
LGBTQI+ COMMUNITY: CHALLENGES AND ISSUES IN THE PHILIPPINE CONTEXT

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ABSTRACT

This paper reviews the legal landscape surrounding the LGBTQ+ communities in the Philippines, in a nation that is deeply influenced by its strong religious heritage and tradition. This paper also presents the significant challenges for the members of the LGBTQ+ communities as they strive for societal acceptance and advocate for certain legal measures towards recognition of their rights. Among the greatest demands of these communities are comprehensive anti-discrimination protections, laws on same sex marriages and recognition civil unions. Landmark cases and jurisprudence, pertinent laws, and legal issues within the Philippine jurisdiction are reviewed in order to trace the evolution and progress of the LGBTQ+ rights and their ongoing struggles towards equality and acceptance in a highly conservative Philippine society.

Introduction

The Philippines is a predominantly conservative and religious nation, with Roman Catholicism significantly influencing societal values and norms.¹ Faith has often been a barrier to the acceptance and flourishing of LGBTQ+ communities in the country. Proposed legislation on anti-discrimination, gender equality, and civil unions has been discussed for decades, but these efforts have struggled to gain momentum due to strong opposition from the Catholic Church.

Many of the laws in the Philippines reflect how socially conservative the country is, including the banning of abortion, divorce and same-sex marriage.² However, the hold of the Church on legislation may not necessarily be absolute, as we have seen in the recent passage of the Reproductive Health (RH) Law, which had strong public support despite vocal opposition from church leaders.³

Although religious teachings and cultural beliefs have long influenced societal norms in the Philippines, there has been significant public discourse on LGBTQ+ rights in recent years. Same-sex relationships have gained wider acceptance in the community, yet no concrete laws advancing additional rights for the LGBTQ+ community have been passed in Congress.

The growing acceptance and recognition of LGBTQ+ rights in some segments of our society—particularly among younger generations and urban populations—has fostered a more inclusive treatment of the LGBTQ+ community in this era of social media and digital communication. A survey of 1,200 adult Filipinos nationwide revealed that over 70% agreed that gays and lesbians are as trustworthy as any other Filipino and have significantly contributed to societal progress, reflecting a shift towards more sympathetic attitudes.⁴ Additionally, another study found that legal recognition of same-sex partnerships reduces social exclusion, mitigates the oppressive effects of institutionalized stigma, and enhances access to benefits and resources, which can, in turn, improve mental and physical health.⁵

¹ Villegas 2015

² Westerman, NPR 2023

³ Ochoa et al. 2016

⁴ Westerman, NPR 2023

⁵ Badgett 2009 and BuFe 2010 as cited in Ochoa et al. 2016

Challenges and Discrimination of the LGBTQ+ Community

LGBTQ+ individuals in the Philippines often face significant challenges, including discrimination in areas such as employment, education, religious, healthcare and family life. Societal prejudice and the lack of legal protections can lead to exclusion and marginalization.

LGBTQI+ Individuals and Same-Sex Unions

"Although same-sex unions are recognized in some countries, they remain unrecognized in the Philippines. The legal landscape for same-sex relationships in our jurisdiction is marked by a lack of comprehensive protections and recognition. Despite various attempts to address these issues, significant gaps remain.

The issue on same-sex marriages in the Philippines continues to be a contentious and sometimes distasteful topic of discussion. A recent case that reached the Supreme Court provided an opportunity to address this issue in *Falcis v. Civil Registrar General*.⁶ In this case, petitioner challenged the unconstitutionality of Article 1 and 2 of the Family Code and arguing that these provisions violated the constitutional rights to due process, equal protection, and the right to marry.

Article 1 of the Family Code limits civil marriage to opposite-sex couples and defines marriage as a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal or family life⁷. This provision of the Family Code clearly opposes the recognition of same-sex marriage in the Philippines.

