



Sex Matters: A comparative Analysis of Work Discrimination in Indonesia and Philippines

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Abstract

Discrimination against women in the workplace is pervasive. This paper however, focuses on Indonesian and Filipino women's stories as workers, wage earners and employees. It traces their past and present how they are today. Specifically it examines work related discrimination that these women experience on the basis of their marital and civil statuses. Plight of women from Indonesia and Philippines were selected because of the: (1) geographic location of their countries, (2) similarities of their pre-colonial and colonial pasts and (3) differences and similarities of their present conditions. As basis for analysis, both historical and legal data were gathered from existing records of government and non-government institutions. Sampling of actual cases documented and or filed in both Indonesian and Philippine courts were also reviewed.

It is revealing how history and world religions contributed to the current situations of Indonesians and Filipino women. Laws and labor policies have been passed to remedy and further protect women workers of these countries. In fact these legal remedies may be sufficient, however stipulated rights of women workers specially, married and pregnant are openly circumvented, abused if not violated by legitimate employers. Documented cases of women victims of these labor law violations clearly demonstrated the government's weaknesses in implementing these laws. Review of the statistics presented in this study reveals that governments of these two countries particularly in their judicial systems have not been serious in protecting their women against exploitations by the business sector. One indication is the limited or absence of decision of their respective courts on cases of gender equality at work.

Countries like Indonesia and Philippines do undermine gender equality in labor and employment. These countries look at this issue not as basis for promotion or violation of human rights but as political maneuvering, signing laws protecting women to give way to

international pressures but ignoring them all together to protect the interest of business sector. It is a continuing challenge for International organizations, feminist movements, and human rights advocates because this issue is not a matter that can be observed in government and business' short term labor policies and legislation. It needs more than making laws to improve gender equality in both countries, in fact it requires long term commitment to advance women's rights.

Introduction

Discrimination is experienced by women everywhere. It is not isolated but is deeply embedded in the societies where women and men live. 'Everything that women do, takes its bearing from men. The norms and dynamics of the natural world – the way its biological, evolutionary, and even chemical and physical properties are explained – embody unstated male reference points.'¹ We hear and read stories about them. We observe it as men and women interact in the public sphere. When socio-cultural and religious practices are used to justify discrimination against women, it becomes more depressing, is gender equality dead?

The continued campaign in universal scale on raising awareness of women's rights resulted in the production of a lot of research materials and publications that deal on discriminatory practices against the rights of women. This is very evident in developed countries, where rights of women have been regularly articulated as part of mainstreaming gender equality. In the United States for instance, a great deal of research has been made that in work environment, discriminatory practices may include denial of job opportunity or termination of services by reason of marital status or pregnancy (which includes maternity). But some employers are very good in circumventing the law without the women employees knowing it. According to Peach (1998), she said:

'[w]hen women become pregnant, employers are no longer legally allowed to fire them, as they once were. Instead, some employers are attempting to eliminate new moms by changing their schedules several weeks after they return from pregnancy leave in order to make it difficult for them to meet their responsibilities, or transferring them to a dead –end position or failing to promote them to a once-promised higher position.'²

But for the countries like Indonesia and the Philippines, there are a limited research studies on discriminatory practices against women by reason of their marital status, pregnancy and

¹ Minow, Martha. 1998 'Feminist Reason: Getting it and Losing it' in Barlett K.T, Kennedy Rosanne, (eds.) Feminist Legal Theory. Westview Press. 1991. 358

² Peach, Lucinda Joy. Women in Culture. A women's studies anthology. 1998, 289

maternity in the workplace. This may be attributed partly of society's perception about secondary role of women and another for the government's failure to strictly enforce laws that promote gender equality.

The important role of women as procreator –child bearer is deeply rooted in Southeast Asian cultures. In Indonesia, which is a largely populated muslim country, '[i]ndonesian women are often sidelined in both the public and private sphere. They are culturally assigned the supporting role, instructed to be subservient and obedient, and their primary duties are seen as being those of "wife" and "mother".' ³ While women are relegated to a secondary role, they are however treated as equal partners in compliance of religious duties. One author claims, '... according to the Qu'ran all duties in the specifically religious realm that are incumbent on men are also the responsibility of women and women are subject to the final judgment as full and equal partners in the community of faith.' ⁴ Religious teachings may be treated as gospel truth but in practice doubt must be ascribed to the faithful in their treatment of women in society. Stowasser (1987) describes a religious male authority who 'tries to persuade women that their place is in the home, using odd arguments – asserting, for example that Marilyn Monroe had wished she had been able to be a housewife.'⁵ This only means that women are for domestic sphere, which is "best suited" to their nature. On the other hand men's domain is the outside world, the public realm, so they can perform the role as provider.

In a Christian country like the Philippines, it is also recognized that the traditional role of women is procreation and that their main task is motherhood. According to Parrenas (2000), 'men are expected to sustain the family and women to reproduce family life. In fact, ideological constructs of feminine identity are molded from mothering and caring roles in the

³ Batubara, Chuzaimah, 'Gender and Politics in Indonesia: Strategies for empowering Muslim women.' <http://chuzaimahbb.multiply.com/journal/item/15>. Visited on February 13, 2008.

⁴ Jane Smith, 'Women in Islam: Equity, Equality, and the search for the natural order'. *Journal of the American Academy of Religion*, XLVII/4, 520.

⁵ Stowasser, Barbara Freyer. 'Religious Ideology, Women and the Family: The Islamic Paradigm,' in her *The Islamic Impulse* (Washington, D.C.: Center for Contemporary Arab Studies, Georgetown University, 1987) 262-96. As cited by Abu-Lughod, L *Remaking Women. Feminism and Modernity in the Middle East*. 1998. 243

domestic arena.’⁶ They are however, expected to function not only as child bearers but also as contributors to the subsistence of their family.

The struggle of women for recognition as equal to men in economic and political development has been a unique experience of frustration and encouragement. In fact, women are simply asking for parity. Women deserve equal degree of respect as members of any society of men and women. ‘If women procreate the nation, ensure its survival in pure form, then they are worthy of reverence and should be incorporated as full-fledged members of the nation’.⁷

History has shown that women have been advancing sufficient grounds proving their worth. In 2006, the International Labor Organization (ILO) estimated that 1.2 billion of the 2.9 billion workers in the world were women.⁸ Likewise in Sub-Saharan Africa and South East Asia, four out of 10 working women are classified as contributing family workers compared with two out of 10 men⁹ where African women’s participation in agricultural is most pronounced. ‘[W]omen are responsible for 60-80 per cent of the agricultural labor supplied on the continent of Africa, that women form the majority of the commercial sector in many African towns and cities, and that they contribute much to the self-help projects of rural development programs’.¹⁰ While in Asia the labor participation in the informal economy of men and women is almost equal in proportion.¹¹ The strength of women in the world’s labor force can never be underestimated. Their combined efforts comprise the driving force for the world’s economy to sail smoothly.

⁶ Parrenas, Rhacel Salazar. ‘Migrant Filipina Domestic Workers and the International Division of Reproductive Labor. *Gender and Society*’. Volume 14 No. 4. August 2000

⁷ Charles, Nickie, Hintjens, Helen. *Gender, Ethnicity and Political Ideologies*. 1998. 5-6

⁸ International Labor Organization. Press Release. *Global Employment Trends for Women 2007*. ILO study warns on the feminization of working poverty. 8 March 2007

⁹ Ibid.

¹⁰ Human Resources Development Division, United Nations Economic Commission for Africa, Addis Ababa, Ethiopia. ‘Women: The neglected resource for African Development’. *Canadian Journal of African Studies*, VI, ii (1972), 359

¹¹ *Women and Men in the Informal Economy. A statistical picture*. Employment Sector. International Labour Office. Geneva. 2002

The emergence of women's organization from all corners of the world providing basic services as partners of the state is beyond dispute. 'Women's organizations in many parts of the developing world have taken on a new and important task – providing family planning services and education to women in remote villages and crowded cities' ¹². Women's role that sustained military superiority of the United States during World War II has been hailed by no less than Senator Truman (who later became President) he said, 'the last war put the women into offices and they have never left them. This war has put them into factories. Let no one imagine that women will permit themselves to be shunted out of these jobs which they have demonstrated so well their capacity to do.' ¹³ Time and again, women have proved themselves dependable in the critical periods of world's history

Just as we think that women have been trying to catch up with their male counterparts in employment opportunities, they have been also experiencing obstacles along the way. No less than a woman doctor and Nobel Prize winner Rosalyn Yalow, said that the 'failure of women to have reached positions of leadership has been due in large part to social and professional discrimination'. Discrimination in the workplace is prevalent in third world countries, but only a limited of cases have trickled down to policy issue discussion due to socio-cultural and religious practices and reinforced by institutional mechanism.

The adoption by the General Assembly of the United Nations in 1979 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was a major achievement in the international arena on the issue of women's rights. '[U]nlike other human-rights treaties, which are usually limited to the conduct of the state or its agencies, CEDAW specifically obliges state parties to take all appropriate measure to

¹² 'Women's Groups Around the World Provide Family Planning to Help Other Women Improve Their Lives' International Family Planning Digest. Vol. 3, No. 3 (Sep., 1977), 4

¹³ Senator Harry S. Truman, quoted in New York Times, August 16, 1943.12

eliminate discrimination against women by any person, organization, or enterprise’¹⁴. Section 2 of CEDAW is very instructive, it says:

‘[i]n order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances’.

Indonesia and Philippines signed the covenant in September 1984 and August 1981 respectively. By signing the said document, the two countries are supposed to enact national legislation removing all the remaining vestiges of discrimination against women. To the contrary, available documents would demonstrate that both countries have never gone any extra mile in pursuing their international commitment. For instance, during the Report of the Committee on the Elimination of Discrimination against Women Eighteenth session in the United Nation, it said about Indonesia, ‘[n]onetheless, the Committee expresses disappointment that change has not taken place as fast as it should have in Indonesia and that many of the problems that have been identified during consideration of the State party's initial report remain unresolved’.¹⁵ In 1998, Ford Foundation – Jakarta reported an anti-discrimination case, ‘[o]ne successful anti-discrimination case APIK handled last year was that of a young woman who became pregnant after joining a private company. Although by law she was entitled to a paid maternity leave of three months, the company refused to grant it on the grounds that she had signed an agreement not to become pregnant during her employment’¹⁶

The same observation was also made on the plight of women in the Philippines, ‘the Convention has been in force in the State party for 25 years, the Committee notes with great

¹⁴ Briceno, Rosa. ‘Reclaiming Women’s Human Rights’, in Stromquist, Nelly (Ed.), Women in the 3rd World. An Encyclopedia of contemporary issues. 1998. 52

¹⁵ [http://www.onlinewomeninpolitics.org/indon/www.unhchr.ch-tbs-doc.nsf-\(Symbol\).htm](http://www.onlinewomeninpolitics.org/indon/www.unhchr.ch-tbs-doc.nsf-(Symbol).htm) , visited on October 12, 2007)

¹⁶ Parsell, Diana. Ford Foundation Report. Fall 1998.

concern the lack of progress in undertaking and completing necessary revisions of discriminatory provisions in national legislation and in enacting a comprehensive legal framework pertaining to gender equality'.¹⁷ In fact in 2005 survey conducted in the Philippines, it concluded that there is a limited awareness among selected companies regarding labor laws for women including special provision protecting the rights of women workers.¹⁸ Just what is discrimination at the work place?

In this research, the meaning of discrimination will be limited to that state where a person in this case a woman or group of women experience/s unfair treatment at work on the basis of prejudice against her/their marital status and/or marital condition, pregnancy which includes maternity. Discrimination comes from the latin word "discriminare", which generally means to "distinguish between"¹⁹. However in this paper, discrimination, is more than distinction or differentiation. It may include any action intentional or not which adversely affects employment opportunities of women. It is the failure to treat them in the same way as men because of a bias towards their marital choices, condition, status, etc. The International Labor Organization has to say,

Women are often discriminated against because of their sex, marital status or family responsibilities. Women, in comparison to men, continue to be disadvantaged and vulnerable to exploitation and in need of organization, representation and social protection. Given that an increasing number of the national workforce are women, issues directly relevant to women, which include maternity and family responsibilities, working conditions, rights of nonpermanent and vulnerable workers and employment discrimination, should be given more attention.²⁰

In formal employment, the status of women as being single or married has exacerbated the context of sex-based discrimination. 'Young, childless women are readily hired than mature women with children, whose employment chances decline further with each additional

¹⁷ UN Committee on the Elimination of Discrimination against women. 36th Session. 7-25 August. 2006

¹⁸ Transporte, Aletha Ma., & Pura, Maria Perpetua. 'An Analysis of Philippine Labor Laws and HR Policies for Women Workers' Presented during the 8th Asian Regional Congress of Labour and Social Security Law, held in Taipei, Taiwan from October 31 to November 3, 2005. <http://www.airroc.org.tw/ISLSSL2005/>, visited on October 10, 2007

¹⁹ Webster's II New Riverside University Dictionary " The Riverside Publishing Company, USA c1984

²⁰ International Labor Organization. Jakarta Newsletter. Bilingual Newsletter. August 2004, Vol.2 No.2. 22

offspring (Fernandez-Kelly, 1983b; Schmink, 1985: 139).²¹ From the vantage point of insensitive companies, employment of married women is disruptive to economic activity with resulting additional cost of employment benefits especially when they apply for maternity leave. The government can also be faulted for failure to sever the vicious cycle of gender inequality especially in work pay disparity. '[g]overnments may make a wrong assumptions about the social responsibilities of men and women. They may act as if men supported families, rather than as men and women together do so, or women do so alone'²²

Gender equality is not totally dead in Indonesia and Philippines where Islam and Christianity respectively are the dominant religious faiths. The governments of both countries are trying their best to comply with international commitment as mandated in CEDAW. However, discrimination against women in work environment in said countries is still an area of special concern. Given the limited study conducted in these countries, this research will specifically concentrate on the following forms of discrimination against women: marital status, pregnancy which includes maternity.

The aim of this paper is to analyze the extent of women rights protection for gender equality in Indonesia and Philippines. This can be done by: (a) identifying the existing laws and policies on gender equality. Specifically, labor laws and marriage laws that protect women workers against discrimination by reason of status, pregnancy and or maternity; (b) analyzing the impact of such laws and policies particularly in the work environment where women are employed or about to be employed through court decisions, data from women's organizations, related government information. It is hoped that by so doing, both countries will be able to identify their shortcomings and shall endeavor to provide appropriate measures in protecting the rights of women and eventually improve gender equality in workplaces in

²¹ Tiano, Susan. 'Gender, Work and World Capitalism: Third world women's role in development', in Hess, B. & Ferree, M. (Eds.) *Analyzing Gender. A handbook of Social Science Research*. 227.

