkable fact is that men constitute the majority of the part-time work force.[61] The growth rate of part-time work has been even higher than that of full-time work during almost the whole of the 1990s.[62] Another retrospect comparison is that in 1975 the Filipino labor force consisted of about 14.3 million workers, of which 68 % were men (9.8 millions) and 32 % were women (4.5 millions).[63]

It follows from this short account that the number of women in employment has increased dramatically since 1975.[64] In 2001 the labor participation rate was 52.8 % for women and 82.3 % for men.[65]

In 1995 women employees dominated in certain occupational and professional groups, such as teachers, technical and related occupations,

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[57] Philippine Statistical Yearbook 2003, Tables 11.5 and 11.6 (figures relating to October 2002). These figures include both *employed* and *unemployed* persons.

[58] Labor Force Survey – April 2003, Integrated Survey of Households Bulletin (Series No. 116), National Statistics Office, Figure 10 and accompanying text. These figures include both *employed* and *unemployed* persons.

[59] Current Labor Statistics, Department of Labor and Employment. Bureau of Labor and Employment Statistics, April–June 1996, Tables 1, 2. The same classification is applied to the official 1995 statistics, Philippine Yearbook 1995, National Statistics Office (figures relating to October 1995).

[60] Current Labor Statistics, April–June 1996, Table 2. There were 7 million male workers working part-time in April 1996, while the equivalent figure for women was 4,7 million.

[61] In Europe it is the other way around, with women dominating the part-time work force. See Employment Policy and the Regulation of Part-time Work in the European Union. A Comparative Analysis, Ed. Silvana Sciarra, Paul Davies and Mark Freedland, 2004. The high figure with respect to part-time working men in the Philippines is explained with reference to the scarcity of full-time jobs which is why Filipino male workers have to take up any available jobs to serve as the breadwinner of the family.

[62] Soriano and Imperial, p. 11, Table 5.

[63] Data from Flerida Ruth P. Romero, 'Is the Economic Emancipation of Filipino Working Woman at Hand?', in 1976 Philippine Labor Review, Vol. 1 No. 3, p. 21.

[64] Such observation was already made in 'Women Workers in the Philippines', NCRFW 1985, p. 14, presenting figures covering the period of 1974–1983.

[65] 'Framework Plan for Women', p. 13.

clerical, sales and service occupations.[66] Female representation in the professions that are still male-dominated in the Philippines is gradually catching up, with women making up more than one-fifth of the labor force in male-dominated professions in 1983, such as agricultural engineers, architects, foresters, geologists and lawyers.[67] It is striking that in 1995 women holding college degrees (undergraduate, graduate, or higher) were more numerous than men: while 17 % of all the employed women held a college degree, only 7 % of all the employed men did.[68] Figures from 2003 indicate the same pattern, though the figures for both sexes have increased: for the female labor force to 19.7 % and for men to 9.4 %.[69]

An index of the 'feminization' of the employment market shows that between 1975 and 1990 the women's share increased in the following occupational groups: administrative, executive and managerial from 16.3 to 21.8 %, which is a 'substantial improvement', says a former Secretary of Labor.[70] In 1995, women held 29.9 % of administrative, executive and managerial positions.[71] The 2002 statistics indicate that women occupy not less than 58.3 % of the following positions: officials of the Government and special interest organizations, corporate executives, managers, managing proprietors or supervisors.[72] *This is a remarkably high figure compared with the past.* We should bear in mind, however, that making proper comparisons is difficult since the classifications of the occupational groups have been changing over time. Already in 1983, however, it was found that the share of women in the civil service sector had increased, even with respect to the higher levels of public management.[73] This reflects the higher proportion of educational qualifications held by Philippine women as compared to Philippine men.[74] In this respect

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[66] Labor Force Survey – January 1995, Integrated Survey of Households Bulletin (Series No. 81), National Statistics Office, Table 3. Identical classifications are not found in the 1995 Philippine Yearbook, or the 1996 Current Labor Statistics.

[67] The Filipino Women in Focus, Table 3:4.

[68] Labor Force Survey – February 1995, Table 4, p. 31.

[69] Labor Force Survey – April 2003, Table 4, p. 32.

[70] Ma. Nieves R. Confesor, 'Equality for Women Workers: Some Considerations', in 1991 Philippine Labor Review, Vol. 15 No. 1, pp. 41, 45. In 'Filipino Women in Public Affairs', NCRFW 1985, p. 12 a slightly higher average figure for women (28 %) is reported, based upon statistics of 1982.

[71] Source: Labor Force Survey – January 1995, Table 4 at p. 31.

[72] Philippine Statistical Yearbook 2003, Table 11.5. It is 58,8 % according to Labor Force Survey – April 2003, Integrated Survey of Households Bulletin (Series No, 116), National Statistics Office, Table 4.

[73] 'Filipino Women in Public Affairs', p. 9.

[74] Op. cit., p. 33. This has been corroborated in a later study based upon labor statistics from 1997, see Morada and Llaneta, p. 97.

I have found no evidence of there being a so called 'glass ceiling' which is applied to career-minded Filipino women, indicating that a woman has to perform far better than a man to be promoted.

Even if two of the four most recent presidents of the Philippines were women, statistics show that the percentage of women elected to *public office* was low in the past – almost of symbolic value only.[75] It has been held that Philippine women refrain from engaging in politics, or are not very enthusiastic about political activities. Where a Filipino woman does take part in public life it is usually due to family/clan tradition.[76] In these cases the woman does not attempt to reform her husband to do household duties: she hires a domestic help instead, who will take care of the housework.[77] The woman may even try to protect or boost her husband's ego, lest he might lose his face, or she may pull strings behind the back of her politically active husband, thus wielding informal or unofficial power.[78] The Filipino male fears bright and articulate women.[79]

In 1998 women occupied seven out of 22 Cabinet posts. More and more women are becoming involved in politics all the time, both in the House of Representatives and in the Senate, as well as in local government.[80] Quijano states: 'The present Filipino women have moved out of the kitchen into the executive suite, out of the bedroom into the corporate boardroom, out of the backyard garden into the industrial production floor. Many Filipino women are no longer staff secretaries and clerical support personnel, but are now colleagues and co-workers with whom real and professional relationships must be built and nurtured. They have entered the judicial system as RTC judges and CA justices. In one *en banc* court session there are four female justices of the Supreme Court.'[81] In 2004, there were still four female Justices of the Supreme Court out of the total of 13 Justices. The Chief Justice was a male.

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[75] The Filipino Women in Focus, p. 143 (Perla Q. Makil) and table 5:1 as regards the relatively low figures pertaining to female representation in elective posts in 1980. See also a survey, 'Filipino Women in Public Affairs', pp. 3–4 (somewhat higher figures are reported as regards the number of females on the local – barangay – levels).

[76] The Filipino Women in Focus, pp. 43–44 (Judy Carol C. Sevilla). See also 'Filipino Women in Public Affairs', p. 33 ('Those few who run either come from a family of well-known politicians, are influential and wealthy enough to have the sympathy of the majority of the electorate.').

[77] Williams, p. 130.

[78] Mina Roces, Women, Power and Kinship Politics. Female Power in Post-War Philippines, 2000, p. 180 (stating that 'unofficial power has no glass ceiling').

[79] James Hamilton-Paterson, America's Boy. The Marcoses and the Philippines, 1998, p. 423.

[80] Gender and Lifelong Learning, pp. 104–105.

[81] Deusdedit B. Quijano, The Philippine Anti-Sexual Harassment Law (and other laws on gender discrimination and sexual exploitation of children), 2002, p. 6, see also p. 214.

Women comprised 23.4 % (362 out of 1,505) of the total of practicing judges in the Philippine courts in 2002.[82] Presently, there are five women representatives in the Cabinet of the President out of the total of 24 members. Having in mind the Filipino practice that it is the woman who holds the purse strings, it is significant that both the Secretary of the Department of Budget and Management and the Secretary of Finance are women. In the Philippine Congress, 4 out of 23 Senators are women. In the House of Representatives there are 37 female members out of the total of 237 representatives.[83]

3 Philippine constitutional provisions applicable to gender and law

A number of provisions of the 1987 Philippine Constitution apply directly to women. Article II, Section 14 provides: 'The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.'[84] This provision is not self-executory. The primary aim is to put pressure on the State to formulate strategies to expand women's participation in non-household, productive activities.[85] Secondly, it is the duty of the State to ensure that equality before the law shall apply, by rectifying or ending those practices and systems which are disadvantageous to women, or which discriminate against them by reason of sex.[86] The State must thus promote and uphold equality between men and women in employment, as regards terms and conditions of work, opportunities for promotion, practice of a chosen profession, acquisition, control and disposition of property and the pursuit of business activities, etc.[87]

Furthermore, Article XIII, Section 14 provides: 'The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential

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[82] Source: www.ncrfw.gov.ph (Facts and Figures), 2004-12-27.
[83] Source: www.gov.ph, 2004-12-27.
[84] The egalitarian view was enunciated already in the 1973 Constitution in contrast to the 1935 Constitution. Source: 'Women Workers in the Philippines', p. 73. See Flerida Ruth P. Romero, 'Women and Labor: Is the Economic Emancipation of the Filipino Working Woman at Hand?' in Philippine Law Journal 1975, pp. 44–45 about the patronizing attitude of the male legislators behind the 1935 Constitution.
[85] See accompanying text to notes 8–19.
[86] Quijano, p. 150 ('Respect for womanhood is highly appreciated and culturally recognized in this country.')
[87] See De Leon, pp. 72–73.

in the service of the nation.' The framers have taken here into consideration the fragile physical structure and maternal functions of women. It is the duty of the State to protect them. For example, a law may validly grant privileges to women (e.g. leaves of absence, shorter working hours without extending the same prerogatives to working men) without violating the guarantee of equal protection of the laws, as found in Article II, Section 14. There is no discrimination because the difference in treatment is based on the material or substantial differences between the sexes.[88] Article XIII, Section 3 provides further, *inter alia*, that the State shall '… promote full employment and equality of opportunities for all'. A similarly drafted declaration is found in the 1974 Labor Code, Article 3 which provides that '[t]he State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race, or creed and regulate the relations between worker and employers'.

The Philippine Constitution also contains a Due Process Clause in Article III, Section 1, stating that: 'No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws.' This is a general provision upholding the rule of law. The due process clause applies also to private employment.[89] A similar, albeit more detailed, provision is found in the 1974 Labor Code of the Philippines. The Labor Code applies, however, only to the private sector of the labor

[88] Op. cit., p. 495.

[89] A case from 1953 shows the Supreme Court's concern when discrimination based upon sex is alleged. In *Caltex (Philippines), Inc. v. Philippine Labor Organizations, Caltex Chapter, April 29, 1953, 92 Phil. Rep. 1014*, a one-year gratuity was extended to prewar male employees only, but was denied eleven prewar female employees. The Court held: 'However, we must agree with the Court of Industrial Relations that if prewar male employees are granted back pay gratuity, prewar female employees should also be extended the same privilege, on grounds of equity, remembering always the Government's constitutional duty to protect labor, especially women'. The Supreme Court continued: 'In the settlement of industrial disputes it is proper and convenient for the court to insist, in exercising its ample powers, that capital shall make no discrimination between male and female employees. But discrimination only exists when one is denied privileges given to the other under identical or similar conditions.' However, the gratuity was granted only to those prewar employees who were in the employ of the employer after the war on July 16, 1949. Since the female laborers had not been in the employ of the employer at that time, and neither been denied reemployment, the complaint was set aside.

market. Civil service law governs public employees, and the Civil Service Commission works as an overseer of the civil service system.[90]

4 Gender provisions in the Filipino Labor Code of 1974

The Labor Code of the Philippines came about in 1974 under martial law.[91] It is argued that the Code was held to be a model for the developing world by the ILO.[92] The Code consolidated and updated various provisions found in previous labor and social laws, such as, to mention just a few, the Court of Industrial Relations Act (C.A. No. 103, as amended), The Industrial Peace Act (R.A. No. 875, as amended) and The Woman and Child Labor Act[93] (which amended the very first statute issued in 1923 to enforce labor standards applying to women and minors).[94] The laws on maternity leave for female employees working for the Government[95] and the Women's Auxiliary Corps Act[96] were left untouched.

The Department of Labor and Employment (DOLE) issues Rules and Regulations for the Labor Code.[97] The focus in this article is placed on the

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[90] See the Philippine Constitution, Article IX, B-Sections 1-8. In *Cuevas vs. Baca, Dec. 6, 2000, 347 SCRA 338,* Justice Puno explains that the civil service laws 'were designed to eradicate the system of making appointments primarily from political considerations with its attendant evils, to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments, to establish a merit system of fitness and efficiency as the basis of appointments, and to prevent discrimination in appointments to public service based on any consideration other than fitness to perform the duties.' See also *Divinagracia, Jr. vs. Sto. Thomas,May 31, 1995, 244 SCRA 595* wherein the Court explains: 'The primordial purpose of our civil service laws is to establish and maintain a merit system in the selection of public officers and employees without regard to sex, color, social status or political affiliation.'

[91] PD No. 442 (1974), as amended several times.

[92] Hamilton-Paterson, p. 211.

[93] R.A. No. 679 (1952), An Act to Regulate the Employment of Women and Children, to Provide Penalties for Violation Hereof, and for Other Purposes, as amended by R.A. No. 1131 (1954), R.A. 6237 (1971) and PD No. 148 (1973).

[94] Act No. 3071 (1923), An Act to Regulate the Employment of Women and Children in Shops, Factories, Industrial, Agricultural, and Mercantile Establishments, and Other Places of Labor in the Philippine Islands; to Provide Penalties for Violation Hereof, and for Other Purposes. Credit for the 1923 Act should be given to the Philippine Government Employees' Association and the League of Women Voters of the Philippines, see Subido, pp. 43, 45 (other subsequent legislation should as well 'be credited to the sustained feminist movement').

[95] C.A. 647 (1941), An Act to Grant Maternity Leave to Married Women Who Are in the Service of the Government or of Any of its Instrumentalities, as amended by R.A. 270 (1948) and R.A. 1564 (1956).

[96] R.A. No. 3835 (1963), An Act to Establish the Women's Auxiliary Corps in the Armed Forces of the Philippines, to Provide the Procurement of its Officers and Enlisted Personnel, and for Other Purposes, as amended by PD No. 1043 (1976) and PD No. 1910 (1984).

[97] Labor Code, Preliminary Title, Chapter 1, Article 5.

provisions of the Labor Code relating to women. The provisions are found in Articles 130–138, Book Three, Title III, Chapter I, entitled 'Employment of Women'. Implementing Rules and Regulations hereto are found in the Omnibus Rules Implementing the Labor Code, Book III, Conditions of employment, Rule XII, 'Employment of Women and Minor'.

Articles 130–138 set forth provisions concerning the following issues: Night work prohibition and exceptions to it, Facilities for women, Maternity leave benefits, Family planning services, Stipulation against marriage, Discrimination prohibited, Prohibited acts and Classification of certain women workers. In the light of the standards set forth in the 1952 Woman and Child Labor Act, as amended, the Codal provisions imply a certain curtailment of protective measures in an effort to divest employers of excuses for denying equal opportunities to women.[98] A frequently used argument is that protective legislation does not benefit women, since protective schemes only discourage employers to employ married women.[99] However, it would seem that implementation leaves much to be desired.[100]

4.1 Stipulation on night work prohibition

Prohibition of night work by women is stipulated in Articles 130 and 131.[101] Various night work rules apply depending on where the woman works. The basic division of women employed in industrial, commercial or non-industrial undertakings, on the one hand, and women employed in agricultural

[98] Romero (1976), p. 25: 'Such a compromise had to be effected if the grim prospect of absolute unemployment was not to be the lot of the female worker.' See also Cortes, p. 159 who discusses the legislation as applied before the 1974 Labor Code: 'Employers become wary of recruiting women because of the added expenses entailed and adopted policies which worked to their disadvantage. Some firms employed unmarried women and imposed the condition that marriage would automatically terminate employment.'