In its decision, the Court, through Associate Justice Leonen, stated that marriage, as defined by current laws, adheres to the dominant heteronormative model. In dismissing the petition, the Court emphasized the need for public discussion and legislative action on the recognition of same-sex marriage.⁸ Granting the petitioner's request, the Court argued, would be akin to exercising quasi-legislative powers, as it would require amending numerous statutes. Importantly, the Supreme Court's decision did not categorically prohibit same-sex marriages

⁶ *Falcis v. Civil Registrar General*, G.R. No. 217910, September 3, 2019

⁷ EO 209, Family Code of the Philippines

⁸ *Falcis v. Civil Registrar General*, G.R. No. 217910, September 3, 2019

but rather indicated that such determinations fall outside its jurisdiction and should be addressed by legislators.

In addition, the Court stated that petitioner had failed to demonstrate that he was directly affected by the provisions he deemed unconstitutional, as he did not request a license to enter into a same-sex marriage that was later on denied, and consequently could not establish the proper standing to file his lawsuit.

It is to be noted that while the petition was dismissed, the Supreme Court acknowledges the discrimination of LGBTQIA+ community in both law and real-life.

In other jurisdictions like Hongkong and Costa Rica, an alternative legal framework like Civil Union or Civil Partnership are already put in place in recognition of marital rights of couples belonging to the LGBTQI+ community.

In the case of *Sham Tsz Kit v. Secretary for Justice*⁹, the Hong Kong Court of Final Appeal recognizes the right of same-sex people to be together not under marital union but under privacy rights of Article 15 of the Hong Kong Constitution. Although the Hong Kong Court of Final Appeal (CFA) denied the existence of a constitutional right for same-sex couples to marry, it however put a positive obligation upon the authorities to establish an alternative legal framework to recognize same-sex unions.

In Costa Rica, the Chamber of Supreme Court declared all three of the Articles 14 and 242 of Family Code as well as Article 4 of the General Young Person's Act as unconstitutional and gave the Legislative Assembly 18 months to amend the laws accordingly in order to accommodate same-sex people's right to marital union.¹⁰

In the United States, the Supreme Court's decision in *Obergefell v. Hodges*¹¹ (2015), legalized same-sex marriage across all states. The Court ruled that the fundamental right to marry is guaranteed to same-sex couples under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the US Constitution. This revolutionary decision underscored the global movement towards marriage equality and prompted global

⁹ *Sham Tsz Kit v. Secretary of Justice*, September 5, 2023

¹⁰ The Ruling was published on November 26, 2018

¹¹ *Obergefell vs. Hodges*, 576 U.S. 644, June 26, 2015

discussions and debates worldwide, including in the Philippines, about civil union rights for the LGBTQI+ community.

LGBTQI+ Individuals and Discrimination Issues

Many LGBTQI+ individuals report experiencing discrimination in the workplace, including biases in hiring practices, promotions, and everyday interactions with colleagues.¹² This discrimination can affect their economic stability and overall quality of life.

In the U.S., cases¹³ involving the alleged firing of employees solely for being homosexual or transgender reached the Supreme Court. For instance, in Clayton County, Georgia, a county employee was terminated for 'conduct unbecoming' shortly after joining a gay recreational softball league. In another case, an employee was fired days after disclosing his sexual orientation, while a third employee, who initially presented as male, was dismissed after informing her employer of her intention to transition and live as a woman. In all three cases, the employees sued, claiming sex discrimination under Title VII of the Civil Rights Act of 1964.¹⁴ The Supreme Court ruled in *Bostock v. Clayton County*¹⁵ that firing an individual solely for being gay or transgender constitutes a violation of Title VII, which prohibits employers from discriminating against individuals based on race, color, religion, sex, or national origin.

