

# Promoting Equality in the Workplace: Debunking the Heteronormative Assumption Applied to Philippine Legislation

Jose Ryan S. Pelongco\*

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\* '23 LL.M. *can.*, Kyushu University Graduate School of Law; '21 J.D., Ateneo de Manila University School of Law. The Author was a Member of the Board of Editors of the *Ateneo Law Journal*. He was the Lead Editor of the fourth Issue of the 64th Volume and was an Associate Lead Editor of the third Issue of the 62d Volume. The Author currently works as a Legal Assistant at the European Union Election Expert Mission to the Philippines. His notable working experiences include serving as a Legal Assistant in the chambers of Senior Associate Justice Marvic Mario Victor F. Leonen of the Supreme Court of the Philippines from August 2018 to January 2020, where he contributed to the implementation of the Supreme Court Case Docket Decongestion Program. He was a part of the team which emerged as the Champion of the International Children's Rights Moot Court Competition held in Leiden University, the Netherlands, in April 2019, where he and his fellow counsel for the Applicant also received the award for the Best Oral Argument for the Applicant. The Author has contributed several Articles to the *Journal*, namely: *In a Class of Their Own: A Review of Quasi-Suspect Classes in Philippine Jurisprudence and the Direct Effect of Case Law in Spurring Legislative Enactments*, 65 ATENEO L.J. 308 (2020); *Making Sense of the Cybercrime Courts' Jurisdiction Over Cybersquatting Cases in Light of the Concurrent Jurisdiction of World Intellectual Property Organization Panels Pursuant to the Uniform Dispute Resolution Policy*, 64 ATENEO L.J. 983 (2020) with Atty. Julianne S. Alberto; & *Republic v. Sereno: Revisiting Constitutional Qualifications for Impeachable Public Officers*, 63 ATENEO L.J. 70 (2018) with Atty. Ray Paolo J. Santiago. This Article was featured in The Asian Society of Labour Law Manila Special Conference held last 16-17 December 2022 at the University of the Philippines College of Law.

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## I. INTRODUCTION

It is no great secret that the Labor Code of the Philippines<sup>1</sup> was designed to tilt more toward the employees' side rather than the employers'.<sup>2</sup> In its myriad decisions, the Supreme Court has, more often than not, stated that "[i]n the interpretation of their provisions, labor contracts require the resolution of doubts in favor of the laborer because of their being imbued with social justice considerations."<sup>3</sup> Also, in Articles 3, 4, and 6 of the Labor Code, for instance, it is stated that

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.

ARTICLE 4. Construction in Favor of Labor. — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

...

ARTICLE 6. Applicability. — All rights and benefits granted to workers under this Code shall, except as may otherwise be provided herein, apply alike to all workers, whether agricultural or non-agricultural.<sup>4</sup>

From the tenor of the above-quoted Labor Code provisions, it is at once crystal clear that the Philippines has an avowed national policy heavily protective of employees' rights. In the virtual tug-of-war between business interests and employee rights, the latter necessarily has better standing before

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1. A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, arts. 3, 4, & 6 (1974) (as amended).
  2. *See* *Becmen Service Exporter and Promotion, Inc. v. Cuaresma*, G.R. Nos. 182978-79, 584 SCRA 690, 714-15 (2009) (citing An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, arts. 1700-02 (1949)).
  3. *Centro Project Manpower Services Corporation v. Naluis*, G.R. No. 160123, 758 SCRA 627, 628 (2015).
  4. LABOR CODE, arts. 3, 4, & 6.

the eyes of the law and the courts — most especially when there is an apparent or perceived ambiguity in the language of the law.

As early as 1953, the Supreme Court already declared that

[t]he right to labor is a constitutional as well as a statutory right. Every man has a natural right to the fruits of his own industry. A man who has been employed to undertake certain labor and has put into it his time and effort is entitled to be protected. The right of a person to his labor is deemed to be property within the meaning of constitutional guarantees. That is his means of livelihood. He cannot be deprived of his labor or work without due process of law.<sup>5</sup>

This right, then, necessarily applies to all workers regardless of classification. Article 6 of the Labor Code even stresses that “[a]ll rights and benefits granted to workers under this Code shall, except as may otherwise be provided herein, apply alike to all workers, whether agricultural or non-agricultural.”<sup>6</sup> Whatever an employee’s classification may be, whether regular, probationary, contractual, or the like, the provisions are all-encompassing and must apply alike to them.

In this Article, the Author shines a spotlight on a very well-known, yet somehow underappreciated, segment of workers in Philippine society today: those belonging to the Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Other Gender and Sexual Minorities (LGBTQI+) community. Although they are prevalent in both the country’s labor scene<sup>7</sup> and in society<sup>8</sup> — this

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5. *Phil. Movie Workers’ Assn. v. Premier Productions, Inc.*, 92 Phil. 843, 848 (1953) (citing 11 AM. JUR. *Labor as Right of Employee and Employer* § 338 (1936) & 11 AM. JUR. *Employment Contracts Generally* § 344).

6. LABOR CODE, art. 6.

7. See AXA Asia, *LGBTQ+ Inclusion: Gauging Progress in the Workplace* (Study by AXA Asia-June 2021), at 3, available at [https://www-axa-com.cdn.axa-contento-118412.eu/www-axa-com/f154df43-d3a8-4d82-b724-ac2ad6a3a2a5\\_AXA-LGBT-Report\\_vFinal.pdf](https://www-axa-com.cdn.axa-contento-118412.eu/www-axa-com/f154df43-d3a8-4d82-b724-ac2ad6a3a2a5_AXA-LGBT-Report_vFinal.pdf) (last accessed Apr. 30, 2022) [<https://perma.cc/2BNY-7JQW>] (While the report did not expressly provide that the LGBTQI+ community is prevalent in the Philippines, its findings show that self-identifying LGBTQ+ employees are more able to be their “true selves” in the Philippines.).

8. United States Agency for International Development & United Nations Development Programme, *Being LGBT In Asia: The Philippines Country Report*, at 18, available at [https://www.undp.org/sites/g/files/zskgke326/files/publications/Philippines%20Report\\_Final.pdf](https://www.undp.org/sites/g/files/zskgke326/files/publications/Philippines%20Report_Final.pdf) (last accessed Apr. 30, 2022) [<https://perma.cc/7QR9-UHWY>].

group faces harsh discrimination.<sup>9</sup> The prejudice they face results not only in teasing and taunting targeted towards them,<sup>10</sup> or the denial of equal access to benefits typically given to their heterosexual counterparts,<sup>11</sup> but also, in extreme cases, to their deaths.<sup>12</sup>

With that, this Article takes a more in-depth look at the community's shared history, their present societal standing, how they fare when it comes to workplace benefits, and how religiosity in the country interacts with the constitutional rights to religion in affecting the shared experiences of the LGBTQI+ community in the workplace.

## II. BEING LGBTQI+ IN THE PHILIPPINES: CURRENT STATE

At present, in the Philippines, homosexuality *per se* and homosexual conduct are not criminalized. As pointed out by the Supreme Court in the seminal case of *Ang Ladlad v. COMELEC*<sup>13</sup> —

We are not blind to the fact that, through the years, homosexual conduct, and perhaps homosexuals themselves, have borne the brunt of societal disapproval. It is not difficult to imagine the reasons behind this censure [of] religious beliefs, convictions about the preservation of marriage, family, and

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9. See Corinne Redfern, 'I'm Scared Every Damn Day': In the Philippines, Violence Shadows Trans Lives, available at <https://fullerproject.org/story/im-scared-every-damn-day-in-the-philippines-violence-shadows-trans-lives> (last accessed Apr. 30, 2022) [<https://perma.cc/3ZUV-TY4Q>].
  10. See Nazish Dholakia, Bullied as a Child, Gay Filipino Comes Into His Own, available at <https://www.hrw.org/news/2017/06/22/bullied-child-gay-filipino-comes-his-own> (last accessed Apr. 30, 2022) [<https://perma.cc/7CY2-NUBK>].
  11. See generally Chang Casal, *Survey Finds That Filipino Companies Are Not Accepting of LGBTQ+*, CNN PHIL., Nov. 14, 2018, available at <https://www.cnnphilippines.com/life/culture/2018/11/14/Filipino-companies-not-accepting-LGBTQ.html> (last accessed Apr. 30, 2022) [<https://perma.cc/5MH5-5ANR>].
  12. See generally Philippine Commission on Women, PCW Condemns Gender-Based Violence, Seeks Justice for Laude's Death, available at <https://pcw.gov.ph/pcw-condemns-gender-based-violence-seeks-justice-for-laudes-death> (last accessed Apr. 30, 2022) [<https://perma.cc/NF27-9GLN>] & Krixia Subingsubing, *Trans Man Found Dead in QC; Childhood Friend, 2 Others Charged*, PHIL. DAILY INQ. May 24, 2021, available at <https://newsinfo.inquirer.net/1435675/trans-man-found-dead-in-qc-childhood-friend-2-others-charged> (last accessed Apr. 30, 2022) [<https://perma.cc/5VUD-QK8>].
  13. *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No.190582, 618 SCRA 32 (2010).