²² Papanek, Hannah, 'Towards Model of Development. Development Planning for Women'. *Signs*, Vol. 3, No. 1 (Autumn, 1977), 15

these countries. In practical terms, this research will encourage members of the civil society, particularly the women's organization to continue their advocacy in empowering women. In Indonesia, a study conducted between 1981-1983 revealed that single female workers were preferred over men and married women by employers.²³ This preference was made at the time when no discrimination laws against women in the workplace existed. There was also no showing whether those who were singled out subsequently filed cases for violations of their rights under applicable laws. In another study conducted in the said country, that while the author mentioned about gender inequality in the labour market where a number of men had been employed than women from 1996 to 2000 but there was no data whether the low turn out of female workers was due to employers discrimination.²⁴ In the Philippines, one author observes that sex discrimination is common in the difficulty of women for job placement and promotion, wage gap difference.²⁵ But no mentioned of discrimination on the basis of marital status, pregnancy and or maternity. This was precisely the reason why this study will be conducted.

For better understanding of this unique and yet empowering research, a comparative method will be utilized. The research will compare the laws, policies of Indonesia and Philippines that promote gender equality. Case Law from the Supreme Court of both countries will also be utilized in comparing the actual practice of the laws and policies of both countries. Documented cases on the plight of women by women's organization or NGO's in both countries can be utilized in making the comparative analysis. The findings of this thesis would suggest that gender discrimination in work environment in Indonesia and Philippines has remained pervasive. While available laws are in place but they are not sufficient

²³ Diane L. Wolfe. 'Javanese Factory Daughters: Gender, the State, and Industrial Capitalism', in Sears, L. (Ed.) *Fantasizing the feminine in Indonesia*. (1996)

²⁴ Lisa Cameron. *Women and the Labor Market during and after the crisis*, in Kathryn R, & Bessell S. (Ed.). *Women in Indonesia. Gender, Equity and Development*. (2002)

²⁵ Chant Sylvia, *Gender, Generation and Poverty: Exploring the 'Feminization of Poverty' in Africa, Asia and Latin America*. 2007, 230-234)

deterrence against possible discrimination. The actual discriminatory practices of employers in treating female employees have reinforced the malignant disease unique in patriarchal society.

For easy reference, this paper is divided into three chapters. The first chapter will discuss the broad outline of socio-cultural aspects of both countries during the critical periods of political history that may have impacted on the gender status in society. The second chapter deals with the legal framework on gender equality in both countries. The written constitution in both countries serves as the reference point of analysis. It will be followed by the analysis of the applicable labor laws and laws on marriage to identify provisions that promote gender equality. The third chapter deals with actual cases of discrimination against women in the workplace or before commencement of employment. Decisions of the court of both countries are included for in depth discussion. The chapter on conclusion provides analysis/synthesis of findings and inferences drawn. It will offer possible additions, amendments and or revision to strengthen existing labor legislation and special laws

Chapter I. History, Culture and Gender Equality in Indonesia & Philippines



A. Indonesia

A.1. Geographical Location

For travelers, the location of Indonesia in the world map is easy to find because Bali, Indonesia is popular for being one of the country's exotic and beautiful islands and tourists Mecca in South East Asia. The infamous Bali bombing in 2002 believed to be associated with Al Queda, assigned Bali as one of the places to watch out for both in tourism and acts of terrorism.

Indonesia is an archipelago consisting of 17,000 islands, the largest of which are Bali, Sumatra, Java, Kalimantan (Indonesia's part of Borneo), Sulawesi (Celebes), the Nusa Tenggara islands, the Maluku (Moluccas Islands), and Irian Jaya (also called West Papua), the western part of New Guinea. Indonesia is a multi-cultural society inhabited by Muslim and various ethnic groups, the largest and most dominant of who are Javanese.²⁶

A.2. Javanese

Javanese adopts a paternalistic system that traces the hierarchical lineage of the father. This system is used to determine descendants' right to use royal titles and to assign inheritance. Most Javanese officially profess Islam as their religion. However, it could be inferred that their practice of Islam is unique only to Javanese because they tend to follow or

²⁶ <http://www.infoplease.com/ipa/A0107634.html>. visited March 4, 2008

mix these practices to their ethnic beliefs, Kejawen, which is somewhat animistic. Prior to Islam, Java was alternately into Hinduism and Buddhism (To date natives of Bali remain as believers of Hinduism). However this should not give the impression that Java is an area of religious conflict. In fact, these different belief systems have been molded into single coherent belief system - whole and thoroughly ingrained throughout the Javanese population.²⁷

Many literatures describe favorable position of Javanese women in their society. Experts noted that the status of women in Java in the past appeared to be ahead of that in other Asian countries.²⁸ In general, Javanese women contribute to the household economy by earning income from wages, trading, and agricultural activities. Javanese women also have the right to own and control land, since it can be transferred as her birthright. It is a Javanese ideal that husbands and wives should show affection and love to each other, although they cannot demonstrate their affection publicly. Husbands and wives cooperate on significant financial decisions. Depending on their family financial needs and social class, Javanese women were allowed to earn a living. On one hand this has provided them economic independence while on the other hand this has placed working Javanese women at the lower social class of their society. In their culture women from upper class need not work and are accorded respect fitting for the nobility.²⁹ At present, Javanese men and women can be found in all professions especially in government, military.³⁰

A.3. Muslim

Indonesia's population is predominantly Muslim, in fact it is considered the most populous Muslim nation in the world. However, Islam is not considered as "state religion" in Indonesia. Given that, Indonesia adheres to the call of their Muslim leaders for strict

²⁷ http://en.wikipedia.org/wiki/Javanese_people, visited March 28, 2008

²⁸ The Javanese Family. <http://www.unu.edu/unupress/unupbooks/uu13se/uu13se09.htm> visited March 22, 2008

²⁹ Ibid.

³⁰ Javanese People. http://en.wikipedia.org/wiki/Javanese_people, March 22, 2008

implementation of Islamic Family law’³¹ Gender equality is a critical issue in a secular state practicing Islamic Family Law. Hence it is expected that feminist movement will be active to advocate for women’s human rights in this scenario.

A.4. Historical Perspective

The following paragraphs attempt to frame events of comparative importance to better appreciate how gender equality evolved to its present state in Indonesia. As Fabian Linden stated” it is useful to look at the past to gain perspective of the present.” Very briefly, the important historical periods that heavily influenced Indonesia are: (a) Pre-colonial Period, between 14th and 17th century; (b) Colonial period, during the Dutch rule for almost 350 years beginning 1800; then Japanese occupation from 1942 to 1945; (c) Post colonial since 1945.

Some historians provided succinct discussion of the influences of Islam, which like other religions, was necessary to sustain Muslim trade, in most of the territories of Malay Archipelago. The introduction of Islam was slow and difficult considering the existence of ethnic religions and beliefs. It was doubly hard since there were apparent contradictions: For instance in inheritance, Islam favors men in contrast with the tradition favoring lineage or birth right regardless of gender.³² There were also other religious faith already in place and had stronghold in some parts of Indonesia, like Christianity, Buddhism and Hinduism.³³

A.4.1. Pre-colonial Period - 14th to 17th Century

The role of women, from 14th to 17th century according to Reid in his paper, he claims that, ‘[i]t could not be said that women were equal to men, since there were few areas in which they competed directly . . . Their reproductive role gave them magical and ritual

³¹ Bowen, John. ‘Qurân, Justice, Gender: Internal Debates in Indonesian Islamic Jurisprudence’. History of Religions. Vol. 38, No. 1, Islam and Law (Aug., 1998), 56

³² Robinson, Kathryn. ‘Indonesian, women: From Order Baru to Reformasi’ in Edwards, L. & Roces, M. (Eds.) Women in Asia. Tradition, Modernity and Globalization. 2000. 143

³³ Fisher, Charles. ‘The Malaysian Federation, Indonesia and the Philippines: A Study in Political Geography’. The Geographical Journal. Vol. 129, No. 3 (Sep., 1963), pp. 313-314

powers which was difficult for men to match.’³⁴ In Indonesia, the personal autonomy of Javanese women had been exemplified by their ability to initiate divorce.³⁵ ‘A woman may at any time when dissatisfied by her husband, demand dissolution of the marriage contract, by paying him sum of money as dictated by their custom’³⁶ This practice was made possible without the trappings of the present day religious injunctions.

Trade was one aspect where women had enjoyed their economic autonomy. Foreign travelers described them ‘either being bright butterflies or shrewd traders’³⁷. It is not surprising that after trade, women had been remarkably valued for their natural ability to perform diplomacy. Women were aptly described as: ‘if the King sends a man . . . (to fetch someone) the parties may refuse to come; but if once send a woman, he may not refuse nor make no excuse. Moreover if any inferior body have a suit to a man of authority, if they come not themselves, they always send a woman.’³⁸ Contrary to present notion of women as home bound and cloistered, the Indonesian women in pre-colonial period, at least in some parts of the country, were also valued as stakeholders who were provided roles according to their abilities and skills as negotiators or warriors alike. This was aptly described by the author when he said that ‘perhaps the most spectacular exercise of public power by women in early modern Southeast Asia occurred in Aceh on Sumatra and Mataran on Java where at least two rulers maintained female bodyguard corps (prajurit estri), including a group trained in the use of arms’³⁹

This only underscores the fact that Indonesian women were present in the public sphere, contributing to the society in accordance to their assigned roles and competence.

³⁴ Reid, Anthony. ‘Female Roles in Pre-Colonial Southeast Asia’. *Modern Asian Studies*. Vol. 22, No. 3, Special Issue: Asian Studies in Honour of Professor Charles Boxer (1988), pp. 629

³⁵ *Ibid.* p.630

³⁶ *Ibid.*

³⁷ Ramusack, Barbara & Sievers, Sharon. *Women in Asia. Restoring Women to History*. 1999. 83

³⁸ See Reid, *supra* note 30 at 636.

³⁹ See Ramusack, *supra* note 33 at 86

Women can be as good as men if unfettered by stereotyping. Indeed, the Indonesian women in pre-colonial period had enjoyed wide latitude of autonomy and self-actualization.

A.4.2. Colonial Period

A.4.2.1 Under the Dutch

Repression of women's social mobility and autonomy began during the Dutch administration beginning 17th Century. The quest for expansion of territories and the search for spices led European countries to the doorsteps of Malaya Archipelago. Portuguese were the first to reach the territory of Indonesia but soon the Dutch dislodged them. 'Unlike Portuguese, the Dutch according to record never considered themselves as agents of Evangelization in Asia even in Indonesia. The Dutch claimed that they were in Asia solely for trading.'⁴⁰ This claim was of course highly contested by other European rivals competing for trade and territory in various parts of Indonesia. The description of Kipp of Dutch Missionaries in their encounter with Karo Women in Sumatra highlights the Dutch strategies. She said that '[t]he missionaries hoped to lead Karo women to emancipation through grounding in Christian morality and education. The primary outcome of this emancipation . . . would be that women might claim greater autonomy within their families and especially greater parity with their husbands'⁴¹ It is plausible that Dutch Missionaries came to evangelize considering that Islam had already set foot on the territory. Winning the hearts and minds of the natives specially women through evangelization would be bloodless but effective. Missionaries perceived Karo women as 'conservative element in society and thus an impediment to religious change.'⁴²

⁴⁰ Madison, Angus. 'Dutch Income in and from Indonesia 1700-1938'. *Modern Asian Studies*. Vol. 23, No. 4 (1989), 648

⁴¹ Kipp, Rita. 'Emancipating Each Other: Dutch colonial Missionaries' Encounter with Karo Women in Sumatra', 1900-1942, in Clancy-Smith, Julia Ann. & Gouda, Frances (Eds.) *Domesticating the Empire. Race, Gender and Family Life in French and Dutch Colonialism*. 1998. 211

⁴² *Ibid.* 214

The coming of Dutch may have greatly altered the autonomy of Indonesian women. It was perceived that 'Islam and Christianity when introduced to South East Asia also dictated prescriptions on female chastity, physical mobility that further circumscribed female sexual and economic autonomy.'⁴³ As a form of subtle coercion, the Dutch allowed intermarriage between Dutch men and Javanese women only if (and only if) the later would convert to Christianity.⁴⁴

By and large, '[d]uring the colonial era, the struggle to improve the condition of women focused on the provision of education of women, which was felt to be a prerequisite for national liberation.'⁴⁵ Indonesian women during colonial period was described by Parawansa⁴⁶ as 'the deal of the 'good wife and mother', a good woman should be able to manage her family and home well.'

It was during the Dutch colonial period when the first Indonesian nationalist and feminist were known. She was Raden Ajeng Kartini, born into an aristocratic Javanese family in a time when Java was still part of Dutch Colony, Her father Raden Mas needed to marry a second wife of higher nobility to be appointed as Regency Chief of Jepara. Her well-published ideas changed the way Dutch viewed native women in Java. In the letters published after Kartini's death in 1904, '[s]he criticized the cultural expectation that women have to be feminine and have to be subservient to men at all times . . . She also challenged Islamic teachings particularly on polygamy, questioned traditional Javanese values that restrict women's right to education, and demanded emancipation of Java from the Dutch.'⁴⁷ Kartini had definitely spurred the emergence of feminist activism in Indonesia. Every year, Indonesia celebrates Kartini's Day in her honor. Another Javanese heroine, Dewi Sartika (1884-1947),

⁴³ See Ramusack, *supra* note 33 at 88.

⁴⁴ *Ibid.* 93

⁴⁵ Parawansa Khofifah Indar. *Institution Building: An effort to improve the Indonesia Women's role and status* in Robinson, K & Bessell, S. *Women in Indonesia. Gender, Equity and Development.* 2002. 68

⁴⁶ *Ibid.* 70.

⁴⁷ Marching, Soe Tjen. 'Indonesia', in Desai Manisha. (Ed.) *The Greenwood Encyclopedia of Women's Issues Worldwide. Asia and Oceania* (2003) 205

shared Kartini's vision. Dewi was recognized for her advocacy for girl's rights to education. Like Kartini, she established several schools for girls.⁴⁸

Collective action of women in Indonesia began in 1928. Women's Congress in December 1928 established the Perikatan Perempuan Indonesia, PPI (Federation of Indonesian Women). It demanded that government increase the number of schools for girls and give more assistance to widows.⁴⁹ Subsequently, the women's organization expanded its participation in the national movement against colonialism and imperialism.⁵⁰ After more than three centuries of Dutch colonial control, the Japanese invaded Indonesia.

