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THIRTEENTH CONGRESS

First Regular Session

H.B. No.

2394



INTRODUCED BY HONORABLE CONSUELO A. DY

EXPLANATORY NOTE

This measure seeks to update and put into context the existing law on prostitution as provided for in Article 202 of the Revised Penal Code which defines prostitution as a crime, provide penalties for its perpetrators and strengthen the efforts of government agencies tasked to curtail it.

Article II, Section 11 of the Constitution of the Philippines provides: "The State values the dignity of every human person and guarantees full responsibility for human rights." Furthermore, the State recognizes the role of women in nation-building as provided for in Sec. 14 of the Constitution: "The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, such as facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."

Any form of prostitution, whether free, voluntary, coerced, or involuntary is a human rights violation, an affront to human dignity and can never be considered dignified labor. Prostituted individuals, particularly women and children, are often stigmatized by the society and are usually subjected to exploitative and slavery-like working conditions and health risks. Hence, it is not the right of an individual to choose to work as a prostitute because it is incompatible with the dignity and worth of a person and it constitutes an obstacle to the full development of an individual.

It is a popular belief that prostitutes derive financial gain from prostitution and thus it is always a choice. However, those who largely profit from it like the pimps, recruiters, operators/managers of prostitution houses and tour operators are often spared from penalty. Although the Revised Penal Code provides two separate provisions pertaining to prostitution – Article 340: Corruption of Minors and Article 341: White Slavery Trade, the implementation and enforcement tend to be discriminating. For instance, after a sensationalized raid of an establishment, the pimps and club operators remain free while prostitutes, particularly women, are often the ones punished. Female sex workers are further subjected to harassment from policemen while on detention.

The most abhorrent form of prostitution is child prostitution. The World Congress Against the Commercial Sexual Exploitation of Children (1996) emphasize that "the commercial sexual exploitation of children constitutes a form of coercion and violence against children and amounts to forced labor and a contemporary form of slavery".

The development of prostitution as an industry can be attributed much to the State's ambivalent attitude towards it. Prostitution is illegal under the Revised Penal Code. However, it allows, and even licenses, through local city and municipal ordinances, the operation of beer joints, massage parlors, and other establishments known to be fronts for prostitution, giving the

impression that the State promotes, legitimizes and regulates prostitution. Government policies encouraging tourism have also been instrumental in facilitating prostitution in the country.

The harsh and discriminating measures to curb prostitution are usually directed against the victims of prostitution, particularly women and children. The socio-cultural and economic factors that lured individuals to prostitution are often overlooked. One of these is the patriarchal assumption that prostitution is seen as "a universal and inevitable social evil, necessary to satiate an uncontrollable male sexuality". This assumption is clearly discriminatory, that men are entitled to sexual services as a matter of right while women and children have to provide this perverse demand. The Revised Penal Code Art. 202 which defines prostitutes as "women, who for money or profit habitually indulge in sexual intercourse or lascivious conduct..." further attest to the bias and discriminatory view against women who are seen as the only perpetrators of prostitution.

Economic factors such as patterns of poverty, unemployment, underemployment and inadequate incomes drive women or men into prostitution. The lack of viable and remunerative employment alternatives for the poorly educated or unskilled in the rural areas increased migration led many to the sex sector. The need for children to repay their "debt of gratitude" to parents and support their natal and conjugal families made them take their chances even if they have to risk selling their bodies.

Largely contributing to the proliferation of prostitution is the active recruitment and sometimes deception, abduction or "conditioning rape" by agents, pimps, and operators. There is a growing demand for sexual services particularly through the sex tourism industry where most of the clients are foreign tourists in search for exotic females, or homosexuals and pedophiles victimizing male and children. There are also reports of prostitution in rural areas, where women cite the saying "*isang kaban, isang dagan*" (one cavan, one lay) which refer to sexual transaction. Sex tourism is also prevalent around mining sites, logging areas, military camps and tourist spots.