procreation, even dislike or distrust of homosexuals themselves and their perceived lifestyle. Nonetheless, we recall that the Philippines has not seen fit to criminalize homosexual conduct. Evidently, therefore, these ‘generally accepted public morals’ have not been convincingly transplanted into the realm of law.<sup>14</sup>

In *Falcis v. Civil Registrar General*,<sup>15</sup> the Court took pains to explain that the Constitution itself “does not define or restrict marriage on the basis of sex, gender, sexual orientation, or gender identity or expression.”<sup>16</sup> Indeed, the *ponencia* hints at the fundamental law of the land being accommodating of unions which are not restricted to that between a man and a woman —

Lacking a manifestly restrictive textual definition of marriage, the Constitution is capable of accommodating a contemporaneous understanding of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The plain text and meaning of our constitutional provisions do not prohibit SOGIESC. These constitutional provisions in particular, and the Constitution in general, should be read through the lens of ‘a holistic approach in legal interpretation’:

The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the

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14. *Id.* at 60–61 (citing *Anonymous v. Radam*, A.M. No. P-07-2333, 541 SCRA 12, 18 (2007) (citing *Concerned Employee v. Mayor*, A.M. No. P-02-1564, 443 SCRA 448, 460 (2004))).

15. *Jesus Nicardo M. Falcis, III v. Civil Registrar General*, G.R. No. 217910, Sept. 3, 2019, available at <http://sc.judiciary.gov.ph/8227> (last accessed Apr. 30, 2022).

16. *Id.* at 14 (citing American Psychologist Association, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AM. PSYCHOL. 832, 862 (2015); An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, and Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties Therefor [Safe Spaces Act], Republic Act No. 11313, § 3 (d) & (f) (2019); & American Psychological Association, *Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients*, 67 AM. PSYCHOL. 10, 11 (2012)).

vernacular that describes the Constitution — *saligan* — demonstrates this imperative of constitutional primacy.<sup>17</sup>

As a final note, *Falcis* is a reminder that

[o]ur freedom to choose the way we structure our intimate relationships with our chosen significant other in a large sense defines us as human beings. Even opposite-sex couples continually adjust the day-to-day terms of their partnership as their relationships mature. It is in the sanctuary of their spaces that we authentically evolve, become better human beings, and thus contribute meaningfully within our society. After all, the companionship and understanding that we inevitably discover with the person we choose to spend the rest of our lives with provide the foundation for an ethic of care that enriches a democracy.<sup>18</sup>

Nevertheless, despite these clear-cut judicial pronouncements, societal acceptance is a different matter altogether. According to a report submitted to the United Nations Office of the High Commissioner for Human Rights for Universal Periodic Review,

[a]lthough the Philippines has signed and ratified most of the core human rights instruments, including the [International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of a Child, Convention on the Rights of Persons with Disabilities, Convention on the Elimination of Racial Discrimination,] and other human rights treaties, Philippine society and culture maintain much prejudice towards the LGBT community, and lacks basic sensitivity and recognition of [ ] LGBT rights.<sup>19</sup>

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17. *Jesus Nicardo M. Falcis, III*, G.R. No. 217910, at 15-16 (citing *David v. Senate Electoral Tribunal*, 795 Phil. 529, 573 (2016) & *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 521 (2015)).

18. *Jesus Nicardo M. Falcis, III*, G.R. No. 217910, at 107.

19. Office of the United Nations High Commissioner for Human Rights, *The Status of Lesbian, Gay, Bisexual and Transgender Rights: Submission to the Human Rights Council for Universal Periodic Review 13th Session*, at 1, available at [https://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS1\\_UPR\\_PHL\\_SI13\\_2012\\_JointSubmission1\\_E.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS1_UPR_PHL_SI13_2012_JointSubmission1_E.pdf) (last accessed Apr. 30, 2022) [<https://perma.cc/FU2K-DQSB>]. See also *International Covenant on Civil and Political Rights*, opened for signature Dec. 19, 1966, 999 U.N.T.S. 171; *International Covenant on Economic, Social and Cultural Rights*, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3; *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted Dec. 18, 1979, 1249 U.N.T.S. 13; *Convention on the Rights of the Child*, adopted Nov. 20, 1989, 1577 U.N.T.S. 3; *Convention on the Rights of Persons with Disabilities*, adopted Dec.

The country may be cautiously tolerant of people in the LGBTQI+ community, but real acceptance is still an elusive dream.

While the Philippine Statistics Authority (PSA) has not provided official statistics, unofficial estimates peg the number of LGBTQI+ in the country at a few million.<sup>20</sup> According to an article by Rappler, “[o]ne in 20 Metro Manila residents openly identifies themselves as LGBT. This means that there are at least 600,000 LGBT people in Metro Manila alone, not counting those who are not ‘out’ or do not identify as LGBT but are in same-sex relationships or encounters.”<sup>21</sup> Going by the 1:20 ratio<sup>22</sup> in Metro Manila and applying this nationwide, the Author estimates a number pegged at five million LGBTQI+ persons in the Philippines (given an estimated population of 100 million),<sup>23</sup> a good number of which are presumably part of the labor force.

Despite the seemingly sizable number of LGBTQI+ individuals gainfully employed in the workplace, widespread discrimination still persists against them. According to the United Nations Development Program 2014 report on Being LGBT in Asia, “LGBT individuals face challenges in employment both on an individual level and as members of a community that is subject to discrimination and abuse. This can be compounded by the weak social status and position of the individuals involved.”<sup>24</sup>

The report adds —

In the Philippines, the governing law between employers and employees is known as the Labor Code of the Philippines, also known as Presidential Decree 442. While several articles of the Code have been amended, its main

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13, 2006, 2515 U.N.T.S. 3; & International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195.

20. Shakira Sison, *#PHVote: Will Anyone Ever Mention the LGBT Community?*, RAPPLER, Nov. 12, 2015, available at <https://www.rappler.com/voices/imho/112513-phvote-anyone-mention-lgbt-community> (last accessed Apr. 30, 2022) [<https://perma.cc/HRX3-X4L4>].

21. *Id.*

22. *Id.*

23. Philippine Statistics Authority, *Census of Population and Housing (2020 CPH) Population Counts Declared Official by the President*, available at <https://psa.gov.ph/sites/default/files/attachments/ird/pressrelease/Press%20Release%20-%202020%20CPH%20Population%20Counts%20Press%20Release.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/98HB-7X9Z>].

24. United States Agency for International Development & United Nations Development Programme, *supra* note 8, at 35.

policy is the protection of workers. However, LGBT people in the Philippines encounter discriminatory practices that affect their employment status. Ocampo [ ] noted that there are no statistics to show the extent of employment-related [sexual orientation and gender identity or SOGI] discrimination in the Philippines. Government agencies that should be involved in issues of SOGI discrimination do not report on LGBT discrimination. As such, ‘SOGI discrimination is a category of workplace discrimination that has not become part of mainstream policy dialogues.’

