

Anti-Discrimination Bill based on SOGIE: An Occupational Justice Perspective

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Abstract:

Despite two decades of legislative debate on the anti-discrimination bill based on sexual orientation, gender identity, and expression (SOGIE), the bill continued to struggle in the eighteenth congress of the Philippines. Human sexuality is a complex concept that needs to be understood by the majority. In this essay, we will look into the bill and its implications using an occupational justice perspective. This aims to provide readers another lens on how to look into this bill that may provide greater understanding of the concerns regarding this long debate.

Keywords: SOGIE, Occupational Justice, Anti-discrimination, Perspective

INTRODUCTION

Despite two decades of legislative debate on the anti-discrimination bill based on sexual orientation, gender identity, and expression (SOGIE) (Abad, 2019), the bill continued to struggle in the eighteenth congress of the Philippines (Domingo, 2020). In 2018, the anti-discrimination bill based on SOGIE, commonly known as “SOGIE Equality Bill”, passed the House of Representatives; however, it failed in the Philippine Senate. Senator Risa Hontiveros, a strong advocate of gender equality, reintroduced the SOGIE Equality Bill in July 2019, and is now being discussed. As the country operates under a presidential system, the SOGIE Equality Bill must be passed both by the Senate and Congress of the Republic of the Philippines, so that it could become a law (Manalo, 2020). The bill aims to fulfill the rights set forth in the 1987 constitution, especially the equal protection statement. It also opens the discussion on concepts of SOGIE and lays the practices that are proposed to be discriminatory and unlawful, which violate SOGIE equality (Deslate, 2020). This bill is important because without such, it may turn people with diverse SOGIE vulnerable, which may lead to exclusion and/or limitation on meaningful and full engagement in activities and enjoyment of basic services that are ideally made for all (Philippine Commission on Women [PCW], 2022). Hence, this bill is anchored on human rights that recognizes any person, regardless of SOGIE, to be free from any form of discrimination (Equality and Human Rights Commission, 2019).

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This means that the SOGIE Equality Bill enables penalization of discriminatory acts relevant to SOGIE, establishes ways to monitor and record SOGIE-based discrimination incidents, provides guidelines on assisting individuals across SOGIE on championing their rights on any occasion, and mandates awareness movements in all media and platforms to achieve gender equality.

Moreover, with discussions on discrimination based on SOGIE, people that identify themselves as lesbians, gays, bisexuals, or transgenders (LGBT) are often highlighted due to empirical studies that emphasize their drawbacks across different contexts (Badgett, 2014; Center for the Study of Inequality, 2018; Sears & Mallory, 2014; Singh & Durso, 2017). The LGBT community usually experience discrimination ranging from stereotyping, unfair treatment, and sometimes, outright rejection (PCW, 2022). So, this bill is closely associated with the LGBT community. In a brief by PCW, there are various recorded events that emphasize the need of this bill. There was an incident in a club in 2015 in a city in Metro Manila when some trans women were refused to enter the club's premises due to the "No Crossdressers Allowed Policy" (Joson, 2015). In as early as 2008, there was also a video scandal involving a rape victim who was ridiculed for undergoing a rectal surgery to remove a foreign object that was used to assault the victim (Punay, 2008). In another instance, a certain school forbade transgender students to wear their choice of clothing on their graduation ceremony because the school has a rule that the students have to conform to the sex they registered on their records (Manahan, 2019). These were just some of the discrimination incidents that clearly necessitates the need of the bill for the LGBT community. Despite the need in favor of the LGBT individuals, SOGIE applies to all, including men and women as well (CNN Philippines Life Staff, 2020). Human sexuality is a complex concept that needs to be understood by the majority. In this essay, we will look into the bill and its implications using an occupational justice perspective. This commentary also aims to provide readers another lens on how to look into this bill that may provide greater understanding of the concerns regarding this long debate.

Occupation is defined by occupational therapists and scientists as meaningful activities of daily living, necessary for health and survival (Wilcock, 2014). By virtue of our biological endowment, people of all ages and abilities require occupation to grow and thrive; in pursuing occupation, humans express the totality of their being, a mind-body-spirit union (Hooper and Wood, 2004). Meanwhile, a theory on gender assumes that it is an act based on one's innate drives that one must put on every day (Butler, 1988). Therefore, gender may be attributed as an occupation that needs to be expressed in daily activities that include, but are not limited to, dressing, grooming, dating, and working. Gender identity and expression, in essence, influence what occupations we do and how we do them.