A.4.2.2 Under the Japanese

The Japanese invasion of Indonesia in 1942 forced the Dutch to flee. The military aggression of Japan in Southeast Asia, particularly in Indonesia was to Free Asians from Western Colonialism and to develop an East Asian Co-Prosperity Sphere in which Japanese would serve as the more experienced older brothers who would lead the younger-brother nations to a mutually beneficial nature.⁵¹ Initially, the Indonesian nation welcomed the Japanese occupation positively. They perceived them as their liberator who would free them from their colonial master. This way of thinking quickly dissipated as the occupation turned out to be the oppressive regime in Indonesian history.⁵² Against Indonesians, the Japanese military was mostly guilty of three things: forced labor; forced requisitioning and force slavery of women.⁵³ In the hearing before the Women International War Crimes Tribunal, historians believe at least 200,000 young women captured during World War II included a

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Poerwandari Kristi, et.al. Indonesian Women in a Changing Society. 2005. 47

⁵¹ Murray, Thomas. 'Educational Remnants of Military Occupation: The Japanese in Indonesia'. Asian Survey. Vol. 6, No. 11 (Nov., 1966) .630

⁵² Japanese Occupation of Indonesia Wikipedia. http://en.wikipedia.org/wiki/Japanese_occupation_of_Indonesia,

⁵³ Sejarah Indonesia. <http://www.gimonca.com/sejarah/sejarah07>

significant number of Indonesian who was forced to serve in Japanese army brothels as “jugun ianfu” sex slaves or comfort women⁵⁴.

It was also the beginning of Japanese suppression of women’s activism. All women’s organizations were banned except *Fujinkai*. *Fujinkai*, which was initiated, established and supported by the Japanese Imperial government.⁵⁵ While Islam was not freely shared in society during Dutch colonial rule, it was viewed as religious obligation during Japanese occupation. The ‘Japanese viewed the Islamic leaders and teachers as allies in its campaign against Western influence and domination. The Japanese elevated Moslems to important administrative posts and encouraged the activities of Islamic schoolmen.’⁵⁶ The three-year occupation of Japan ended after its surrender to the Allied Forces in 1945. This was the beginning of Indonesia’s independence from foreign powers and the continuation of Islamic traditions.

A.4.3. Post Colonial Period

The Republic of Indonesia proclaimed independence from Japan on August 17, 1945. Achmed Sukarno, the first president of the newly independent state, restored independence to women’s organization. For the first time, massive activity of women in the public arena was observed in providing defense to sovereignty against the possible resumption of Dutch colonial administration. For instance, training of women to do police work such as body searches of women crossing into areas controlled by the republic;⁵⁷ military women’s organization also started.⁵⁸ Women’s police and military work gradually ceased when Dutch recognized the sovereignty of Indonesia in 1949. While Indonesia is Muslim majority, including its President Sukarno, the latter on many occasions publicly expressed his

⁵⁴ BBC news International Version: <http://news.bbc.co.uk/2/hi/asia-pacific/6374961.stm>) v

⁵⁵ See Parawansa K. supra, note 42 at 69

⁵⁶ See Murray, T. supra, note 47 at 634

⁵⁷ See Parawansa K. supra, note 42 at 70.

⁵⁸ See Poerwandari K, supra, note 46 at 51

opposition to the establishment of Islamic state in Indonesia.⁵⁹ Was he contemplating that the creation of Islamic state would run counter to the substantial gains by the feminist movement thereby threatening its democratic institutions? The answer could be found in the country's subsequent troubled political developments.

The government's recognition of the role of women during the fragile condition of sovereignty had been shown through: (a) the adoption in 1957 of International Labor Equal Remuneration Convention No. 100 (1951) which was transposed into its domestic legal framework as Law No. 80/1957, providing for equal wages for men and women for equal work; (b) participation of women in the formation of political parties.⁶⁰ In 1965, when Sukarno had been removed from power due to the handiwork of his military general, Haji Muhammad Suharto, the women's initiated organization had also suffered a major setback. Suharto established and supported two women's organizations, Dharma Wanita and Pendidikan Kesejahteraan Keluarga, or PKK) 'that promoted the role of Indonesian women as outlined in the *kodrat wanita* (God-given roles) thereby encouraging women to remain submissive to their husbands rather than being active in struggling for their right'⁶¹

The freedom of pre-colonial Indonesian women to manage her own reproductive life had been eroded with Suharto's New Order policy. In a study conducted among Indonesian women in Sentani Tribe in Papua, it was found out that failure to undergo pre-natal care had direct effect to high maternal mortality rate.⁶² According to the same study '[i]f pregnant women experience inconvenience and problems during their pregnancies and/ or childbirth, they believe that it is the way nature works. Such conviction is closely related to the Sentani community's notion of women's roles, positions, and values'.

⁵⁹ Van der Kroef, J. The Role of Islam in Indonesian Nationalism and Politics. *The Western Political Quarterly*. Vol. 11, No. 1 (Mar., 1958),.33

⁶⁰ See Parawansa K. *supra*, note 42 at 70

⁶¹ See Marching, S. *supra*, note 44 at 205

⁶² Akmal, Y., Women of the Sentani Tribe in Papua: Socio-cultural position and its implications for women's reproductive health, in Poerwandari, K, (Ed.) *Indonesian in a Changing Society*. 2005, 225-227

Empowering women is vital to their well being. This is difficult in a patriarchal society where the concern of women is inferior to structured priorities of men. This was clearly illustrated in the mandated family planning which was about the 'rational control of women's bodies and the harnessing of the energy of mothers to produce model Indonesian citizens and workers ... thus defining their citizenship in terms of their roles as wives and mothers.'⁶³

The New Order policy may have encouraged gender equality in the work environment thru the policy of 'equal wages for equal work' but in reality, women faced the public denial of this economic right because to work outside her home was not her prescribed role. One author said that, 'the ideology of early new order refused to recognize women as workers. Ali Murtopo, one of the most powerful figures in the 1970's, reportedly claimed, 'in Indonesia . . . generally it is only men who work'.⁶⁴ In a survey conducted in 1990, the participation of Indonesian women in the labor force was pegged at 38.1 % and this figure would accelerate to 54.2 % in 2020.⁶⁵ While a sizable number of women have jobs, most of them worked in factories where their salaries were lower than their male counterpart.⁶⁶ In fact for over 10 years, average employment growth rate for Indonesian women is only 30% compared to 58% or more of their male counterpart. This was clearly illustrated in the study conducted by Asian Development Bank on Gender Situation Analysis.⁶⁷ In Figure 1.3 it is clear that from 1990-to 2003 Indonesian labor market consistently favor hiring male employees reaching up to 60% high in 2003 compared to their female counterpart.

⁶³ Ibid. 81

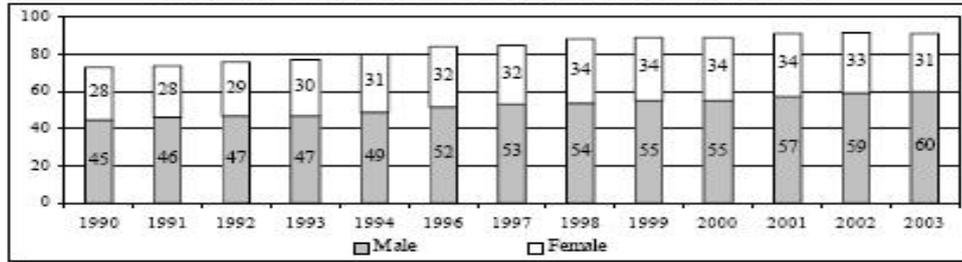
⁶⁴ Sen, K. Indonesia women at Work, in Sen, K and Stivens, M. (Ed.). Gender and Power in Affluent Asia. (1998), 39

⁶⁵ Ananta, A., et.al., Implications of Indonesia's future Population., in Jones G. & Hull T. Indonesia Assessment. Population and Human Resources. 1997, 321.

⁶⁶ Wolf, D. Javanese Factory Daughters. Gender, the State, and Industrial Capitalism in Sears, L. (Ed.). Fantasizing the Feminine in Indonesia. 1996, 150-151.

⁶⁷ Indonesia. Gender Situation Analysis, Asian Development Bank. July 2006

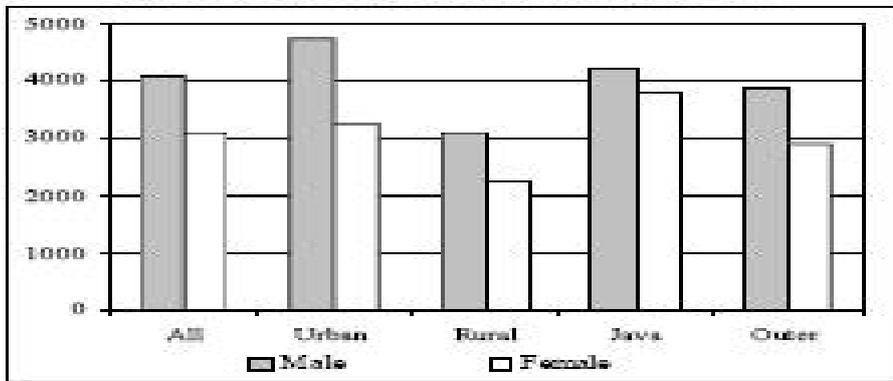
Figure 1.3. Employment Growth by Sex, Indonesia, 1990–2003



Source: ADB. 2005. Labor Markets in Indonesia: Key Challenges and Policy Issues, in *Labor Markets in Asia: Issues and Perspectives*

The same study indicated the large disparity on hourly wages of Indonesian male and female in favor of men. (See figure 1.5)

Figure 1.5 Average Hourly Wages by Sex



The study claims that this ‘wage gap between women and men could be elucidated with only two (2) economic explanations namely: human capital and gender discrimination. . . The difficulties that women face in getting access to the labor market and moving their income opportunities are enforced by gender stereotype of women’s traditional role in the family.’ This limits women’s job choices because they only apply and or get hired to those jobs that are traditionally perceived to be appropriate for women.

The plight of Indonesian women in their society remains uncertain. If statistics is any guide, Indonesia is the world’s second largest exporter of labor supplying mainly unskilled labor. Approximately 72 % are women with almost 90% of them employed as domestic workers in the Middle East and South-East Asian countries.⁶⁸ Women migration only

⁶⁸ ILO – Jakarta, Indonesia: Decent Country Work Programme. 2006-2010. June 2007. 7

suggests that Indonesia, despite its being a signatory to different international instruments granting rights to women, is exporting them as labor surplus to transfer low paying male jobs to them. It has nothing to do with their rights more so with their so-called role as keepers of internal domain.

B. Philippines



B.1. Geographical Location

Philippines is a Y-shape archipelago consisting of 7, 100 islands, the 3 largest of which are: Luzon, Visayas and Mindanao. It has a total land area of 300,000 square kilometers (slightly larger than Arizona, USA) and has the world longest discontinuous coastline of over 34,000 kilometers.⁶⁹ The country has a population of 90 million, mostly Christians majority of whom are Roman Catholic.⁷⁰ There are more than 100 ethnic and 111 linguistic groups in the Philippines. The concentration of Muslim population is found in Mindanao, southern part of the country where Islam had first arrived in 1380 along with trade in pre-colonial Philippines.

The Philippines is a unique nation having four cultural heritages from Asian, European, Mexican and American. It is not surprising to meet a Filipino who looks like Oriental, with Spanish sounding name, who speaks English with an American accent and with Latin temperament. It may be difficult to locate the Philippines in the world map because of

⁶⁹ <http://library.thinkquest.org/C003235/brief.htm> visited March 21, 2008

⁷⁰ <http://en.wikipedia.org/wiki/Philippines>, visited March 10, 2008.

its size, but of its strategic location and first successful bloodless revolution, it is used by the west to showcase democracy in Asia. After 9/11 this small archipelago was again in the news when it was discovered that the training grounds of terrorist elements was in a remote island in Southern Philippines.

Like most countries in Malay Archipelago, Philippines was colonized, first by Spain, for more than 300 years; United States for almost 50 years; and then Japan came for almost 4 years during the struggle for post freedom from the colonial masters. It might be said that after three centuries of Western presence, there is nothing-unique left to the Filipino culture except an amalgamation of these foreign cultures. Philippines is also described as a nation of strong women who directly or indirectly run the family unit, businesses, government agencies. Throughout history, Filipino women lived in a culture that is focused on the community, and family as the main unit of society.⁷¹ Compared to other parts of Southeast Asia, women in Philippine society have always enjoyed a greater share of legal equality as observed in Philippine laws, directives and proclamations (see Annex A).⁷²

B.2. Tagalog

The Tagalog may be considered the single largest ethnic group in the Philippines (Bisaya is the largest when all other Bisayan ethnolinguistic groups are combined).⁷³ Although paganistic, the first Tagalogs believed that there is a Supreme Being called Bathala (from the Sanskrit *Batharra*, or god) and many other lesser deities. They also had a very high respect to women, because women are not only allowed to inherit lands, they are allowed to be the matriarch of their clans. And although the office of the Babaylan is open to both sexes, it is generally left to the women. When a man is chosen to be a Babaylan, he will be clad as a woman. The Babaylan is a term identifying an indigenous Filipino religious leader, who

⁷¹ http://en.wikipedia.org/wiki/Women_in_the_Philippines

⁷² Annex "A"

⁷³ Tagalog People. http://en.wikipedia.org/wiki/Tagalog_people visited March 23, 2008

functions as a healer, a shaman, a seer and a community "miracle-worker" (or a mix of any of those). "The Babaylan in Filipino indigenous tradition is a person who is gifted to heal the spirit and the body; a woman who serves the community through her role as a folk therapist, wisdom-keeper and philosopher; a woman who provides stability to the community's social structure; a woman who can access the spirit realm and other states of consciousness and traffic easily in and out of these worlds; a woman who has vast knowledge and skills to preach and heal."⁷⁴ It is believed that many of Filipino ancient teachings were recorded by the Babaylan, however such records were burned by the Spaniards.

B.3. Historical Perspective

Like in the previous discussion, let us look closely on Filipino women against the backdrop of their country's history.

B.3.1. Pre-Colonial Period

The pre-colonial Philippines was 'made up of loosely related principalities with their own separate social, political and economic systems under their own tribal rulers'.⁷⁵ Its social structure gave equal importance to maternal and paternal lineage. This bilateral kinship system accorded Philippine women enormous power within a tribe or clan. They were entitled to property, they could engage in trade and could exercise their rights to divorce husband. They could also become village chiefs in the absence of a male heir. Filipino women could also achieve status as medicine women, high priestesses (babaylans) and or astrologers.