[99] See Eviota, p. 143: 'Such requirements as maternity benefits and the provision of creches also became institutionalized justification for disqualifying married women from employment'; see also Protection and Enhancement of Women's Rights in ASEAN Labor Law, p. 21(Chairman of the Civil Service Commission, Patricia A. Sto. Thomas): 'The point is, such well-intentioned laws eventually become tools of discrimination against women and sometimes become counterproductive to all efforts to grant them the freedom to decide their own careers and life patterns'. See also, 'Survey of Laid-Off Female and Young Workers in Metro Manila', Bureau of Women and Minors 1985, p. 11: 'Furthermore, employers still prefer to hire men over women because of the additional costs entailed in special facilities and amenities required for women, like maternity benefits.'

[100] See Protection and Enhancement of Women's Rights in ASEAN Labor Law, p. 70 (Myrna S. Feliciano, Ass. Prof. of Law, U.P. College of Law).

[101] Formerly PD No. 442 (1974), Articles 128 and 129. Provisions imposing restrictions on women's working hours were earlier found in R.A. No. 679 (1952), Section 7. In Act No. 3071 (1923) similar provisions were applied *only* to minors, Section 3.

undertakings, on the other, still applies.[102] So, for example, in industrial establishments the night work ban applies to the period between 10 p.m. and 6 a.m.; in commercial or non-industrial undertakings the ban applies to the period between 12 p.m. and 6 a.m. In agricultural undertakings night-time work is prohibited, unless the woman is given a period of rest of not less than 9 consecutive hours.[103] The statutory night shift differential shall be not less than 10 % of the employee's regular pay for work between 10 p.m. and 6 a.m., sometimes more.[104]

A 1987 study shows that women workers who work nights do it because they have to augment the family income, since their husbands are unemployed or have a very low income.[105] There is a lack of awareness among both employer representatives and female nighttime workers regarding their rights, as well as concerning the fact that a substantial proportion of employer representatives favor a total removal of the provisions, while the majority of women favor their retention within the Labor Code.[106]

Exceptions to the aforementioned statutory provisions are set forth in Article 131.[107] They apply in a number of cases, such as cases of actual or impending disasters or emergencies (fire, flood, typhoon, earthquake, etc.); if urgent work must be performed in order to avoid serious loss which the employer would otherwise suffer; if the work is necessary to prevent serious loss of perishable goods; if the woman employee holds a responsible position of a managerial or technical nature; if the woman has been engaged to provide health and welfare services; if the nature of the work requires 'the manual skill and dexterity of women and the same cannot be performed with equal efficiency by male workers'; or, finally, where the women employees concerned belong to immediate members of the family operating the establishment or

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[102] Originating from the 1954 legislation, R.A. No. 1131 (1954).

[103] In 'Women Workers in the Philippines', p. 9, it is held that the Labor Code provisions are the result of the Philippine ratification of the ILO Convention on Night Work (Women), No. 4 (1979 – *sic!* must be 1919) and No. 89 (1948). The Philippines ratified Convention No. 89 in 1953. However, the Philippines never ratified Convention No. 4. – The former provision in the old law that no woman shall 'work always standing or which involves the lifting of heavy objects', R.A. No. 6237 (1971), Section 7(a), and the provision 'granting her a rest period of eleven consecutive hours of work between two working periods', Section 7(f), had been repealed in the 1974 Labor Code.

[104] Refers to Article 86 of the Labor Code. See also 'Night Work and Women Workers', BWYW 1997, p. 29.

[105] See 'Night Work and Women Workers', pp. 20, 46.

[106] Op. cit., p. 39.

[107] These are in the main equal to the provisions of R.A. No. 1131 (1954), Section 7(d).

undertaking. The enforcement procedure is lax with respect to these exceptions, and many violations go unnoticed.[108]

It is easy to see from the above that the Labor Code's night work restrictions applied to women belong to the category of so-called protective legislation, which does not put men and women workers on equal footing. Based on this point of view the bans have been questioned as being contrary to the principle of equality between the sexes, which narrow the range of jobs open to women.[109] The 1987 Report argues, however, that the primary purpose of this legislation is to restrict women's work alongside strictly biological differences between men and women, for example, the woman's reproductive function, which emphasizes the need of safeguarding women from the arduous task posed by night work considering the women's special role of child-bearing.[110] One commentator argues that: 'This is indicative of the paternalistic attitude towards working women.'[111] A healthy sign is, however, that women are no longer 'lumped together' with minors with respect to night work; the latter are, in contradistinction to the situation before 1974 (Woman and Child Labor Act), dealt with separately.[112]

4.2 Facilities for women

Article 132[113] provides that an employer shall provide 'seats proper for women' for both rest periods and work, establish 'separate toilet rooms and lavatories for men and women' and 'provide at least a dressing room for women'; he shall also 'establish a nursery in a workplace for the benefit of the women employees

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[108] 'Women Workers in the Philippines', p. 9.

[109] See 'Night Work and Women Workers', p. 4. In quite another context I have submitted an article in Swedish on 'mandatory maternity leave' where the same aspect is highlighted, '*Obligatorisk mammaledighet – nytt vin i gamla läglar*, in *Normativa perspektiv. Festskrift till Anna Christensen* (2000), pp. 59–79. In that context I pursued a study of the reception of the ILO Conventions on night work in Swedish law, and found that Sweden has not ratified the pertinent conventions as regards the ban on night work for women. Since 1962 it is the law in Sweden that no distinction is made between men and women in terms of night work.

[110] 'Night Work and Women Workers', pp. 52–53.

[111] Mare. A quarterly publication of the National Commission on Women, Vol. 2. No 1, July 1990, p. 17 (Emelina Quintillan, 'Philippine laws affecting women inconsistent?').

[112] The provisions for minors were formerly found in Articles 139 and 140 of the Labor Code, but they were superseded by R.A. No. 7610 (1992), An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes. Section 12 in that Act deals with employment of children.

[113] Similar provisions were earlier found in Act No. 3071 (1923), Sections 2 and 9, and R.A. No. 679 (1952), Section 9. The provisions in the 1952 Act were in the main carried over to the 1974 Labor Code, see PD No. 442 (1974), Article 130.

therein', and 'determine appropriate minimum age and other standards of retirement or termination regarding such special occupations as those of flight attendants and the like'. The Secretary of Labor shall establish 'safety and health' standards for women employees, in appropriate cases by regulations. No regulations of this kind have been, however, issued. As regards nurseries I have been told that the Article is a 'dead letter'.[114] Many of the other benefits are now commonly provided.[115]

4.3 Maternity leave benefits

Maternity leave benefits were once provided for in Act No. 3071 (1923), but the Philippine Supreme Court found that its provisions constituted an encroachment on the freedom of contract and therefore violated the Constitution, which is why the provisions had been struck off from the Act.[116] In 1952 a general provision applicable to all women employed in the private sector was introduced, stipulating that the employer 'shall grant to any woman employed by him who may be pregnant vacation with pay for six weeks prior to the expected date of delivery and for another eight weeks after normal delivery or miscarriage at the rate of not less than 60 % of the regular pay of her regular or average weekly wages'.[117] Employers were thus placed in a quandary, says Romero, as compliance with the requirements of the Woman and Child Labor Act led to higher operational costs. To obviate the necessity of having to pay maternity leave, employers adopted policies preferential to

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[114] Interview January 21, 1997, Lilia A. Estillori, Chief, Labor Standards Enforcement Division, DOLE, Regional Office No. 7, Cebu City. This is corroborated in the report 'Night Work and Women Workers', p. 17, where it is held that there is 'the virtual nonexistence of the nursery in the workplace [...] its non-compliance is very apparent'. It is rather an understatement when Chant and McIlwaine, p. 152 submit the view that nursery facilities under Article 132 of the Labor Code 'are a somewhat gray area in the eyes of the law'. In 'Women Workers in the Philippines', p. 5, it is, however, held that 'some companies have established day care centers in workplaces to specifically assist women workers in fulfilling their responsibilities at home and at work harmoniously'.

[115] See 'Night Work and Women Workers', p. 16 where the findings from a special study of 36 establishments in the food, garment and semiconductor industries, totaling about 59,000 workers out of which 43,000 were female workers, show that special legislative benefits for women workers such as the provision of seats, dressing rooms, separate comfort rooms, and maternity leave, are commonly provided by the establishments, but a few of the establishments failed to comply with the statutory standards in areas where there are high population rates of pre-school children.

[116] *People vs. Pomar, 46 Phil. 440 (1924)*. The case was based on case law from the U.S. Supreme Court, which intended to uphold the freedom of contract doctrine. See also, Perfecto V. Fernandez and Camilo D. Quaison, The Law of Labor Relations, Manila 1963, p. 15. The 1924 case is no longer to be perceived as normative in the light of subsequent changes in judicial attitude.

[117] R.A. No. 697 (1952), Section 8(a).

men.[118] By means of the 1973 PD the benefit was severely cut down to apply to two weeks prior to the expected date of delivery and to four weeks after normal delivery or abortion.[119] Romero argues again that it became necessary to reduce the protective measures of the Woman and Child Labor Act hitherto granted to women workers in order to divest employers of excuses for denying equal opportunities to them.[120] Instead, family planning services entered into the statutory scheme, to wit that maternity leave benefits should be paid for the first four deliveries only.[121] Establishments that were required 'by law' to have a clinic or an infirmary, now had to provide 'free family planning services to their employees'.[122] The Department of Labor was supposed to 'develop and prescribe incentive bonus schemes to encourage family planning among the married workers'.[123] The subsequent changeover to the 1974 Labor Code did not entail major changes in these respects.

Article 133 has not been amended since 1974.[124] Accordingly, Article 133(a) stipulates firstly, that a pregnant woman who has been in aggregate service lasting for at least 6 months during the preceding period of 12 months shall be granted *maternity leave* of at least 2 weeks prior to the expected date of delivery and another 4 weeks after normal delivery *with full pay*.[125] Secondly, Article 133(b) provides that maternity leave shall be *extended without pay* on account of a medically certified illness arising from pregnancy, delivery, abortion or miscarriage, which makes the woman unfit for work. Thirdly,

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[118] Romero (1975), p. 46.
[119] PD No. 148 (1973), Section 8(a).
[120] Romero (1975), p. 48.
[121] PD No. 148 (1973), Section 8(c).
[122] PD No. 148 (1973), Section 8(e).
[123] PD No. 148 (1973), Section 8(f).
[124] Formerly PD No. 442 (1974), Article 131. However, the benefits have been extended to apply to women victims, see R.A. No. 9262 (2004), An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes (commonly called Anti-Violence Against Women and Their Children Act of 2004). To wit, women victims are entitled to paid leave of absence up to ten days in addition to other types of paid leave under the Labor Code. Any employer who shall prejudice the right of women shall be penalized in accordance with the provisions of the Labor Code or the Civil Service Rules, see Section 43 of this Act.
[125] If the two-week pre-delivery leave, or any part thereof, has not been used, it shall be added to the woman's post-delivery leave; Omnibus Rules Implementing the Labor Code, Book III, Rule XII, Section 8.

Article 133(c) provides that the employer shall pay maternity leave benefits for the first four deliveries only.[126]

Article 133 does not contain any mechanism for the implementation of the aforementioned benefits. These can be found instead in the Social Security Law, Section 14-A, in force since 1978.[127] The essence of that fact is that the ultimate burden of paying maternity benefits has been lifted from the employers and transferred to the social security system instead. The Social Security Law preempts aspects related to the amount of the maternity benefit, which, being part of the more comprehensive Social Security System (SSS), is governed and controlled by the Social Security Commission.[128] Civil service workers do not fall under the provisions of the Social Security Law.[129]

The public maternity leave benefit was thus introduced in 1978 into the Social Security Law. The benefit applied during 45 calendar days for the first four deliveries.[130] President Aquino initiated further changes in 1992 in order to improve maternal benefits.[131] Consequently, the benefit was extended to 60 calendar days and was equivalent to the basic salary including other applicable

[126] This stipulation applies regardless of the identity or number of employers from whom the woman has been receiving maternity benefits; Omnibus Rules Implementing the Labor Code, Book III, Rule XII, Section 10. In R.A. No. 679 (1952), Section 8(b) a provision was found that provided that the employer should allow a woman employee who was nursing a child a break of half-an hour twice a day during her working hours for that purpose. The provision was abolished by means of PD No. 148 (1973).

[127] By means of PD 1202 (1978), adding section 14-A to the 'Social Security Law', originating in R.A. No. 1161 (1954), amended several times.

[128] Social Security Law, Section 3.

[129] Op. cit., Section 8(j) (3). *Married women* who are in the service of the Government were once granted maternity leave benefits by means of C.A. No. 647 (1941), An Act to Grant Maternity Leave to Married Women Who Are in the Service of Government or of Any of its Instrumentalities, as amended R.A. No. 270 (1948) and R.A. No. 1564 (1956). The Act granted maternity leave for 60 days for married women employed in the public service. The maternity leave could be either with full or half pay, subject to whether the employee had rendered *two or more*, or *less than two* years of continuous service, see Section 1 of the Act. By means of E.O. No. 292 (1987), Book V, Title 1, Section 60, and the Omnibus Rules Implementing Book V, Sections 12 and 13, the former provisions have been, in the main, reiterated. – In the private sector there is no requirement that a female employee must be *married* to be the beneficiary of the maternity leave benefits.

[130] The limitation is part and parcel of the family planning services program, says Hunt et al., p. 241.

[131] R.A. No. 7322 (1992), An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector, Amending for the Purpose Section 14-A of R.A. No. 1161 (1954), as Amended, and for Other Purposes.

allowances and benefits.[132] In the case of a caesarian delivery the benefit was to be paid for 78 days. To be entitled to maternity benefit the female employee was required to have paid at least three monthly contributions during a twelve-month period preceding the childbirth.[133] She must also have notified the employer of her pregnancy and the expected date of childbirth. The benefit was then to be advanced by the employer within 30 days from the filing of the maternity leave application, which meant, in fact, that the mother could claim the benefit both before or after the delivery, or that it could be paid to her during her maternity leave, often as a lump sum.[134] The employer was reimbursed upon receipt of such payment by the SSS.

If other laws, collective bargaining agreements or company policy provide better benefits, the latter benefits would prevail.[135] It has been held that the Social Security Law in this respect superseded Article 133 of the Labor Code.[136] This statement must relate strictly to those aspects that are pre-empted by the Social Security Law and to no other issues that may be brought up within the boundaries of the Labor Code. For example, under the Labor Code a woman is always entitled to have her maternity leave extended without pay for reasons of illness connected with her pregnancy, delivery, abortion or miscarriage. Furthermore, according to Article 133(a), the employer may require that the female employee who applies for maternity leave shall submit

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[132] The extension was suggested in a study on maternity/paternity leave benefits published already in 1990. In a study covering 150 establishments both employer representatives and workers favored such extensions, see 'Study on Maternity/Paternity Leave Benefits', BWYW 1990, p. 33. It is interesting to note that the issue of *paternity leave benefits* for male workers was discussed already in this report. Many of the employer representatives and workers wanted the issue to be regulated by law. It seems that many employers had already granted paternity leave benefits to male workers by means of collective bargaining agreements or company policy. It took a few more years until the 1996 Paternity Leave Act was enacted.

[133] Social Security Law, Section 14-A.

[134] See 'Study on Maternity/Paternity Leave Benefits', pp. 16–17.