For many LGBT people, discrimination starts even before they are employed. For instance, there are cases of male-to-female transgender women being [‘]told by recruitment officers that they will only be hired if they presented themselves as males by cutting their hair short, dressing in men’s clothes, and acting in stereotypically masculine ways.[’] For those already employed, there are cases of dismissals of LGBT employees solely because of their SOGI. In the case of lesbian employees, LeAP! [ ] reported that ‘discrimination can occur in the process of hiring, in the assigning of wages, in the granting of benefits and promotions, and the retention of ... employees.’<sup>25</sup>

With regard to LGBTQI+s being represented in the workplace, it was found that

[a] key issue raised during the national dialogue was the absence of representatives from within the LGBT community to address these employment-related issues. For instance, while it is recognized that existing employment-related policies should be reviewed to ascertain if they are pro- or anti-LGBT, no LGBT organization is currently doing this. Similarly, no LGBT organization checks if agencies such as the Department of Labor and Employment comply with LGBT-friendly policies/agreements to which they are signatory or a part. There are also sectors from within the LGBT community that continue to not be represented in employment-related

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25. *Id.* (citing LABOR CODE, art. 3; Michael B. Ocampo, “Sex” in the Workplace: Approaches to Sexual Orientation and Gender Identity Discrimination in the Workplace Absent an Anti-Discrimination Law, 86 PHIL. L.J. 186, 194 (2011); Submission of the Civil Society Organizations (CSOs) Coalition Report on the Situation of Lesbian, Gay, Bisexual and Transgender (LGBT) Persons in the Philippines for the 13th Session of the UN Universal Periodic Review for the Philippines (May 21–June 1, 2011), at 3, available at [https://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS13\\_UPR\\_PHL\\_S13\\_2012\\_JointSubmission\\_13\\_E.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS13_UPR_PHL_S13_2012_JointSubmission_13_E.pdf) (last accessed Apr. 30, 2022) [<https://perma.cc/U5H9-U7KB>]; Patrick King Pascual, *Discrimination in Focus*, OUTRAGE MAG., Nov. 18, 2012, available at <https://outragemag.com/a-closer-look-at-lgbt-discrimination> (last accessed Apr. 30, 2022) [<https://perma.cc/937V-6NAB>]; & LESBIAN ADVOCATES PHILIPPINES, UNMASKED: FACES OF DISCRIMINATION AGAINST LESBIANS IN THE PHILIPPINES (2004).



discussions. These include LGBT overseas Filipino workers (OFWs), those involved in sex work, LGBT people with disabilities, and LGBT people belonging to indigenous communities. According to the national dialogue's participants, they should be included in any planned efforts.<sup>26</sup>

In a report released jointly by the International Labor Organization and the United Nations Development Program in 2018,

[t]he largest issue for LGBTI people in the Philippines remains the lack of an anti-discrimination law at the national level, which can be used to protect LGBTI employment rights. The Labor Code of the Philippines (1974), which serves as an overarching framework providing standards on the rights of workers in the country, is silent about SOGIESC [Sexual Orientation, Gender Identity or Expression, and Sex Characteristics]. Since the late 1990s, LGBTI rights advocates have lobbied for the passage of anti-discrimination bills covering not only discrimination in the workplace, but also in education, access to goods and services, accommodation, and the military. However, the bills have faced strong opposition from religious groups as well as from lawmakers.<sup>27</sup>

It also points out how various local government units (LGUs) have passed measures which explicitly prohibit discrimination against members of the LGBTQI+ community, in lieu of a nationwide, overarching law which does so.<sup>28</sup>

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26. *Id.* at 36-37.

27. International Labour Organization & United Nations Development Program, LGBTI People and Employment: Discrimination Based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in China, the Philippines, and Thailand, at 31-32, available at [https://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic\\_governance/hiv\\_aids/lgbti-people-and-employment--discrimination-based-on-sexual-orie.html](https://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/lgbti-people-and-employment--discrimination-based-on-sexual-orie.html) (last accessed Apr. 30, 2022) [<https://perma.cc/WQ9Y-WX2A>] (citing GALANG Philippines, Inc., How Filipino LBTS Cope with Economic Disadvantage: Sexuality, Poverty and Law, at 4, available at [https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/5873/ER-B120\\_AccompanyingBrief.pdf](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/5873/ER-B120_AccompanyingBrief.pdf) (last accessed Apr. 30, 2022) [<https://perma.cc/2P87-XDSV>] & United States Agency for International Development & United Nations Development Programme, *supra* note 8, at 26-27).

28. International Labour Organization & United Nations Development Program, *supra* note 27, at 32 (citing Eric Julian Manalastas, Anti-Discrimination Ordinances, available at <http://pages.upd.edu.ph/ejmanalastas/policies-ordinances> (last accessed Apr. 30, 2022) [<https://perma.cc/9U4E-E75G>] &

The comprehensive report also notes the seeming contradiction in the country's existing legislation when it comes to promoting gender equality, pointing out that contradictory policies are found in several guidelines of administrative agencies.<sup>29</sup>

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United States Agency for International Development & United Nations Development Programme, *supra* note 8, at 23).

According to the report,

[i]n the absence of national anti-discrimination legislation, local ordinances have been passed during the past 15 years that prohibit discrimination based on sexual orientation and/or gender identity and expression, often along with a number of other grounds, such as disability, age, race, ethnicity, religion[,] and health status. In 2003, Quezon City was the first local government unit to pass an anti-discrimination ordinance banning employment-related discrimination (Quezon City Ordinance No. SP-1309 (series of 2003)). This 2003 ordinance was later expanded in 2014 to also cover affirmative acts encouraging existing barangay (village or district) help desks addressing violence against women and children to also address and document cases of gender-based violence against LGBT people (Quezon City Ordinance No. SP-2357 (series of 2014), better known as the Gender-Fair Ordinance). As of February 2018, [five] provinces, 15 cities, [one] municipality and [three] barangays have passed anti-discrimination ordinances that include SOGIE as protected grounds, covering just over one-tenth of the population.

International Labour Organization & United Nations Development Program, *supra* note 27, at 32.

29. See International Labour Organization & United Nations Development Program, *supra* note 27, at 33 (citing OutRight Action International, *The Philippines: Acceptance of Gays in the Military Does Not Mean Equality (Yet)*, available at <https://outrightinternational.org/content/philippines-acceptance-gays-military-does-not-mean-equality-yet> (last accessed Apr. 30, 2022) [<https://perma.cc/DF9A-6EZX>] & United States Agency for International Development & United Nations Development Programme, *supra* note 8, at 24).

The report says —

In relation to public services, contradictory rules and regulations remain concerning SOGIE. For example, Section 59 of [Republic Act No.] 8551 (Philippine National Police Reform and Reorganization Act of 1998) requires the National Police Commission (NAPOLCOM) to formulate a gender sensitivity [program], prevent sexual harassment in the workplace, and prohibit discrimination on the basis of gender or sexual orientation. Yet, the NAPOLCOM Memorandum Circular No. 2005-[002] allows a police officer to be discharged for 'sexual

Indeed, being LGBTQI+ in the Philippines may not be illegal nor same-sex conduct punishable under the law similar to other jurisdictions,<sup>30</sup> but it is clear from these reports, and also from people's behavior in general, that heteronormativity is still very much prevalent in the country. Despite the many strides that have been advanced by other States when it comes to LGBTQI+ rights, one of the most significant examples being the United States (U.S.), which declared that limiting the institution of marriage to opposite-sex couples is violative of the due process and equal protection clauses of their constitution in the U.S. Supreme Court's landmark case of *Obergefell v. Hodges*,<sup>31</sup> it seems as if the country still lags behind when it comes to according the full respect and dignity befitting members of the LGBTQI+ community. This is also despite the Supreme Court's relatively recent pronouncements in *Falcis v. Civil Registrar General*,<sup>32</sup> where the Court has stressed and "recognized

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perversion,' including 'latent and overt homosexuality' and places homosexuality under 'neurological and psychiatric disorders' that make a person unsuitable for service. Likewise, the Code of Ethics of the Armed Forces of the Philippines (AFP), which announced a zero tolerance for discrimination policy in 2009, has provisions that allow discrimination against lesbian and gay members of the military. In the civil service, the Civil Service Commission's (CSC) Office Memorandum [29-2010] prohibits discrimination against LGBTI people applying for civil service examinations, but it is not widely known.

International Labour Organization & United Nations Development Program, *supra* note 27, at 33 (citing An Act Providing for the Reform and Reorganization of the Philippine National Police and for Other Purposes, Amending Certain Provisions of Republic Act Numbered Sixty-Nine Hundred and Seventy-Five Entitled, "An Act Establishing the Philippine National Police Under a Re-Organized Department of the Interior and Local Government, and for Other Purposes" [Philippine National Police Reform and Reorganization Act of 1998], Republic Act No. 8551, § 59 (1998); National Police Commission, Amending Memorandum Circular No. 2003-009 Entitled "Further Amending NAPOLCOM Memorandum Circular No. 92-015 Prescribing a Standard Procedure for the Recruitment, Selection and Appointment of PNP Uniformed Personnel Dated November 26, 1992" and Other Related Issuances, Memorandum Circular No. 2, Series of 2005 [NAPOLCOM Memo. Circ. No. 2, s. 2005], § IV (C) (7) (June 14, 2005); & Civil Service Commission, Memorandum Circular No. 29, Series of 2010 [CSC Memo. Circ. No. 29-2010] (2010)).

