

# The Legal Face of Gender Sensitivity

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## Introduction

Gender equality exists in a society where everyone enjoys equal political, civil and economic rights and opportunities and performs obligations. Gender sensitivity exists when all members of the civil society, regardless of their sex and social orientation, share mutual respect, equal distribution of power and influence, and equal access and treatment.

Gender equality is a goal where men and women are treated equally in the society. Gender sensitivity is a state of mind where one understands and appreciates the equal gender power relations.<sup>2</sup> It is the awareness and recognition that women deserve special consideration and attention not generally associated to men by reason of their biological and physiological difference from men.<sup>3</sup>

A significant aspect of promoting gender equality and sensitivity is the empowerment of the genders through laws that do not only recognize the equality of different genders but also respond to the uniqueness of each. Social Behavioral Theory shows that a citizen's behavior is formed and shaped by the laws of the land.<sup>4</sup> To reduce gender-related barriers, violence and other forms of discriminations, laws must be gender sensitive

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<sup>2</sup> L. S. Chan (personal communication, September 30, 2012).

<sup>3</sup> W. E. Ibabao (personal communication, September 30, 2012).

<sup>4</sup> Richard Ryckman, *Theories of Personality* (9<sup>th</sup> ed., 2008).

to generate respect for the human person and to realize the enjoyment of human rights for all.

Do our laws recognize gender equality? Are these laws responsive to the uniqueness of each gender? The researchers conducted a focused group discussion (FGD) and key informant interviews (KIIs) to respond to these key questions.

Four women and three men participated in the focused group discussion (FGD). Of these seven, five are single and two are married; five are in their 20s and two are in their 30s. All are college graduates.

Two women and two men agreed to be interviewed (KII). Of these four, two are lawyers, one a University Assistant Professor and researcher, and the other a retired RTC judge; three are married, and one is single; and all are productive in their field of expertise.

## Discussion

The Universal Declaration of Human Rights (HDHR) provides the framework for all signatory nations to comprehend gender equality, sensitivity, and responsiveness. Foremost among these provisions are Article 1,<sup>5</sup> Article II,<sup>6</sup> and Article VII.<sup>7</sup>

In the national scene, the 1987 Philippine Constitution specifies a national framework from which Congress extract the bases for legislation and formulation of national development plans targeted at the advancement and empowerment of everyone. More specifically, the 1987 Constitution recognizes the role of women in nation development

<sup>5</sup> Article I. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

<sup>6</sup> Article II. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

<sup>7</sup> Article VII. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

in Article II, Section 11<sup>8</sup> and Section 14<sup>9</sup> and Article XIII, Section 14<sup>10</sup>, Article 69<sup>11</sup>, Article 70<sup>12</sup>, and Article 73<sup>13</sup> of the Family Code recognize the equal roles of gender in the formation of a family. Subsequent laws such as RA 9208<sup>14</sup>, RA 7192<sup>15</sup>, RA 9262<sup>16</sup>, RA 7877<sup>17</sup>, RA 8353<sup>18</sup>, and RA 9710<sup>19</sup> provide not only for protection of women but also their rights before the law; Article 3<sup>20</sup>, Article 135<sup>21</sup>, and Article 136<sup>22</sup> of the Labor Law show that

<sup>8</sup> Article II, Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

<sup>9</sup> Article II, Section 14: The State recognizes the role of women in nation building, and shall ensure the fundamental equality before the law of women and men.

<sup>10</sup> Article XIII, Section 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

<sup>11</sup> Article 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

<sup>12</sup> Article 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties.

<sup>13</sup> Article 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.

<sup>14</sup> RA 9208. An Act to institute policies to eliminate trafficking in persons especially women and children, establishing the necessary institutional mechanisms for protection and support of trafficked persons, providing penalties for its violations and for other.

<sup>15</sup> RA 7192, "Women in Development and Nation Building Act".

<sup>16</sup> RA 9262, "Anti-Violence Against Women and Their Children Act of 2004".

<sup>17</sup> RA 7787, "Anti-Sexual Harassment Act of 1995".

<sup>18</sup> RA 8353, "Anti-Rape Law of 1997".

<sup>19</sup> RA 9710, "An Act Providing for the Magna Carta for Women".

<sup>20</sup> Article 3. Declaration of basic policy. The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

<sup>21</sup> Article 135. Discrimination prohibited. 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.

<sup>22</sup> Article 136. Stipulation against marriage. 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

women should have equal opportunities for work and better conditions for employment where discrimination is prohibited.

The Government, its agents, and the courts, not only must condemn all forms of discrimination against women, but also must implement measures towards its elimination. In Halaguena v. PAL,<sup>23</sup> the Court ruled that female flight attendants have the constitutional right to fundamental equality with the male cabin attendants. The Court pointed to Section 14, Article II of the 1987 Constitution, Article 135 of the Labor Code as amended by Republic Act No. 6725,<sup>24</sup> and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In PT&T v. NLRC and Grace de Guzman,<sup>25</sup> the Court explained that the company policy of not accepting married woman as its employees violates Article 136 of the Labor Law.