⁷⁶ Arranged or pre-arranged marriages were practiced. ⁷⁷ Traditionally, the tribal council of elders and the family of the boy arranged the matches.

⁷⁴ Ibid

⁷⁵ Torralaba – Titgemeyer, Lorna. 'La Mujer Indigena – The native woman. A description of Filipino women during pre-spanish time'. <http://www.univie.ac.at/Voelkerkunde/apsis/aufi/wstat/mujer.htm>, visited March 10, 2008

⁷⁶ The role of women before European occupation of the Philippines'. <http://www.helium.com/items/605525-philippine-society-prior-arrival>, visited March 10, 2008

In various facets of social and economic life, pre-colonial Filipino women were not in most part hindered on the basis of their sex. They engaged in trade, and husband cannot engage in trade without the consent of his wife. They were given latitude to decide on divorce.⁷⁸ These societal arrangements between men and women had been eroded with the coming of the colonizers.

B.3.2. Colonial Period

B.3.2.1. Under the Spaniards

Ferdinand Magellan, a Portuguese national who served under the King of Spain led the expedition that discovered the Islands of Philippines in 1521. Subsequent expeditions from Spain eventually made the Philippines as its colony for more than 300 years. It was clear then that Spain had two objectives to colonize the Philippines, to wit: ‘to take the roman catholic faith to the inhabitants of the Philippines and to send back some of the spices and other wealth . . .’⁷⁹ Under Spain, ‘Filipinos were led to acknowledge a superior political authority, tribal allegiance disappeared, and in the towns as they gradually grew up, smaller communities were formed and in the course of time acquired certain European characters.’⁸⁰

Spanish colonization relegated Filipino woman to secondary position in society, while glorifying and assigning the Virgin Mary as a model for them. The colonizer fixed the native Filipino women's role to the church, the convent and home. The pre-colonial era with a semblance of egalitarian society as exemplified by the sharing of responsibilities between man and a woman had suddenly disappeared. The change was aptly described by De Manuel as:

⁷⁷ See Torralaba – Titgemeyer, L, supra note 75

⁷⁸ Ibid.

⁷⁹ Doeppers, Daniel. ‘The Development of Philippine Cities Before 1900’. The Journal of Asian Studies. Vol. 31, No. 4 (Aug., 1972), 771

⁸⁰ Moses, Bernard. Colonial Policy with Reference to the Philippines. Proceedings of the American Political Science Association. 1904

‘The dimension of male dominance becomes a central issue in the experience of colonialism, as the friar’s usurpation of power and supplanting the priestesses is responsible for cutting off the nation from its roots in the beautiful, motherly earth. The Spaniards have silenced them, infected them, with shame and made them hide their strength and taken over their land from horizon to horizon’⁸¹

Images of “dalagang Filipina (lady) were promoted under Spain. Ideal Filipinas were projected as the "shy, diffident, puritanical tearstained little woman of the late nineteenth century" so well immortalized in literature.⁸² Jose Rizal’s⁸³ novel *Noli Me Tangere* (touch me not) perfectly described a Filipina woman thru the characters of Maria Clara and Sisa. Maria Clara, a young woman has been portrayed as very gentle, and shy. She does not go outside the house without a companion. Her devotion to religion can be seen in her regular attendance to church service and confession to the friar. While Sisa is the opposite character. She is a loving mother to her two children, Crispin and Basilio and a dedicated wife to her husband who comes home drunk and beats her regularly.

Religion was also an effective instrument in suppressing any women dissent. Religion was propagated to ‘neutralize the influence of independent women at that time. Monogamous marriage and chastity were inculcated alongside with the institutionalization of property ownership. Filipino woman then became subordinate to a male: to her father before marriage, to her husband after marriage.’⁸⁴ Oppression and suppression eventually led Filipino men and women to revolt against Spanish rule. Filipinos using bolos and wooden spears, attacked and killed Spanish soldiers armed with guns. Not to be left out, Filipino women supported Katipunan, the revolutionary movement. The courageous Melchora Aquino, who assisted the wounded and the sick during the resistance. Another woman named Gregoria Montoya y

⁸¹ De Manuel, Dolores. ‘Decolonizing Bodies, Reinscribing Souls in the Fiction of Ninotchka Rosca and Linda Ty-Casper’ *MELUS*. Vol. 29, No. 1, Filipino American Literature (Spring, 2004), 105

⁸² <http://cpcabrisbane.org/CPCA/IWSSForum.htm>

⁸³ National Hero of the Philippines. He died fighting for the abuses committed by Spain

⁸⁴ Rodriguez, Luz. ‘Patriarchy and women’s subordination in the Philippines’, *Review of Women’s Studies*. Vol. 1 No. 1 (1990-1991) University Center for Women’s Studies, University of the Philippines, 20

Patricio, who upon the death of her Katipunero husband, led the charge of a thirty men unit while holding a Katipunan flag on one hand and a sharp-bladed *bolo* (machete) on another hand. She used a white piece of cloth, commonly used during mass, to ward off bullets.⁸⁵ Finally, when the defeat of Spaniards was already imminent, and Filipinos prepared to launch the final assault, in what is now known as the “Battle of Manila Bay” the Americans came and offered assistance when it was not necessary. The arrival of Americans was an extension of the theater of Spanish-American war, which began in Cuba. When the fight ended, Spanish accepted defeat. The treaty of Paris was signed in December 1898 ending the Spanish-American War. In the treaty, Philippines was ceded by Spain to the Americans in the amount of \$ 20 M.⁸⁶ From this on, Philippines was under the new colonial ruler, the Americans until the latter recognized the sovereignty of the Philippines.

B.3.2.2. Under the Americans

There was a general consensus among Filipinos then that the defeat of the Spaniards would end the colonial regime in the Philippines. Little did they know, that the Americans who came to aid them against the Spaniards would become their new colonial master. Suspicions snowballed when continued military reinforcements came despite the surrender of Spain. The justification of the continued presence of Americans in the Philippines was outlined in the Benevolent Assimilation Proclamation of US President William Mc Kinley, where he argued that the ‘Americans must educate, civilize, and uplift the conditions of the Filipinos.’⁸⁷ In his instructions to American commissioners who established civil government in the Philippines he said ‘Philippines, are ours not to exploit but to develop, civilize, educate, train in the science of self-government’⁸⁸

⁸⁵ <http://opmanong.ssc.hawaii.edu/filipino/women.html> visited March 12, 2008

⁸⁶ Castillo, A. Filipino Migrants in San Diego (1990-1946). The Journal of San Diego History. Summer 1976, Volume 22, Number 3

⁸⁷ The Philippine History Site. <http://opmanong.ssc.hawaii.edu/filipino/benevolent.html>, visited March 13, 2008

⁸⁸ Lansang, Jose. ‘The Philippine-American Experiment: A Filipino view’. Pacific Affairs. Vol. 25, No. 3 (Sept. 1952), p. 226

Americans set up public school system where English was the medium of instruction. Professionals in hordes were imported from the United States to run the educational system in the Philippines. Manlapaz described how the American public education affected Filipino women and men:

‘In coeducational American system that replaced the Spanish system of sex-segregated schools and curricula, young Filipino women gained access to this language of power as readily as men; at least within the classroom, the English Language helped level the playing field, allowing women simultaneous access to the many professional and personal opportunities that presented themselves during this period’⁸⁹

Filipino women influenced the formation of Philippine literature. Manlapaz claimed that ‘English offered women writers an unprecedented opportunity: to play a formative role in creating a new body of national literature soon to be known as Philippine Literature in English.’⁹⁰ This unique professional achievement of women was absent in the Spanish rule. Americans ‘substituted a secular government and religious freedom for the Spanish theocracy.’⁹¹ Influx of Christian religions helped propagate American culture in the country. The passage of Philippine Organic Act of 1902, was intended to sever the affiliation of Roman Catholic as the official religion of the state.⁹²

Through the American-patterned school system, Filipino women became professionals. Equality between men and women seemed revived during this period. As described by Becker: ‘[o]rordinarily a Filipino woman is brighter than her husband, and I know of no other country where women exert an equal amount of influence.’⁹³ And how Americans can reach these Filipino women, Becker said ‘[t]hey can be most easily reached through our own women, who should seek to gain their confidence and to exert themselves systematically

⁸⁹ Manlapaz, Edna. Literature in English by Filipino women. *Feminist Studies*. Vol. 26. No. 1 (Spring, 2000) p. 188

⁹⁰ *Ibid.* 189

⁹¹ Taeuber, Irene. ‘The Bases of a Population Problem: The Philippines’ *Population Index*. Vol. 26, No. 2 (April, 1960), 97.

⁹² US Library of Congress. <http://countrystudies.us/philippines/16.htm> visited March 12, 2008

⁹³ Becker, George. ‘Conditions Requisite to Our Success in the Philippine Islands’ *Bulletin of the American Geographical Society*. Vol. 33, No. 2 (1901) p. 116

for the good of both races.’⁹⁴ The Philippine-American war from 1899 – 1902 showed disapproval of Filipinos to foreign occupation. Filipino women saw themselves in action reviving their natural capacity to fight when necessary. They ‘donned military uniforms and fought side by side with men, operating machine guns and building trenches.’⁹⁵ While the Americans won most battles, but the pockets of resistance relentlessly continued to fester their forces. It was only temporarily suspended when the Japanese forces invaded the Philippines in 1941.

B.3.2.3. Under Japanese

Several hours after Japanese attacked Pear Harbor in Hawaii on December 8, 1941, they proceeded to invade the Philippines. Japanese intention of invading the Philippines was partly to free Asia from the influence of American and European powers. Setting aside temporarily their differences, Filipinos and Americans combined their forces to dislodge the Japanese. Initially, Japanese proved to be powerful and eventually ruled the Philippines for more than three years.

Colonizing the Philippines proved to be difficult for the Japanese. They were surprised to discover that Filipinos were highly influenced by the American system. To sever the Filipino-American ties, the Japanese ‘promoted the use of Tagalog (Filipino language) and revived appreciation of Filipino cultural traditions its “Asia for the Asians policy.”⁹⁶

‘Comfort houses’ for Japanese soldiers entertainment were built. From 1928 until the end of World War II, about 200,000 Asian women including Filipinos were forcibly drafted into sexual servitude by the Japanese Imperial Army.⁹⁷ Due to the nature of the crime, it was only in the 90’s that at least 170 Filipino ‘comfort women’, came out and confessed that they

⁹⁴ Ibid. 122-123

⁹⁵ Santos, Aida. ‘Do women really hold up half of the sky? Notes on the women’s movement in the Philippines’, in Sobritchea, Carolyn. *Gender, Culture and Society: Selected Readings in Women’s Studies in the Philippines*. 2004, 29.

⁹⁶ Roces, Mina. *Filipino Identity in Fiction, 1945-1972*. *Modern Asian Studies*. Vol. 28, No. 2_(May, 1994), pp. 279

⁹⁷ <http://cpbrisbane.org/Kasama/Archive/FelicidadDe LosReyes.htm>, visited March 13, 2008

became sex slaves of the Japanese Army.⁹⁸ They filed a class suit against Japanese Government before the latter's court but it was dismissed. The state sanctioned sexual assault of women during Japanese colonial rule was an indication that Japanese society regarded women as chattels willing to be exploited at any time. When the Japanese forces were defeated and surrendered to the Allied Forces in 1945, the Americans decided to grant the Filipinos their independence. On July 4, 1946, the United States officially recognized the independence of the Philippines.

B.3.3. Post Colonial Period

The liberation from foreign powers was test for Filipinos to govern themselves after several decades of restricted freedom. The discourse on women's rights was limited if not neglected during the colonial period, territorial independence being the primary concern. The postcolonial era onwards was more receptive to women's rights. It ushered to the emergence of women's groups and feminist activism. Issues affecting Filipino women like: domestic violence, mail-order brides, rape, prostitution, labor migration, reproductive rights and a lot more have become their growing concerns specially when the lack of willingness on the part of the government to address these issues aggravated situation of their marginalized sisters.

The Philippines had been given opportunity to articulate women's rights during the time of former President Ferdinand Marcos (1969-1986) when his wife, Imelda Marcos had wielded enormous influence supporting her husband both in international and domestic activities. According to Roces, '[i]n granting women unofficial power, kinship politics makes them vulnerable to modern criticisms that women are manipulating or scheming.'⁹⁹ When people power toppled down Marcos in 1986, Corazon Aquino, wife of the assassinated

⁹⁸ Kyodo News International, Inc. 2002. http://findarticles.com/p/articles/mi_m0WDO/is_May_6/ai_85519970, visited March 13, 2008

⁹⁹ Roces, Mina. Negotiating modernities: Filipino women 1970 -2000, in Edwards, L. & Roces, M. (Ed.). Women in Asia. Tradition, modernity and globalization, 1994), pp. 113

political figure, became the first woman President. It was believed that ‘power was exercised behind the scenes by close kin and menagerie of advisers.’¹⁰⁰

The Philippine colonial past has injected consciously or unconsciously to the Filipino people the concept of male supremacy and female subordination, it is well entrenched in the Philippine society. It’s no surprising that a large concentration of women workers are found in less paying jobs compared to their male counterparts. Filipino women are expected only to subsidize the primary income of their partner, women’s job are often less valued and far less lucrative compared to men.¹⁰¹ Working mothers, who juggle their schedules between work and family, still are obliged to contribute. Such contributions like in homemaking so that husbands and children may feel comfortable and secure in their homes. This treatment of women has diminished their value over time such that they become easy prey of labor exploitation. Take for instance the diaspora of women migrant workers. In the early 80’s there was a huge demand for Filipina domestic workers abroad for their exemplary caretaking abilities. Living in a foreign country, however, makes these women vulnerable to abuse and exploitation. Take the case of Sarah Balabagan¹⁰² who served as inspiration to many Filipino domestic helpers across the globe who risked their lives in order to feed their families back home. Layosa, has a fitting description of these women, to wit:

‘Indeed our women have been partially liberated from the anguish of their day-to-day existence with their families and from economic problems, only to be enslaved again in the confines of another home, most of the time trampling their rights as human beings. . . we have to face the reality that many of our women will be compelled to leave their confines of their own tidy bedrooms and their spotless kitchen only to clean another household, to mend other’s torn clothes at the same time mend our tattered economy’¹⁰³

Despite the harrowing experiences of Filipino domestic workers abroad, the government does not seem to restrict the influx of their citizens working abroad. The obvious reason is the

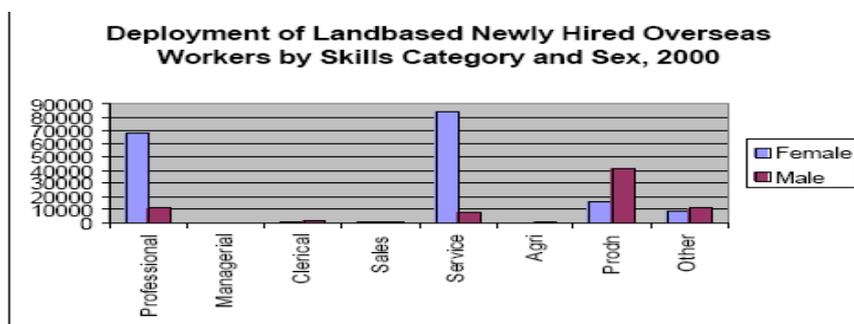
¹⁰⁰ Ibid. 118

¹⁰¹ See Parrenas, R. supra, note 6 at 567

¹⁰² She was only 15 years old as a domestic helper in United Arab Emirates when she was sexually assaulted by her employer. In the act of self-defense she killed him. She was still imprisoned.