30. *Ang Ladlad LGBT Party*, 618 SCRA at 66.

31. *Obergefell v. Hodges*, 576 U.S. 644 (2015).

32. *Jesus Nicardo M. Falcis, III*, G.R. No. 217910.

the protracted history of discrimination and marginalization faced by the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community, along with their still ongoing struggle for equality.”<sup>33</sup>

Is this grim picture, however, really the case when it comes to the workplace?

### III. BENEFITS ACCORDED TO MEMBERS OF THE LGBTQI+ COMMUNITY IN THE WORKPLACE

While, indeed, comprehensive legislation affording LGBTQI+ members the same employment benefits (which are accorded to their straight counterparts by virtue of the Labor Code) and other relevant, special labor and social legislation have yet to be passed, a handful of companies have made notable strides in leveling the playing field for every employee, regardless of their gender, gender identity, or sexual orientation.<sup>34</sup>

In 2013, Thomson Reuters became the pioneer in providing benefits to same-sex partners of their employees.<sup>35</sup> It was not only a first for the country, but also a first for the firm in offering the policy in Asia.<sup>36</sup> Under the Domestic Partners Eligibility Policy of the company, “single employees in committed relationships may enroll their partners as beneficiaries of insurance and retirement plans. [ ] Eligibility is determined via a set of criteria and submission of certain requirements.”<sup>37</sup> According to Thomson Reuters’ Senior Site officer and Head of Human Resources Peter C. Buenasada, the company

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33. Lian Buan, *Supreme Court Junks Same-Sex Marriage Case on Technicalities*, RAPPLER, Sept. 3, 2019, available at <https://r3.rappler.com/nation/239225-supreme-court-junks-same-sex-marriage-based-technicality> (last accessed Apr. 30, 2022) [<https://perma.cc/2ZY6-YJVY>].

34. See Annelle Tayao-Juego, *In the Business of Diversity*, PHIL. DAILY INQ., June 24, 2018, available at <https://business.inquirer.net/252945/in-the-business-of-diversity> (last accessed Apr. 30, 2022) [<https://perma.cc/3LMF-NJED>].

35. Thomson Reuters PH Includes Same-Sex Partners in Benefits, RAPPLER, Oct. 11, 2013, available at <https://www.rappler.com/business/41113-thomson-reuters-philippines-same-sex-partners-company-benefits> (last accessed Apr. 30, 2022) [<https://perma.cc/245V-BMQ9>].

36. *Id.*

37. *Id.*

“foster[s] an inclusive workplace where all employees are valued and have the opportunity to reach their full potential[.]”<sup>38</sup>

Three years later, in 2016, technology giant IBM followed suit by extending similar benefits.<sup>39</sup> Under this scheme, LGBTQI+ “domestic partners of IBM Philippines’ employees can now avail of health coverage, life insurance, and ‘accompanied employee’ relocation entitlements.”<sup>40</sup> The company also claims to be the first IBM unit in the ASEAN region to offer benefits for LGBTQI+ domestic partners.<sup>41</sup> “Prior to making these benefits available, domestic partners of LGBTQI+ IBM employees in the Philippines are able to avail [of] leaves and other special benefits,’ said IBM Philippines’ [Human Resources (HR)] Area Leader, Divya Sharma, in a press release.”<sup>42</sup> The company’s country president and general manager, Luis D. Pineda, added that IBM employees “are central to IBM’s success [—] regardless of race, creed, gender, or disability[.]”<sup>43</sup> It even has its own “internal business resource group, the Employee Alliance for LGBTQ+ Empowerment (EAGLE), which works with the company’s HR and management to establish diversity in the workplace.”<sup>44</sup>

In the same year, another IT and Consulting firm, Accenture, also rolled out its “gender-neutral” benefits for their LGBTQI+ employees.<sup>45</sup> Accenture offers more or less the same package inclusions as the two previous companies already mentioned. Rica Paras, Accenture’s ASEAN LGBT Lead, says in a press release —

I’m proud to say Accenture is way ahead of most companies in inclusion and diversity. We also have gender-neutral benefits and [a] gender non-conforming dress code. At Accenture, gender equality is absolutely

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38. *Id.*

39. TJ Dimacali, *IBM Philippines Extends Benefits to LGBTQ+ Employee*, GMA NEWS, Feb. 23, 2016, available at <https://www.gmanetwork.com/news/scitech/technology/556448/ibm-philippines-extends-benefits-to-lgbtq-employees/story> (last accessed Apr. 30, 2022) [<https://perma.cc/HG4Z-77VV>].

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. Accenture in the Philippines, Video, *Rica: Shining Solution Architect and Diversity Advocate*, YOUTUBE, June 28, 2016, available at [https://www.youtube.com/watch?v=C5QloBJRa\\_4](https://www.youtube.com/watch?v=C5QloBJRa_4) (last accessed Apr. 30, 2022).

fundamental. We have to give equal respect and opportunity to all our people. I like to think we're helping set an example for other companies in the Philippines.<sup>46</sup>

Outsourcing company TaskUs is another company offering benefits to its LGBTQI+ employees.<sup>47</sup> Aside from participating in yearly Pride Marches, it also has a comprehensive Health Maintenance Organization (HMO) coverage for members of the LGBTQI+ community.<sup>48</sup> According to its CEO, Bryce Maddock, “TaskUs is an equal opportunity employer so much so that in the Philippines, [the company has] pioneered the 120-day maternity leave since the late 2015, even before the [Philippine] government. [It is important to] highlight that in TaskUs, love wins because we provide a comprehensive LGBTQ HMO coverage.”<sup>49</sup>

This comprehensive HMO coverage is not only applicable to TaskUs employees, but also covers their partners as well.<sup>50</sup> Anna Victoria Alcachupas, its Vice President for Business Development, Corporate Marketing, Global Communications, & People Branding, has mentioned that they were one of the very first companies in the country to do so.<sup>51</sup> The company has also “recently launched a self-identification initiative that allows employees to voluntarily identify their SOGIE (sexual orientation, gender identity, and expression); employees can use their preferred names and pronouns in their formal and informal communications and even in their official ID and corporate email address.”<sup>52</sup> TaskUs also provides for “gender-neutral restrooms in all their sites; employees can use the comfort room according to

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46. *Id.* (The quoted statement begins at 2:15 and ends at 2:39).

47. *This Outsourcing Company is a ‘Millennial Magnet’ Thanks to a Comprehensive LGBTQ HMO Coverage, MMA Fighting Sessions, and More*, GMA NEWS, Sept. 4, 2017, available at <https://www.gmanetwork.com/news/lifestyle/healthandwellness/624346/this-outsourcing-company-is-a-millennial-magnet-thanks-to-a-comprehensive-lgbtq-hmo-coverage-/story> (last accessed Apr. 30, 2022) [<https://perma.cc/ZVR8-GCBG>].

48. *Id.*

49. *Id.*

50. Juju Z. Baluyot, *What Does a ‘Safe Workplace’ Look Like for LGBTQ+ Employees?*, CNN PHIL., Apr. 13, 2021, available at <https://www.cnnphilippines.com/life/culture/2021/4/13/lgbtq-inclusive-workplace-philippines.html> (last accessed Apr. 30, 2022) [<https://perma.cc/H9NW-22ZL>].

