
Law and Social Justice: From a Gender Perspective

Myrna S. Feliciano*

Introduction

Social justice is not a mere aphorism to express concern for the plight of the poor and downtrodden. As a mandate imposed by the Constitution, it requires the adoption by the State of measures that guarantee the right of all the people to equality of opportunity for advancement in all fields of human endeavor and to equitable sharing of social and economic benefits with special emphasis to such measures that ameliorate the standard of living of the underprivileged groups (CONST., art. XIII, sec. 1). The aim is to assure that “those who have less in life should have more in law.”

While the end of social justice is to ensure the dignity, welfare and security of all people, it is a well-recognized fact that women is a disadvantageous lot.

It is a truism that the Constitution is the fundamental law of the land and all legislative acts must conform to it. But inevitably, laws reflect the interests, conduct and norms that are founded on socially-shaped assumptions about women and men – their roles, capacities, needs and vulnerabilities. For the most part, they can bestow upon women and men, rights, privileges, and obligations indicative of those socially constructed stereotyped roles. In this way, laws can legitimize and strengthen gender biases and subordination in society.

Before the law, men and women are equal (CONST., art. II, sec. 14). Fairness and equity require that both have the same opportunities to achieve a better life, given their endowments and preferences. This sense of fair play and fairness is one of the cornerstones of any democracy. Although the Philippines has made impressive gains in providing women’s socio-economic status as compared to many Asian countries, the position of Filipino women masks a number of gender issues related to human resources development, human rights, labor market participation, participation in politics, and decision-making (J.F.I. ILLO, *WOMEN IN THE PHILIPPINES*, xi (Asian Development Bank Country Briefing Paper, Dec. 1997)).

* Professor of Law, Associate Dean, College of Law, University of the Philippines; Director, Institute of Judicial Administration, U.P. Law Center.

I. Situation

Take, for example, the Filipina's situation today. In economic activities, men still dominate the labor force, but the labor participation rate and employment to population ratio of women are growing faster than men's. In 1999, only 49.9% of women were employed compared to 76% of the men. Men dominate all industries except the wholesale and retail trade, and community, social and personal services sectors (P.L. Adversario, "Gender Statistics As A Tool for Women Empowerment," *This Week*, October 9-12, 2000 http://bworld.com.ph/This_Week/Cover/coverstory.html. [1-7]). The government still needs to devise a system for measuring women's work. A 1990 study on the average number of hours rural women and men in Bicol spent on economic and domestic activities shows that women worked longer hours than men – 78 hours per week against the men's 59 hours (*Ibid.*, p. 2). This does not factor in the 44.6 hours of domestic work per week spent by women as compared to men's 10.5 hours per week.

In April 1999, unemployment was pegged at 11.8%, at 11.2% for men and 12.8% women. The gender gap in terms of unemployment is narrowing due to women's greater readiness to enter vulnerable, low quality jobs and to employers' tendency to replace more expensive male workers with cheaper female workers. But with the decreasing gap in unemployment, there was also a rise in informal activities from July 1997-98, with the self-employed increasing by 430,000 and unpaid family workers by 127,000 ("Beijing Platform for Action Strategies: How Far Realized By Now?," Philippine NGO Beijing Scoreboard Bulletin 12 (August 1999) citing Illo, 1998).

To respond to unemployment, more and more Filipinos are working abroad mainly in vulnerable, unprotected and unregulated occupations as domestics, care givers, entertainers, and other service workers. In 1998, women comprised 61% of deployed new hires (Asis, 1999), the highest percentage since 1992. In 1997, deaths were recorded at 451, 148 of whom were women; 251 came home physically ill (124 of whom were women) and 22 returned mentally ill (84 were females) (*Id.*, citing Asis, 1999 and Alcid, 1999).

In migration, the continued commodification of women and children has been facilitated by legal frameworks that condone prostitution where force is not ostensibly utilized to coerce women into prostitution. Worldwide, the problem of trafficking of women and children for prostitution, pornography, marriage-matching arrangements, military prostitution and other practices of sexual exploitation have been perpetuated by

organized criminal syndicates (“Charting Progress Five Years After Beijing,” 5 COALITION ASIA-PACIFIC REPORT 1 (Jan.-March 2000)). Since 1997, some 143,611 Filipinas went abroad ostensibly to join their fiances but ended up in prostitution houses controlled by these syndicates (Beijing Platform for Action Strategies, *op. cit.*, p. 13 citing Yamsuan, 1999). This is precisely why a bill entitled The Anti-Trafficking in Women and Minors Bill have been passed the House of Representatives and presently being discussed in the Senate of the Congress of the Philippines.