[135] See R.A. No. 8282 (1997), An Act Further Strengthening the Social Security System Thereby Amending for this Purpose Republic Act No. 1161, as Amended, Section 9(a), last proviso. The same principle applied to R.A. No. 7322 (1992), Section 2. In fact, the report 'Study on Maternity/Paternity Benefits', pp. 4, 17, 19–22 shows that both female and male employees are granted benefits over and above the provisions laid down by the law, such as, the number of days covered by maternity leave, or the number of births, abortions or miscarriages covered by the maternity leave benefit, or paid or unpaid extended leave for mothers, or the grant of paternity leave benefits for male workers, paid or unpaid.

[136] C.A. Azucena, The Labor Code with Comments and Cases. Vol. I, Rev. ed, 8th pr. 1995, National Book Store, Inc., p. 380 says that the provisions of Article 133 'are superseded' by amendments to the Social Security Law, cf. Vicente B. Fox, The Labor Code of the Philippines and Its Implementing Rules and Regulations, 2000 Edition, p. 30 who says that the Social Security Law superseded Article 133 as to 'coverage and amounts of benefits'. It is not entirely clear whether the two statements are in conformance.

a medical certificate stating that delivery will probably take place within two weeks. The Social Security Law does not possess such a time limit.[137] A more problematic issue is how to harmonize the Labor Code's requirement of an aggregate period of service of at least six months during the last twelve months, and the Social Security Law's provisions stating that a female employee is insured if she has paid at least three monthly contributions during the twelve-month period preceding the birth. There are reasons to conclude that both provisions can be compatible if the Labor Code can be regarded as having been superseded by the Social Security Law on this very point. To argue otherwise would imply that a woman employee may be entitled to maternity benefits from the SSS, but that she will not be able to avail herself of the maternity leave stipulation in the Labor Code, since she may not have an aggregate period of service of at least 6 months during the preceding twelve-month period.[138]

The following case highlights a certain aspect of the Labor Code, though it must be borne in mind that the case was decided on the basis of Article 133(b) of the Labor Code before Section 14-A of the Social Security Law came into force, which is, however, of no importance in the light of the content of Article 133(b).

Reyes v. National Labor Relations Commission, Aug. 31, 1989, 177 SCRA 180. The plaintiff had filed an application at the end of 1982 for indefinite leave of absence due to complications resulting from child delivery. The school rejected her application. She was later forced to resign from her post, while she was promised to be reinstated when the time came. By June 1985 she had regained her health, and applied for reinstatement, but the school refused to rehire her. She filed a claim for reinstatement and back wages. Having concluded that her resignation was involuntary and amounted to illegal dismissal, the Supreme Court found, referring to Article 133(b), that: 'the school had no right to disapprove petitioner's application for an indefinite leave of absence due to illness caused by the delivery of her child and to force her to resign instead'. She was reinstated with three years' back wages to be paid to her.

Another interesting characteristic of Philippine law can also be found in Section 8 of the Woman in Development and Nation Building Act of 1992.[139]

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[137] Social Security Law, Section 14-A (a) is want of such a requirement and is not to be found elsewhere in the Act.

[138] It is hence possible to apply the provisions of Article 4 in the Preliminary Title, Chapter 1 of the Labor Code in that: 'all doubts in the implementation and interpretation of the provisions of this Code [...] shall be resolved in favor of labor'.

[139] R.A. No. 7192 (1992), An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation Building and for Other Purposes.

The Act points up an entirely new aspect of Philippine social security law of special significance. It provides that *the non-working spouse* shall be covered by *Voluntary Pag-IBIG, GSIS* and *SSS.*[140] With respect to the SSS coverage includes benefits related to retirement, disability, death, funeral, medicare, sickness and loan privileges, but does not include employee's compensation benefits. Section 8 of the Act provides: 'Married persons who devote full time to managing the household and family affairs shall, upon the working spouse's consent, be entitled to [the said benefits] to the extent of one-half (½) of the salary and compensation of the working spouse. The contributions due thereon shall be deducted from the salary of the working spouse.' The Implementing Rules and Regulations related to SSS benefits[141] presuppose, however, that 'the non-working spouse has never have been a member of the SSS'.[142]

4.3.1 Paternity Leave Act

It is important to examine here another Philippine law that does not form part of the Labor Code. The issue of paternity leave was discussed already in a report from 1990.[143] The Paternity Leave Act of 1996 is a landmark statute, which came into force under President Ramos's administration.[144] The Act gives the father of a child a limited right to paternity leave with benefits.

Section 2 provides that 'every married male employee in the private and public sectors shall be entitled to a paternity leave of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting'. The seven days stipulated in the Act refer to 'working' days.[145] The male employee shall notify the employer of the pregnancy of his legitimate

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[140] Pag-IBIG is a private insurance fund, helping people to get loans for housing. In Tagalog, IBIG means 'love' (!). GSIS means the Government Service Insurance System.

[141] Rules and Regulations Implementing Section 8 of R.A. 7192, issued August 2, 1995 by the Social Security Commission.

[142] This will limit the range of the new provision. To wit: most women have had a job in the past before they become a non-working spouse. One of my respondents said (interviewee Lilia A. Estillori, January 22, 1997): 'I haven't come across such a woman yet.'

[143] 'Study on Maternity/Paternity Leave Benefits', pp. 19–22, 38–41.

[144] R.A. No. 8187, An Act Granting Paternity Leave of Seven (7) Days With Full Pay to All Married Male Employees in the Private and Public Sectors for the Four (4) First Deliveries of the Legitimate Spouse With Whom He Is Cohabiting and for Other Purposes.

[145] Implementing Rules and Regulations of R.A. No. 8187 for the Private Sector, dated August 5, 1996, and issued jointly by DOLE and DOH, Section 2, and Implementing Rules and Regulations of R.A. No. 8187 for the public sector, Section 1(c), undated, issued jointly by CSC and DOH, Memorandum Circular No. 1, 1996.

spouse and the expected date of such delivery. Delivery includes miscarriage.[146] 'Legitimate spouse' refers to the lawfully married wife of the male employee.[147]

Paternity leave means the right of the father 'not to report for work for seven (7) days [...] *for purposes of enabling him to effectively lend support to his wife in her period of recovery and/or in the nursing of the newly-born child*' (Section 3 of the Act, my italics). The true objective of the Act is thus to give the male employee an opportunity to take care of his wife during her period of recovery and/or nursing of the newly born child. Paternity leave may be taken *before, during* or *after* the childbirth.[148] In the private sector the leave must be taken not later than 60 days after the date of delivery.[149]

How is the benefit calculated? The Act is silent on this point. However, the Implementing Rules and Regulations for the private sector provide that the seven-day paternity leave with pay shall consist of a 'basic salary, all allowances and other monetary benefits',[150] or 'full pay' as regards the public sector.[151] If the paternity leave benefit has not been taken advantage of, it cannot be converted into cash.[152] Violations of the Act lead to criminal penalties in the form of a fine not exceeding 25,000 pesos, or to imprisonment for not less than thirty days and not longer than six months (Section 5). No case law has been found.

4.4 Family planning services

Family planning is regarded as a means towards responsible parenthood in the Philippines. Abortion is illegal. Article 134[153] contains the employer obligations relating to incentives for family planning. In spite of extensive family planning

[146] Implementing Rules and Regulations of R.A. No. 8187 for the private sector, Section 1(c) also includes 'abortion'. However, in the Revised Implementing Rules, dated March 13, 1997 abortion has been removed.
[147] Implementing Rules and Regulations of R.A. No. 8187 for the private sector, Section 1(d), and Implementing Rules and Regulations of R.A. No. 8187 for the public sector, Section 1(e).
[148] Implementing Rules and Regulations of R.A. No. 8187 for the private sector, Section 5, and Implementing Rules and Regulations of R.A. No. 8187 for the public sector, Section 4.
[149] Op. cit., Section 5.
[150] Op. cit., Section 6.
[151] Implementing Rules and Regulations of R.A. No. 8187 for the public sector, Section 2.
[152] Implementing Rules and Regulations of R.A. No. 8187 for the private sector, Section 7, and Implementing Rules and Regulations of R.A. No. 8187 for the public sector, Section 6.
[153] Formerly P.D. No. 442 (1974), Article 132. Similar provisions were introduced in PD No. 148 (1973), Sections 8 (e) and (f).

campaigns Filipinos tend to favor large families ('the more the merrier').[154] The total fertility rate in the Philippines reached 3,72 in 1998.[155] Population education goes back as far as the late 1960s.[156] Family planning is, however, held to be an area showing great ambivalence.[157] Article 134 and the respective Omnibus rules, Section 11, provide that employers with more than 200 employees (in 1974: 300) in any locality shall provide family planning services, at their own expense, to their employees and spouses. The Department of Labor and Employment shall develop and promulgate incentive bonus schemes to encourage family planning among *female* workers.[158] This may imply that the State is supposed to provide contraceptives free of charge.[159]

Gender sensitivity programs/seminars are also conducted under the guidance of the labor organizations.[160] According to the Labor Code and its Implementing Rules and Regulations every legitimate labor organization must maintain a special fund for education and research, and hold obligatory seminars for the purpose of educating its members on various subjects, such as, for example, family planning. These seminar activities are to be financed by the union members or by the union's general fund, including the strike fund.[161]

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[154] Andres, Understanding the Filipino, pp. 45–46. Cf. also Andres, Understanding Filipino Values on Sex, p. 31, which – in one form or another – is often quoted: 'Many Filipinos believe that the more children they have, the greater is the chance that one of them will become great and will give honor to the family. They cite Jose Rizal who was the seventh child and argue that if the parents of Rizal stopped at the sixth child, there would never have been no hero, Rizal.'

[155] Women who have no education have a fertility rate of 5,01 while those with college education have a fertility rate of 2,9. Source: www.ncrfw.gov.ph, Info Resource (Facts and Figures), 2004-12-27.

[156] Source: Pamphlet on 'Tripartism in the implementation of The Family Welfare Program at the Workplace', issued by the Labor Population Program Office (DOLE) (based upon a workshop held in Dec. 1991).

[157] See, for example, The Filipino Women in Focus, p. 50 (Judy C. Sevilla), Tipton, p. 339 ('The entire government effort has been questioned.'). See also Metro Cebu Study 1997, p. 28 ('Overall then, history of family planning use explains relatively little variation in number of pregnancies.'), p. 29 ('Women with fewer pregnancies had significantly higher levels of education.') and Rosalinda Pineda-Ofreneo and Rosario S. del Rosario, 'Filipino women workers in strike actions' (mimeographed), p. 4 state: 'It seems that having to work is a natural deterrent to having more babies,' in Daughters in industry. Work, skills consciousness of women workers in Asia, Ed. Noeleen Heyzer, 1988. Husbands generally preferred more children than their wives; they also objected to their spouse's practice of family planning, see 'Framework Plan for Women', p. 16.

[158] In PD No. 148 (1953), Section 8(f) the bonus schemes targeted *married* workers.

[159] Interview January 21, 1997, Lilia A. Estillori.

[160] Article 242(f) of the Labor Code provides: 'A legitimate labor organization shall have the right [...] To undertake all other activities designed to benefit the organization and its members, including cooperative, housing welfare and other projects not contrary to law.'

[161] Interview January 22, 1997, Atty. Joy Lily B. Elumir, Chief, Industrial Relations Division, DOLE, Regional Office No. 7, Cebu City.

4.5 Stipulation Against Marriage

Article 136[162] makes it 'unlawful for any employer to require as a condition of employment or continuation of employment that a woman employee shall not get 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 by reason of her marriage'. The provisions were introduced by means of PD No. 148 (1973), as an amendment to the Woman and Child Labor Act.[163]

The case law shows that the provisions have been applied strictly.[164] *Zialcita* constitutes a landmark case.[165]

Zialcita, et al. vs. PAL, May 27, 1976 (Secretary of Labor), Feb. 20, 1977 (Office of the President Decision).[166] Complainant Zialcita, an international flight stewardess of Philippine Air Lines (PAL), was discharged on account of her marriage in 1975. The respondent invoked its policy that flight attendants had to be single, and that they were supposed to be automatically discharged in the event of marriage. The Secretary of Labor held: 'The position of respondent company is based on a tradition-bound but factually inaccurate assumption. Clearly, to get married does not necessarily mean to get pregnant. On the other hand, getting married or remaining single is not a guarantee against pregnancy. One can get pregnant without being married; in the same way, one can get married without pregnant *(sic!)*. In fact, in this age of family planning a married flight attendant should have even, if not better chances of not getting pregnant than an unmarried one, if she so desires […]. Therefore, the fear of respondent company that its flight attendants will get pregnant upon getting married with all its implications need not have any basis. This fear, though commendable, is a product of a tradition-based imagination.' It was found that the company's policy was in contravention of the Constitution of the Philippines and the Labor Code. Zialzita was reinstated, but she received no back pay.

The second case is from the Court of Appeals.

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[162] Formerly P.D. No. 442 (1974), Article 134.

[163] PD No. 148 (1973), Section 12 (c).

[164] *Yuseco vs. Simmons, Aug. 30, 1933, 97 Phil. 487 (1955)* was the first case tried by the Supreme Court challenging the validity of a non-marital clause in a contract of employment on the issue of sex discrimination.

[165] Cortes, p. 162 ('the case represents a major gain in women's rights'). Romero (1976), p. 27 states in a contemporary note that 'it is to be hoped that the Labor Secretary Blas Ople's ruling [...] will convince similar employers that the Department of Labor is serious in implementing the Code'. The case has 'population and family planning undertones', see 'Women Workers in the Philippines', p. 4.

[166] The case is restated, for example, in Azucena, Vol. I, pp. 382–384.

Gualberto vs. Marinduque Mining & Industrial Corporation, June 28, 1978, 23 CAR 528 (1978). The company employed plaintiff Olympia Gualberto as a dentist in 1971 while she was still single. She married Roberto, another employee (electrical engineer) of the company, in 1972. The company informed her that she was regarded to have resigned her office, invoking the firm's policy that stipulated that female employees were regarded to automatically terminate their employment the moment they got married. Olympia filed a claim for compensation. The Court of Appeals not only upheld her claim for damages but also awarded exemplary damages, and held, *inter alia*: 'No employer may require female applicants for jobs to enter into pre-employment arrangements that they would be dismissed once they get married and afterwards expect the Courts to sustain such an agreement.' In that the Court made references to the Civil Code, the Woman and Child Labor Act and the 1935 Constitution of the Philippines. In light of this the Court further stated: 'The agreement which the appellants want this Court to sustain on appeal is an example of discriminatory chauvinism. Acts which deny equal employment opportunities to women because of their sex are inherently odious and must be struck down.'

In 1997 the Supreme Court was confronted with the issue.

Philippine Telegraph and Telephone Co. vs. NLRC, May 23, 1997, 272 SCRA 596 (1997). A female employee, Grace de Guzman was dismissed, following the company policy of not employing married women. The company claimed that she had been dismissed for breach of confidence, the reason being that she had declared in an application for probationary employment that she was single although she had contracted marriage a few months earlier. The Supreme Court based its judgment on the constitutional provisions applying to women and also to the subsequent provisions on gender equality of the Labor Code, in particular Article 136, and the Family Code, which have been promulgated following the Philippine's commitment as a signatory to the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women. The Court held that the company's 'policy of not accepting or considering as disqualified from work any woman worker who contracts marriage runs afoul of the test of, and the right against, discrimination, afforded all women workers by our labor laws and by no less than the Constitution.' With respect to the fact that Guzman had concealed her marital status the Court stated that: 'Verily, private respondent's act of concealing the true nature of her status from PT&T could not be properly characterized as willful or in bad faith as she was moved to act the way she did mainly because she wanted to retain a permanent job in a stable company. In other words, she was practically forced by that very same illegal company policy into misrepresenting her civil status for fear of being disqualified from work.' Guzman was entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, but, due to the fact that she had committed an act of dishonesty in concealing her status, albeit under the compulsion of the employer's company policy, she was suspended for three months without pay.