51. *Id.*

52. *Id.*

the gender they identify with without fear of getting harassed and/or discriminated against.”<sup>53</sup>

Multinational consumer goods company Proctor & Gamble (P&G) Philippines, meanwhile, launched their “Share the Care” parental leave program,

which allows for [eight] weeks of fully paid leave for all parents (not just mothers), including LGBTQ+ adoptive parents. Same-sex domestic partners also have equal access to the company’s benefits such as healthcare and medical plans, insurances, and loans. P&G is also an annual supporter of the Pride March and holds an annual Pride Summit to educate and inspire inclusion and allyship.<sup>54</sup>

P&G Philippines Country HR Leader Vince D. Dizon stresses that “[i]t is critical to champion equality and inclusion so each [employee] can bring their full, authentic selves to work, perform at their peak, and deliver the best results[.]”<sup>55</sup>

On 4 March 2020, these private companies’ noble efforts to extend HMO and insurance benefits to their LGBTQI+ employees received some form of legal imprimatur in the person of the Insurance Commission which, in Legal Opinion No. 2020-02, affirmed an individual’s right to designate any beneficiary, should he or she secure a life insurance policy on his or her own life.<sup>56</sup> The Legal Opinion was issued in response to a letter from Professor Leo D. Battad, the Program Director of the University of the Philippines (UP) College of Law Gender Law and Policy Program, who wrote the Commission requesting clear guidelines relating to the right of the insured to designate a beneficiary, “particularly the right of members of the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community to designate their domestic partners as beneficiaries of their life insurance.”<sup>57</sup>

The Commission wrote —

The foregoing considered, the rule, therefore, is that an individual who has secured a life insurance policy on his or her own life may designate any person as beneficiary provided that such designation does not fall under the

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53. *Id.*

54. *Id.*

55. *Id.*

56. Insurance Commission, Legal Opinion on Insured’s Right to Designate Beneficiary, Legal Opinion No. 02, Series of 2020 [IC Legal Opinion No. 02, s. 2020], at 1 (Mar. 4, 2020).

57. *Id.*

enumerations provided in Article 739 of the Civil Code, without prejudice to the application of Section 12 of the Amended Insurance Code.

...

In light of the apparent confusion in the application of the concept of ‘insurable interest’ on the designation of beneficiary in a life insurance policy, the Commission clarifies that unlike in the case of property insurance where the Amended Insurance Code specifically provides that the beneficiary must have an insurable interest in the property insured, there is no equivalent provision in the case of life insurance. Hence, insofar as life insurance is concerned, it suffices that the person securing the life insurance policy has an insurable interest in the life being insured.

...

Thus, in the case where the insured secures a life insurance policy on his or her own life, it is of no moment whether or not the individual designated by such insured as beneficiary has an insurable interest in the life of the insured, there being no provision in either the Amended Insurance Code or the Civil Code requiring that the beneficiary have an insurable interest in the life of the insured, subject to the application of Article 2012 in relation to Article 739 of the Civil Code. Therefore, there is no legal impediment to the designation as beneficiary of the domestic partner of an insured who has secured a life insurance policy on his or her own life.<sup>58</sup>

This Legal Opinion of the Insurance Commission is a welcome development for LGBTQI+ employees nationwide. However, this is but a drop in the bucket in terms of members of the LGBTQI+ community being granted access to the full range of benefits due them in the workplace. While, indeed, a handful of companies may be leading the way when it comes to providing equal benefits to all of its employees, including those belonging to the LGBTQI+ community, it should be pointed out that all these companies are foreign corporations.<sup>59</sup> We have yet to see a major local company rolling out the red carpet for their LGBTQI+ employees when it comes to creating similar policies in line with the provisions of the Labor Code.

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58. *Id.* at 2-3 (citing CIVIL CODE, arts. 739 & 2012 & A Decree Ordaining and Instituting an Insurance Code [INS. CODE], Presidential Decree No. 612, §§ 10 & 12 (1974) (as amended)) (emphasis omitted).

59. The individuals mentioned in this Section are affiliated with the said companies at the time of writing.



#### IV. THE PERVASIVE EFFECT OF RELIGION ON LGBTQI+ WORKPLACE RIGHTS AND PROTECTIONS

While the 1987 Constitution guarantees freedom of religion<sup>60</sup> and the separation of Church and State,<sup>61</sup> religion may have glaring negative consequences on LGBTQI+ treatment in society, especially in terms of getting workplace protections.

For instance, the 17th Congress' comprehensive Anti-Discrimination Bill (ADB) on the basis of Sexual Orientation or Gender Identity or Expression (SOGIE)<sup>62</sup> was supposed to provide comprehensive protection on discriminatory practices, not only for LGBTQI+ people, but also for everyone in the workplace. Both the House<sup>63</sup> and

60. PHIL. CONST. art. III, § 5.

61. PHIL. CONST. art. II, § 6.

62. An Act Prohibiting Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (SOGIE) and Providing Penalties Therefor, S.B. No. 1271, 17th Cong., 1st Reg. Sess. (2016).

63. An Act Prohibiting Discrimination on the Basis of Sexual Orientation or Gender Identity or Expression (SOGIE) and Providing Penalties Therefor, H.B. No. 4982, 17th Cong., 2d Reg. Sess., § 4 (b), (e), (g), (i), & (p) (2017).

It states in full —

Sec. 4. Discriminatory Practices. – It shall be unlawful for any person, natural or juridical, to engage in discrimination as defined in this Act, which shall include:

...

(b) Including sexual orientation or gender identity or expression, as well as the disclosure of sexual orientation, in the criteria for hiring, promotion, transfer, designation, work assignment, reassignment, dismissal of workers, and other human resource movement and action, performance review, and in the determination of employee compensation, access to career development opportunities, training, and other learning and development interventions, incentives, privileges, benefits or allowances, and other terms and conditions of employment: Provided, [t]hat this provision shall apply to employment and skills training in both the private sector and public service, including military, police, and other similar services: Provided, further, [t]hat this prohibition shall likewise apply to the contracting and engaging of the services of juridical persons;

...

(e) Refusing or revoking the accreditation, formal recognition, registration[,] or plan to organize of any organization, group, political

Senate<sup>64</sup> versions contained strong anti-discrimination provisions which would have greatly benefitted LGBTQI+s in the workplace. The Lower

party, institution, or establishment in educational institutions, workplaces, communities, and other settings, solely on the basis of the sexual orientation or gender identity or expression of their members or of their target constituencies;

...

(g) Denying an application for or revoking a professional or other similar kind of license, clearance, certification on or any other similar document, except marriage license, issued by the government due to the applicant's sexual orientation or gender identity or expression;

...

(i) Subjecting or forcing any person to undertake any medical or psychological examination to determine or alter, or both, the person's sexual orientation or gender identity or expression without the express[ ] approval of the person involved, except in cases where the person involved is a minor and below the age of discernment[,] in which case prior approval of the appropriate Family Court shall be required. In the latter case, the child shall be represented in the proceedings by the Solicitor General or the latter's authorized representative;

...

(p) Subjecting a person to any other analogous acts that shall have the effect or purpose of impairing or nullifying the enjoyment, recognition, or exercise of a person's rights and freedoms.

*Id.*

64. S.B. No. 1271, § 5 (b), (e), (g), (i) & (k). It states in full —

SEC. 5. Discriminatory Practices. – It shall be unlawful for any person, natural or juridical, to:

...

(b) Include SOGIE, as well as the disclosure of sexual orientation, in the criteria for hiring, promotion, transfer, designation, work assignment, re-assignment, dismissal of workers, and other human resource movement and action, performance review and in the determination of employee compensation, career development opportunities, training, and other learning and development interventions, incentives, privileges, benefits or allowances, and other terms and conditions of employment: Provided, [t]hat this provision shall apply to employment in both the private sector and public service, including military, police and other similar services; Provided, further, [t]hat this prohibition shall likewise apply to the contracting and engaging of the services of associations or organizations with lesbians, gays, bisexuals, transgenders,

House's version passed the third and final reading "a little over a year after Bataan 1st District Representative Geraldine B. Roman delivered an emotional speech asking fellow lawmakers to support an anti-dis[c]rimination bill."<sup>65</sup> Unfortunately, the Senate version is still "pending second reading" on the Senate floor,<sup>66</sup> or, in short, languishing on second reading. Senator Risa N. Hontiveros had previously noted that the bill faces an "uphill battle" and "the [SOGIE] measure has been under the period of interpellation for 602

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intersex, or queers (LGBTIQs) members or of associations or organizations advocating LGBTIQs rights;

...

(e) Refuse or revoke the accreditation, formal recognition, registration or plan to organize of any organization, group, political party, institution[,] or establishment[ ] in educational institutions, workplaces, communities, and other settings, solely on the basis of the SOGIE of their members or of their target constituencies;

...

(g) Deny an application for or revoke, on the basis of SOGIE, any government license, authority, clearance, permit, certification, or other similar documents necessary to exercise a profession, business, or any other legitimate calling;

...