¹⁰³ Layosa, Linda. ‘Economy Menders’, Tinig Filipino Magazine. 1995. 7

country's economy. For instance, in the first two months of 1995, Filipina workers in Hong Kong (mostly domestic service) sent home \$36 million compared with just \$1.2 million by the more numerous and largely male workforce in Saudi Arabia.¹⁰⁴ They were even called by former president Aquino as “mga bagong bayani” (new heroes).



Data Source: Philippine Overseas Employment Administration

The above figure indicates that there is a very significant deployment of Filipino women in two categories namely services and professional. However, it should be noted that even professionals opt to work abroad not to practice their profession but for economic reason hence it is very likely that many professionals could have ended up providing services as caregivers and or domestic help. The so called “mga bagong bayani” (new heroes) are mostly women.

The Table below is the domestic employment statistics reported by the Department of Labor in the Philippines. The rosy figures may be encouraging for thousands of Filipinos living in poverty, but labor force participation of men and women strikes at the heart of gender equality. Out of 33.2 million employed Filipinos, only 12.8 million are female or 48%

¹⁰⁴ See Chant, S, supra, note 25 at 202-203

while there are about 79.1% employed male. Contrary to standard it should be noted also that out of the 12.8 million employed women about 2.4 million (55.5 %) are unpaid. ¹⁰⁵

Philippines	October 2006	October 2005
Total 15 years old and over (in '000)	55,989	54,799
Labor Force (in 000)	35,806	35,494
Labor Force Participation Rate (%)	64.0	64.8
Employment (in '000)	33,185	32,875
Employment Rate (%)	92.7	92.6
Unemployment (in 000)	2,621	2,619
Unemployment Rate (%)	7.3	7.4
Underemployment (in 000)	6,761	6,962
Underemployment Rate (%)	20.4	21.2

Source: Department of Labor and Employment, Philippines

The incumbent woman president Gloria Macapagal Arroyo would have been the source of inspiration of Filipino women had she not allowed herself to be the dutiful and obedient servant of Catholic Church. After being elected into office, 'her government has reduced spending on reproductive health programs.'¹⁰⁶ The church is known for its stance against the use of contraceptives and any artificial modes of birth control. Women's advocacy for divorce and abortion also failed to muster support from the government that has been heavily influenced by the church. The role of the church in influencing the policies of the state contributes to the widening gap of power imbalance between men and women.

The pre-colonial social structure of Indonesia and the Philippines gave equal importance to maternal and paternal lineage. This bilateral kinship system accorded Filipino and Indonesian women leverage to power and freedom in their respective communities. The pre-colonial past of these two distinct groups of women proved that they were equally present and involved to the many dynamic aspects of growth and development in their respective societies as well as autonomy for self actualization.

¹⁰⁵ National Commission on the Role of Filipino Women (NCRFW). Fact Sheet. Filipino women. <http://www.ncrfw.gov.ph> visited March 24, 2008.

¹⁰⁶ Estrada-Claudio, Sylvia. 'On earth as it is in heaven: The Philippine Catholic Hierarchys's Gendered Worldview of Society and Salvation in the 1940's and 1950's', in Sobritchea, C. Gender, Culture and Society: Selected Readings in Women's Studies in the Philippines. 2004, 93

The coming of colonial masters to the Philippines and Indonesia greatly altered their ancient concept of gender equality, and autonomy of their women. Western thoughts and religions prescribed roles and re-defined social structure between gender. The colonial past necessitates discourse on women's parity rights at the present times. Being Indonesian or Filipino female matters in any sphere specially in economic sphere, at work and in any environment where survival and independence matter.

Chapter II. Legal Framework on Gender Equality in Indonesia and the Philippines

A. Constitutional Provisions Promoting Gender Equality

The very first constitution of Republic of Indonesia was created in 1945. This was amended 1999. Every year thereafter it was subsequently amended until 2002. The Philippines constitution has followed similar evolution. The first constitution was made in 1899 and subsequently replaced by 1935 constitution. The latter was however amended in 1940. The 1935 constitution had been changed paving the way for the adoption of the 1973 Constitution. In 1986, a temporary freedom constitution was in place preparatory to the creation of the latest 1987 constitution.

Gender equality is included in the constitutions of both Indonesia and Philippines. This is an indication that women's rights are as fundamentally important as rights of men: Articles: II, III, XIII in the Philippine constitution; and Chapters X, X-A in Indonesian Constitution respectively. Understandably, inherent rights of women under these fundamental charters provide guaranteed equity in any playing fields they would be engaged in.

A.1. Indonesia

There are various constitutional provisions in Indonesia that express gender equality. It starts with the broad scope provision which recognizes equality of all citizens before the law and the government is enjoined to respect that law¹⁰⁷ This fundamental equality does not refer to single class of persons alone but applicable to both men and women who are inhabitants of the state. It also allows women the same opportunity as men in employment opportunities,¹⁰⁸ including equal opportunities in government service,¹⁰⁹ giving an avenue for women to exercise and develop their full potential, to earn a living for herself and her loved ones and to

¹⁰⁷ Constitution of Indonesia. Art. 27 (1).

¹⁰⁸ Ibid. Article 27(2)

¹⁰⁹ Ibid. Article 28D(3)

contribute to the nation's economy. The state is obliged to provide protection against violence and discrimination of all its citizens.¹¹⁰

This protection against discrimination may be understood to cover all forms of discrimination against women including protection at work places outside their homes. Although no specific forms of discrimination have been suggested, the constitution ensures protection of women against discriminatory practices that may arise in work environment. This is a stern warning against employers to observe non-discriminatory practices in employment and ensuring that men and women are entitled to receive fair and proper compensation and proper treatment¹¹¹

The constitution in endorsing gender equality, affirms the 'right of every person to better him/herself through the fulfillment of his/her basic needs, the right to education and to benefit from science and technology, art and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race...'¹¹² The affirmation of such right is in keeping with the idea that '[e]very person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state'¹¹³ Ownership of personal property is part of personal development regardless of gender. To ensure its fulfillment, the constitution recognizes that 'every person has the right to own personal property, and such right may not be arbitrarily interfered with by any party'¹¹⁴

A.2. Philippines

The constitution of the Philippines is not without adequate provisions promoting gender equality. Like the constitution of Indonesia, the Philippine constitution concretizes women's share to gender equality. This is seen as prelude to the gradual destruction of shackles found

¹¹⁰ Ibid. Article 28B(2)

¹¹¹ Ibid. Article 28D (2)

¹¹² Ibid. Article 28 C

¹¹³ Ibid

¹¹⁴ Article 28 (H)4

in patriarchal society which hindered women's participation in public arena. Philippine Constitution has a similar counterpart in the Constitution of Indonesia that speaks of equality of all citizens, it says '[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.'¹¹⁵ As one of its policies, '[t]he state recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.'¹¹⁶ This constitutional declaration debunks the patriarchal society's notion on the inferior status of women, thereby encouraging women to participate in all human activities that may have the impact of nation building. To assure the widest extent possible so that gender equality may flourish under the democratic society, the constitution affirms the 'right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.'¹¹⁷

In the labor sector, gender equality has found its greater significance in the promotion of employment opportunity. It is now mandated that '[t]he state shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.'¹¹⁸ Having access to job opportunity is not enough. Once employment is obtained, the state 'shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law... security of tenure, human conditions of work and a living wage.'¹¹⁹ An important milestone on the importance of women in society, is a special provision focusing on their welfare, as workers, with the corresponding state's obligation. It says '[t]he state shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and

¹¹⁵ Constitution of the Philippines. Art. III Sec. 1

¹¹⁶ Ibid. Art. 11 Sec.14

¹¹⁷ Ibid. Art. XIII Sec.1

¹¹⁸ Ibid. Sec. 3

¹¹⁹ Ibid.

opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.’¹²⁰ This is an explicit affirmation that women are capable of both: (a) serving the nation thru their own efforts, and (b) the maternal function of child bearing and child caring essential to the continuation of the human race.

A.3. Similarities and Differences

From the above cited constitutional provisions, both countries have strong similarities on promoting gender equality. They both speak of equal access to employment opportunity, protection against discrimination either in employment or public opportunities, encouragement of women to utilize their skills, talents in public activities with the potential of improving the nation. While discrimination is prohibited, both constitutions are not clear as to what types of discrimination. They however differ in the following areas, namely: (a) In Indonesia, while women are allowed to participate into public opportunities free from discrimination but it has no explicit mention as to the protection given to their maternal functions, which is present in the Philippine constitution; (b) In Indonesia, no mention is given to the rights of women workers to engage in trade unionism, collective bargaining for the improvement of their employment status while in the Philippines it is expressly provided. While Philippines and Indonesia have strong constitutinal safeguards on gender equality but doubts persist whether it holds true in practice especially in certain cases when women are economically vulnerable.

B. Labor Legislation and Laws on Marriage

The unequal treatment of men and women may have been the product of laws enacted by society. This legal barrier coupled with socio-cultural practices perpetuate female subordination. But laws when properly crafted can also be the potent instruments against the

¹²⁰ Ibid. 14

institutionalization of women's rights discrimination. In this chapter, labor legislations and marriage laws promoting gender equality are the only selected areas for analysis. It is not possible to cover other branches of Indonesian laws, given the limited nature of this research paper.

B.1. Indonesia

B.1.1. Labor Legislations

Some of the various laws of Indonesia promoting gender equality may have been crafted as a result of the country's membership in international community. Interaction among members states provide impetus to improve Indonesia's treatment of Indonesian women and eliminating barriers that hinder them to participate in public sphere. The ratification of Indonesia to the UN Convention on the Elimination on all forms of Discrimination against Women (CEDAW) was very significant in large part of the country's commitment to women's rights where Islamic practices and traditions have been well entrenched in society. In the area of workers' rights, Indonesia issued Presidential Decree No. 83 of 1998 ratifying Convention No. 87 of the International Labor Organization (ILO) concerning freedom of association and protection of the right to organize.¹²¹ By ratifying the convention, Indonesia has joined other member states allowing its workers, men and women alike to exercise freely their right to organize. This was in effect filled the gap that Indonesia's constitution did not provide to workers.

Concerning equal remuneration, Indonesia strengthened gender equality when it issued legislation, Act No. 80/1957 ratifying Convention No. 100 of the ILO Concerning Equal Remuneration For Men and Workers For Work of Equal Value.¹²² In 1999, Indonesia moved step further, by opening the floodgates of employment opportunities to all

¹²¹ <http://www.ilo.org/public/english/region/asro/jakarta/convention/conv87.htm>. visited on December 29, 2007

¹²² http://www.itcilo.it/actrav/english/calendar/2002/A3-2739/work/country_report/Indonesia.doc visited on December 31, 2007)

its citizens and prohibited discrimination in employment when it issued Law No. 21 of 1999,¹²³ ratifying Convention 111 of the ILO concerning discrimination in respect of employment and occupation.¹²⁴ Under the convention, discrimination includes, ‘[a]ny distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.’¹²⁵

As a state party to CEDAW, Indonesia responded thru its Ministry of Human Power, by the issuance of two regulations. First, is the Minister of Manpower NO. 3 PER/MEN/1989 which provides the following features, (i) prohibits employers to terminate the employment of women workers during fixed or non-fixed employment periods due to marriage and pregnancy or childbirth ; (ii) It requires employers to substitute for the duties of pregnant workers without reducing their rights in the company if due to the characteristics of work they cannot perform it during pregnancy. If employer fails to arrange for substitution of work, then longer maternity leave must be given. The second regulation is Government Regulation No. 8/1981 on Remuneration Protection which provides that employers shall not discriminate between women and men workers in determining the rates of remuneration of work of equal value.¹²⁶

The Human Rights Act (otherwise known as Legislation Number 39 of 1999 Concerning Human Rights) (HRA for brevity) is another piece of legislation that guarantees gender equality. While the constitution provides a grey area for gender equality in work environment, the HRA has made it more specific making individual rights enforceable. The HRA recognizes the following rights of everyone: (a) free choice of employment and the right

¹²³ <http://www.ilo.org/public/english/employment/gems/eoo/law/indonesi/act1.htm>

¹²⁴ <http://www1.umn.edu/humanrts/instree/n3ilo111.htm> visited December 29, 2007)

¹²⁵ Art. 1 (1) (a) Discrimination (Employment and Occupation) Convention (ILO No. 111), 362 U.N.T.S. 31

¹²⁶ Second and Third Reports of Indonesia, CEDAW/C/IDN/2-3, 12 February 1997. See also p.11, CEDAW Country Report: Independent Information for the Committee on the Elimination of Discrimination against Women prepared by NGO Forum on CEDAW Implementation. Also found in <http://www.iwraw-ap.org/aboutus/paper11.rtf>, visited December 29, 2007)

to just conditions of work;¹²⁷ (b) the right to equal pay for equal work, and the right to equal work conditions;¹²⁸ (c) the right to fair and adequate remuneration.¹²⁹ Of special importance unique to women, HRA provides the following rights: (a) right to select, be selected and appointed to an adequate job, position or a profession, in line with prevailing law¹³⁰; (b) right to special protection in the undertaking of work or a profession that could put her safety and/or her reproductive health;¹³¹ pregnant women...have the right to a special facilities and treatment...¹³² Indonesia's commitment under ILO on trade unionism has made a similar domestic initiative under the HRA, giving everyone, men and women workers, 'the right to form and join trade unions...'¹³³