The share of women in the Philippine power structure is still very low. Women have low participation in decision-making processes at all levels. According to the Commission on Elections, women, last year, held 27 seats or 12.4% of the total 217 seats in the House of Representatives. In 1998, women occupied 15.4% of the executive and legislative levels in contrast with the 84.6% of men. At the local government level, only one woman was elected for every six men in 1998. At the national level, only one woman was elected for every nine men.

Women in poverty do not enjoy social security. Those in the informal sector, which include home-based workers, domestics, micro-entrepreneurs, vendors, unpaid family works and whose work is invisible, unrecognized, unregulated, unprotected, low-skilled and low-paid find it hard to apply for membership because of the required documents like income tax returns. Either employers do not comply for lack of sanctions and in the case of subcontractors, they cannot identify their principal employers.

As for the rural women, who are in subsistence farming and who have a stake in food security as the family food provider they suffer from lack of government support and competition from cheap foreign imports. Their poverty have worsened due to the impact of globalization and economic crisis. The liberalization of agriculture and mining, the introduction of monoculture and more special economic zones have resulted in the destruction of the environment and sustainable livelihood, the conversion of land to high-value crop at the expense of staple crops, the ruin of local business and the displacement of indigenous communities from their ancestral lands (*Ibid.*, p. 12).

Very few women have benefited from land distribution. The latest data reveals that only 5,145 women versus 23,310 men received Certificates of Land Ownership Agreement (National Statistics Coordinating Board, 1999).

A current concern about women’s health resolves around the right of women to have their health needs addressed as women and not merely for their roles as mothers.

This has forced the expansion of reproductive health concerns beyond maternal and child health to include fertility regulation, sexual health, infertility safe motherhood and child survival (PLAN FRAMEWORK OF THE PHILIPPINE PLAN FOR GENDER-RESPONSIVE DEVELOPMENT, 1995-2025, 11 (1996)). However, factors such as the government's efficiency and effectiveness in making available to all, married or not, protection against unwanted pregnancies and ensuring services for women's health, as well as necessary information to be given about sexual health, fertility regulation depend on the meager government's budget, the lack of qualified personnel, and the politics of a nation entrenched in the religious dictum and by the circular consequences of poverty and ill-health (*Id.*, at 10. Abortion is illegal and unconstitutional in the Philippines).

From 1991 to 1997, the Department of Social Work and Development has reported a total of 41,667 cases of women especially in difficult circumstances. Incidence of women battery constituted the biggest member at 59.8%. On the other hand, the Philippine National Police (PNP) reported that in 1998, there were 2,633 cases of physical injuries followed by 1,054 cases of rape and 426 cases of acts of lasciviousness (Philippine National Police, 1998 Report). For 1999, reported cases of physical injuries increased 14% while reported cases of rape and lascivious acts rose 11.5% and 37.6%, respectively (Reported by Deputy Director Rodolfo N. Caisip, Police Community Relations of the PNP).

However, these statistics are not entirely accurate considering that violence against women and children is usually shrouded with a culture of silence. Revelations of violence within the family bring shame and tremendous pressure on the victims to bear their pain, fear and rape in silence.

II. Constitutional Standards and Implementing Policies

As earlier stated, Section 14, Article II of the Constitution provides that "the State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men." Likewise, "the State shall protect working women by providing safe and healthful working conditions, taking into account their material 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" (CONST., art. XIII, sec. 14).

The Philippines is a signatory of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1249 U.N.T. 13. It entered into force on

3 September 1981) which it ratified on 5 August 1981. This Convention sets forth internationally accepted standards and principles of achieving equality for women. It addresses a wide order of women's concerns in the private and public spheres and provides a mechanism for assessing the status of women in the enjoyment and exercise of their fundamental rights.

On its part, the Supreme Court, through Justice Florenz Regalado in the case of *Philippine Telegraph and Telephone Co. v. NLRC* (G.R. No. 118978, May 23, 1997, 272 SCRA 596 (1997)), has cited CEDAW as the basis of corrective labor and social laws which prohibits discrimination against women with respect to terms and conditions of employment as when the services of a female employee was terminated because she contracted marriage during employment.

1. National Action Plans

A blueprint for integrating women in development was adopted and referred to as the Philippine Development Plan for Women (PDPW), 1989-1992. This was followed by the Philippine Plan for Gender-Responsive Development (PPGD), 1995-2005 which is a perspective plan giving strategies for development that will guide investment and expenditures of efforts and resources.

Pursuant to these constitutional mandates, Republic Act No. 7192 (1992) was enacted. Otherwise known as the Women in Development and Nation-Building Act, it enjoins government agencies to set aside for the benefit of women a substantial portion of development assistance funds obtained from foreign governments and multilateral organizations (Sec. 2). It installed a compliance requirement by which government agencies shall review and revise their regulations to remove gender bias therein (*Id.*, sec. 10). It also mandates the National Economic and Development Authority (NEDA) with the assistance of the National Commission on the Role of Filipino Women (NCRFW) to ensure that the different departments, including its agencies and instrumentalities, which, directly or indirectly, affect the participation of women in national development and their integration therein to:

- formulate projects and provide income and employment for rural women;
- assess its programs;
- ensure active participation of women and women's organizations;
- collect sex-disaggregated data and include such in their project proposal/strategy;

- ensure that programs are designed so that the percentage of women who receive assistance is approximately proportionate to their traditional participation in the targeted activities or their proportion to the population; and
- assist women in activities that are of critical significance to their self-reliance and development.