(i) Subject or force any person to undertake any medical or psychological examination to determine or alter the person's SOGIE without the expressed approval of the person involved, except in cases where the person involved is a minor and below the age of discernment in which case prior approval of the appropriate Family Court shall be required. In the latter case, the child shall be represented in the proceedings by the Solicitor General or the latter's authorized representative;

...

(k) Subject a person to any other analogous acts that shall have the effect or purpose of impairing or nullifying the enjoyment, recognition, and exercise of a person's human rights and fundamental freedoms.

*Id.*

65. Bea Cupin, *House Passes SOGIE Equality Bill on Final Reading*, RAPPLER, Sept. 20, 2017, available at <https://www.rappler.com/nation/182796-sogie-equality-bill-passes-house> (last accessed Apr. 30, 2022) [<https://perma.cc/63EW-2RXC>] (emphasis omitted).
66. An Act Prohibiting Discrimination on the Basis of Ethnicity, Race, Religion, or Belief, Sex, Gender, Sexual Orientation, Gender Identity, Gender Expression, Civil Status and HIV Status, and Providing Penalties Therefor, S.B. No. 1619, § 1, 17th Cong., 2d Reg. Sess. (2017).

calendar days, since her sponsorship last December 2016<sup>67</sup> as of the publication of the news report in 2018.

One of the key obstacles to this remains to be religion. While public policy and legislation should not make any allusions favoring the views of one religious majority or another, it seems as if when it comes to the ADB, the country's legislators have let themselves be influenced by the views of a select section of religious groups. The Senate President himself, Vicente C. Sotto III, for instance, said that "there's no need for it. It's a redundancy."<sup>68</sup> He said this in a news briefing with House Deputy Speaker Eddie C. Villanueva, who is the founder of the Jesus Is Lord Church.<sup>69</sup> Congressman Villanueva, a staunch religious conservative himself, says that the bill will "destroy the family" and said that it is "not fit" for Philippine culture.<sup>70</sup> He adds, "*Ang kultura ng Pilipino ay sapat para maging great nation ang Pilipinas ... Bakit kailangan pa nating umimport ng template from Western countries just to drastically change the system ng ating bansa?*"<sup>71</sup>

He is not alone in voicing such an opinion. During a recent hearing on the ADB, "various religious groups against the bill raised concerns about religious freedom, the readiness of the country for such a liberal law, and its necessity."<sup>72</sup> For instance, Atty. Lyndon P. Caña, on behalf of the Coalition

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67. Amita Legaspi, 4 *Senators Express Support for Immediate Passage of SOGIE Bill*, GMA NEWS, Aug. 10, 2018, available at <https://www.gmanetwork.com/news/topstories/nation/663671/4-senators-express-support-for-immediate-passage-of-sogie-bill/story> (last accessed Apr. 30, 2022) [<https://perma.cc/C3S8-BS5E>] (citing S. JOURNAL NO. 9, at 272, 17th Cong., 3d Reg. Sess. (Aug. 8, 2018)).

68. Aika Rey, Sotto: At Least 15 Senators Oppose SOGIE Equality Bill, RAPPLER, Sept. 30, 2019, available at <https://www.rappler.com/nation/-sotto-says-senators-oppose-sogie-equality-bill> (last accessed Apr. 30, 2022) [<https://perma.cc/SS2Q-WPJD>].

69. See Jesus is Lord Church Worldwide, Bro. Eddie, available at <https://jilworldwide.org/bro-eddie> (last accessed Apr. 30, 2022) [<https://perma.cc/58WR-5WRG>].

70. Rey, *supra* note 68.

71. *Id.* (translated as follows: "Filipino culture is already enough for the Philippines to be a great nation. Why do we need to import the template of Western countries just to drastically change our country's system?").

72. Aika Rey, *Is It Dangerous or About Love? Church Groups Split Over SOGIE Bill*, RAPPLER, Sept. 4, 2019, available at <https://www.rappler.com/nation/-church-groups-split-sogie-bill> (last accessed Apr. 30, 2022) [<https://perma.cc/6ZWA-6CR9>].

for Concerned Families of the Philippines, said that the bill was “one-sided” as it does not mention the heteronormative majority.<sup>73</sup> Katherine Inocencio, representing the Christian Broadcasting Network Asia that runs 700 Club Asia, says that freedom of expression and religion will be “curtailed” by such a measure.<sup>74</sup> The spokesperson for Pro-life Philippines said there was no “gay gene” which could justify the passage of such a measure.<sup>75</sup> In a statement, Couples for Christ-Foundation for Family Life said that they were against the bill “due primarily to the inclusion of the legalization of marriage between homosexuals, or homosexual unions, and the Gender Ideology[.]”<sup>76</sup> despite the legislative proposal being devoid of any provision legalizing same-sex unions.

On a strictly legal basis, such arguments should not influence or sway public officials from faithfully complying with their duty to legislate laws which should be bereft of any religious leanings or favoritism. However, one cannot avoid the fact that in a country known for its religiosity,<sup>77</sup> these powerful religious groups have been instrumental in delaying the passage of much needed legislation by the general populace. One need not look far and see how the very Senate President himself subscribes to these particular religious views. In passing the ADB, the Senate President said the Filipinos “will lose [ ] religious freedom, [the Filipinos] will lose [ ] academic freedom. They would ban teaching that there is only ‘[man] and woman[.]’ That’s why it did not reach the second reading in the last Congress[.]”<sup>78</sup> he said in Filipino.

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73. *Id.*

74. *Id.*

75. *Id.*

76. Couples for Christ-Foundation for Family Life, Statement of the Young Ministries on the Proposed SOGIE Bill, available at <http://web.archive.org/web/20180405104606/https://cfcfl.net/statement-of-the-young-ministries-on-the-proposed-sogie-bill>.

77. Mahar Mangahas, *The Religiosity of Filipinos*, PHIL. DAILY INQ., Apr. 23, 2022, available at <https://opinion.inquirer.net/152314/the-religiosity-of-filipinos> (last accessed Apr. 30, 2022) [<https://perma.cc/XYV4-N9RY>].

78. Gabriela Baron, ‘SOGIE Bill Takes Away Religious and Academic Freedom’, *Says Sotto*, MANILA BULL., Aug. 19, 2019, available at <https://mb.com.ph/2019/08/19/sogie-bill-takes-away-religious-and-academic-freedom-says-sotto> (last accessed Apr. 30, 2022) [<https://perma.cc/GZK7-PH5E>] (The original quote is as follows: “*Mawawala ang religious freedom, mawawala ang academic freedom. Pagbabawalang magturo ang kahit anong institusyon na man and woman lang. Kaya noong nakaraang Kongreso, hindi makapasa-pasa sa second reading ‘yan[.]’*”).

His view seems to ignore the fact that there were already cross-dressing men before the Spanish colonization of the Philippines in the presence of the “*Babaylan*,” who was the “indigenous ... religious leader who provided healing and divination to a community.”<sup>79</sup> Though most *babaylan* were female, there were also males who fulfilled the role of a *babaylan*.<sup>80</sup> They served as religious shamans and functionaries, were looked upon highly within the community, and sometimes were even deferred to by the *datu* or local ruler.<sup>81</sup>

The same senator also uttered during the interpellations of the Responsible Parenthood and Reproductive Health Act<sup>82</sup> that in passing the

79. Ambeth R. Ocampo, *Bringing LGBT Out of the Closet of History*, PHIL. DAILY INQ., Apr. 13, 2016, available at <https://opinion.inquirer.net/94272/bringing-lgbt-closet-history> (last accessed Apr. 30, 2022) [<https://perma.cc/F684-9USJ>].

80. *Id.*

81. J. Neil C. Garcia, *Male Homosexuality in the Philippines: A Short History*, INT’L INST. FOR ASIAN STUD., Nov. 2004, at 13.

We know from Spanish accounts of encounters between *conquistadores* and the archipelago’s various *indios* that gender crossing and transvestism were cultural features of early colonial and thus, presumably, pre-colonial communities. Local men dressed up in women’s apparel and acting like women were called, among other things, *bayoguin*, *bayok*, *aginnin*, *asog*, *bido* and *binabae*. They were significant not only because they crossed male and female gender lines. ... To their native communities they were *babaylan* or *catalonan*: religious functionaries and shamans, intermediaries between the visible and invisible worlds to whom even the local ruler (*datu*) deferred [to]. They placated angry spirits, foretold the future, healed infirmities, and even reconciled warring couples and tribes. Donning the customary clothes of women was part of a larger transformation, one that redefined their gender almost completely as female. We may more properly call them ‘gender crossers’ rather than cross dressers, for these men not only assumed the outward appearance and demeanor of women, but were granted social and symbolic recognition as ‘somewhat-women.’ They were comparable to women in every way except that they could not bear children. *Cronicas* tell us they were ‘married’ to men, with whom they had sexual relations. These men treated their womanish partners like concubines; being men, they had wives with whom they had their obligatory children.