The conclusion that may be drawn from this case is that a woman may conceal her marital status, but if she does that, she will be subject to a minor private law penalty (suspension). One may infer that Grace de Guzman would not have been better off if she had stated unequivocally that she was married, since in that case she would not have been given the job. To my knowledge, no Filipino court has yet decided a case when a female applicant to a job has been refused employment due to the fact that she was married.

4.6 Non-discrimination principle

Article 135[167] provides that it 'shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex'. This has essentially the same meaning as the same provision introduced already in 1952.[168] The present wording of Article 135 stems from an amendment in 1969 to reinforce women's rights, otherwise known as the Equal Employment Opportunities Act.[169]

To be more specific, Article 135 provides that the following acts are prohibited as acts of discrimination: 'a) Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and b) Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.' Violations thereof may carry a criminal penalty.[170] Criminal liability (i.e. fine or/and imprisonment) for the willful commission

[167] Formerly PD No. 442 (1974), Article 133.

[168] R.A. No. 679 (1952), Section 7(b) ('In any shop, factory, commercial, industrial, or agricultural establishment or other place of labor where men and women are employed, the employer shall not discriminate against any woman in respect to terms and conditions of employment on account of her sex, and shall pay equal remuneration for work of equal value for both men and women employees'.).

[169] R.A. No. 6725 (1969), An Act Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment, Amending for the Purpose Article 135 of the Labor Code, as Amended. – Dawn Aimee Flores, 'Discrimination Against Women in Philippine Civil and Criminal Laws', in Ateneo Human Rights Law Journal. Vol. 1 (1992), p. 204, argues that the non-discrimination wage principle is an implementation of Article 7 of the 1966 UN General Assembly's International Covenant on Economic, Social and Cultural Rights that was ratified by the Philippines in 1974. This argument does not take into consideration that the non-discrimination principle was implemented in the Philippines already in 1952. Already in 1953 the Philippines ratified the ILO Convention No. 100 (1951) concerning equal remuneration for men and women workers for work of equal value.

[170] Ma. Nieves R. Confesor, p. 31 ('What makes RA 6725 precedent-setting is the provision on criminal liability').

of acts in violation of Article 135 is penalized as provided for in Articles 288 and 289 (Penal provisions and liabilities) of the Labor Code.[171] The aggrieved employee may also file a claim for damages only, or other affirmative relief.

No case law has been found relating to Article 135 or its precursors concerning wage discrimination. This does not mean that no wage discrimination occurs. The non-existence of case law regarding this matter may be explained by lax enforcement of the labor laws. According to Romero abuse of the law is widespread: 'This holds true with the enforcement of the equal pay for work of equal value provision in the Labor Code.'[172] This is a recurring theme in many Filipino studies,[173] and the issue of women receiving lower average earnings than their male counterparts has earned notoriety.[174] In 1983 it was found that the wage gap was becoming narrower.[175] Data relating to 1980 and 1989 likewise indicate that the situation is changing. In 1980 women's average earnings were lower than men's in all occupational groups. In 1989 women's average earnings were higher than men's in three occupational

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[171] The same applies to Articles 136 and 137 of the Labor Code. See Joselito Guianan Chan, Law on Labor Relations and Termination of Employment, 2nd rev. ed. 2000, p. 876.

[172] Romero (1976), p. 29.

[173] Comments are abundant, but contradictory. See, e.g., Patricia B. Licuanan, 'Situation analysis of women in the Philippines', Presented at the March 20–21, 1990 Gender Analysis Training Workshop conducted by the Institute of Philippine Culture (mimeographed), p. 3 ('Several studies show that women's average income are generally lower than those of the men, even for the same type of work.'), Andres, Positive Filipino Values, p. 64 ('There are cases where a woman receives less pay than a man with the same title.'), Hunt et al., p. 66 ('However, equal opportunities in leadership positions, equal pay for equal work [...] still remain to be achieved.'), The Filipino Women in Focus, p. 47 (Judy C. Sevilla), ('Studies have consistently shown that women's jobs pay much less than similar jobs held by men.'), Cortes, p. 172 who refers to a 1979 study in Metro Manila based on the number of complaints filed with the Ministry of Labor wherein it is found that the majority of complaints filed by female workers 'were wage-related', and Business World, Jan. 10–11, 2003 ('In the Philippines, the disparity between salaries remains wide.'). A seemingly contrary point of view, see Eviota, p. 175 ('But where there are basically similar tasks, these wages tend to be similar.'), p. 191 ('Wages of women and men in similar positions were generally the same.') and Chant and McIlwaine, p. 303: ('women in the Visayas do not necessarily receive lower wages or fewer fringe benefits than their male counterparts').

[174] See, e.g. Cortes, p.168 ('for every peso earned by the male worker, the female gets 54 centavos'), Flores, p. 197 ('Statistics show that while women are relatively at par with men in the field of education, the average earnings of female workers are lower by forty percent (40 %) than those of male workers, a result of the gender-tracking of professions which severely limits the choice of women to a few lower-paying and less challenging jobs') and Protection and Enhancement of Women's Rights in Asean Labor Law, p. 39 ('In sum, therefore, women workers in the region [covering Singapore, Thailand, Malaysia and the Philippines] generally receive less than their male counterparts, even in industries where they are predominant, as in textiles and electronics'). I have found no sophisticated research that would attempt to identify the relevant factors lying behind such structural wage discrimination.

[175] 'Women Workers in the Philippines', p. 24.

groups: professional and technical, clerical and related occupations, and sales.[176]

In a study from 1986 it is held that the 'prospect of losing her job and her natural timidity will make her faint-hearted to complain'.[177] Equally forthright was one of my respondents who told me that, firstly, women discriminated against did not know the law, and, secondly, that they were scared to come to the Department of Labor with a complaint.[178] This is tantamount to saying that: 'Even in those countries where constitutional and other provisions either protect women or enable them to benefit equally from the protection of the law, they are ignorant of these provisions or incapable of availing themselves of them.'[179] However, one of my respondents added that no separate wages are set for males and females in the collective bargaining agreements.[180]

In 2000 a Senate Bill was introduced in the Philippine Congress by Senator Loren Legarda, then in office, to amend Articles 135 and 137 of the Labor Code.[181] The aim was to enforce more stringent regulations regarding the ban on wage discrimination against women, and the frequent practice of males being favored in relation to women with respect to job assignment and during the recruitment process.[182] The Bill was never promulgated into law.

It should be added here that there is no provision in the Labor Code, or elsewhere in the Filipino law, relating to the hiring procedure. It is an established principle that a Filipino employer has 'a right to select his employees and to decide when to engage them', and also to 'refuse to employ whomever he may wish, irrespective of his motive'.[183] The following case is a good example thereof.

Pampanga Bus Company, Inc. vs. Pambusco Employees' Union, Inc., Sept. 23, 1939, 68 Phil. 541. In this case the Court of Industrial Relations issued an order directing the employer to recruit union members. The Supreme Court held: 'We hold that the court has no authority

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176 Confesor, pp. 41–42, 47.

177 'A Study on Working Women's Participation in Industrial Relations', Bureau of Women and Minors (Ministry of Labor and Employment), March 1986, p. 13. Romero (1975) said, p. 52: ('One should understand that, faced with the choice of a job with sub-minimum pay and no job at all, an applicant will unhesitatingly choose the former').

178 Interview January 21, 1997, Lilia A. Estillori.

179 Woman and the Law (Proceedings of the Regional Seminar on Women and the Law, June 1980), Ed. Flerida Ruth P. Romero, 1983, p. iii (Preface).

180 Interview January 20, 1997, Cecilio T. Seno, Vice President, TUCP.

181 Senate Bill No. 1471/2000.

182 See further Loren Legarda, 'Towards gender equality in the workplace', Manila Bulletin, 26 April 2000.

183 Azucena, Vol. I, p. 20. See also Fernandez and Quaison, p. 47.

to issue such a compulsory order. The general right to make a contract in relation to one's business is an essential part of the liberty of the citizens protected by the due-process clause of the Constitution. The right of a laborer to sell his labor to such person as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer has thus an equality of right guaranteed by the Constitution.'

Hence, discrimination of female (or male) applicants may occur without being able to obtain a remedy from the court.[184] Since advertisements for job positions may have the following wording:[185] 'Wanted. Experienced Female Secretary, must be single with pleasing personality, between 18–25 years old', it is easy to expose the weaknesses of the protective sex discrimination law, which lacks any employment standards. Allowing the use of discriminatory language in job advertisements amounts to what is commonly called pre-employment discrimination.[186]

4.7 Classification of certain women workers

Article 138[187] states that '[a]ny woman who is permitted or suffered to work, with or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishment, under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor, shall be considered as an employee of such establishment for

[184] The issue of whether to include hiring requirements in the final version of R.A. No. 6725 (1989) was discussed at the Joint Conference Committee Meeting in the Philippine Congress on Senate Bill No. 65 and House Bill No. 10848, April 24, 1989. However, no action was taken. A survey relating to the export manufacturing industry and international tourism showed that gender stereotype procedures in recruiting young women workers were rampant, see Chant and McIlwaine, pp. 148–150, 287. Cf. also Protection and Enhancement of Women's Rights in ASEAN Labor Law, p. 53: 'Among the important issues concerning women workers in the Philippines is the discriminating hiring policy towards married and pregnant women.' Recruitment in the government sector is, however, based 'only according to merit and fitness', The Philippine Constitution, Article IX, Section 2(2). Interview January 23, 1997, Atty. Ladislao A. Gerra, Chief Legal Division, Civil Service Commission, Regional Office No. 7, Cebu City.

[185] Example from Eviota, p. 191.

[186] See Hector B. Morada and Lani Q. Santos, 'Pre-Employment Sex Discrimination. A Three-Period Comparison', in Philippine Labor Review. Vol. 25, (January–December 2001), pp. 60–75. The study was based on ads in 1975, 1985 and 1995 published in the Sunday edition of Manila Bulletin. The authors found that there was a decrease in the proportion of discriminatory ads regarding both females and males between 1975 and 1995.

[187] Formerly PD No. 442 (1974), Article 136.

purposes of labor and social legislation'.[188] The Secretary of Labor has never issued any regulations concerning this issue.[189] Furthermore, the Article refers to 'entertainment workers' or 'hospitality workers' – two slick euphemisms for various types of prostitution in the Philippines.[190] The fact that this activity is regulated in the Labor Code at all provoked on one occasion the following comment: 'The new labor code also regulates the work in the industry by making prostitution formal wage work.'[191] The fact that prostitution is at the same time a criminal offence against public morals[192] shows the double standards still prevailing in the Philippines. Criticism has also been expressed in a NCRFW report: 'The government is still ambivalent as to whether or not to legalize prostitution. Enforcement of regulations remains inadequate and programs to dissuade women from engaging in the trade and to rehabilitate those who decide to leave it have not really met great success.'[193]

From a strictly legal point of view, and according to Section 280 of the Labor Code, employment in the entertainment sector may also be regarded as *regular* employment if the activities in question are 'usually necessary or desirable in the usual business or trade of the employer', as, for example, when a bar dancer is contracted.[194]

To explain why various types of prostitution are subject to regulation in the Labor Code one has to remember that the sex industry started to flourish due to the presence in the past of the military personnel at the U.S. military bases in the country, and to ex-President Marcos's efforts to promote international

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[188] The rule constitutes, in fact, a volte-face from the provisions of the Woman and Child Labor Act, R.A. No. 697 (1952). Section 3(a) in that Act provided that no woman below 18 years of age should be employed, or permitted, or suffered to work 'in any bar, night club, or dance hall'. R.A. No. 1131 (1954), Section 3(a) extended the law to cover other establishments, such as, 'escort services, lodging house, massage clinic, hotel, resort or other place of work similar to the foregoing, such as hostess, waitress, individual entertainer or escort for men, taxi-dancer, professional dance partner, attendant, or in any other similar capacity'. The law was, however, amended by means of PD No. 148 (1973). Section 3 therein provided that any women who worked in 'any nightclubs, cocktail lounges, bars, massage clinics, or in any similar places shall be considered employees'.

[189] Eviota, p. 222.

[190] See Eviota, p. 214, Chant and McIlwaine, p. 215.

[191] Eviota, p. 218.

[192] Revised Penal Code, Articles 202 and 341, Flores, p. 208.

[193] 'Women Workers in the Philippines', p. 76.

[194] Chan, p. 743.

tourism in the 1970s.[195] The sex industry is a prosperous business.[196] One of the few cases is the following.[197]

Nelly B. Ocenar, et al. v. Amihan Night Club and Restaurant, Inc., NLRC Case No. LR IV-853-74, August 31, 1976. Nine hospitality girls claimed that they had been dismissed without just and valid cause. They had worked at night as hospitality girls on various dates in the years ranging from 1966 to 1973. The employer argued that the girls had never been employees of Amihan Night Club, having been employed instead as independent contractors by the Floor Managers of the nightclub. The case was decided on the basis of former Section 3(a) of the PD 148 (1973).[198] The Secretary of Labor found that the girls had indeed worked as regular employees of the nightclub, which is why they were reinstated with back pay.

Even if the 1976 case gives a simple solution, the 1974 Labor Code adds an extra criterion which must be satisfied, whose essence is that to be considered a regular employee an entertainment worker must be under the 'effective control or supervision of the employer for a substantial period of time'. It is no wonder that it has been held that the provision 'is more honored in the breach than in the observance'.[199]

It is suitable to discuss in this context the issue of the so-called 'mail-order marriage business'. This practice was made unlawful in 1990.[200] The Act's primary aim is to protect Filipino women from being exploited in utter disregard of human dignity (Section 1). The Act bans matching women for marriage for a fee, as well as export of domestic workers to certain countries that cannot ensure protection of their rights. Fiancés of foreign nationals are required to attend guidance and counseling sessions organized by the

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195 Chant and McIlwaine, p. 211.

196 Op. cit., p. 237 concludes that 'there is little doubt that the prospect of financial reward plays a major part in luring female migrants to sex work in Cebu', see also p. 248: 'Indeed, financial considerations are usually cited as the primary, if not only, justification for work in the business.' Similar in Eviota, p. 213: "Prostitution as 'wage' work is relatively higher-paying than most types of women's work."

197 The case is reported in 1976 Philippine Labor Review, Vol. 1 No. 3, p. 92.

198 See text in the above, note 188.

199 Romero (1976), p. 30.

200 R.A. No. 6955 (1990), An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail-Order Basis and Other Similar Practices, Including the Advertisement, Publication, Printing or Distribution of Brochures, Fliers and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefor. An account of the 'mail-order marriage business' is given in The Filipino Women in Focus, pp. 235–287. Even if the United Nations intervened more than 50 years ago – upon the advent of the UN Convention (1950) for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others – the trafficking of persons has taken new forms. The Philippines ratified the 1950 Convention in 1952.

Department of Foreign Affairs in order to minimize inter-racial marital problems.[201] The pivotal Section 2 of the Act therefore provides that it is unlawful for any person 'to establish or carry on a business which has its purpose the matching of Filipino women for marriage to foreign nationals either on a mail-order basis or through personal introduction', or 'to advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flier, or any propaganda material calculated to promote the prohibited acts', and also 'to solicit, enlist or in any manner attract or induce any Filipino woman to become a member in any club or association whose objective is to match women for marriage to foreign nationals' or 'to use the postal service to promote the prohibited acts'. The penalties are severe and include imprisonment from 6 to 8 years as well as a heavy fine, and if the offender is a foreigner he will be deported from the country and forever banned from entering the Philippines (Section 4). It is also declared that nothing in the Act shall be interpreted as a restriction of the freedom of speech or association (Section 5). No cases have been found yet with regard to this legislation.[202]

4.8 Prohibited acts

According to Article 137[203] it shall be unlawful for any employer: '(1) To deny any woman employee the benefits provided for in this Chapter [i.e. Articles 130–138] 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; (3) To discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.' From Section 13(d) of the Omnibus rules of the Labor Code follows that it shall be unlawful for an employer to discharge any woman or any other employee for having filed a complaint, or having testified, or being about to testify under the provisions of the Code. Only one case before the Court of Appeals has been found with respect to this provision, but it nevertheless illustrates the core of Article 137.