2. Family Law

Perhaps, the aspects of life most highly influenced by culture and tradition are family and marriage. In the Philippines, marriage and motherhood are seen as the destiny of women. Their roles are further strengthened by other institutions such as media and religion.

The Family Code which was signed into law in 1987 answered the clamor of women to remove the discriminatory provisions of the Civil Code. Executive Order No. 209 provides more rights to women by equalizing the marriage age requirement at 18 years old, giving joint authority to the husband and wife to choose the family residence, manage the conjugal property and have custody of the children; the wife's right to exercise her profession or career and the right to accept gifts without the need of her husband's consent; wife's right to remarry even before the expiration of 300 days after her husband's death and the right to retain parental authority over her children after remarriage.

The Family Code did not provide for absolute divorce but aligned the marriage termination mechanism with Canon Law by providing for a "declaration of nullity of marriage" on the ground of psychological incapacity to comply with essential marital obligations" (Art. 36).

The Code has further broadened the grounds for legal separation:

- repeated violence or grossly abusive conduct directed against the petitioner, a common child or a child of the petitioner;
- physical violence or moral pressure to compel the petitioner to change religion or political affiliation;
- attempt of respondent to corrupt or induce the petitioner, a common child or a child of the petitioner, to engage in prostitution or connivance in such

corruption or inducement;

- drug addiction or habitual alcoholism of the respondent;
- final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
- lesbianism or homosexuality of the respondent; and
- abandonment of petitioner by respondent without justifiable cause for ore than one year (Art. 55).

Instead of adultery on the part of the wife and concubinage on the part of the husband, which is hard to prove, the Family Code provides for sexual infidelity as a ground for legal separation (Art. 55(8)). However, it does not require a stretch of one's logic to realize that there are social realities about the double standards in the law. There are certain behavior and practices where men can indulge in and in which women are socio-culturally restrained from doing. A common example of this would be men having extramarital affairs or engaging in multiple relationships. For women, the sanctions are primarily in the context of social ostracism even in cases of women in serial monogamous relationships.

The State's premium on marriage is seen most obviously in cases of conflict between husbands and wives where the law consistently leans heavily toward spousal reconciliation. In an action for legal separation, a "cooling off" period from the time of the filing of the petition (FAMILY CODE, art. 58) is required even in cases of domestic violence which may need immediate action or redress. Moreover, there is general resistance in the recognition of marital rape although this is not precluded by the current rape law (Rep. Act No. 8353 (1997)).

There has yet to be a law on domestic violence because the existing laws on physical injuries and other pertinent offenses are not real alternatives. Prevalent among law enforcers, prosecutors, and the courts is the view that domestic violence is a private matter to be settled between the spouses.

3. Labor and Social Legislation

The Labor Code acknowledges biological and social consideration when it deals with the situation of working women. It requires the employer to provide a nursery in the workplace for the benefit of women employees, maternity leave benefits, family planning services, separate toilet rooms and lavatories for men and women and

at least a dressing room for women (Pres. Decree No. 442 (1974), arts. 132, 133 & 134 Pres. Decree No. 442 (1974), arts. 132, 133 & 134).

Article 135 of the Labor Code, as amended by Republic Act No. 6725 (1989), spells out what constitutes discrimination against employees: *“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.”*

The following are acts of discrimination:

Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value.

Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.

Under the Implementing Rules dated January 16, 1990, work of equal value refers to “activities, jobs, tasks, duties or services, workers or employees are required or called upon to perform and which are identical or substantially identical. Payment of a lower compensation or lower benefits to a female employee does not constitute a failure to comply with this section, if the difference between the rates of pay is based on length of service or seniority, on location or geographical area of employment, or any factor other than sex and the factors on which the difference is based would normally justify such difference in rates of pay.

Despite these statutory provisions, discrimination in opportunity and treatment remains a reality for women workers. This unequal access to jobs, better remuneration, and wider occupation choice can be attributed to several factors, such as a lower level of literacy; unequal access to education and training; limited educational choices of women due to the influence of family, teachers, and employers; inadequate educational and training schemes to meet the special needs of women; and the stereotyped roles that women play in society, particularly as wife and mother.

4. Health

Health is a basic human right. The Constitution specifically refer to it under Section 15 of Article II which provides that *“the State shall promote the right to health of the people and instill health consciousness among them”* and Section 11, Article XIII states that *“the State shall adopt an integrated and comprehensive approach to health*

developments. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children.”