In the Philippines, a recent case¹⁶ involving lawyers who made stereotypical remarks about the LGBTQI+ community reached the Supreme Court. The Court reprimanded and imposed fines on the lawyers for inappropriate social media posts and comments directed at LGBTQI+ community members and members of the judiciary. During the investigation, the Office of the Bar Confidant (OBC) noted that, although no specific names were mentioned, the lawyers' comments were made in a degrading and shameful manner. This behavior was deemed contrary to the duty of lawyers to maintain the highest standards of propriety and decorum and to avoid making remarks that ridicule any segment of the population, including the LGBTQI+ community.

¹² LGBT People's Experiences of Workplace Discrimination and Harassment, Sears et al., September 2021

¹³ *Bostock v. Clayton County*, 2020

¹⁴ Equal Employment Opportunity Commission

¹⁵ *Bostock v. Clayton County*, 2020

¹⁶ A.M. No. 21-06-20-SC, April 11, 2023

The Court also found the lawyers liable for violation of Rule 7.03 of the Code of Professional Responsibility, which prohibits lawyers from engaging in conduct that adversely reflects on their fitness to practice law and prohibits them from behaving in a scandalous manner to the discredit of the legal profession. It further stressed that members of the legal profession must respect the freedom of LGBTQI+ individuals to be themselves and express who they are, as part of their constitutionally guaranteed right to freedom of expression¹⁷. The Court found that the social media postings included statements that tend to propagate and enforce an unfair and harmful stereotype that are not representative of LGBTQIA+ individuals. It added that such stereotypes in conversations should not be propagated among lawyers.

This case likewise reiterated the adherence of the Philippines to the internationally-recognized principle of non-discrimination and equality. As such, every member of the legal profession is bound to observe and abide by them, especially when dealing with LGBTQIA+ individuals. The Court also pointed out that inappropriate, disrespectful, belligerent, or malicious language can be a source of criminal liability under the Safe Spaces Act¹⁸ which prohibits gender-based online sexual harassment. Further, the Court stated that Gender-based sexual harassment - encompassing transphobic and homophobic slurs – in streets and public spaces as well as online, may warrant progressive penalties ranging from community service, fines and imprisonment.

The rights of the LGBTQIA+ community to participate in political processes were upheld in the landmark case *Ang Ladlad LGBT Party v. COMELEC*.¹⁹ In this case, the Supreme Court addressed Ang Ladlad LGBT Party's petition for accreditation to participate in the party-list elections. The Commission on Elections (COMELEC) had initially denied the registration, citing immorality. However, the Supreme Court overturned COMELEC's decision, ruling that the denial violated the right to equal protection under the law and freedom of expression.

In the *Ang Ladlad* decision, the Court clarified that the list of marginalized and under-represented sectors in R.A. 7941²⁰—including labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas

¹⁷ Article 3, Section 4, 1987 Philippine Constitution

¹⁸ Sec. 12: Gender-based Online Sexual Harassment, R.A. 11313

¹⁹ *Ang Ladlad LGBT Party v. COMELEC*, G.R. No. 190582, April 8, 2010

²⁰ Party-List System Act, March 3, 1995

workers, and professionals—is not exhaustive, as ruled in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*.²¹ The crucial element is not whether a sector is specifically enumerated but whether an organization meets the requirements set by the Constitution and R.A. 7941. Additionally, refusal to accept *Ang Ladlad*’s petition based on religious grounds would violate the non-establishment clause²² of the Constitution.

Efforts have been made to introduce legislation aimed at providing legal protections for LGBTQ+ individuals, such as the Anti-Discrimination Bill, which seeks to prohibit discrimination based on sexual orientation and gender identity. However, these bills have faced significant challenges in the legislative process and have not yet been enacted into law.