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[201] Comment on website, www.ncrfw.gov.ph/insidepages/inforesource/laws_p2.htm, 2004-12-29.

[202] In an interview Dec. 12, 2002, with Atty. Geraldine Jorda, active in women's groups in Cebu City, I was told that it would probably be difficult to summon a perpetrator and prove the case.

[203] Formerly PD No. 442 (1974), Article 135.

Purita Ochoa Bautista v. Perfecto Ong, et al., Feb. 13, 1958, 54 O.G. 6075. Bautista was denied maternity leave benefits accruing to her under Section 7 of the Republic Act No. 679 (1952) when she reported back to work after giving birth for the second time. Evidence showed that she was refused reinstatement because she had filed a complaint with the Department of Labor. The Court of Appeals affirmed the judgment of the Court of First Instance against the respondents, requiring them to reinstate the petitioner with back pay. The Court found that Bautista was illegally discharged on account of her complaint to the authorities. The employer's act showed 'evident bad and selfish motives in utter disregard of the clear provisions of Republic Act No. 679'. The respondents were held to pay maternity leave benefits to Bautista until her reinstatement. Since Bautista had been out of service for more than three years and she may have found another employment or means of livelihood during that time, the Court held, however, that 'it is the sense of the Court that whatever she may have earned during that period shall be deducted from her back wages to mitigate somewhat the liability of the respondent-appellants, under the principle that no one shall be allowed to enrich herself at the expense of another'.

5 Anti-Sexual Harassment Act

5.1 The Act – background and design

In 1995 on Valentine's Day, February 14, President Ramos promulgated the Anti-Sexual Harassment Act of 1995.[204] The Philippines was the first Asian country to adopt such a law. The matter had been widely discussed for quite some time, with more than ten bills filed in Congress before the Act was passed.[205] Feminist groups had also been prodding the Filipino male-

[204] R.A. No. 7877 (1995), An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes. See also Ouijano, pp. 30–32 with respect to the background of the Act.

[205] The first legal instrument, issued by a Government entity, the Secretary of Labor and Employment, issued Administrative Order No. 80 (series of 1991, April 4), amended by No. 68 (series of 1992), both entitled 'Policy against sexual harassment', applicable to the staff of DOLE. A definition of sexual harassment is found therein. Section 2(a) provided: 'Any unwanted or unwelcome sexual advance, demand or request for sexual favor, or other act or conduct of sexual nature whether written, oral or physical [...] and such act 1. is committed to take advantage of the weaknesses, vulnerability, status and professional, social and economic standing of the official, employee or client; or 2. is explicitly or implicitly imposed as a condition for securing employment, advancement, promotion, assistance, services or preferential treatment; or 3. interferes adversely with the official's or employee's performance; or 4. is bound to create a hostile, offensive, intimidating or uncomfortable work environment.' The Orders are considered 'landmarks in the evolving process of policy-making and action planning on this issue', see ILS (Institute for Labor Studies) News Digest, Vol. 6 No. 6, November–December 1993, p. 10. The CSC issued a Memorandum Circular No. 19 on Policy on Sexual Harassment in the Workplace, directed to all Heads of Departments, Bureaus and Agencies of the National and Local Government including Government Owned and Controlled Corporations and State Colleges and Universities (May 31, 1994). Section 3 therein gives a definition of sexual harassment: 'a) Sexual harassment is one of a series of incidents involving unwelcome sexual advances, requests for sexual favors, or other verbal or [continued]

dominated Congress into enacting a comprehensive and effective law in order to eradicate or prevent sexual harassment.[206] Some voices had also been calling attention to the experience of the U.S. Civil Rights Act of 1964 as a source of inspiration for enacting a Filipino law on sexual harassment.[207] The law adds vitality to the constitutional provisions recognizing the equality between men and women. 'The main value of passing the law was that it gave a name to reality', said the then Chairperson of the NCRFW, Aurora Javate-De Dios in 2002 in an interview.[208] Sexual harassment is a violation of human rights for three reasons: it is a violation of a person's inherent dignity, of the right to job security and of the right to equal opportunities on the labor market.[209] Sexual harassment is a form of coercion that usually derives from male domination and female subordination, which is why it should be examined as one of many different means employed in the perpetuation of patriarchal structures.[210]

Filipino research shows that sexual harassment was prevalent in the past in factories where women workers were supervised by men, for example, in the textile and electronics industries, hotels, restaurants, banks, media and entertainment, where, especially in the latter, the beauty is still a criterion for employment, and physical appearance is a foremost consideration. In educational institutions and business or professional occupations it is not easy to assess the degree of sexual harassment because of very limited data that are

physical conduct of sexual nature, made directly and impliedly when [...] (b) For this purpose, 'employment-related sexual harassment' means sexual harassment by a member or employee of the agency which occurs (1) in the working environment, or (2) anywhere else as a result of employment responsibilities or employment relationship.' Myrna S. Feliciano, 'Philippine Law on Sexual Harassment in the Workplace', in Philippine Law Journal. Vol. 70 (1996), p. 551 has aptly concluded that under the CSC Circular sexual harassment committed by fellow employees is, thus, both broader and more comprehensive than the forthcoming Act is.

206 Quijano, p. 17.

207 Quijano, p. 283 (the deliberations of the Congress of the Philippines show that penal law was based on and follows Title VII of U.S. Civil Rights Act and Guidelines issued by the EEOC), Dante Miguel Cadiz, 'The Law on Sexual Harassment: A Focus on Employer's Liability', in Ateneo Law Journal. Vol. 40 (1996), pp. 26–62 (the whole analysis of an employer's liability is based on U.S. law).

208 Business World, March 8–9, 2002 ('Sexual harassment in the workplace').

209 Philippine Labor, March 1995, p. 7 ('All about sexual harassment').

210 See Cadiz, p. 26.

available.[211] Sexual harassment of young and single women is abundant in the so-called export processing zones.[212] Sexual favors are frequently required if a woman is to get a promotion or a wage raise.[213] Male managers or supervisors are usually the ones who act as sexual aggressors.[214] Fear of public harassment and embarrassment is the main reason for the majority of victims to show reluctance in reporting their experiences, and so is the fear of losing their jobs.[215] Once a sexual harassment case enters the judicial system it becomes just like any other case and undergoes innumerable delays. Time often works against the victim, as she faces an opponent who is usually wealthier and more influential than she is.[216]

Before the coming into force of the 1995 Act, various other provisions had been used with respect to sexual harassment, such as the Philippine Revised Penal Code (regarding unjust vexation, slander by deed, acts of lasciviousness and abuses against chastity), the Civil Service Law (the relevant provisions can be found in Section 46, Ch. 7 of the Administrative Code of 1987) and Article 21 of the New Civil Code (Preliminary Title, Ch. 2, Human Relations), which required that any person who deliberately causes loss or injury to another in a manner contrary to morals, good customs or public policy shall compensate

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[211] See 'Sexual Harassment at the Workplace', BWYW 1991, pp. 9, 15, 'Country Monograph on Sexual Harassment', Institute for Labor Studies, September 1993, p. 10. Several incidents of sexual harassment reported from interviews are narrated by Carmela I. Torres, 'Sexual Harassment at Work: Cases, Issues and Recommendations', in 1992 Philippine Labor Review Vol. 16 No. 2, p. 34–36. See also Primer on Sexual Harassment by the U.P. Center for Women Studies, March 1994. Women who are poor and without powerful connections, women with few options to other jobs, women who are single, divorced, separated or widowed, women in jobs where there are more men than women or where there are more male supervisors are more prone to be subjected to harassment; referred to in Quijano, p. 155.

[212] See 'Sexual Harassment at the Workplace', p. 9.

[213] Eviota, pp. 180–187, hence the saying: 'lay down or lay off', see also 'Sexual Harassment at the workplace', p. 10 and Feliciano, p. 549.

[214] ILS News Digest, p. 3. A typical harasser is someone who holds a senior position in the company, or is married and has a high educational attainment, see Business World, March 8–9, 2002 ('Sexual harassment in the workplace').

[215] ILS News Digest, p. 3. Aspects related to why the victim keeps silent are discussed in Pananaw. Publication of the University Center for Women's Studies. University of the Philippines, Vol. III, Nos. 1–6, January–December 1992, pp. 2–3 ('Sexual harassment'). See also Feliciano, p. 541 ('Because of the fear of losing their jobs, many women have silently endured sexual harassment in the workplace considering it to be a 'normal' occupational hazard.') and Quijano, p. 14 ('Women's memories of previous punishments, or their observations of what happened to other women who spoke out, have made many of them afraid that they will be subjected to retaliation if they report even a mild incident of sexual harassment.').

[216] Business World, March 8–9, 2002 ('Sexual Harassment in the Workplace').

the latter for damage. These legal avenues have, however, proven to be inadequate in addressing the problem of sexual harassment.[217]

The Act's applicability is broad,[218] as it falls within the ambit of both civil and criminal law, covering both the private and the government sectors of the labor market, and applying to sexual harassment in the working, educational and training-related environment. Hence, it is more than a labor law statute.[219] Here, I will focus only on the ways in which the Act applies to sexual harassment *in the work place*.

The Act sets out a *Declaration of Policy* in Section 2: 'The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment [...] Towards this end all forms of sexual harassment in the employment [...] environment are hereby declared unlawful.'

Section 3, first paragraph, defines work-related sexual harassment.[220] It provides that sexual harassment can be committed by 'an employer, employee, manager, supervisor, agent of the employer, [...] or any other person who, *having authority, influence* or *moral ascendancy* over another in a work [...] environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of the said Act' (my italics). Even 'any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act' (Section 3, last paragraph).

Section 3(a) lists the instances in which sexual harassment can be committed, as applied to a work-related or employment environment. These are when: '(1) The sexual favor is made as a condition in the hiring or in the employment,

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[217] Carmela I. Torres, 'Sexual harassment at work', in Philippine Law Gazette. Vol. 12, No. 4 1995, pp. 35–36 wherein examples from case law are given; some of them are quoted below. See also Quijano, pp. 79–106 (for a more extensive presentation relating to cases with reference to the Revised Penal Code), and pp. 148–152 (related to acts of civil law).

[218] The broad coverage of the Act stems from the Senate Bill No. 1273 (9th Congress, 1993), introduced by Senator Blas Ople, the former Minister of Labor during the Marcos regime.

[219] The most debated issue in Congress seems to have been whether non-work related sexual harassment should be embraced by the Act, e.g., the relationship between a professor/teacher and a student. The outcome was that inclusion of non-work related sexual harassment was supported. See Minutes from the Bicameral Conference Committee in the Disagreeing Provisions of Senate Bill No. 1632 and House Bill No. 9425, November 16, 1994.

[220] Feliciano, p. 548 has noted that the Act does not really define what sexual harassment is.

re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee; (2) The above acts would impair the employee's rights or privileges under existing labor laws; or (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.'[221]

From this follows that both 'sexual coercion' and 'sexual annoyance' are acts covered by the provisions of the Act. The division of sexual harassment into two different types of harassment seems to originally stem from a Filipino report.[222]

Section 4 of the Act addresses more specifically the duties laid upon the employer or head of office in a work-related environment. It provides that 'it shall be the duty of the employer or the head of the work-related […] environment to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head of office shall: (a*) Promulgate appropriate rules and regulations* in consultation with and jointly approved by the employees [...], through their duly designated representatives, prescribing the procedures for the investigation of sexual harassment cases and the administrative sanctions therefor' (my italics). The said rules shall include 'guidelines on proper decorum in the workplace', and 'administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment'. It is also held that the employer shall: '(b) *Create a committee on decorum and investigation* of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees [...] to increase understanding and prevent incidents of sexual harassment. *It shall also conduct the investigation of alleged cases*

[221] It shall be noted that Section 3 is drafted in a gender-neutral manner; it includes both same-sex harassment and female-male harassment. Harassment among co-workers is, however, not included by the Act, since the harasser must have *'authority'* over another. Accord in Feliciano, p. 550. Another view is advanced by Chrysilla Carissa Bautista, Note: 'Sexual Harassment: Bridging the Gender Divide', in Philippine Law Journal. Vol. 73, (1998), pp. 147–148.

[222] 'Sexual Harassment at the Workplace', p. 4. See also Torres (1992), p. 28, Torres (1995), p. 32. According to Feliciano, pp. 551–552 sexual harassment can either be a 'quid pro quo – type' (or 'this for that') or a 'hostile work environment type'. Accord, Cadiz, p. 32 and Bautista, p. 135, both of them rely heavily on U.S. literature on sexual harassment. The same type of distinction is found in Quijano, pp. 176–192.

constituting sexual harassment' (my italics).[223] In order to achieve these goals one can open a crisis hot line, or establish women's desks that will receive sexual harassment complaints.[224] It is further provided that the committee shall be composed of 'at least one representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank-and-file employees'.[225] And finally: 'The employer or head of office [...] shall disseminate or post a copy of this Act for the information of all concerned.'

Section 5 of the Act addresses the liability of the employer. It provides that the 'employer or head of the office [...] shall be solidarily liable[226] for damages arising from the acts of sexual harassment committed in the employment [...] if the employer or head of office [...] is informed of such acts by the offended party and no immediate action is taken thereon'.[227] However, the victim of sexual harassment is not precluded from bringing a separate and independent action for damages and other affirmative relief (Section 6).

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[223] Quijano, p. 50: 'In granting such a delegation of legislative power, the legislators took into consideration the novelty of the subject matter and the unchanneled private feelings and conduct of sexuality which the new penal law would intrude upon, and the expected dissentions and furor coming from both sexes.' – Implementing Rules and Regulations on R.A. 7877 have been issued by the DOLE, Administrative Order No. 250 (June, 1995) which applies to officials and employees of the DOLE. The CSC has issued similar Rules and Regulations, Memorandum Circular No. 30 (1995), Resolution 956161, applicable to CSC officials and employees. The Department of Interior and Local Government (DILG) issued a Memorandum Circular Nr. 2001-37 (April 5, 2001) to all Local Chief Executives and DILG Regional Directors and Field Officers related to the implementation, particularly provisions of Section 4 of the 1995 Act. In June 22, 1995 the DOLE issued an Advisory directed to all employers in the private sector of the implementing rules and regulations of R.A. 7877, reminding them of the content of Section 4 of the Act. A survey made in 2000 showed that 70 out of 334 establishments had rules and procedures governing sexual harassment in the workplace. The compliant establishment usually comes from the financing, insurance, real estate and business services industry, and is a large Filipino-owned company in Metro-Manila. Source: Business World, March 8–9, 2002 ('Sexual Harassment in the Workplace').

[224] Feliciano, p. 554.

[225] This seems to coincide with the recommendations made in 'Country Monograph on Sexual Harassment Report', p. 44, wherein the following is held: 'Perhaps, the most effective way to deal with sexual harassment is still to develop and implement a preventive policy at the workplace or enterprise level. This policy should include four components: a policy statement, a complaints procedure, disciplinary rules, and a training and communication strategy.'

[226] This means joint and several liability; see Primer on R.A. No. 7877 issued by the Department of Labor and Employment, undated.

[227] Quijano, pp. 289–290: 'Indeed, employers should take prompt remedial, and effective action upon learning of the commission or occurrence of sexual harassment in his workplace, whether from suit filed or from an internal complaint system [...] he should investigate promptly and thoroughly the matter, and then take immediate and appropriate corrective action by doing whatever is necessary to stop and end the harassment, by making the victim whole through restoration of her lost employment benefits or opportunities, and to prevent the misconduct from recurring. [...] Generally, the corrective action should reflect the severity of the misconduct.'