The serious commitment of the government to improve working conditions of its labor force was manifested in the passage of Act of the Republic of Indonesia number 13 Year 2003 (Manpower Act in brevity) which was undertaken to consolidate, supersede, and improve existing labor laws, The Manpower Act supersedes the regulations and existing laws dealing with labor relations and working conditions of the workers. But the previous laws ratifying ILO conventions are still in force. Under this Manpower Act, equal opportunities to get a job¹³⁴ and equal treatment from employer,¹³⁵ require protection against discrimination on the basis of sex, set the landscape for gender equality. Ensuring utmost protection to the safety and well being of women thereby making them fit to work, employers must observe certain work hours. . . Employers are prohibited: ` to employ female workers/ labourers aged less than 18 (eighteen) years of age between 11 p.m. until 7 a.m;'¹³⁶ or 'employing pregnant female workers/ labourers who, according to a doctor's account, are at risk of damaging their

¹²⁷ Ibid. Article 38 (2)

¹²⁸ Ibid. (3)

¹²⁹ Ibid. (4)

¹³⁰ Ibid. Art. 49 (1)

¹³¹ Ibid. Art. 49 (2)

¹³² Ibid. Art. 41 (2)

¹³³ Ibid Art. 39

¹³⁴ Act of the Republic of Indonesia number 13 Year 2003. Art. 5

¹³⁵ Ibid. Art. 6

¹³⁶ Ibid. 76 (1)

health or harming their own safety and the safety of the babies that are in their wombs if they work between 11 p.m. until 7 a.m.’¹³⁷

And when employers allow women workers to work between 11 p.m. until 7 a.m. they are under obligations: ‘[t]o provide them with nutritious food and drinks;¹³⁸ and ‘[t]o maintain decency/ morality and security in the workplace.’¹³⁹. Working after late hours of the day could be dangerous to women especially if their homes are away from the workplace and when they have no companions to go home. They become the easy prey of human predators who prowl during the night looking for sexual gratification or for other reasons. But this will not hinder women in regularly reporting to work, lest it would reinforce the notion that women do not have any role outside their homes. To make sure they are safe, ‘[e]ntrepreneurs are under an obligation to provide return/ roundtrip transport for female workers/ labourers who work between 11 p.m. until 5 a.m.’¹⁴⁰

The biological nature of women requires for their special protection. The Act requires that, ‘[f]emale workers/ labourers who feel pain during their menstrual period and tell the entrepreneur about this are not obliged to come to work on the first and second day of menstruation.’¹⁴¹ The policy of no work now pay does not apply to them.¹⁴² And when they exercise their inherent reproductive function, with more reason that the state is compassionate about their welfare. This is so because women require considerable amount of time to be physically functional again to go back to their jobs. By allowing women to recover physically, they would be able to keep pace with their male counterparts in the rigors of employment. Employers are mandated that their ‘[f]emale workers/ labourers are entitled to a 1.5 (one-and-a-half) month period of rest before the time at which they are estimated by an obstetrician or a

¹³⁷ Ibid. (2)

¹³⁸ Ibid. (3) a

¹³⁹ Ibid. (3) b

¹⁴⁰ Ibid. (4)

¹⁴¹ Article 81 (1)

¹⁴² Article 93 (2) b

midwife to give birth to a baby and another 1.5 (one-and-a-half) month period of rest thereafter.’¹⁴³ When the female worker suffers from miscarriage, she ‘is entitled to a period of rest of 1.5 (one-and-a-half) months or a period of rest as stated in the medical statement issued by the obstetrician or midwife who treats her’.¹⁴⁴ In like manner, the policy of no work no pay shall not apply to them.¹⁴⁵

The reproductive function of women does not end upon the giving of birth. It continues while she is still nursing the child. Such that ‘[e]ntrepreneurs are under an obligation to provide proper opportunities to female workers/ labourers whose babies still need breastfeeding. . .’¹⁴⁶ The employer can not make a valid excuse of terminating the services of women employees on the grounds that: worker/ labourer is absent from work because he or she is getting married;¹⁴⁷ the worker/ labourer is absent from work because she is pregnant, giving birth to a baby, having a miscarriage, or breast-feeding her baby;¹⁴⁸ worker/ labourer is of different ...sex, physical condition or marital status;¹⁴⁹ The government in reinforcing protection to the maternal and reproductive function of Indonesian women under the Manpower Act has continued to uphold the regulation issued by the government which ‘prohibits employers from terminating the employment of women workers during fixed or non-fixed employment periods due to marriage, pregnancy or maternity’¹⁵⁰ Formation of union and membership thereunder while incorporated already as one of the rights of Indonesians in the Human Rights Act, has been re-emphasized in the Manpower Act as one of the protected rights of all workers, signifying equal treatment on gender.¹⁵¹

¹⁴³ Article 82 (1)

¹⁴⁴ Ibid. (2)

¹⁴⁵ Article 93 (2) c

¹⁴⁶ Article 83

¹⁴⁷ Article 153 (1) d

¹⁴⁸ Ibid. e

¹⁴⁹ Ibid. i

¹⁵⁰ Regulation of the Minister of Manpower No. 3 PER/MEN/1989 on Termination of Employment of Women Workers on the Basis of Marriage, Pregnancy, or Maternity. Also found in <http://www.ilo.org/public/english/employment/gems/eo/law/indonesi/rmm.htm>, visited January 4, 2008

¹⁵¹ Article 104

B.1.2. Marriage Law

Marital life is one aspect that women in most third world countries lose their autonomy. And this is prevalent to women who are economically dependent for chief support from their husbands. The status of Indonesian women is an exception. Both the civil law (Law No. 1 of 1974) and Islamic Law on marriage afford men and women equal rights and duties in family and social life.¹⁵² Thus, married women are not prevented from pursuing criminal and civil actions, save in cases as may be provided by religious law.¹⁵³ In the course of marriage, 'wife and husband have equal rights and responsibilities with regard to all aspects of marriage, contact with their children, and rights to joint control of assets.'¹⁵⁴ Upon dissolution of marriage, 'wife and her former husband have equal rights and responsibilities with regard to all matters concerning their children, taking into account the best interests of the child,';¹⁵⁵ they 'have equal rights with regard to all matters concerning joint assets while not undermining children's rights . . .'¹⁵⁶ Even in mixed marriages, the law is very protective of women's personal status, '[t]he nationality of a woman married to a foreign citizen shall not automatically change to that of her husband; rather, she has the right to maintain, change, or re-gain her nationality'¹⁵⁷ However, as regards the civil servants they are required to observe the provisions of PP 10/1983 in addition to either the civil law or Family law on marriage. The PP 10/1983 requires among others for the 'husband to obtain permission from their superiors before taking a second wife or divorcing.'¹⁵⁸

¹⁵² Sriro, A. Sriro's Desk Reference of Indonesian Law. 2007. 334, 338-339

¹⁵³ Human Rights Act Art. 50

¹⁵⁴ Ibid. Art. 51 (1)

¹⁵⁵ Ibid. Art. 51 (2)

¹⁵⁶ Ibid. Art. 51 (3)

¹⁵⁷ Ibid. Art. 47

¹⁵⁸ Suryakusuma, J. The state and sexuality in new order Indonesia, in Sears, L. (Ed.) *Fantasizing the Feminine in Indonesia*. 1996. 104-105

B.2. Philippines

B.2.1. Labor Legislations

The Philippines in a similar fashion has not differed much from Indonesia in its respect for the equality of men and women. Labor laws prevent gender bias in work environment and provide a neutral ground for men and women to enjoy their inherent abilities to perform work related tasks.

The catalog of labor laws in the Philippines promoting gender equality can be traced from the country's participation in the membership of nations. In its commitment with the International Labor Organization, Philippines ratified several conventions advancing the interests of the women workers to catch up with the status occupied by their male counterparts, namely: (a) "[w]omen without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed;¹⁵⁹ (b) the application to all workers of the principle of equal remuneration for men and women workers for work of equal value¹⁶⁰; (c) prohibited discrimination, which is defined as, any distinction, exclusion or preference made on the basis of...sex ...which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;¹⁶¹

Harnessing the potential of women for nation building is a mere lip service without active support from the government. Laws are needed to require strict adherence from society. The passage of Women in Development and Nation Building Act, 1992, makes the state committed to its declared policy which 'recognizes the role of women in nation building and

¹⁵⁹ ILO Night Work (Women) (Revised) Convention, 1948 (No. 89). Article III. Also found in <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C089>, visited January 5, 2008

¹⁶⁰ ILO Equal Remuneration Convention, 1951 (No. 100). Also found in <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>, visited January 5, 2008

¹⁶¹ ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Art. 1 (1) a. Also found in <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111> visited on January 5, 2008

shall ensure the fundamental equality before the law of women and men¹⁶² This can only be achieved when: '[a] substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women; ¹⁶³ '[a]ll government departments shall ensure that women benefit equally and participate directly in the development programs and projects... to ensure the full participation and involvement of women in the development process; ¹⁶⁴ '[a]ll government departments and agencies shall review and revise all their regulations, circulars, issuances and procedures to remove gender bias therein.¹⁶⁵

The Labor Code of the Philippines (otherwise known as Presidential Decree 442, as amended) is the codification of labor relations and labor standards in the private sector. In the public sector, the employer-employee relationship is generally outlined in the Civil Service Rules. The Labor Code provides additional protection to women to level the playing field of gender participation. Women are not permitted to work in the establishments during night time with or without compensation except in certain circumstances.¹⁶⁶ The justification is safety and protection to women where they may become the targets of criminals taking advantage of darkness. The biological nature of men and women require them separate facilities in work environment. Women's health and hygiene entitle them 'proper seats . . . to separate toilet rooms and lavatories, nurseries. . .' ¹⁶⁷ Pregnancy is the natural attribute of women which distinguish them from men. In the course of their employment, they are expected to take a leave of absence to give birth. Husbands, necessarily have to be with their

¹⁶² Republic Act 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. Section 2

¹⁶³ Ibid. Section 2 (1)

¹⁶⁴ Ibid. Section 2 (2)

¹⁶⁵ Ibid. Section 2 (3)

¹⁶⁶ Labor Code of the Philippines. Arts. 130-131

¹⁶⁷ Ibid. Art. 132

wives to provide the necessary support. In this situation, employers are mandated to provide maternity benefits for wife ¹⁶⁸ and paternity benefits for husband ¹⁶⁹

One way for the employers to get away with the burden granting maternity and paternity benefits would be to exclude employment of women or if not requiring women before employment to sign a contract of no marriage and or pregnancy in the course of employment. This discriminatory employment policy had been settled already in the cases decided by the Supreme Court which will be discussed in the subsequent chapter. But as provided in the Labor Code, under the following circumstances, it is unlawful to: ‘require as a condition of employment or continuation of employment that a woman employee must not marry, or to stipulate . . . that upon getting married a woman employee shall be deemed to have resigned or separated. . .¹⁷⁰; and to discharge a woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy. . . or discharge or refuse the admission of a woman upon returning to her work for fear that she may again be pregnant.’¹⁷¹

Another way which the employers may resort in discouraging women from getting employment is to make their status inferior. This can be done either by giving compensation lower than men of equal work or to condone the hostile environment for women. But this economic tactic may no longer work with employers without being entangled with legal consequences. It is unlawful discrimination of ‘paying lesser compensation to a woman for work of equal value and favouring a male employee . . .with respect to promotion, training opportunities and study or scholarship grants.¹⁷²; This legal protection for women was in line with the ILO Convention No. 100, which defines discrimination as ‘[p]ayment 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 whether the work or

¹⁶⁸ Ibid. 133

¹⁶⁹ Paternity Leave Act of 1996.

¹⁷⁰ Labor Code of the Philippines. Art. 136

¹⁷¹ Ibid. Art. 137

¹⁷² Ibid. 135

tasks are the same or of a different nature". Hostile work environment for women may take place when they are singled out to sexual harassment by their superior officers. In this case, women may either cease to work or consent to exploitation for economic reason. This dilemma is no longer possible by making sexual harassment a criminal act.¹⁷³ It deters the 'predators', usually the males from possible imprisonment arising from conviction.

B.2.2 Marriage Law

The Family Code of the Philippines governs the marital relations between husband and wife to the majority Christian population including the minority groups if the latter choose to avail its application. The state however may allow the application of the prevailing customs and traditions of the cultural minorities to govern family relations among its members. In the case of minority muslim population, the codification of personal laws is found in the Code of Muslim Personal Laws of the Philippines. The discussion of law on marriage which promotes gender equality shall be confined only to the Family Code of the Philippines. The choice was based on the familiarity of the writer of this paper on the given subject.

One of the requirements of marriage is that contracting parties who must be male and a female shall be in the marrying age of eighteen years or upwards.¹⁷⁴ This was a complete departure from the old provision of civil law where a man was at least sixteen (16) and the woman at least fourteen (14) years old.¹⁷⁵ Having a common reference for age of marriage of man and a woman relieves any suspicion of gender bias. When contracting parties suddenly realize in the course of marriage that certain circumstances either intentional or accident that would change their marital relations, both are entitled to pursue either of the following: legal separation,¹⁷⁶ annulment of marriage,¹⁷⁷ declaration of void marriage¹⁷⁸

¹⁷³ Anti-Sexual Harassment Act, 1995

¹⁷⁴ Family Code of the Philippines. Art. 5

¹⁷⁵ Civil Code of the Philippines. Art. 54

¹⁷⁶ Ibid. Art. 55

¹⁷⁷ Ibid. Arts. 35,36,45

Married life requires different responsibilities from husband and wife to found a family. It is in this area where the source of gender bias may arise. But the Family Code has been structured in such a way that husband and wife stand in equal footing in the following areas, among others: fixing of family domicile;¹⁷⁹ support of the family;¹⁸⁰ management of the household;¹⁸¹ administration and enjoyment of the community property;¹⁸² constituting the family home;¹⁸³ legal guardianship over the property of the unemancipated common child;¹⁸⁴ parental authority over the persons of their common children.¹⁸⁵ Should either party exert superiority or dominion over the other thereby causing injury to the latter or the family, the aggrieved party may ask for relief from the court.¹⁸⁶ There is however a possibility that the wife may be forever relegated to household domain, a situation abhorred by feminist advocates, when she becomes a victim of domestic violence. This will ultimately deprive the woman contrary to mandate of law to ‘exercise any legitimate profession, occupation, business or activity without the consent of the other. . . .’¹⁸⁷ The autonomy of man and a woman to control over his or her property can also be shown in one’s capacity to dispose it without the consent of the other.¹⁸⁸

B.3 Similarities and Differences

Labor legislations in both Indonesia and the Philippines have a color of similarities inspired by their active participation in international alliance like the ILO. For instance, both countries are committed to ILO’s Convention 110 concerning equal remuneration for men and workers for work of equal value and Convention 111 concerning discrimination in respect of

¹⁷⁸ Ibid. Arts. 37,38,41,44

¹⁷⁹ Ibid. Art. 69

¹⁸⁰ Ibid. Art. 70

¹⁸¹ Ibid. Art. 71

¹⁸² Ibid. Art. 96

¹⁸³ Ibid. Art. 152

¹⁸⁴ Ibid. Art. 225

¹⁸⁵ Ibid. Art. 211

¹⁸⁶ Ibid. Art. 72

¹⁸⁷ Ibid. Art. 73

¹⁸⁸ Ibid. 111.

employment and occupation. These international commitments have been translated by both countries thru the passage of their own national legislations. Aware of the sad plight of women in public life, both countries went beyond stamping out prejudices against women in work environment. By signing CEDAW, Indonesia and Philippines are committed to the elimination of all forms of discrimination against women whether in the public or private sphere. This is a new era of women empowerment a prelude to remove the shackles that made them vulnerable to exploitation and abuse.