The case of *Falcis v. Civil Registrar General*²³ underscored the severity of discriminatory acts against the LGBTQIA+ community in the Philippines. According to a 2012 report by OutRight Action International, along with 40 Philippine LGBTQI+ and human rights groups and 13 activists, 163 LGBTQI+ individuals were murdered due to their gender identity, gender expression, or sexual orientation between 1996 and 2012. Additionally, a 2016 report from EnGendeRights, Inc. and OutRight Action International, cited in A.M. No. 21-06-20-SC²⁴, highlighted the lack of national anti-discrimination, gender recognition, and hate crime legislation in the Philippines. It also documented numerous instances of discrimination by police, health workers, educators, employers, and the judiciary against LGBTQI+ individuals. A more recent report submitted in 2017, as cited in A.M. No. 21-06-20-SC²⁵, to the Universal Periodic Review of the United Nations Human Rights Council continued to document human rights violations against LGBTQI+ individuals, noting that the existing legal framework remains inadequate to address systemic issues of discrimination and exclusion.

Although Congress has not yet elevated the SOGIE Bill into a law, nonetheless our Court had on several occasions upheld the rights of the members of the LGBTQI+ community against all forms of discriminations. According to the Court, the principles of non-discrimination and equality are deeply embedded in the Philippine system of laws.

²¹ G.R. No. 147589, November 20, 2003

²² Article III, Section 5 of the Philippine Constitution

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

As held in *Social Security System v. Urbana*²⁶, any discriminatory act can be a source of civil liability thus, public policy abhors inequality and discrimination. Our Constitution and laws reflect the policy against these evils. The Constitution in the Article on Social Justice and Human Rights exhorts Congress to give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities. The very broad Article 19 of the Civil Code also requires every person, in the exercise of his rights and in the performance of his duties, to act with justice, give everyone his due, and observe honesty and good faith.²⁷

The Court also reiterated the Philippines' adherence to the internationally-recognized principle of non-discrimination and equality. It held in *CBEAI v. Bangko Sentral ng Pilipinas*²⁸ that the principle of equality has long been recognized under international law. It further stated that Article 1 of the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes basic principles in the protection of human rights.

On April 17, 2019, the Philippines enacted R.A. 11313, and its implementing rules and regulations followed on October 28, 2019, affirming that men and women deserve equality, security, and safety not only in private spaces but also in public places, workplaces, online environments, and educational and training institutions.²⁹ Despite this progress, LGBTQI+ activists and organizations continue to advocate for the passage of the SOGIE Bill. Their relentless efforts underscore a steadfast commitment to advancing rights and raising awareness about the challenges faced by the LGBTQI+ community. Pride marches, community outreach, and legal advocacy have significantly boosted visibility and sparked crucial dialogues about LGBTQ+ issues.

Annual Pride Marches in the Philippines are a regular activity in major cities like Manila and Cebu which keep on drawing large crowds year after year and serve as platforms

²⁶ G.R. No. 200114, August 24, 2015

²⁷ Article 19 of the New Civil Code of the Philippines

²⁸ 487 Phil. 531, G.R. No. 148208, December 15, 2004

²⁹ Sec. 2: Declaration of Policies, R.A. 11313

for advocating LGBTQ+ rights. These events have become significant symbols of the community's solidarity towards legal recognition and protections.

Conclusion

Recognition of LGBTQI+ rights in the Philippines navigates a complex landscape shaped by cultural, legal, and social factors. While societal attitudes are gradually shifting, and there have been notable advancements in LGBTQ+ visibility and advocacy, significant challenges remain. The lack of comprehensive legal protections, absence of a magna carta of rights of individuals belonging to this marginalized group, and ongoing resistance from conservative and religious groups continue to pose obstacles to achieving full recognition, equality, and protection.

As the discourse on LGBTQ+ rights continue to evolve, it reflects positive global trends towards greater inclusion and recognition of this community. Addressing these issues requires a concerted effort from all sectors of society to promote understanding, legal reform, societal change, and respect for human rights. The relentless efforts of activists and advocates are crucial in driving meaningful change for LGBTQ+ individuals. The journey toward equality and acceptance for LGBTQI+ individuals in the Philippines is ongoing and faces an uphill path, and continued advocacy and dialogue are essential for achieving a more inclusive and just society.