*Id.*

82. An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health [The Responsible Parenthood and Reproductive Health Act of 2012], Republic Act No. 10354 (2012).

said statute, there are “foreign organizations underhandedly seek[ing] to legalize abortion in countries where it is still a crime.”<sup>83</sup>

It is comforting to note, however, that not all religious groups and leaders in this jurisdiction harbor the same negative outlook towards the passage of the ADB. For instance, Bishop Solito K. Toquero of the National Council of the Churches Philippines said that the latter supports the SOGIE bill despite backlash from other religious groups for being violative of the Church’s teachings.<sup>84</sup> Sister Mary John Mananzan O.S.B., former National Chairperson of the Association of Major Religious Superiors of the Philippines and erstwhile President of St. Scholastica’s College, stressed the bill’s urgency — highlighting the need to provide equal access to the LGBTQI+ community with regard to education, employment, and social services.<sup>85</sup> “The oldest Protestant seminary in the Philippines,”<sup>86</sup> Union Theological Seminary, “also allayed the worries of some people that the SOGIE bill will step on their religious beliefs.”<sup>87</sup> Pastor Kakay Pamaran said that “[t]he SOGIE bill does not infringe on religious freedom. On the contrary, it represents what most religions advocate — human equality, human dignity, and human rights[.]”<sup>88</sup>

In the 18th Congress, the ADB’s latest iteration has gained approval in the House of Representatives’ human rights committee as of 20 May 2021 and is currently scheduled for plenary discussion.<sup>89</sup> In the Senate, the bill was reintroduced by Senators Risa Hontiveros, Leila M. De Lima, Imee R. Marcos, and Francis “Kiko” N. Pangilinan,<sup>90</sup> and is now pending second

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83. S. JOURNAL NO. 10, at 193, 15th Cong., 3d Reg. Sess. (Aug. 15-22, 2012).

84. Lara Tan, *Some Religious Leaders Back SOGIE Bill*, CNN PHIL., Sept. 19, 2019, available at <https://www.cnnphilippines.com/news/2019/9/4/SOGIE-bill-LGBTQ-discrimination-religious-groups.html> (last accessed Apr. 30, 2022) [<https://perma.cc/JVB2-MS37>].

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. Rambo Talabong, *Debates Set After House Panel Approves Anti-Discrimination Bill*, RAPPLER, May 21, 2021, available at <https://www.rappler.com/nation/house-plenary-debates-set-anti-discrimination-bill> (last accessed Apr. 30, 2022) [<https://perma.cc/2MRH-TTVF>].

90. An Act Prohibiting Discrimination, Marginalization, and Violence Committed on the Basis of Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics and Providing Sanctions Therefor, S.B. No. 1934, 18th Cong., 2d Reg. Sess. (2020).

reading.<sup>91</sup> What is notable about the new version of the ADB filed in the Senate is the inclusion of “sex characteristics” in its definition of terms<sup>92</sup> which was absent in the previous versions of the bill. Under Senate Bill No. 1934, sex characteristics refer to

a person’s physical traits that indicate their biological sex, such as chromosomes, external genitalia, gonads, hormones, and internal reproductive organs. Traits present at birth are called primary sex characteristics, whereas those that develop during puberty are called secondary sex characteristics. A person’s sex characteristics can be male, female, or intersex[.]<sup>93</sup>

In addition, the “publishing [of] information intended to ‘out’ or reveal the sex or SOGIESC of persons without their consent, whether or not done in good faith, when such has not been made known by the person concerned”<sup>94</sup> is now a prohibited act and is punishable under the proposed law. Another taboo and punishable act under the bill is

[p]reventing a child under parental authority, custody, or guardianship, whether court appointed or otherwise, from exhibiting or expressing one’s SOGIESC; or manifesting rejection of such child’s SOGIESC by inflicting or threatening to inflict bodily or physical harm against the child or by causing mental or emotional suffering of the child through intimidation, harassment, public ridicule or humiliation, verbal abuse, or other similar means, or in general, commit any act or omission prejudicial to the welfare and interest of the child[.]<sup>95</sup>

As of this time, there has still been no news regarding the progress of both bills in the lower and upper chambers of Congress. Any hope of moving the bills forward to becoming an enacted statute looks increasingly bleak as the country welcomes a new administration. With a fresh slate of local and national legislators in place, it would be up to the next Congress and the next President of the Republic of the Philippines to move this agenda forward and finally bring this chapter to a satisfying close for the LGBTQI+ community.

Should the next administration decide to take up the cudgels for the LGBTQI+ community in finally passing the ADB, they would have ample

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91. Senate of the Philippines, SOGIESC-Based Anti-Discrimination Act, *available at* [http://legacy.senate.gov.ph/lis/bill\\_res.aspx?congress=18&q=SBN-1934](http://legacy.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-1934) (last accessed Apr. 30, 2022) [<https://perma.cc/R4GD-EM8Z>].

92. S.B. No. 1934, § 3 (h).

93. *Id.*

94. *Id.* § 5 (k).

95. *Id.* § 5 (l).



legal backing under the current and previous constitutions, and jurisprudence which has, through the years, definitively ruled for the separation of Church and State while at the same time guaranteeing religious freedom.

As early as 1913, in *U.S. v. Balcorta*,<sup>96</sup> the High Court clarified that “the change of sovereignty [from Spain to the United States] and the enactment of the [14th] paragraph of section [five] of the Philippine Bill [of 1902] *caused the complete separation of church and state, and the abolition of all special privileges and all restrictions theretofore conferred or imposed upon any particular religious sect.*”<sup>97</sup>

The Philippine Bill of 1902<sup>98</sup> preceded the Jones Law of 1916,<sup>99</sup> with the latter carrying more or less the same prohibition, with an additional caveat against using public funds for religious reasons —

(k) Freedom of religion — That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such.<sup>100</sup>

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96. *United States v. Balcorta*, 25 Phil. 273, 276 (1913) (citing Act of Congress of July First, Nineteen Hundred and Two, “The Philippine Bill” An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes [Philippine Bill of July 1902], § 5 (1902)).

97. *Id.* (emphasis supplied).

98. Act of Congress of July First, Nineteen Hundred and Two, “The Philippine Bill” An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes [Philippine Bill of July 1902] (1902).

99. An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands, and to Provide a More Autonomous Government for Those Islands [Jones Law of 1916], Public Law No. 240, § 3 (k) (1916).

100. An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands, and to Provide a More Autonomous Government for Those Islands [Jones Law of 1916], Public Law No. 240, § 3 (k) (1916).

The Philippine Independence Law or the Tydings-McDuffie Law of 1934<sup>101</sup> which granted independence to the Philippines and allowed the drafting of a Philippine Constitution,<sup>102</sup> also called for the inclusion of freedom of religion in the Constitution's drafting.<sup>103</sup> In accordance with this, the 1935 Constitution<sup>104</sup> in its Bill of Rights, stated that "[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."<sup>105</sup>

The 1973 Constitution<sup>106</sup> contained an identical free exercise and non-establishment imperative, stating that "[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."<sup>107</sup>

The latest iteration of this is found in the 1987 Constitution<sup>108</sup> which reproduces verbatim the 1973 version. The present Constitution also added a provision on the "inviolable" separation of Church and State<sup>109</sup> which does not condone the Church's meddling into temporal affairs nor the State's interference into spiritual affairs.

Jurisprudence, indeed, has affirmed as early as 1959 in the case of *Gerona v. Secretary of Education*<sup>110</sup> that where one's personal religious beliefs clash with the law, the former must necessarily give way to the latter —

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101. An Act to Provide for the Complete Independence of the Philippine Islands, to Provide for the Adoption of a Constitution and a Form of Government for the Philippine Islands, and for Other Purposes [Tydings-McDuffie Act], Public Law No. 73-127 (1934).

102. *Id.* § 1.

103. *Id.* § 2 (a) (3).

104. 1935 PHIL. CONST. (superseded in 1973).

105. 1935 PHIL. CONST. art. III, § 1 (7) (superseded in 1973).