In People v. Marivic Genosa<sup>26</sup>, however, the Court held that the defense of Battered Wife Syndrome is insufficient to prove complete self-defense of her person. Article 94<sup>27</sup> and Article 221<sup>28</sup> of the Family Law present the dominance of the male in decision-making of the family. Although the provisions provided a manner for the recourse of the wife to the courts, still tradition and practice point to the husband as the final decision maker.

In the study, the respondents believe that Philippine Laws are gender-sensitive and promote gender equality but they can only point to

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be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

<sup>23</sup> G. R. No. 172013 (2009).

<sup>24</sup> See RA 6725, "Act Strengthening Prohibition on Discrimination Against Women".

<sup>25</sup> G.R. No. 118978 (1997).

<sup>26</sup> G.R. No. 135981 (2004).

<sup>27</sup> Article 94. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

<sup>28</sup> Article 211. The father and mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail unless there is judicial order to contrary.

R.A. 9272<sup>29</sup> as specifically onto this track and the Labor Code. Generally, the laws give equal rights to men and women and protect their rights. Women are empowered and have a hand in policy-formulation and national decision-making affecting a greater number of the population.

There are laws that protect the rights of every man, woman, and child as there are obligations imposed on them. Our Constitution guarantees those rights and obligations. The laws enacted by Congress translate those Constitutional guarantees into positive action. The law on suffrage grants men and women equal rights to vote. Our Public Land Laws grants qualified Filipino citizens regardless of sex or gender the right to acquire alienable and disposable public lands. ... In some things, the government has substantially complied with its obligations. In 2004, they passed, after ten long years, the anti-VAWC act, which provides protection to women in domestically abusive relationships. It also passed a law prohibiting sexual harassment in the academe, in the workplace and in training environments. There is a mandatory 5% Gender and Development budget for all government offices, which the NEDA<sup>30</sup> must constantly monitor as regards its proper implementation. During the Arroyo government, the Magna Carta for women was signed into law.

However, when queried as to whether these laws actually respond to the needs of each gender and place them in equal footing, the respondents disagreed. Despite the presence of these laws, the social bent of most Filipinos on maintaining the male *macho* image remains; the culture of patriarchy remains a constant. The polarity of paper law and praxis law is observed.

Substantive equality is equality in terms of the actual condition; this is where the major problem lies because even if the law will say that men and women should be treated equal before the eyes of the law, in reality, in the way we live our lives and the way the norms of the societies are addressed, we see so much inequality in the way we regard men and women. ... On paper, equality is unequivocally spelled out. However,

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<sup>29</sup> See RA 9262, "Anti-Violence Against Women and Their Children Act of 2004".

<sup>30</sup> National Economic and Development Authority.

in substantive equality, actual practice and felt experiences, there is so much more *conscientization* needed. The culture of patriarchy and its manifestations still exist. The enemy is the culture, not the men.

The view that laws are more male-friendly still exists despite the presence of new laws that are more gender friendly. The dissemination and implementation of these laws remain limited and gender-biased as long as the patriarchal perspective and the paper-praxis polarity persist.

The sad part here is that these laws are not well disseminated. I grew up in the province and there are those remote places, which are not well catered by education. The people living there are not well oriented with these kinds of laws. Since they do not know their rights, no action takes place against the person abusing them. ... Women are still discriminated and violated. The data would show that the cases have never gone down. Every three hours a woman is raped; more than 50% of women experience domestic abuse. There are more than 15% of women in Congress. In short, women are still marginalized, subordinated, violated, abused, and stereotyped.

Those who believe that these laws are towards equal empowerment, debunk this. They see that the broader scope of the law; women enjoy similar rights and opportunities with their male counterparts. However, they also realize that funding and a strong political will are significant in enforcing these laws; without sufficient funds to educate a gender-sensitive populace, the schism continues to live.

There are enough laws that have been enacted with more coming protecting women and men. There is a surfeit of laws, the implementation, however, is stymied by the lack of adequacy of funds. ... What the government can do is reduce the pork barrels of the congressmen and senators and channel part of their pork barrels to provide funding for these laws protecting men and women and children of both sexes.

## Conclusion

Gender equality is an important concern that society should resonate with. Laws that are sensitive to gender equality must be seen in the workplace, civil and political relationship, and in living life. Putting one gender ahead of the other means a deprivation of benefits, rights, opportunities, and voice of the other. The State, through its gender-sensitive laws, should inculcate into the consciousness of all citizens the equality of men and women. These laws should be disseminated; government agencies, non-governmental agencies, and civil society organizations must conduct women empowerment activities and rights-awareness campaign both in the urban and rural areas. As gathered from the study, the problem is focused on the implementation of these gender-sensitive laws and the government's response to the gender issues of society. Despite the presence of these laws, discrimination and abuse against women continue. Hence, the government must set aside sufficient funding to empower the real meaning of gender sensitivity.