Section 7 specifies the penalties. Any person who commits an act of sexual harassment shall be penalized upon conviction by either imprisonment of not less than one month and not more than six months, or a fine of not less than 10,000 pesos and not more than 20,000 pesos, or by both fine and imprisonment at the discretion of the Court. The limitation period for any act committed in violation of the Act is three years from the time the act was committed (Section 8).

5.2 Case law from the public sector

Under the provisions of Book V, Title I, Ch. 7, Section 46 of the Revised Administrative Code of 1987, otherwise known as the Civil Service Law,[228] public servants may be subject to disciplinary action, wherein sexual harassment may constitute Misconduct, Disgraceful and Immoral Conduct, or Conduct Prejudicial to the Best Interests of the Service. The Local Government Code of 1991 (R.A. 7160), Ch. 4, Section 60, may also apply with reference to Misconduct in Office or Abuse of Authority, which may lead to either suspension or dismissal, pursuant to a valid decision of the court or a resolution of the disciplining authority.

Only one case as of now relate to the Anti-Sexual Harassment Act solely.[229] On the other hand, earlier case law indicates that the Anti-Sexual Harassment Act did not in fact open an entirely new avenue in Filipino law, even though it introduced a new and distinct concept of a criminal offense with respect to sexual harassment. Sexual harassment within the judiciary will be dealt with separately (section 5.2.1). The ensuing case presentation is more like a scrapbook.

City Mayor of Zamboanga vs. Court of Appeals, Feb. 27, 1990, 182 SCRA 785. Three female employees, all married, filed charges against the male Chief Veterinarian of Zamboanga City alleging that he made various amorous advances, suggesting dining and drinking during working hours, asking for a 'reward' in exchange for his official signature or favor, and propositioning them to meet at hotels etc. The Supreme Court held that the respondent's conduct 'projects the abnormality [...] consisting of a libidinous desire for women and the propensity to sexually harass members of the opposite sex working with him. [...] What aggravates the situation is the undeniable circumstances that private respondent took advantage of his position as the superior of the three ladies herein involved. [...] Such acts of private respondent cannot be condoned. He should not be let loose to pursue his lewd

[228] E.O. No. 292 (1987), issued by President Aquino.
[229] *Jacutin vs. People, March 6, 2002, 378 SCRA 453* (restated at note 235).

advances towards lady employees in said office.' The Court concluded that the respondent was guilty of 'disgraceful and immoral conduct' and 'grave misconduct in office' and imposed the penalty of dismissal.

Chua-Qua vs. Clave, Aug. 30, 1990, 189 SCRA 117. Evelyn Chua-Qua, 30 years of age, had been a teacher since 1963 and, in 1976 when the dispute arose, she was a class advisor in the sixth grade where Bobby Qua, aged 16, was enrolled. The couple fell in love and married in a civil ceremony in 1975. The school wanted to dismiss her because of 'abusive and unethical conduct unbecoming of a dignified school teacher'. [230] After protracted proceedings the Supreme Court finally decided the case in 1990. Evelyn, as petitioner, alleged, *inter alia*, that she had been dismissed from her employment because of her marriage to Bobby (she had probably Article 136 of the Labor Code in mind). The ruling of the Supreme Court was not based on that provision, however. Instead, the Court considered the issue of 'whether or not there is substantial evidence to prove that the antecedent facts which culminated in the marriage between petitioner and her student constitute immorality and/or grave misconduct'. The Court found that since 'there is no substantial evidence of the imputed immoral acts, it follows that the alleged violation of the Code of Ethics governing school teachers would have no basis. Private respondent utterly failed to show that petitioner took advantage of her position to court her student. If the two eventually fell in love, despite the disparity in their ages and academic levels, this only lends substance to the truism that the heart has reasons of its own which reason does not know. But, definitely, yielding to this gentle and universal emotion is not to be so casually equated with immorality.' The dismissal was, therefore, declared as illegal. However, the petitioner was not reinstated, the reason being that the relationship between her and the school 'has been inevitably and severely strained'. She was awarded back wages and separation pay in the amount of one month for each year of service.

University of the Philippines vs. Catungal, J., May 5, 1997, 272 SCRA 221. A faculty member, Salvador Carlos, teaching at the Philosophy Department of the College of Social Sciences and Philosophy, was charged with grave misconduct, in particular with having sexual intercourse with three female students of 13, 15 and 16 years of age. He promised to have the girls photographed for publication in a magazine, but instead threatened them with a gun and ordered them to strip naked. Nude photos of the three girls were taken, and they were forced to have sex with him. The UP Administrative Disciplinary Tribunal found that "[t]hese acts constitute violation of the law, specifically Republic Act No. 7610[231] and Article 335 of the Revised Penal Code. Section 5(b) of R.A. 7610 imposes the penalty of reclusion

[230] Quijano, p. 201 says that '[i]n the Philippine culture, teacher-student amorous or sexual relationship is strictly taboo, and both parties to such consensual venture will readily be expelled from the school or college.'

[231] R.A. No. 7610 (June 16, 1992), known otherwise as the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act (my remark).

temporal in its medium period to life imprisonment to '[t]hose who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse.' Likewise, Article 335 of the Revised Penal Code provides that rape is committed by having carnal knowledge of a woman, among others, 'by using force or intimidation'. Respondent's acts, therefore, clearly constitute Grave Misconduct. – The Tribunal recommends, unanimously and without reservation, the penalty of DISMISSAL. – The respondent's acts violate all standards of ethics in public service, including the specific standards set in Republic Act No. 6773 (*sic!*),[232] otherwise known as the 'Code of Conduct and Ethical Standards for Public Officials and Employees', Section 4 of which enjoins all public officials to 'respect the rights of others' and 'refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interests'. – The respondent's acts cannot also be tolerated in the country's premier university where among others, young men and women are supposed to be taught how to become good and productive citizens. The respondent's acts, in particular the blatant abuse of his power and position (including the cottage leased to him by the university) to commit these acts, run counter to the example expected of faculty members." The University thereafter dismissed Carlos. Carlos and his counsel questioned the action taken against him on various formal grounds. The Supreme Court found that Carlos was not entitled to equity since '[c]learly, it could hardly be said that Carlos and his counsel came to the court below with clean hands'.

Even though it is crystal clear that the Supreme Court judgment was not based on moral issues, the professor was lawfully dismissed. It was to no avail that Carlos and his counsel sought to quash the University Administrative Disciplinary Tribunal's Recommendation. They failed.

Civil Service Commission vs. Lucas, Jan. 21, 1999, 301 SCRA 560. In 1992 Raquel P. Linatok, an assistant information officer at the Agricultural Information Division, Department of Agriculture, filed a complaint alleging misconduct on the part of respondent Jose J. Lucas, a photographer employed at the same agency. While standing before a mirror, Linatok noticed Mr. Lucas sitting on a chair close to her. He bent to reach his shoe, at which moment she felt that his hand touched her thigh, and that he ran his palm down to her ankle. She admonished him not to do it again and a verbal exchange ensued. Mr. Lucas said that he did not touch her thigh. What happened was that he accidentally brushed against her leg when he reached for his shoes; he never intended to touch her legs. The Supreme Court held: 'Of course, we do not in any way condone respondent's act. Even in jest, he had no right to touch complainant's leg. However, under the circumstances, such act is not constitutive

[232] Should be R.A. No. 6713 (1989), An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, To Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Remedies for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes (my remark).

of grave misconduct, in the absence of proof that respondent was maliciously motivated. We note that respondent has been in the service for twenty years and this is his first offense.' No ground for dismissal was found.

Floralde vs. Court of Appeals, Aug. 8, 2000, 337 SCRA 371. Mr. Resma was the head of division of the Agriculture Training Institute (ATI) and charged with several acts of sexual harassment, occurring between 1990 and 1994. Three female employees, Floralde, Alambra and Velasco, all rank-and-file employees of the ATI, filed the complaints. They were all under the direction of Mr. Resma. Floralde testified that Mr. Resma had squeezed her buttocks, touched and massaged her neck, and, when she was dressed in a body fit and tuck-in, he would suddenly appear and look as if he wanted to lustily embrace her. Alambra testified that on one occasion Mr. Resma suddenly embraced her and kissed her on the lips, grabbing her buttocks several times and saying: 'I really love big buttocks'. Velasco testified that on one occasion Mr. Resma fondled her breasts and kissed her on the lips; another time he held her buttocks saying: 'You look very tempting', and on a third occasion said: 'Your private parts are getting redder.' The CSC found Mr. Resma guilty of grave misconduct (through sexual harassment) and imposed the penalty of dismissal.[233] The Commission held: 'It is indeed hard to believe [...] that these women would ventilate in public the offense committed, recount the incidents of sexual harassment, undergo the trouble, humiliation, shame and the ordeal [...] Jurisprudence provides that: As a rule, no [...] Filipina of decent repute would publicly admit that she had been criminally abused and ravished unless that is the truth. It is her natural instinct to protect her honor (P. v. Ramillo, G.R. No. 52230, Dec. 15, 1986).[234] Filing charges for sexual harassment does not only affect the accused but also the complainant herself. The reason is that the moment she files the complaint, she is exposed instead to the mock and jeer of the public. Sleepless nights and mental anguish is what the victim has to suffer after courageously voicing the transgressions made upon her dignity and honor.' The Supreme Court affirmed and held: 'Sexual harassment in the workplace is not about a man taking advantage of a woman by reason of sexual desire; it is about power being exercised by a superior officer over his women subordinates. The power emanates from the fact that the superior can remove the subordinate from his workplace if the latter would refuse his amorous advances. [...] Filing a charge for sexual harassment is not a trivial matter. It entails having to go public with an incident that one is trying to forget. It means opening oneself to public ridicule and scrutiny.'

Mollaneda vs. Umacob, June 6, 2001, 358 SCRA 537. A public school teacher, Leonida Umacob filed charges for sexual harassment against Mr. Arnold Mollaneda, who was Superintendent of the Schools Division in Davao City, alleging that while she was visiting the offices concerning a possible transfer to another school in September 1994, he started

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[233] See Resolution No. 95-2900, Apr. 18, 1995.
[234] See above p. 131.

all of a sudden hugging and embracing her, kissed her in a torrid manner, and squeezed her left breast. He repeated the act several times, after which he warned her not to tell anybody what he had done to her while she was in his office. He denied all charges. The CSC found the petitioner guilty of grave misconduct and conduct grossly prejudicial to the best interest of the service and was dismissed from the service. The Court of Appeals affirmed the sentence and held: 'It bears mentioning that respondent victim is a public school teacher. If she is not motivated by the truth, she would not have subjected herself to the rigors of a hearing before the Commission and airing in public matters that affect her honor. It is hard to conceive that respondent would reveal and admit the shameful and humiliating experience she had undergone if it were not true.' The Supreme Court upheld the sentence.

The following case is decided upon the basis of the Anti-Sexual Harassment Act of 1995. It can no doubt be said that the Act has teeth if a case of sexual harassment can be proven.

Jacutin vs. People, March 6, 2002, 378 SCRA 453. City Health Officer, Dr Rico S. Jacutin of Cagayan de Oro City, was charged with the offence of sexual harassment before the Sandiganbayan,[235] in that he allegedly took advantage of his position, and that he willfully, unlawfully and criminally demanded and solicited sexual favors from Ms. Juliet Yee, a young 22 year old single woman, a B.Sc. graduate in Nursing, who was seeking employment in the Office of the accused. He was charged with demanding from Ms. Yee that she should expose her body and allow her private parts to be massaged and stimulated by the accused, making it the condition for her employment in the Family Program at the Office. Mr. Jacutin said that Ms. Lee had to undergo a physical examination/research if she wanted the job. He invited her to go bowling, and while in his car Ms. Lee was directed to raise her foot so that he could see whether she had varicose veins, or lower her pants, exposing half of her legs. When he later on tried to insert his hand into her panties, she was shocked and exclaimed 'hala ka!'[236] The accused then held her abdomen, saying 'you are like my daughter', and then let the back of his palm touch her forehead indicating the traditional way of making the young respect their elders. Then he told her to raise her blouse. In confusion she raised her blouse up to her breasts, upon which he started fondling them. It was at that moment that she told him that she would not continue the research. The Supreme Court held: 'While the City Mayor had the exclusive prerogative in appointing city personnel, it should stand to reason,

[235] This is a special court which has jurisdiction over criminal and civil cases involving graft, corruption and other similar offences committed by public officers and employees; see Rufus B. Rodriguez, The Sandiganbayan, the Ombudsman, the PCGG, the Anti-Graft-Laws and the Code of Conduct of Public Officials, Central Professional Books 3rd ed. 1995. The Ombudsman is subject to R.A. No. 6770 (1989), An Act Providing for the Functional Organization of the Office of the Ombudsman, and for Other Purposes. See also the Philippine Constitution, Article XI, Section 5 ('There is hereby created the independent Office of the Ombudsman [...]').

[236] This is Visayan (or Cebuano) language, and means: 'You better watch out or I will report you'.

nevertheless, that a recommendation from petitioner in the appointment of personnel in the municipal health office could carry good weight. Indeed, petitioner himself would appear to have conveyed, by his words and actions, an impression that he could facilitate Juliet's employment. The findings of the Sandiganbayan were bolstered by the testimony [of three other witnesses], all of whom were said to have likewise been victims of perverse behavior by petitioner.' The Court upheld the sentence of six months' imprisonment and a fine of 20,000 pesos, but the Court modified the amount of moral and exemplary damages meted out by the Sandiganbayan.[237]

5.2.1 Sexual harassment in the judiciary

As regards sexual harassment in the judiciary there are over ten cases tried before the Supreme Court. The first case is from 1981 when Mrs. Uy filed charges against a male judge of the Court of First Instance of immoral, malicious, lascivious and indecent acts committed against her person. The Investigating Judge, appointed by the Supreme Court, established that the Judge in question tried to caress and kiss Mrs. Uy, and as she disengaged herself from him and was running towards the door, he told her that if she consented to become his mistress, she would be given plenty of money. After leaving the chambers her husband saw that his wife was in tears. The Supreme Court held: 'What makes the wrongdoing complained of particularly condemnable is that respondent Judge was capitalizing on complainant's case before him to make her succumb to his immoral advances. Such brazen and despicable actuation by the respondent Judge towards a party litigant, who happened to be a woman, cannot but deserve reprobation.' The judge was dismissed from the Bench.[238]

The following is a restatement of several cases involving alleged sexual harassment in the judiciary.

Castillo vs. Calanog, Jr., July 12, 1991, 199 SCRA 75. Complainant Emma J. Castillo sought advice from the RTC Judge, Manuel M. Calanog, Jr., related to the settlement of the estate

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[237] This is a 'landmark decision', says MOB, Vol. 34, No. 1615, July 5, 2002 and Quijano. p. 188. According to the Philippine Daily Inquirer (a major newspaper in the Philippines), issue of April 3, 2002, quoted after Quijano, p. 189, and with respect to the Jacutin case: 'It was a long, uphill climb to find justice. Yee exhibited a remarkable determination to see it to the end, with her successful quest, she has opened the door for other women victims to seek redress for similar grievances.'