The available literature yields a low estimate of 100,000 and a high estimate of 600,000 sex workers in the country (Tan, 1990). A recent report to the United Nations Children's Fund estimated that there are 300,000 women in prostitution (Cueto, 1997). DSWD estimated an increase in the number of prostituted children from 20,000 in 1987 to 50,000 -60,000 in 1991. Most recent data estimated that there are some 50,000 to 75,000 female and male child in prostitution. Although the number of male sex workers is yet undetermined, they have joined the ranks of women and children prostitutes by being employed as gigolos, macho dancers, or masseurs working in gay bars, massage parlors offering "special services" and male brothels, or those that solicit customers near commercial centers, cinemas, parks and public toilets.

To lessen or if not totally eradicate prostitution, the government must update the existing laws on prostitution which are discriminating and often subjected to arbitrary interpretations and implementation. The formulation of effective policy measures against prostitution will not be effective unless it is rooted in the moralistic and traditional beliefs where sanctions and measures are directed at individual prostitutes. The government must address the economic and social bases of prostitution, and penalize the pimps, operators, agents who control, perpetuate, and benefit from taking advantage, degrading and exploiting the vulnerability of others. Prostituted persons must not be treated as criminals, but as victims of circumstances. They must be provided with support services to encourage to them leave their way of life.

In view of the foregoing, the passage of the bill is earnestly sought.



CONSUELO A. DY

H. B. No. 2394

INTRODUCED BY HONORABLE CONSUELO A. DY

AN ACT
DEFINING PROSTITUTION, IMPOSING PENALTIES ON ITS PERPETRATORS,
AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress Assembled:

SECTION 1. Short Title – This Act shall known as “The Anti-Prostitution Act of 2002”

SECTION 2. Definition of Terms – The following terms are defined for purposes of this Act:

- (a) Prostitution – any act, transaction, scheme or design involving the use of a person, whether woman, man or child, for the sexual gratification, exploitation or pleasure of another exchange for cash, profit or other consideration, or any act which promotes or facilitates the accomplishment of the said act, transaction, scheme or design.
- (b) Prostituted persons – refers to a woman, man or child used or hired for another person’s sexual gratification, exploitation, or pleasure and for the monetary gain or profit of others
- (c) Sexual exploitation – refers to an act, including, but not limited to having sexual intercourse with or performing any form of lascivious or sexual act with the person giving, conveying or delivering money or consideration, or with another person or performing or demonstrating sexual or lascivious act in presence of another person or persons or a crowd.
- (d) Child – refers to a person below eighteen (18) years of age or over but is unable to fully take care of herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;
- (e) Establishment – refers to any business enterprise or establishment, including, but not limited to, club, sauna, bath, massage parlor, discotheque, bar, restaurant, resort, lodging house, motel, hotel, ship, vessel, or any dwelling, house, structure or building or any group, association or organization, serving as a cover or venue for, or which engages in, prostitution activities as defined in Section 3 of this Act

SECTION 3. Punishable Acts – *Prostitution is a crime if committed by:*

- (a) Any person who indulge in sexual or lascivious act for money or profit;
- (b) Any person who gives, convey or delivers money or any consideration in exchange for another person’s sexual exploitation;
- (c) Any person who poses as pimp or recruiter, solicits, receives or accepts money or any consideration in exchange for another’s sexual exploitation, whether the person exploited in prostitution has consented to the said sexual act;

- (d) Any person who derives profit or advantage as owner, operator, manager, head, director, officer or agent of the establishment serving as a cover or venue for any prostitution activity, or aiding another establishment or person involved in any prostitution activity;
- (e) Any person who leases, subleases, or in any manner allows the use of any dwelling, house, structure or building for the purposes of prostitution;
- (f) Any person who in any manner advertises, promotes, or facilitates the commission of prostitution acts through the use of information technology such as cyberspace, satellite, television, or any form of media.