106. 1973 PHIL. CONST. (superseded in 1987).

107. 1973 PHIL. CONST. art. IV, § 8 (superseded in 1987).

108. PHIL. CONST. art. III, § 5.

109. PHIL. CONST. art. II, § 6.

110. *Gerona v. Secretary of Education*, 106 Phil. 2 (1959).

The question involved in this appeal is a highly important one. We are called upon to determine the right of a citizen as guaranteed by the Constitution about freedom of religious belief and the right to practice it as against the power and authority of the State to limit or restrain the same. Our task is lessened by the fact that petitioners do not challenge the legality or constitutionality of Republic Act [No.] 1265. All that they question is the legality or constitutionality of Department Order No. 8, series of 1955 of the Department of Education implementing said Republic Act.

The realm of belief and creed is infinite and limitless[,] bounded only by one's imagination and thought. So is the freedom of belief, including religious belief, limitless and without bounds. One may believe in most anything, however strange, bizarre[,] and unreasonable the same may appear to others, even heretical when weighed in the scales of orthodoxy or doctrinal standards[.] *But between the freedom of belief and the exercise of said belief, there is quite a stretch of road to travel. If the exercise of said religious belief clashes with the established institutions of society and with the law, then the former must yield and give way to the latter. The Government steps in and either restrains said exercise or even prosecutes the one exercising it.*

*One may believe in polygamy because it is permitted by his religion, but the moment he translates said religious belief into an overt act, such as engaging or practi[cing] plural marriages, he may be prosecuted for bigamy and he may not plead or invoke his religious belief as a defense or as a matter of exemption from the operation of the law.<sup>111</sup>*

Gerona was eventually upheld and buttressed by the case of *Balbuna v. Secretary of Education*.<sup>112</sup>

The case of *Victoriano v. Elizalde Rope Workers Union*<sup>113</sup> was decided in 1974 — more than a decade after *Gerona*. In *Victoriano*, the Court stressed that while the Constitution frowns upon any form of governmental support for any religion and allows all persons to practice their religion within reasonable bounds, this does not preclude the State from enacting legislation that

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111. *Id.* at 9–10 (citing An Act Making Flag Ceremony Compulsory in All Educational Institutions [Flag Salute Law], Republic Act No. 1265 (1955) & Department of Education, Culture and Sports, Rules and Regulations for Conducting the Flag Ceremony in All Educational Institutions, Department Order No. 8, Series of 1955 [DECS D.O. No. 8, s. 1955] (July 21, 1955)) (emphases supplied).

112. *Balbuna v. Secretary of Education*, 110 Phil. 150, 152 (1960).

113. *Victoriano v. Elizalde Rope Workers Union*, G.R. No. L-25246, 59 SCRA 54 (1974).

primarily advance secular goals *even if it has an “indirect burden on religious observance”*<sup>114</sup> —

The constitutional provision [not] only prohibits legislation for the support of any religious tenets or the modes of worship of any sect, thus forestalling compulsion by law of the acceptance of any creed or the practice of any form of worship, but also assures the free exercise of one’s chosen form of religion within limits of utmost amplitude. It has been said that the religion clauses of the Constitution are all designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good. Any legislation whose effect or purpose is to impede the observance of one or all religions, or to discriminate invidiously between the religions, is invalid, even though the burden may be characterized as being only indirect. *But if the sta[t]e regulates conduct by enacting, within its power, a general law which has for its purpose and effect to advance the state’s secular goals, the statute is valid despite its indirect burden on religious observance, unless the state can accomplish its purpose without imposing such burden.*<sup>115</sup>

In *Ebralinag v. Division Superintendent of Schools*,<sup>116</sup> while the High Court categorically overturned *Gerona*, it did not necessarily abandon the tenets in the latter where in a clash between the temporal and the spiritual, the State reigns supreme. In *Ebralinag*, for instance, the *Gerona* ruling was overturned not purely on religious freedom grounds alone, but also because another State-sanctioned right would be violated if the members of the Jehovah’s Witnesses would not be given the flag ceremony exemption — namely the right to free education as the Court said that “the expulsion of members of Jehovah’s Witnesses from the schools where they are enrolled will violate their right as Philippine citizens, under the 1987 Constitution, to receive free education, for it is the duty of the State to ‘protect and promote the right of all citizens to quality education ... and to make such education accessible to all.’”<sup>117</sup> In short,

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114. *Id.* at 73 (citing *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961) & *McGowan v. Maryland*, 366 U.S. 420, 444-45 & 449 (1961)) (emphases supplied).

115. *Victoriano*, 59 SCRA at 73 (citing *United States v. Ballard*, 322 U.S. 78, 88 (1944) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940); *William A. Carroll, The Constitution, the Supreme Court, and Religion*, 61 AM. POL. SCI. REV. 657, 663 (1967); *Shebert v. Verner*, 374 U.S. 398, 404 (1963) (citing *Braunfeld*, 366 U.S. at 607); *Braunfeld*, 366 U.S. at 599; *McGowan*, 366 U.S. at 444-45 & 449; & *Aglipay v. Ruiz*, 64 Phil. 201, 209-10 (1937))) (emphasis supplied).

116. *Ebralinag v. The Division Superintendent of Schools of Cebu*, G.R. No. 95770, 219 SCRA 256, 272 (1993).

117. *Id.* (citing PHIL. CONST. art. XIV, § 1).

the Court decided to tilt the scales in favor of another constitutionally protected right in upholding the exemption, and not necessarily due to freedom of religion grounds.

Three years after *Ebralinag*, the Court in *Iglesia ni Cristo v. Court of Appeals*<sup>118</sup> reiterated Justice Isagani A. Cruz's words and the distinction between the Freedom to Believe and the Freedom to Act on One's Beliefs —

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul[ — ]in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases.

...

*But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all [the] other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others. It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.*<sup>119</sup>

This pronouncement and distinction between the Freedom to Believe and the Freedom to Act on One's Beliefs, then, found in *Iglesia ni Cristo* echoes and encapsulates the very essence of the freedom of religion in our jurisdiction — it is perfectly alright for any individual to freely possess and practice whatever religious beliefs he or she may have, but whenever the individual acts on his or her beliefs to the detriment of the general public then the State may step in to regulate this behavior.<sup>120</sup>

In the veritable tug-of-war between religious freedom and compelling state interest, then, it is almost always the latter which enjoys the advantage. Based on the stated constitutional provisions and various jurisprudence, no matter how fierce or culturally ingrained one's religious beliefs may be, the

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118. *Iglesia ni Cristo v. Court of Appeals*, G.R. No. 119673, 259 SCRA 529 (1996).

119. *Id.* at 543 (emphases supplied and omitted).

120. *See id.*

individual does not have the right to claim primacy of one's religious beliefs to the detriment of the general public. In the case of the ADB, then, and all those who are opposed to its provisions, which are beneficial not only to one specific group but to the public in general, their religious beliefs, while valid, may not be used to hold hostage a bill which the government has a compelling state interest to transform into law.

#### V. CONCLUSION

Indeed, the country still has a long way to go when it comes to promoting equality not just in workplaces nationwide, but in society as well. It all must start from a single idea — that of equality before the law and due process being afforded to each and every citizen under our republican and democratic state. There is certainly no room for bigotry and hate in this day and age. There is a need to ensure that the Bill of Rights<sup>121</sup> and the Social Justice<sup>122</sup> provisions enshrined in the Constitution are not just mere lip service to the ideals the people hope to espouse as a nation, but are living, breathing testaments to the kind of society envisioned for the Philippines.

More specifically, the country's current legislation needs to be amended, revised, or otherwise overhauled in order to reflect the ideals and aspirations espoused in our fundamental law. Despite the clear import of these constitutional provisions which provide for non-discrimination and equality for all within our jurisdiction,<sup>123</sup> it cannot be denied that the LGBTQI+ community in particular, is a seemingly a second-tier sector when it comes to legal protections and benefits, which are otherwise accessible and readily available to their heteronormative counterparts, yet remain elusive to them simply because they do not fit the orthodox and binary mold that society imposes on them. This should not be the case, and change must begin sooner rather than later.

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121. PHIL. CONST. art. III.

122. PHIL. CONST. art. II, § 10; art. XII, § 15; & art. XIII, § 2.

123. PHIL. CONST. art. II, §§ 2 & 14; art. III, § 5; & art. XIII, § 3.