[238] *Dy Teban Hardware & Auto Supply Co. vs. Tapucar, Jan. 31, 1981, 102 SCRA 493.* See also *Hadap v. Lee, June 29, 1982, 114 SCRA 559* (a municipal judge was dismissed with forfeiture of retirement benefits and with prejudice to re-employment in the Government for the habitual use of vulgar and obscene language wherever solemnizing marriages, as well as writing letters to a married woman inviting her to come to his office or his house after office hours to comfort him).

after her late common-law husband, who died intestate. The Judge asked Emma to be her sub husband and promised to give her his condominium unit, as well as provide financial support for Emma's two children, and place them in an exclusive school for girls. Emma consented. Later on Emma gave birth to a baby boy, the Judge being the father, but the relationship turned sour. The Investigating Judge found in her report that 'Judge Calanog did establish an intimate, albeit immoral, relationship with complainant Emma Castillo although he, Judge Calanog, is a married man. Out of that liaison Emma Castillo gave birth to Judge Calaong's child [...] whom he housed in a condominium unit together with his mother and her two children. [...] The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. [...] The Investigator is of the view that the respondent who is a married man, and a member of the judiciary and the incumbent President of the Philippine Judges Association, had committed immorality.' The Investigating Judge recommended dismissal from the Bench with prejudice to appointment to other public office and forfeiture of retirement benefits. The Supreme Court upheld the recommendation and said, *inter alia*, that the Judge 'took advantage of the complainant's helplessness and state of material deprivation and persuaded her to become his mistress. The exploitation of women becomes even more reprehensible when the offender commits the injustice by the brute force of his position of power and authority, as in this case.'

Talens-Dabon vs. Arceo, July 25, 1996, 259 SCRA 354. Atty. Jocelyn Talens-Dabon, Clerk of the RTC of San Fernando, Pampanga, filed charges of gross misconduct and immorality against Executive Judge Hermin E. Arceo. During a meeting in the judge's office she received several 'love' poems; and found the poems obscene. The Judge attempted even to kiss her, but in the ensuing turmoil she panicked and fell on the floor, whereupon the Judge satisfied his lust, kissing her with his mouth open and putting his tongue in her mouth. The complainant angrily left his office. Witnesses observed when she was leaving the Judge's office that her face was flushed and her hair disheveled. The Investigating Judge recommended that the Judge be dismissed from the Bench with prejudice to re-appointment in any other Government position with forfeiture of all benefits and privileges appertaining to him. The Supreme Court upheld the recommendation: 'We need not repeat the narration of lewd and lustful acts committed by respondent judge in order to conclude that he is indeed unworthy to remain in office. The audacity under which the same were committed and the seeming impunity with which they were perpetrated shock our sense of morality. [...] The actuations of respondent are aggravated by the fact that complainant is one of his subordinates over whom he exercises control and supervision, he being the executive judge. He took advantage of his position and power in order to carry out his lustful and lascivious desires.'

Dawa vs. De Asa, July 22, 1998, 292 SCRA 703. The MTJ of Caloocan City, Armando C. De Asa, was charged with sexual harassment and/or acts of lasciviousness, filed by three

subordinate female employees of the court, Floride Dawa, Femenina Lazaro-Barreto and Noraliz L. Jorgensen. They all alleged that the Judge had made amorous advances (kissing on the lips and licking the ears) several times. Atty. Lisa Buencamino, Clerk of the Court, also filed a complaint against the Judge for sexual harassment under Republic Act No. 7877/ acts of lasciviousness, grave or serious misconduct, and for violation of the high standard of morals demanded by judicial ethics. In his report the Investigating Officer found that the Judge had made several amorous advances vis-à-vis the female employees of the Court and recommended dismissal from the Bench for gross misconduct and immorality with forfeiture of all retirement benefits and with prejudice to reemployment in any Government branch. The Supreme Court accepted the findings and recommendations: "By the very nature of the bench judges, more than the average man, are required to observe an exacting standard of morality and decency. [...] In the present case, we find totally unacceptable the temerity of the respondent judge in subjecting herein complainants, his subordinates all, to his unwelcome sexual advances and acts of lasciviousness. [...] His severely abusive and outrageous acts, which are an affront to women, unmistakably constitute sexual harassment because they necessarily 'result in an intimidating, hostile, or offensive environment for the employee[s]'.[239] Let it be remembered that respondent has moral ascendancy and authority over complainants, who are mere employees of the court of which he is an officer." The Court concluded that '[t]he bench is not a place for persons like him. His gross misconduct warrants his removal from office.'

Vedaña vs. Valencia, Sept. 3, 1998, 295 SCRA 1. RTJ Eudarlio Valencia was charged with gross misconduct and immoral acts by complainant Sarah Vedaña who acted as a court interpreter in the respondent's court. She said that the respondent, while in his chambers, hugged her and tried to kiss her on the mouth, which she was able to evade, after which he grabbed her left breast. The event caused her a lot of suffering and mental anguish. The Investigating Judge recommended suspension for 60 days without pay. The Supreme Court concurred with the factual findings without reservation, but decided that the penalty of suspension should be raised instead to one year without pay. The Court held: 'Verily, no position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the Bench. [...] In insulting the Bench from unwarranted criticism, thus preserving our democratic way of life, it is essential that judges, like *Caesar's* wife, should be above suspicion. [...] Before closing, it is apropos to discuss the implications of the enactment of R.A. No. 7877 or the Anti-Sexual Harassment Act to the Judiciary. Under our system of governance, the very tenets of our republican democracy presuppose that the will of the people is expressed, in large part, through the statutes passed by the Legislature. Thus, the Court, in instances such as these, may take judicial notice of the heightened sensitivity of the people to gender-related issues, as manifested through legislative issuances. It would not be remiss

[239] The Court refers here to Sec. 3, par. a, no. 3, Republic Act No. 7877. Even if this reference is made in the opinion, the Court did not decide the case on the basis of the Anti-Sexual Harassment Act. *My remark.*

to point out that no less than the Constitution itself has expressly recognized the invaluable contributions of the women's sector to national development, thus the need to provide women with a working environment conducive to productivity and befitting their dignity. [...] Thus, in our nation's very recent history, the people have spoken, through Congress, to deem conduct constitutive of sexual harassment [...] as criminal. In disciplining erring judges and personnel of the Judiciary then, this Court can do no less.'[240]

Simbajon vs. Esteban, Aug. 11, 1999, 312 SCRA 192. Judge Rogelio Esteban was charged by Ana May V. Simbajon, a married woman with two children, and a job applicant, with sexual harassment and grave misconduct. The complainant held that the Judge demanded that in exchange for his signature on her employment application she should become his girlfriend and, thereafter, kissed her on the left cheek against her will. Later, he called Simbajon to his chambers and said again that she was his girlfriend and went on to embrace and kiss her all over her face. He also touched her right breast. The Investigating Judge concluded in his report that the Judge took advantage of his position and power in order to satisfy his lascivious desires, 'this despicable act of respondent turning his august chambers into a bordello only further tainted the image of the judiciary', and recommended dismissal from the Bench. The Supreme Court concurred: 'Respondent's conduct violated the Code of Judicial Conduct. Not only did he fail to live up to the high moral standards of the judiciary; he even transgressed the ordinary norms of decency expected of every person. [...] Respondent's lustful conduct was aggravated by the fact that he was the superior of the complainant. Instead of acting in *loco parentis* toward his subordinate employee, he took advantage of his position and preyed on her. [...] Without a doubt, respondent acted beyond the bounds of decency and morality. He has shown himself unworthy of the judicial robe.' The Judge was dismissed from the Bench, with forfeiture of all retirement benefits and leave credits and with prejudice to any reemployment in any Government branch.

Madredijo et al. vs. Loyao, Jr, Oct. 13, 1999, 316 SCRA 544. Leandro Loyao, RTJ and Executive Judge, was charged with several counts of sexual harassment. The complainant was Ms. Violate Hipe, a court stenographer. She claimed that the respondent made sexual advances to her at a Christmas party. While she was watching the children play he asked: 'When will we make ours?' After that he asked her to accompany him to a disco. On another occasion he invited her to join him in a drinking spree. Still later, the respondent called her into his chambers and sprang a surprise question on her: 'Are you ready for our date tonight?' She tried to keep her distance from him, which made the judge start carping about her work. When her situation became unbearable, she asked for a transfer to another court. The Investigating Judge found respondent guilty of conduct prejudicial to the best interest of the service. The Supreme Court held: 'Taken together, his actions towards Hipe for several

[240] Even here the Court took the liberty of making references to the Anti-Sexual Harassment Act, but the case was resolved on the basis of the fact that the judge had violated numerous canons of judicial decorum. *My remark.*

months leave no doubt that he was indeed soliciting a sexual favor from his subordinate. [...] The fact that RA 7877 was not yet in effect at the time [i.e. in December 1992] does not make his conduct regular or valid. Sexual harassment was not criminal at that time, but neither was it acceptable, as in fact it has never been acceptable.' In referring to the *Simbajon* case (above), the Court continued: 'While the misconduct of herein respondent towards Hipe was more indirect, it was just as inexcusable. His protracted assault on her was verbal, not physical, but its effect was the same: it rendered her working conditions offensive and unbearable.' The Supreme Court dismissed the Judge from the service, with forfeiture of all retirement benefits and leave credits and with prejudice to reemployment in any branch of the Government.[241]

Biboso vs. Villanueva, Apr. 16, 2001, 356 SCRA 430. Complainant Mrs. Lucita Biboso filed a charge of sexual harassment against Judge Osmundo Villanueva, claiming that on the morning of 20 August 1996 he embraced and kissed her, removed her blouse and caressed her breasts, and began unzipping her pants. She managed to flee from his chambers. The complainant said that the respondent molested her again on 4 September the same year while she was in his chambers. The judge rebutted all the charges. He was able to prove that he was not in the courthouse on those dates. He argued that the complainant and her father-in-law trumped up the charges against him, because he had dismissed two earlier cases filed against him by the complainant and her father-in-law involving similar charges. The Investigating Judge found the complainant's claim of sexual harassment to be unsubstantiated, due to material inconsistencies. She maintained, however, that the incident on September 4 did occur. However, the documentary evidence cast serious doubt on the veracity of her claims. The Supreme Court held: 'Indeed, it appears, as respondent judge claims, that this case was filed to punish him for having dismissed the cases filed by complainant and her father-in-law, especially as the filing of this case came on the heels of the dismissal of the latter.' It was, however, established that a meeting in the courthouse between the judge and Biboso took place on 27 August 1996 during which the respondent only shook her hand. The Court held: 'In any event, the incident [...] does not constitute sexual harassment for, as she herself stated, respondent merely shook her hand.'[242]

Aquino vs. Acosta, April 2, 2002, 380 SCRA 1. Atty. Susan N. Aquino, Chief of the Legal and Technical Staff of the Court of Tax Appeals, filed a charge against Judge Ernesto D. Acosta of sexual harassment under R.A. 7877, and violation of the Canons of Judicial Ethics and Code of Professional Responsibility, that the judge had kissed her on the cheek on six occasions. The Investigating Judge found in her report that 'the complainant failed to show,

[241] It is true that the Judge was found guilty on other charges, but it is my view that he would have been dismissed on the basis of the sexual harassment charge solely. The reference to the *Simbajon* case is a strong indication of that.

[242] The judge was fined 20,000 pesos for another offence, unrelated to the sexual harassment charge, to wit the judge had given assistance to the complainant's father-in-law in filing a case.

by convincing evidence that the acts of Judge Acosta in greeting her with a kiss on the cheek, in a 'beso-beso' fashion, were carried out with lustful and lascivious desires or were motivated by malice or ill-motive. It is clear under the circumstances that most of the kissing incidents were done on festive and special occasions. [...] In sum, no sexual harassment had indeed transpired on those occasions. Judge Acosta's acts of bussing Atty. Aquino on her cheek were merely forms of greetings, casual and customary in nature.' The Supreme Court upheld the recommendation, adding the following comment: "What we perceive to have been committed by respondent judge are casual gestures of friendship and camaraderie, nothing more, nothing less. In kissing complainant, we find no indication that respondent was motivated by malice or lewd design. [...] As aptly stated by the Investigating Judge: 'A mere casual buss on the cheek is not a sexual conduct or favor and does not fall within the purview of sexual harassment under R.A. No. 7877.' [...] Indeed, from the records on hand, there is no showing that respondent judge demanded, requested or required any sexual favor from complainant in exchange for 'favorable compensation, terms, conditions, promotion or privileges' specified under Section 3 of R.A. 7877." The Supreme Court exonerated the respondent Judge, but advised him 'to be more circumspect in his deportment'.[243]

Paiste vs. Mamenta, Jr., and *Goltiao vs. Mamenta, Jr., Oct. 1, 2003, 412 SCRA 403*. The cases arose from two different complaints filed against the Clerk of Municipal Trial Court, Aproniano Mamenta. Complainant Joanne Goltiao, a stenographer of the Court, filed a charge of sexual harassment against him (only this aspect is dealt with here; the respondent was also accused of discourtesy and gambling in the court). She had told him to stop courting her and sending her love notes on pieces of paper, as she was a married woman. Two other stenographers at the same court (Marilyn De Leon and Glenda Ramirez) stated that they had also received love notes or invitations to meet the Clerk. The Investigating Judge found the respondent guilty of serious misconduct, and recommended a stern reprimand and a fine of 10,000 pesos on him. The Office of Court Administration proposed a hasher penalty. The Supreme Court held: 'The undue advances respondent made to complainant Goltiao betrays (*sic!*) his twisted sense of propriety. Many times, he declared his feelings for her and handed her love notes. [...] While professing one's amorous intention is not something that usually causes a hullabaloo, it becomes indecent and improper in this case considering he is complainant Goltiao's superior and both of them are married. His dissoluteness told itself when he went to the extent of calling her at her mother's house and persuading her not to tell her husband about these incidents. – [...] Witnesses Marilyn De Leon and Glenda Ramirez testified that they also received love notes and invitations for dinner from him. Like a hunter out on the prowl, he victimized other female workers unabashedly professing his

[243] The case will 'send a strong message and open the eyes and minds of the male executives and supervisors to moderate their language of appreciation and cushion their gestures of gratitude for the over-zealous attention and daily show of tireless work from their female secretaries or Friday assistants, which could be neatly converted into trumped-up charges of sexual harassment,' says Quijano, p. 192.

alleged feelings for them in utter disregard of the fact that they were his subordinates, they were married and they were young enough to be his daughters. Instead of he being *in loco parentis* over his subordinate employees, he preyed on them as he took advantage of his superior position. – Under the circumstances, we find respondent guilty of sexual harassment. His severely outrageous acts, which are in affront to women, constitute sexual harassment because they necessarily result in an intimidating, hostile, and offensive working environment for his female subordinates. He abused the power and authority he exercises over them, which is the gravamen of the offense in sexual harassment. Sexual harassment in the workplace is not about a man taking advantage of a woman by reason of sexual desire – it is about power being exercised by a superior over his women subordinates.' The Clerk was dismissed from the Bench with prejudice to re-employment in any Government branch.

Veloso vs. Caminade, July 8, 2004 (not yet in SCRA). Atty. Grace Veloso, a lawyer in the Public Attorney's Office assigned to the RTC branch presided by Judge Anacleto Caminade, filed a sexual harassment complaint against judge Caminade. On one occasion the Judge placed his hand on her right thigh and squeezed her leg. He then took her hand and kissed it, upon which she stood up, but then he placed his hand on her shoulder and said: 'Let me kiss you'. She replied: 'You are so disgusting, Judge' and she left his chambers. After the incident she asked to be transferred to another branch of the court. The Judge claimed that placing his hand on her thigh was a gesture of showing his thankfulness to her. The Judge said that taking her hand and kissing it was explained by an act of playfulness. He never had any malicious or lascivious designs on his female employees. Another clerk of the court, Joeylynn Quiñones, also claimed that on three different occasions the Judge squeezed her hand and on one occasion he also kissed her on the cheek. The Judge rebutted the accusation and stated that he had only been behaving friendly, and squeezing one's hand was an innocent gesture. He kissed Joeylynn on her cheek because it was Valentine's Day. The Investigating Judge found that Judge Caminade was guilty of violating the Code of Judicial Conduct and the Canons of Judicial Ethics and that he should be suspended from office for six months. The Supreme Court upheld the recommendation: 'In this particular case, we are principally concerned with the moral fiber of Judge Caminade. His penchant for teasing and showing unwelcome affection to women indicates a certain moral depravity and lack of respect towards his female employees. They were his subordinates and he should have treated them like his own children. [...] He failed to meet the standard of conduct embodied in the Code of Judicial Conduct. His abusive and distasteful acts unmistakably constituted sexual harassment because they resulted in an intimidating, hostile, or offensive environment for his female subordinates.' The judge was suspended from office for a period of six months without pay, 'with a warning that a repetition of the same offense shall be punished with dismissal from the service'.