The consolidated version of labor laws in Indonesia and Philippines could be found in Act of the Republic of Indonesia number 13 Year 2003 and the Labor Code of the Philippines respectively. Their differences are not very significant. They are almost uniform in granting equal protection to men and women. However, there are specific privileges which are granted to Indonesian women but not to Filipino women. These are: (a) women are entitled to compensation when they are absent by reason of pain caused by menstrual period; and (b) employers are required to provide roundtrip transportation from home to place of work to women workers who are assigned to work during nighttime. It may also be possible that while these privileges are not found in the text of the labor code but employers of the Philippines may have actually granted them as their customary practice.

In marriage, both countries are similar in consolidating their laws on marriage. In Indonesia, it is found in Civil law on marriage which is applicable to non-muslims and the Islamic Law for muslim majority. While the Philippines has the Family Code applicable to the majority Christian population and the Code of Muslim Personal Laws of the Philippines which applies only to members of Muslim minority. These laws on marriage have shown the aspects of gender equality at least in so far as the duties and obligations of husband and wife in marital relations. One distinction is however shown by the additional duties imposed to Indonesian husbands who are public servants. In the Philippines no distinction is made.

Another distinction is on the aspect of divorce expressed in the Indonesian Islamic Law and Code of Muslim Personal Laws of the Philippines. It is easy for Indonesian Muslim woman to secure divorce from her husband than for Muslim woman in the Philippines.

The various legal protection found in the written constitutions and labor legislations of Indonesia and Philippines are sufficient to protect the rights of everyone. Likewise, these laws definitely recognize that equal protection for self preservation and self development of the female gender is necessary. In fact, these laws recognize that woman like man should be allowed unrestricted use of her faculties and the free disposition of the fruits of her labor to attain both economic and social progress commensurate to her contributions.

Both governments seem to have sought the best means of correcting the errors of their pre colonial and colonial pasts through the fundamental laws of their lands. However, the failures to providing teeth to laws pertinent to gender equality could be dramatic, specially for Indonesian women. It seems that in pursuing the best results through legal means, both governments achieved less for Filipino and Indonesian working women. Obviously there are limits to what these laws could achieve but definitely it was harder then and now for women of both countries to get rewarded fairly for products of their hard work in spite of existing laws.

Chapter III. Women Discrimination in Workplace: Experiences of Indonesia & Philippines

Many international organizations, non-government organizations have recognized that empowerment of women through gender equality in all areas of employment and work is very necessary to reduce poverty and attain progress. It is known fact that women contribute significantly to global economies and for that matter to national economies of both Indonesia and the Philippines. Yet these contributions are often unrecognized and unpaid.

A. Indonesia

A.1 Forms of Discrimination

The large scale discrimination against Indonesian women in the workplace was magnified during the early 70's when Indonesia had engaged in a massive industrialization by allowing foreign investors to set up factories in the countryside, at the time when discrimination against women was gaining momentum in international discourse. 'Part of the attraction of international capital to Indonesia is its large size, cheap labor force.'¹⁸⁹ The much publicized riot of Great River company clearly depicted this scenario. Great river company was a garment factory located in a village near Jakarta. Its workers of about 6,000 mostly young Indonesia women staged a rally to demand better employment conditions; work leave during menstruation; paid holiday; higher pay, good working conditions; etc. All these demands should be provided for according to the Indonesia Labor law. To dramatize the situation, these women walked from the factory to the city but were stopped by Indonesia police, some women were physically hurt others were abducted and were not found by their families.¹⁹⁰

¹⁸⁹ Diane L. Wolf, "Javanese Factory Daughters". Gender, the State, and Industrial Capitalism", in Laurie J. Sears (Ed.) 1996, 144

¹⁹⁰ <http://www.wsws.org/articles/2005/may2005/lab-m21.shtml> visited March 25, 2008

Women comprised the majority of employees in the factories. Wolf¹⁹¹ in her field work from 1981 – 1983, discovered that: (a) employers preferred to hire single women than married ones; (b) some factories did not grant compensation for women who went home due to menstruation and physically maltreated their women workers; (b) maternity benefits were simply ignored. It was reported in a newspaper¹⁹² that an Indonesian Boss from a factory was being investigated for allegedly lashing nine (9) women workers in front of other workers for negligence of work. However, the absence of documented cases of aggrieved women before the proper authorities would make it difficult to assess the extent of discrimination against women. Due to the relentless lobbying of women's groups, Indonesia was convinced to sign the 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Article 1 of the said convention, says:

‘discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’

Since the signing of CEDAW by Indonesia in 1984, the country's international commitment has remained in serious dispute. Even the passage of the 2003 Manpower Act, a codification of labor laws, has failed to strengthen the government's resolve of eliminating all forms of discrimination against women particularly in the work environment. If statistics is any guide, Indonesia is slow learner. ‘In practice, however, women still lag far behind men in terms of equal opportunities in the labor market. For many unskilled women, international migration has become a coping strategy to avoid poverty and increase their income’¹⁹³ While there may be jobs available for women, but the choices are hardly encouraging or they may not be any choices at all. According to World Bank, ‘[w]omen are over-represented in unpaid

¹⁹¹ Ibid.

¹⁹² Strait Times. Singapore Newspaper. December 13, 2000 issue.

¹⁹³ Country Gender Assessment. Asian Development Bank. July 2006, p. 15. See also <http://www.adb.org/Documents/Reports/Country-Gender-Assessments/cga-ino.pdf> visited March 20, 2008)

and low-paid jobs, and are underrepresented in the more lucrative formal wage sector’¹⁹⁴ Work pay is another aspect that separates men from women. ‘A woman with exactly the same education and experience as a man will earn on average only about 81% of what the man earns’¹⁹⁵ The US State Department reported that ‘[many female factory workers were hired as day laborers instead of as full-time permanent employees, and companies were not required to provide benefits, such as maternity leave, to day laborers.]’¹⁹⁶ Even religion is not enough security for women. In one company, a Muslim woman who had been working for more than 15 years had to give up wearing headscarf, or jilbab or risk losing the job.¹⁹⁷

A.1.1 Discrimination by reason of Age and Physical Appearance

While aging is the criterion for a good wine, for Indonesian women age and physical appearance are unacceptable personal baggage in employment. Ms Brahmani’s story¹⁹⁸ is case in point. According to her, Garuda Indonesia¹⁹⁹ has implemented a policy that requires its female flight attendants to resign at age 46 while for male flight attendants, they may continue to work until they reach the age of 56 years old. Brahmani’s experience raises the fundamental issue of gender equality where competence of man and a woman depends upon age difference.

Even in the Civil Service, discriminatory practices have remained alive. For instance, in the Ministry of Finance, ‘Gender discrimination, although prohibited, is still a semi-official part of MOF (Ministry of Finance) hiring practices. When women do get hired, they still face significant hurdles in obtaining promotions, meaning that women tend to occupy the lower

¹⁹⁴ March 2006 Report. World Bank.
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/INDONESIAEXTN/0,,contentMDK:20864480~pagePK:141137~piPK:141127~theSitePK:226309,00.html> visited on March 20, 2008

¹⁹⁵ Ibid

¹⁹⁶ US state Department. Country Reports on Human Rights Practices - 2004. Indonesia
Released by the Bureau of Democracy, Human Rights, and Labor
February 28, 2005

¹⁹⁷ <http://www.indonesiamatters.com/1107/sogo/> visited March 20, 2008

¹⁹⁸ Interview conducted by ILO Jakarta. The information was obtained thru e-mail from ILO – Jakarta Office dated October 27, 2007

¹⁹⁹ National Airline company in Indonesia

positions in the ministry.’²⁰⁰ If Indonesia wants to improve its performance rating in advancing women’s interest, it need not require observations from international bodies to take action. The words of Bishop Agustinus Agus of Sintang, Indonesia are sufficient, when he said:

‘At the work place women have to face discrimination by way of low pay, hard work, less facilities and constant disregard and humiliations from their employers and co-workers. [...] Women have to struggle in their role as mothers working long hours, with lack of health care and child support facilities. Together with these problems many women have to face physical, mental, sexual violence due to the negative attitudes of society toward women’²⁰¹

But convincing words from a religious man may not be enough to prod the lethargic country like Indonesia on women’s issues. If we continue to unravel specific forms of discrimination against women, we would end up cursing rather than praising Indonesia. This will be exemplified in the next topic.

A.1.2 Discrimination by reason of Marital Status, Pregnancy/ Maternity

For employers during the early 70’s there may be some logic why they would prefer to hire single women than married ones. According to Wolf in her study, single women are cheaper to maintain than married ones.²⁰² It may be true that the maternity benefits and leaves of absence that employers are supposed to provide are a financial headache. But the contribution of women to the human race which men cannot provide is more than the business of financial balancing of loss and profits. The natural process of reproduction unique to women is priceless and yet essential even before the activity of business was invented.

With CEDAW, Indonesia was expected to make a bolder stand accommodating wider participation of women in public life. Removing any obstacle to the autonomy of private life of women is the first step in recognizing that gender equality is not a mere lip service. The

²⁰⁰ Paramita Muljuno. ‘Glass ceiling in government. Women in the Ministry of Finance face significant obstacles to advancement’. <http://insideindonesia.org/content/view/1018/47/> visited December 17, 2007

²⁰¹ <http://www.zenit.org/article-21672?l=english> visited March 19, 2008)

²⁰² See supra note 1

decision to get married, or to give full term to pregnancy in the course of employment is entirely up to a woman to decide. The formation of women's group has shown how effective they would become in protecting the individual interest of its members. Take for example the successful lobbying of a trade union in abolishing the company policy of prior physical examination before menstruation leave is granted.²⁰³ Job advertisement is the visible sign of discrimination against women. For instance, it says: 'PT MegaGlobal Enterprises Inc. seeks secretary for President Director. Must be under 25, unmarried, 1.60 m tall. Send large full-color photo.'²⁰⁴ What strong signal does it suggest? Simple, that married status has never been considered a strong contender for any job opportunities. It is a curse for married women to endure.

The US State Department made the following observation that 'despite laws that provide women with a 3-month maternity leave, the Government has acknowledged that pregnant women often are dismissed or are replaced while on leave. Some companies require that women sign statements that they do not intend to become pregnant. . .'²⁰⁵ While Manpower Act 2003 abolished discrimination against women by reason of marital status, pregnancy and maternity in work environment, it remains to be doubtful in comparison with the disparity of employment opportunity between men and women. Just recently, the International Labor Organization released its report prior to International Women's Day that Indonesia has recorded the largest increase of unemployed women in South-east Asia a decade since the 1997 financial crisis. Young women's unemployment rose from 17 percent to 33.9 percent between 1996 and 2006.²⁰⁶ This figure is very alarming considering the existing labor laws of Indonesia. Indeed a cause of concern for women who have remained

²⁰³ <http://insideindonesia.org/content/view/1004/29/> visited March 19, 2008

²⁰⁴ Duncan Graham. Published in the Sunday Post 19 August 07.

<http://indonesianow.blogspot.com/2007/08/beauty-in-indonesia-workplace.html>, visited December 9, 2007

²⁰⁵ U.S. Department of State. Indonesia Country Report on Human Rights Practices for 1998. Released by the Bureau of Democracy, Human Rights and Labor. February 26, 1999.

²⁰⁶ Marwaan Macan-Markar. Indonesia: Women Still Pay Decade After Asian Meltdown. <http://www.ipsnews.net/news.asp?idnews=41515>, visited March 9, 2008

hopeful that discrimination in all its forms would become a thing in the past in this era of globalization.

A.2 Case Law Discussion

Indonesia has an established legal system that settles disputes between parties. All courts of general jurisdiction are under the supervision of the Supreme Court. Aggrieved parties in a case decided by court of first instance (Pengadilan Negeri) would ultimately lodge their last resort of appeal to the Supreme Court. The Indonesian legal system does not however observe the principle of precedent, a prominent feature in the common law countries.²⁰⁷ This means prior decisions of the court have no binding effect to the subsequent decisions of the court.

This may be surprising, but based on accessible documents and professional inquiry, no cases of discrimination against women have been decided by court. The search by the author of this paper for discrimination cases originated from the report of the online publication of Ford Foundation Report Edition Fall of 1998. It says in the report:

‘One successful anti-discrimination case APIK handled last year was that of a young woman who became pregnant after joining a private company. Although by law she was entitled to a paid maternity leave of three months, the company refused to grant it on the grounds that she had signed an agreement not to become pregnant during her employment. . . With APIK's assistance, the woman won her case and got her job back’

When APIK²⁰⁸ failed to provide information regarding the case after several e-mails, Ford Foundation Jakarta had been contacted. Unfortunately, Ford Foundation did not have the data and instead suggested to contact the editor of Jakarta Post²⁰⁹ who may have the information.

²⁰⁷ Dr. Benny S. Tabalujan. The Indonesian Legal System: An Overview.

<http://www.llrx.com/features/indonesia.htm>

²⁰⁸ Its full name Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia Untuk Keadilan (LBH-APIK). It is an NGO that promotes women's social, economic and political rights in Indonesia. See

<http://www.iie.org/Website/WPreview.cfm?CWID=669&WID=189> visited March 22, 2008

²⁰⁹ The English newspaper in Jakarta, Indonesia.

The latter in his e-mail²¹⁰ said that ‘I couldn’t find any judgment from the Supreme Court of Indonesia. Cases of discrimination against women at work place are poorly documented’ The absence of discrimination cases has been confirmed by International Labor Organization (ILO) – Indonesia and the Professor of Law²¹¹. In its e-mail²¹² ILO- Indonesia says, ‘[t]o begin with, almost none on discrimination cases in Indonesia brought to the court. There are many reasons for that, either the victims do not know their rights, lack of understanding from the union and also the law enforcer, etc. While the law Professor said that, ‘I just want to inform you, that I have already searched on the internet about the decision but unfortunately, I could not find it. I also ask my friends whose major subject is labour law, but they said that there is no decision yet from the Court related to woman discrimination on the workplace in Indonesia.’²¹³

Court decisions are very important since it will settle the conflict between party litigants and prevent the occurrence of a similar incident. If there are no court decisions involving discrimination cases at least based on the above mentioned discussion, then it follows necessarily that either there were no aggrieved parties or the latter did not bother to pursue the claim. The absence of a case law only confirms that gender equality in Indonesia is only in its infancy stage. To contrast it with the status of gender equality in the Philippines, is the next topic of discussion.