Complementary legislation were passed, namely: (a) Executive Order No. 51 (1986) known as the National Code of Marketing of Breastmilk Substitutes, Breastmilk Supplements and Other Related Products; (b) Republic Act No. 6972 (1990) which establishes a day-care center in every barangay; (c) Republic Act No. 7600 (1992) providing incentives to all government and private health institutions with rooming-in and breastfeeding practices; and (d) Republic Act No. 7883 or the Barangay Health Workers’ Benefits and Incentives Act of 1995.

5. Economic Rights

The Philippine Constitution subscribes to the same developmental framework in advocating as state policies the promotion of a just and dynamic social order (CONST. art. I I, sec. 9), and the promotion of social justice in all phases of national development (*Id.*, sec. 10). It aspires to free the people from poverty by providing adequate social services, and promoting full employment, a rising standard of living, and an improved quality of life for all (*Id.*, sec. 9), affirms labor as a primary social economic force (*Id.*, sec. 18); and promotes comprehensive rural development and agrarian reform (*Id.*, sec. 21).

Several laws were passed pursuant to these articles. Republic Act No. 6657 (1988) or the Comprehensive Agrarian Reform Law carries a provision that “all qualified women members of the agricultural labor force must be guaranteed and assured equal rights to ownership of land, equal share of the farm’s produce and representation in advisory or appropriate decision-making bodies.” The Department of Agrarian Reform continues to amend its administrative policies and guidelines accordingly by issuing Memorandum Circular No. 1993, series of 1993. It also ensures that women benefit equally and participate fully in the development projects of the Comprehensive Agrarian Reform Program. Likewise, Memorandum Circular No. 18, series of 1996, provides clarificatory guidelines in the manner of generating and issuing emancipatory patents (EPs) and certificates of land ownership agreements (CLOAs) to qualified agrarian reform beneficiaries and ensures gender equality between spouses who are beneficiaries of CARP, particularly in the generation and issuance of EPs and CLOAs.

On the other hand, the Department of Environment and Natural Resources has issued certificates of stewardship contracts that granted land tenure of twenty-five years

and access to training programs to both spouse beneficiaries.

To increase participation of women in business, Republic Act No. 7882 (1995) provides assistance to women engaging in micro and cottage business enterprises.

6. Criminal Law and Violence Against Women

Philippine laws pertaining to gender violence are inadequate. This necessitates the passage of major legislation to address domestic violence and the illegal trafficking of women. Although repeated physical violence and sexual infidelity are grounds for legal separation under the Family Code (Art. 55), the corresponding provisions have not been amended in the Revised Penal Code (Act No. 3815 (1932), arts. 333 & 334). For example, Article 333 on adultery states that to be guilty of adultery, a wife only needs to engage in a single act of sexual intercourse with another man. However, in Article 334, the married man commits concubinage only if he keeps a mistress, has sexual intercourse under scandalous circumstances or cohabits with her which certainly is discriminatory.

Republic Act No. 8353 or the Anti-Rape Law was passed last September 30, 1997. Rape as defined in the Revised Penal Code was expanded and the present law now provides that rape is committed:

- “1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
- through force, threat, or intimidation;
 - when the offended party is deprived of reason or otherwise unconscious;
 - by means of fraudulent machination or grave abuse of authority;
 - and
 - when the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present.
2. By any person who, under any of the circumstances mentioned in paragraph 1 shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.”

The new law now classifies rape as a crime against persons and can now be prosecuted by the State. Note that the second paragraph of the law is gender-neutral. It also provides that any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence.

Recent laws passed include: (a) Republic Act No. 7877 (1995) which makes sexual harassment unlawful in the employment, education and training environment; (b) Republic Act No. 7659 (1993) which imposes the death penalty on certain heinous crimes such as rape when committed with certain attendant circumstances; (c) Republic Act No. 7610 (1992) which punishes child abuse, pornography and pedophilia; (d) Republic Act No. 8505 (1998) which provides rape victims assistance and protection and contains for a rape shield provision; and (e) Republic Act No. 7309 (1992) which awards compensation not exceeding PhP10,000.00 to victims of unjust imprisonment or detention and victims of violent crimes including rape.

Conclusion

Despite all these government initiatives, immediate attention should be given to the real causes of women's difficulties and the *de facto* practices that give rise to these hardships. A thorough examination of the inadequacy of some legislation as well as the impact of the laws on gender relations is in order. There is also a need to put monitoring mechanisms and indicators in place in order to measure the effects of government policies and programs.

There has been a growing consensus that sustainable development requires an understanding of the roles of women and men, within the community and in their relations to each other. With the gender and development approach, improving the status of women is no longer considered solely an issue for women, but instead is a goal whose attainment requires active participation of both women and men.