SECTION 4. Penalties and Sanctions

- (a) Any person found guilty of the acts in Section 3, paragraph (a) of this Act shall be punished by *destierro* or ~~banishment~~ in the discretion of the court, and in the case of recidivism, by *prison correctional* or a fine ranging from 3,000 to 5,000 pesos or both, in the discretion of the court, Provided, however, that if the offender of the acts defined in Section 3, paragraph (a) is a child, as the case maybe, the child shall not suffer any criminal liability under this Act and shall be under the custody of the Department of Social Welfare and Development;
- (b) Any person found guilty of the acts in Section 3, paragraph (b) of this Act shall be punished by *arresto mayor* and a fine ranging from 3,000 to 5,000 pesos;
- (c) Any person found guilty of the acts in Section 3, paragraph (c) shall be punished by *prison mayor* in its medium period;
- (d) Any person found guilty of the acts in Section 3, paragraph (d) shall be punished by *reclusion temporal* in its medium period to *reclusion perpetua*, and a fine of not less than five hundred thousand pesos (P500,000) but not more than one million pesos (P1,000,000).

In addition, the establishment, corporation, partnership or association shall be immediately closed and its registration and/or license shall be revoked, without prejudice to the filing of other charges under other applicable laws.

- (e) Any person found guilty of the Acts in section 3, paragraphs (e) and (f) shall be punished by *prison mayor* or a fine ranging from six thousand to twelve thousand pesos, or both in the discretion of the court;
- (f) When the act against the child constitutes rape, the offender shall be prosecuted under Art. 266-A paragraph 1 or 2 of the Revised Penal Code, as amended by R.A. 8353;

A penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed if the acts of prostitution is committed with any of the following aggravating/ qualifying circumstances:

- (1) When the prostituted person is a child,
- (2) When the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent or victim;
- (3) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of such prostitution activities;

SECTION 6. Right to Privacy

The identity of the prostituted persons shall not be disclosed to the public through exposure to media during raids, prosecution and trial of complaints for violation of this Act. Any person found guilty of the violation shall suffer the penalty of *arresto mayor* in its maximum period.

SECTION 7. Responsibilities of Government Agencies in Anti-Prostitution Efforts

Local government units shall exercise their powers to curb prostitution through massive public information and continuous monitoring of prostitution activities within their areas of jurisdiction.

The Philippine National Police and the National Bureau of Investigation, as provided for under Republic Act No. 6975, as amended by Republic Act No. 8551, shall immediately investigate any person or establishment suspected to be engaged in prostitution activities as defined under Section 3 of this Act and shall take appropriate measures for the speedy prosecution of the offenders.

The Department of Social Welfare and Development shall continuously provide support services and programs like resocialization, reintegration, counseling, and crisis intervention for the prostituted persons. It shall also formulate preventive and protective strategies or programs for street children vulnerable to being drawn, lured or coerced into the prostitution sector.

The Department of Health (DOH) shall continuously provide public information on sexually-transmitted diseases as a result of prostitution and shall provide health care services for prostituted persons.

The Department of Tourism (DOT) shall undertake corrective and enforcement measures to stop activities in tourism constituting, promoting or facilitating prostitution.

The Department of Trade and Industry (DTI) shall formulate training and assistance for alternative livelihood programs or projects for the prostituted persons.

The Department of Justice (DOJ) shall provide legal aid for the victims of prostitution.

SECTION 8. Separability Clause. – if any provision of this Act is declared invalid or unconstitutional, the remaining provisions not affected thereby shall continue in full force and effect.

SECTION 9. Suppletory Clause. – The provisions of the Revised Penal Code shall have suppletory application to this Act.

SECTION 10. Repealing Clause. Articles 202 and 341 of the Revised Penal Code are hereby repealed. Article III, Sections 6 and 6 of the Republic Act No. 7610 and all other laws, decrees, ordinances and rules inconsistent with the provisions of this Act are hereby modified or repealed accordingly.

SECTION 22. Effectivity Clause. This Act shall take effect upon completion of its publication in at least two (2) national newspapers of general circulation.

Approved.