B. Philippines

B.1. Forms of Discrimination

Even when democratic institutions are in place and laws are readily available, Philippines is still not spared as guilty by omission for failure to elevate the status of

²¹⁰ February 9, 2008

²¹¹ Faculty of Law, Islamic University of Indonesia

²¹² October 26, 2007

²¹³ October 30, 2007.

Filipino women at par with men. The fact that out of 128 countries surveyed, Philippines ranked number six (6) in terms of promoting gender equality,²¹⁴ merely amplifies the clarion call for the Philippines to work harder to totally dislodge the remaining vestiges of discrimination against women.

Almost three decades since the Philippines signed the CEDAW in 1981, Filipino women have yet to find the fulfillment of the international document in their lives. Discrimination in the work place has remained the proverbial struggle between the ant and the elephant. With limited sympathy from society, the struggle of women for gender equality remains an uphill battle. In the October 2007 survey, it was shown that labor force participation for women was only 36.5 per cent compared to men at 63.5 per cent. For low paid jobs, women pegged at 26.25 per cent as against 0.94 per cent for men.²¹⁵ The disparity seems to suggest that discrimination against women either before or during the employment has remained embedded in the system.

Even the Labor Code of the Philippines which has some of the provisions of CEDAW is not a deterrence to employers. Religious moral teachings is not as effective either. A Muslim woman, an employee of a Korean firm in the Philippines was ordered to stop wearing veil since it is somehow connected to terrorism.²¹⁶ In another company, women complained against the demeaning treatment of the male guards against them. They were frisked every time they get in and out of the company premises. They were even inspected for the color and brand of their underwear.²¹⁷ Filipino women also experienced sexual harassment by their supervisors.²¹⁸ These are all discriminatory practices that not only debase women as a class but also prevent women pursuing activity in the public sphere.

²¹⁴ Switzerland-based World Economic Forum.

²¹⁵ Labor Force Survey. ILO – Manila.

²¹⁶ Trade Union Congress of the Philippines. <http://www.tucp.org.ph/projects/sweatshops/stories/index5.htm> visited March 23, 2008

²¹⁷ Ibid.

²¹⁸ Ibid.

B.1.1 Discrimination by reason of Marital Status, Pregnancy, Maternity

Marital status, pregnancy and maternity are component elements of women's autonomy for reproduction. And yet they are stifled when opportunity comes for their natural application simply because of the presence of their genitalia. While financial burden is at the core of employer's denial to grant women their personal autonomy. Dire financial needs and gender may result to women compromising their rights. Even before women gain entrance to employment they have to face the ordeal of their gender. Women applicants of a company that produces wire harness for cars and motorcycles were required to be physically examined by poking and probing at their genitalia if they have had given birth.²¹⁹ This is to ensure the selection of only single women and avoid provision for maternity benefits applicable to married women. Even job advertisements already carry the badges of discrimination. Take for instance the following advertisements in the national daily paper, to wit: (1) Sales Engineer Computer Sales Secretary. Single/Fem, 30 yrs below;²²⁰ (2) Nurse Stay-in, RN, Single, Female, Female, Catholic.²²¹ There is no plausible connection between being single to the given position. Competence is not acquired by marital status, it is by practice. And yet this type of discrimination is carried out in ordinary fashion as business as usual.

Contractualization of employment only exacerbates discrimination. In another survey it was reported that employers have a way of avoiding the benefits of labor laws by hiring women employees for a term that disqualify them to become regular employees. This would disqualify them to enjoy maternity benefits. To ensure that they were not pregnant, women applicants were required to undergo pregnancy test even if they were single²²² In another company called Texworld Industries, which employs 170 workers where 140 are women,

²¹⁹ Ibid.

²²⁰ Manila bulletin. <http://www.classifiedads.com.ph/> visited March 22, 2008)

²²¹ Ibid

²²² The Life and Struggle of Women Workers under Contractualization. Asia Pacific Research Network. <http://www.aprnet.org/index.php?>, visited March 23, 2008)

pregnant employees are placed on forced leave and are not reinstated after delivery.²²³ A device to avoid paying for maternity benefits. Even the government which is a proponent of gender equality is guilty of discrimination. Take for instance, in the Philippine Military Academy, the premier military school in the country. There is a standing policy that female cadets are not allowed to get married until they shall served the military for at least three years.²²⁴ The policy is only applicable to female but not to male cadets. Why single out women? Maybe marital status of women is a liability to the defense of the country but not for men. A pure irrational double standard.

B.2. Case Law Discussion

The legal system in the Philippines has been influenced by the civil law and common law systems found in other countries. Cases are decided based on the codified laws and at the same time previous decisions of the court have binding effect to the resolution of cases. In the hierarchy of court system, the Supreme Court has administrative supervision over all courts and their personnel. Decisions of the lower court if appealable, will reach to the Supreme Court as the highest court of the land. Decisions of the Supreme Court are final and the lower courts are expected to observe the decisions as part of the law of the land.

Women discrimination cases are not many. They are insignificant to the many cases that clog dockets of the courts. There are two important cases that reached to the Supreme Court interpreting discriminatory practices against women employees. These are: (1) *Philippines Telegraph and Telephone Company (PT&T) vs. National Labor Relations Commission and Grace De Guzman*;²²⁵ (2) *Zialcita, et al. vs. Philippine Air Lines*²²⁶. Both cases are significant because the *PT&T* was decided in 1994, after the Philippines signed

²²³ See supra note 26.

²²⁴ <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20080309-123645/No-marriage-rule-for-female-cadets-riles-solon>. visited March 9, 2008)

²²⁵ G.R. No. 118978. May 23, 1997

²²⁶ Case No. RO4-3-3398-76; February 20, 1977. As cited in G.R. No. 118978. May 23, 1997

CEDAW while *Zialcita* was promulgated in 1977 before Philippines became the signatory of CEDAW.

In *PT&T*, private respondent Grace de Guzman was an employee of petitioner PT&T. She was dismissed from service because petitioner discovered that she contracted marriage in the course of her employment in violation of company policy. She concealed her marital status until discovered by petitioner. The main issue in this case is whether an employer can prohibit its women employees from contracting marriage during employment. The court in giving the negative answer decreed that:

‘[p]etitioner’s policy is not only in derogation of the provisions of Article 136 of the Labor Code on the right of a woman to be free from any kind of stipulation against marriage in connection with her employment, but it likewise assaults good morals and public policy, tending as it does to deprive a woman of the freedom to choose her status, a privilege that by all accounts inheres in the individual as an intangible and inalienable right’.

The decision also acknowledged that the existence of labor and social legislations to correct gender inequality was ‘largely due to our country’s commitment as a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)’. It is worth knowing that Justice Regalado writing for the majority opinion has aptly described the status of women in society. He said thus:

‘Decreed in the Bible itself is the universal norm that women should be regarded with love and respect but, through the ages, men have responded to that injunction with indifference, on the hubristic conceit that women constitute the inferior sex. Nowhere has that prejudice against womankind been so pervasive as in the field of labor, especially on the matter of equal employment opportunities and standards. In the Philippine setting, women have traditionally been considered as falling within the vulnerable groups or types of workers who must be safeguarded with preventive and remedial social legislation against discriminatory and exploitative practices in hiring, training, benefits, promotion and retention’

In *Zialcita* the company policy requiring that flight attendants, in this case applied to a woman, must remain single and that a breach of the policy will be automatically separated from the service was assailed for being unconstitutional. The court declared the company policy as unconstitutional citing the provisions of the Labor Code which was enacted in 1974.

These provisions are: (a) 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 (Article 35); and (b) It shall be unlawful for an 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 merely by reason of her marriage (Article 36).

The cases of PT&T and Zialcita are demonstrative of the commitment of the legal system against discrimination of women in the workplace. However, the low turn out of discrimination cases decided by court, presumably because of the reluctance of the complainants to file, requires governmental support and civil society advocacy to encourage marginalized women to raise their voices.

The state of Filipino and Indonesian women workers as they are with their employers (or prospective employer), is vividly portrayed in the actual cases presented in this chapter. These cases aptly demonstrated that today, women because of their sex, are discriminated against in work environment in spite and despite of their stature and legal rights. This is reality as it really is! It gives strong emphasis that discrimination is commonplace in the workplace, that it is symptomatic of defective system, and that it disregards the rule of law. These cases also provided practical demonstration in details on how women are actually treated in their work place. Likewise it provides practical assessment of existing laws and the extent of how much they are applied, manipulated, and or ignored by the different sectors of society including to a large extent the national governments of these nations.

Conclusion

Based on the foregoing, it is crystal clear that the claim of Filipino and Indonesian women for gender equality has remained elusive. It is almost an impossible quest specially in societies that seldom challenge a collective thought that women are subordinate to men. One reason is because both Indonesia and Philippines are influenced by male dominated religions: Islam and Christianity respectively. Although this paper has demonstrated that the power relations between man and woman had been balanced by the ancient style of pre-colonial societies, the colonial past inculcated the striking division of social and economic roles, spheres and domain of men and women.

At present time, gradual recognition of women's rights through the passage of national legislations in Indonesia and the Philippines is continuously evolving. The national policy of equal job opportunity and equal pay for men and women has been adopted by both governments, however, their implementations seem wanting. Majority of women from these countries remain at the lower echelon of their workforce, assuming work not wanted or less preferred by male, remaining underpaid or unpaid and discriminated against because of their marital status

While there are enough laws now guaranteeing women's rights, discrimination against women has been indicated to be very pervasive in work place. Women from Indonesia and Philippines have continued to suffer discrimination by reason of their status, when they become pregnant or when they are on leave for maternity. In Indonesia, there are many reports of discrimination against women, but not a single court decision, at least based on the research, has been granted in favor of women workers. While in the Philippines, it has only two court decisions directly related to work discrimination cases. The absence of court decision in Indonesia and the very limited figures of court decisions in the Philippines have demonstrated that something is still lacking in the promotion of gender equality in both

countries. Economic dependency of women coupled with ignorance of their rights require the concerted efforts of the government and the civil society. The existence of laws is not enough if law enforcement is inadequate.

While the ills of gender inequality are pestering to all women, proper treatment can still be achieved. As practical guide to both governments of Indonesia and Philippines including women's rights advocates, the following recommendations are worth pondering: (1) Strengthen women's advocacy in partnership between the government and the civil society; (2) Creation of job opportunities for women so they become economically independent; (3) Improve the affirmative action of women composition in both public and private offices.; (4) Creation of laws criminalizing job advertisements that discriminate the status of women.

Application of the above mentioned recommendations may not result to an overnight impact to the lives of women in view of the cancerous nature of the social ills that has been deeply rooted in the system, but at least it will shake the foundation that perpetuates these colonial practices. The various legal protection found in the written constitutions and labor legislations of Indonesia and Philippines are sufficient to protect the rights of everyone. Likewise, these laws definitely recognize that equal protection for self preservation and self development of the female gender is necessary. In fact, these laws recognize that woman like man should be allowed unrestricted use of her faculties and the free disposition of the fruits of her labor to attain both economic and social progress commensurate to her contributions. Both governments seem to have sought the best means of correcting the errors of their pre colonial and colonial pasts through the fundamental laws of their land. However, the failure to provide strict enforcement and more deterrent laws pertinent to gender equality could be dramatic, specially for Indonesian women. It seems that in pursuing the best results through legal means, both governments achieved less for Filipino and Indonesian working women. Obviously there are limits to what these laws could achieve but definitely it was harder then

and now for women of both countries to get rewarded fairly for products of their hard work in spite of existing laws.

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the right to organize.

Law No. 21 of 1999 ratifying Convention 111 of the ILO concerning
discrimination in respect of employment and occupation

Government Regulation No. 8/1981 on Remuneration Protection

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Philippines

Constitution of the Philippines

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Paternity Leave Act of 1996

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Annex A

List of laws on Filipino Women

RA 6725 otherwise known as “Anti-Violence Against Women and their Children Act of 2004

RA 6725 (April 27, 1989)

An Act Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment, Amending for the Purpose Article One Hundred Thirty-Five of the Labor Code, As Amended

RA 6949 (April 10, 1990)

An Act to Declare March Eight of Every Year as a Working Special Holiday to be Known as National Women's Day

RA 6955 (June 13, 1990)

An Act to Declare Unlawful the Practice of Matching for Marriage to Foreign Nationals on a Mail-Order Basis and For Other Similar Practices. Including the Advertisement, Publication, Printing or Distribution of Brochures, Fliers and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefor

RA 6972 (November 23, 1990)

An Act Establishing a Day Care Center in Every Barangay Instituting Therein a Total Development and Protection of Children Program, Appropriating Funds Therefor, and for Other Purposes

RA 7192 (December 11, 1991)

An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation Building and for Other Purposes

RA 7309 (March 30, 1992)

An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes

RA 7322 (March 30, 1992)

An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector, Amending for the Purpose Section 14-A of Republic Act No. 1161, as Amended and for Other Purposes

RA 7600 (June 17, 1992)

An Act Requiring All Government and Private Health Institutions with Obstetrical Services to Adopt Rooming-in and Breastfeeding Practices and for Other Purposes

RA 7610 (June 17, 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

RA 7655 (August 19, 1993)

An Act Increasing the Minimum Wage of House helpers Amending for the Purpose Article 143 of Presidential Decree No. 142, as Amended

RA 7688 (March 3, 1994)

An Act Giving Representation to Women in Social Security Commission Amending for the Purpose Section 3(A) of Republic Act 1161, as Amended

RA 7877 (February 8, 1995)

An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes

RA 7822 (February 20, 1995)

An Act Providing Assistance to Women Engaging in Micro and Cottage Business Enterprises, and for Other Purposes

RA 8171 (October 23, 1995)

An Act Providing for the Repatriation of Filipino Women Who Have Lost Their Philippine Citizenship by Marriage to Aliens and of Natural Born Filipinos

RA 8353 (September 30, 1997)

An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes

RA 8369 (October 28, 1997)

An Act Establishing Family Courts, granting Them Exclusive Original Jurisdiction Over Child and Family Cases, Amending Batas Pambansa No. 192, as Amended, Otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor and for Other Purposes