It is remarkable that so many cases involving the judiciary have been tried before the High Court. The presented cases show clearly that the Supreme Court takes a very stern view of sexual harassment, and pursues a rigorous

policy regarding cases of sexual harassment among the members of the judiciary It is a recurrent theme that if a male judge is taking advantage of his position as being a superior to subordinate female employees he will be almost automatically dismissed from the bench. The penalties include forfeiture of retirement and other benefits, without the possibility of employment in any other branch of the Government. What I see as a draconic measure in these cases is forfeiture of accrued retirement benefits that are vested. However, in cases where no ill-motives or lewd designs have been found on the part of the judge, the penalty was most often suspension for a period of time, or even exoneration in cases when the complaint is concocted or futile.

5.3 Private sector – immorality as serious misconduct under Section 282 of the Labor Code

A traditional approach for an employer in the private sector is to take action against the harasser, following Section 282 of the Labor Code. An employer may always terminate a harasser's employment due to 'serious misconduct'. Misconduct means improper or bad conduct. Immoral acts may constitute instances of serious misconduct. To be regarded as serious, the misconduct in question must be grave. Trivial or insignificant violations would not fall under the concept of serious misconduct.[244] The following cases – there are not many to be found – deal with sexual advances and immoral conduct.

Sanchez vs. Ang Tibay, Feb. 17, 1958, 54 O.G. 4515. Sanchez was employed as a supervisor in a shoe factory. He kept a young concubine. Sanchez's wife filed an action for legal separation and support. The defendant company subsequently received a notice of garnishment, upon which the company decided to dismiss Sanchez due to unbecoming conduct contravening the company's rules on immorality and indecency. The Supreme Court upheld the dismissal, noting, among other things, that as a supervisor Sanchez had under him a number of men and that he 'was expected to set a good example for his men to follow and to exhibit such conduct worthy of emulation. Instead of living up to these reasonable expectations, appellant got himself a young concubine and virtually drove away the members of his family from conjugal dwelling. [...] Said acts are palpably immoral and indecent and are violative of the rules and regulations of appellee'.

Stanford Microsystems, Inc. vs. NLRC, Jan. 28, 1988, 157 SCRA 410. A 'security coordinator' abused the company rules inasmuch as he, being a married man, invited two female security

[244] C. A. Azucena, The Labor Code with Comments and Cases, Vol. II, Rev. ed., 7th pr. 1995, National Book Store, Inc., p. 550 and Chan, pp. 760–761.

guards from a security agency to the back office, offered them intoxicating liquors, which he drank with another male guard on duty, and had sexual intercourse with one of the female security guards, also married, on top of the desk, and in the presence of the other male guard who pretended to be asleep during the act. The security coordinator was dismissed. The Labor Arbiter and the NLRC imposed only the penalty of suspension. The Supreme Court set aside the NLRC's decision and upheld the dismissal. Drinking liquor and engaging publicly in sexual intercourse involving an act of adultery during working time and on company premises was deemed to be 'repulsive to morality'. The Court reasoned in the following way: 'No employer may rationally be expected to continue in employment a person whose lack of morals, respect and loyalty to his employer, regard for his employer's rules, and appreciation of the dignity and responsibility of his office, has so plainly and completely been bared'.

Villarama vs. National Labor Relations Commission,Sept. 2, 1994, 236 SCRA 280. Mr. Villarama was a Materials Manager at Golden Donuts, Inc. Ms. Gonzaga, a clerk-typist assigned to his department, charged the respondent with sexual harassment, which humiliating experience compelled her to resign from work. In a letter to the President of the company she explained that on 7 July 1989 Mr. Villarama and Mr. Jess de Jesus invited all the girls from Materials Department to dinner. The other three girls decided not to join the group. After the dinner she was offered a drive home, but quite soon she discovered that they were entering a motel. 'I was really shocked. I did not expect that a somewhat reputable person like Mr. Villarama could do such a thing to any of his subordinates', she said in the letter. To begin with, Mr. Villarama agreed to tender his resignation. Failing to do this, the company dismissed Mr. Villarama. The Labor Arbiter found that Mr. Villarama had been denied due process, which is why no valid cause of dismissal existed. The NLRC reversed and held that the dismissal of the complainant was valid. The Supreme Court upheld the decision, with slight modifications. The Court found indeed that petitioner was denied due process of law in accordance with Section 277(b) of the Labor Code.[245] In the main issue, the Court found that there was valid cause for termination. Mr. Villarama had even admitted his 'error' vis-à-vis Ms. Gonzaga. The Court therefore decided that loss of trust and confidence constituted solid grounds for permitting dismissal. The Court held: 'As a managerial employee, petitioner is bound by a more exacting work ethics. He failed to live up to this higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from over sexed superiors.' The Court struck off the award of separation pay, but awarded the petitioner the sum of 1,000 pesos for non-observance

[245] Under this provision the employer shall furnish the worker with 'a written notice containing a statement of the causes for termination, and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative [...]'.

of due process, and an equivalent amount of his unused vacation/sick leave and thirteenth month salary.

Navarro III vs. Damasc, July 14, 1995, 246 SCRA 260. Ms. Mercy Baylas is a female employee of a milling company. One day when she was on her way to the dormitory, she was attacked by the petitioner, who forced her on the floor and got on top of her. She resisted as well as she could, and struggled to free herself from his grasp. The dormitory housekeeper heard her cries for help, and saw the petitioner embracing and kissing Ms. Baylas. Navarro, on the other hand, said that Ms. Baylas was his girlfriend, and that she had lost her balance when she ran to her room, and that he caught her to prevent her from hitting the floor. He denied that he had embraced or kissed her. The company rules stated that immoral conduct on the company premises was punishable whether or not it was committed during working hours. Navarro was dismissed. The Supreme Court upheld: 'The harassment of an employee by a co-employee within the company premises even after office hours is a work-related matter considering that the peace of the company is thereby affected. [...] The pretext of petitioner that he was merely helping Baylas is belied by eyewitnesses. [...] His alleged act of chivalry is nothing more than a chance to gratify his amorous feelings.'

Libres vs. National Labor Relations Commission, May 28, 1999, 307 SCRA 675. Carlos Libres, an electrical engineer, holding a managerial position, was suspended from work for 30 days without pay by the company because of sexual harassment inflicted on a woman employee, Susan Capiral, the secretary of Mr. Libres's immediate superior. The company report opined that under the Plant's Rules and Regulations: 'touching a female subordinate's hand and shoulder, caressing her nape and telling other people that Capiral was the one who hugged and kissed or that she responded to sexual advances [...] damaged her honor'. Libres never questioned the veracity of Capiral's allegations, and argued that the acts did not fall within the definition and criteria of sexual harassment as laid down in Section 3 of the Anti-Sexual Harassment Act. The Labor Arbiter upheld the suspension and based his decision on the common connotation of sexual harassment, referring to a Manual issued by the *Philippine Daily Inquirer* which provided a definition of sexual harassment.[246] The decision of the Labor Arbiter was upheld by the NLRC. The Supreme Court concurred with the ruling. With respect to R.A. 7877 the Court noted that the Act 'was not yet in effect at the time of the occurrence of the act complained of. [...] Hence, the Labor Arbiter had to rely on [...] the common connotation of sexual harassment as it is generally understood by the public.'

[246] This is one of the leading newspapers in the Philippines. The Manual held, inter alia: 'Sexual harassment is defined as unwelcome or uninvited sexual advances, requests for sexual favors and other verbal or physical conduct of sexual nature with any of the following elements: [...] (3) such conduct as unreasonably interferes with the individual's performance at work, or creates an intimidating, hostile or offensive working environment.'

Philippine Aeolos Automotive United Corporation vs. NRLC, Apr. 25, 2000, 331 SCRA 237. Rosalinda Cortez had worked as company nurse for five years. William Chua worked as a plant manager. One day Rosalinda threw a stapler at William Chua, and hurled a stream of invectives at him. Her employment was terminated due to this and other charges. Rosalinda filed a complaint for illegal dismissal. The NLRC found that the company was guilty of illegal dismissal according to Section 282 of the Labor Code, and ordered the company to pay back wages. However, Rosalinda was not awarded any damages. The employer appealed the decision. The Supreme Court confirmed the NLRC's finding that Rosalinda had been dismissed without just cause. As regards the issue of damages, the Court took into consideration that Rosalinda had been subject to sexual harassment by the plant manager. Chua had earlier manifested his liking for her, so much so that she was given 'special treatment' in that he would invite her 'for a date'. On many occasions, he would make sexual advances – touching her hands, putting his arms around her shoulders, running his fingers along her arms and telling her that she looked beautiful. This special treatment and sexual advances continued for four years, but she never reciprocated his flirtations, until finally, she noticed that his attitude towards her had changed. She found out one day that her table had been moved to another place without her knowledge, which is why an argument ensued when she confronted Chua. This led to her being charged with gross disrespect by her employer. The Supreme Court held: "The gravamen of the offense in sexual harassment is not the violation of the employee's sexuality but the abuse of power by the employer. Any employee, male or female, may rightfully cry 'foul' provided the claim is substantiated. [...] Private respondent admittedly allowed four years to pass before finally coming out with her employer's sexual impositions. Not many women, especially in this country, are made of the stuff that can endure the agony and trauma of a public, even corporate, scandal. [...] Perhaps, to private respondent's mind, for as long as she could outwit her employer's ploys she would continue on her job and consider them as mere occupational hazards. [...] But William Chua faced reality soon enough. Since he had no place in private respondent's heart, so must she have no place in his office. So, he provoked her, harassed her, and finally dislodged her. [...] Sexual harassment is an imposition of misplaced 'superiority', which is enough to dampen an employee's spirit in her capacity for advancement. It affects her sense of judgment; it changes her life. If for this alone private respondent should be adequately compensated." Rosalinda was awarded both moral and exemplary damages. Due to the strained relations between the adverse parties, Rosalinda was not reinstated, but the petitioner was ordered to pay separation pay to her.[247]

[247] Quijano, pp. 185–187 perceives this case as an example of hostile environment case. I do not agree. The case is a typical example of a *quid pro quo* type of harassment. Rosalinda did not respond to Chua's desires and propositions, and was harassed for this very reason. It has nothing to do with a display of sexually suggestive materials at the workplace.

6 Concluding observations

It has been a long journey since I started exploring the gender issues in the Philippines in 1997. I have found out that Filipino women traditionally enjoy a strong position in relation to men, and they are held in high esteem. The honor of a Filipina is not questioned in a rape case, or with respect to sexual harassment – as has been shown by the presented case law, where the immorality of male colleagues or superiors has been exposed. It is something that distinguishes Filipino law and custom from the Western world. A Filipino woman usually holds the family purse strings. This seems to be a part of the matriarchal heritage of the era before the Spanish colonization, which, under the influence of the Catholic Church, tried to make Filipino women subordinate to men, but which has never really succeeded in this task.

Today women still constitute a minority of the labor force in the Philippines. On the other hand, Filipino women are better educated than men, and have therefore advantage over them, especially in the public sector, which is highly meritocratic. The family planning programs designed to reduce the high nativity rate would be, however, more successful if the Filipino Government encouraged more women to pursue higher education in order to enter the labor market. Encouraging women to pursue higher education seems to be a better method of birth control, since educated women give birth to fewer children according to the statistics. The large number of women working as officials in the Government and in various public and business interest organizations, as corporate executives, managers, managing proprietors or supervisors is striking – approximately 58 % of these positions are held by women, which is a remarkably high figure compared with the past. Gender-conscious programs have also been implemented by the NCRFW.

The Anti-Sexual Harassment Act of 1995 is of pivotal importance. The Act is remarkable for many reasons. First of all, it falls within the ambit of criminal law. The medical doctor Jacutin experienced it at first-hand when he was sentenced to six months' imprisonment for the sexual harassment of a twenty-two-year old female nurse applicant in 2002.[248] According to the provisions of the Act an employer must take into consideration the findings of the committee on decorum in response to a complaint. The committee is composed of representatives of the employer, the union, and the employees. The procedure outlined therein circumscribes the employer's prerogative to

[248] See above at note 235.

investigate every complaint that might have been voiced by the employees at their workplace. The studied case law concerning sexual harassment also shows a clear picture. Many cases concern the judiciary, and dismissals of judges are frequent. The case law shows furthermore that the judges in question have also forfeited retirement benefits and other privileges. This is a clear sign that sanctions imposed in connection with sexual harassment offences are extremely harsh. Retirement benefits are, after all, to a large extent vested rights that are based on the duration of service with an employer. Philippine law also shows that it is the Court which acts as the ultimate arbiter, deciding whether the harasser's conduct is to be regarded as harassment or not, irrespective of the way in which the victim perceives the situation.[249]

The large number of sexual harassment cases appearing before the Philippine courts are not just the straightforward result of the 1995 Act, since many such cases appeared before the promulgation of the Act. Why is this so? A simple explanation would be that the situation reflects the high status enjoyed by women in Filipino society in the past. A Filipino woman will readily invoke her integrity, honor and independence once they have been threatened or trampled under foot, and she is almost always given the benefit of the doubt in order to protect her honor and integrity.

The Philippine Labor Code is no doubt *prima facie* gender-neutral, but exceptions can nevertheless be found. Sex discrimination as such is illegal by law and has been that since 1952. The last vestiges of discrimination on grounds of sex still remain, however, in the form of sex-based prohibition on night time work concerning women. As a matter of principle, women's rights have now been separated from the rights of minors, which is a good thing. It is still remarkable, however, that no wage discrimination cases can be found in the Philippines. On the other hand, research on this issue is less convincing. The only wage discrimination case that could be found is one from 1953, which had to do with war veteran's benefits.[250] In the public sector there is little room for wage discrimination, considering the way in which wages are set in accordance with rank and level.

There is a serious loophole in the Filipino Labor Code, that gives employers the exclusive right to decide whom to employ at will, which makes that they can choose between employing only men or only women. Discriminatory

[249] Cf. the Swedish system (Bill 1997/98:55, p. 112). It is held there that it is up to the complainant to decide whether an act of sexual harassment has taken place. There is no Swedish case law yet on this issue. It is my view, however, that the Swedish policy is untenable. Ultimately, as is done in the Philippines, it should be the Court that shall ultimately decide these issues.

[250] See above note 89.

advertisements are still rather frequent, even though their number has decreased in recent times. Senator Legarda's Bill of 2000 might have contributed to the aforesaid. The Philippine legislator is vacillating. It is at the same time a good sign that there is an open discussion as to the advantages and disadvantages of a given proposal or choice. Notwithstanding this somewhat slow progress it would seem that the Philippines, as a third world country, has achieved a high ranking position when thinking of the UN development report on sex equality.

Frequently used Filipino abbreviations

BWYW	Bureau of Women and Young Workers
C.A.	Commonwealth Act
CAR	Court of Appeals Reports
CSC	Civil Service Commission
DOH	Department of Health
DOLE	Department of Labor and Employment
E.O.	Executive Order
ILO	International Labor Organization
MTJ	Municipal Court Judge
NCRFW	National Commission on the Role of Filipino Women
NLRC	National Labor Relations Commission
O.G.	Official Gazette
PD	Presidential Decree
R.A.	Republic Act
RP	Republic of the Philippines
RTJ	Regional Trial Judge
RTC	Regional Trial Court
SCRA	Supreme Court Reports Annotated
SME	Small and Medium Enterprises
SSS	Social Security System
TUCP	Trade Union Congress of the Philippines
UN	United Nations
WID	Women in Development