As an occupation, then, gender is multifaceted and includes the person and the environment. The person is recognized having a physical body that has various capabilities but with innate orientation that needs to be expressed through gender identity and expression, disregarding the assigned sex at birth. In this assumption, sexual orientation is considered as sexual attraction; gender identity is associated with inner sense of self; and gender expression is the demonstration of gender through actions. Gender, as occupation, is a series of actions that are meaningful, which happens in a certain space and time. Whilst, environment are the physical and social factors that influences the participation in occupation. Provided with these insights, we can say that all human beings are occupational beings in nature; hence, each bears occupational rights. These rights include the right to have opportunities in a range of occupations, choose occupations of want and need, and perform these occupations freely. If there are barriers that hinder these rights, occupational injustices occur (World Federation of Occupational Therapist [WFOT], 2019). Furthermore, occupational injustices happen when individuals or communities are limited to choices on what or how to do daily activities. Occupational injustices also occur when they experience marginalization and alienation when engaging in selected tasks due to societal, economic, and political factors. The central point is that occupational injustice is a result of social policies and other forms of governance that shape how power is exercised in order to restrict participation in the everyday occupations of populations and individuals (Nilsson & Townsend, 2010). In contrast, occupational justice may be defined as the presence of equitable or fair opportunities and resources "to do, be, belong and become what individuals have the potential to be and the absence of avoidable harm" (Hocking, 2017). Using an occupational justice perspective, one can analyze situations based on the idea that participating in occupations is crucial in enriched human existence, and that structural and contextual factors are as important to fulfill the

forementioned rights. Described as a justice of difference, occupational justice recognizes individuals as occupational beings and acknowledges each individual as having unique occupational wishes, habits, and needs based on their unique set of circumstances and capacities; and, that each individual will require different occupational opportunities to utilize their talents and flourish (Durocher et. Al, 2013).

As we position the members of the LGBT community and other people with varying sexuality necessitating to participate in occupations, one can assume that gender identity and expression are both necessary for health, and eventually, for survival. This notion is true since there is a universal interrelation between an individual's meaningful engagement in daily life and their experience of well-being, health and quality of life (Kronenberg & Pollard, 2006). Again, when there are physical or social factors that impede these, people might experience occupational injustices. This may mean that they might be able to attribute meaning to everyday actions that could affect "living", which may hinder in achieving their full potential.

Dressing forms part of our gender expression. However, how we dress, particularly the type of clothing a person wears is easily interpreted by a majority as one's gender identity. An individual is perceived gay just by the sole idea of wearing skirts or colorful clothing, "female" clothing as some would call it.. Gender expression is easily displaced as gender identity in these situations. Much as we deny it, gender-based discrimination like this may affect the way we do our occupations. For cisgender males, acting effeminate during social situations would be rashly assumed as being gay by some people, but in essence, society's perception on gender stereotypes influence the way we *should* do our occupations. The mass media's portrayal of gender and gender roles greatly plays a part in this notion. According to Section 11 of the proposed bill, the creation of an Anti-Discrimination Oversight Committee (ADOC) is necessary for its effective implementation. The committee will monitor the compliance of public institutions to the provisions of the act and conduct an audit of national and local policies that discriminate on the basis of SOGIE, following a report to be submitted to the Congress, the Office of the President, and the Supreme Court. This will prevent untoward incidents of people in skirts and suits, or in whatever clothing from getting discriminated against and wrongly identified just because of how they dress. Dressing may be simple, we may view it as merely as covering our bodies; however, looking at it profoundly, we deduced that: it is more of showing ourselves than just covering up; how dressing as an occupation primarily transcends gender identity and even expression; and the simple act of choosing what we wear need not be questioned but respected and valued. With the proposed bill, the portrayal of the LGBT community in social media platforms that creates a huge impact on the viewpoints of the society, especially the youth, may change as it encourages the incentivization of platforms that would promote LGBT rights and its members. Thus, the bill can clearly enable organizations and institutions to be more open on ideas of wearing varied kinds of clothing that can provide liberty for individuals to go anywhere without fear of being harassed. "The bill is not only punitive, but more importantly, is preventive. It orders the inclusion of SOGIE concerns in all police station activities and services, with the renaming of the Women and Children's Desks to Women, Children, and LGBTQ++ Protection Desk, and the imposition of human rights based training on the police. It directs the promotion of nondiscrimination through social protection and diversity programs, and even incentivizes the positive portrayal of the LGBTQ++ in the media" (Deslate, 2021).

Another example of gender-based discrimination is the controversial issue on comfort rooms in public spaces. In a news report by ABSCBN News (2019), a trans woman was denied access to a female restroom in a mall in Quezon City; she was also harassed and detained after her SOGIE was misidentified. Under Section 5H of the bill, "Denying a person access to or the use of establishments, facilities, utilities or services, including housing, open to the general public on the basis of SOGIE," is given emphasis as one of the various discriminatory practices we experience. Even with the Gender-Fair City Ordinance in Quezon City, such incidents still occur. The bill proposes the protection of any people to access any establishment that is deemed necessary for the general public. When we take care of ourselves in the "restroom", we expect to feel safe and relieve ourselves with ease, not minding whether we are in the right place or not . As such, this dilemma forces people to adjust their way of doing things, affecting their "*right to benefit from fair privileges for diverse participation in occupations*" (Townsend & Wilcock, 2004) to put it simply.

Culturally, there is a stereotype that the man works while the woman stays at home. Conversely, these gender roles and stereotypes are becoming flexible with time. There are fathers doing house chores, such as laundry, cooking, and child rearing, while moms work. If we look into the choice of occupations, the meaning it holds for us, and the overall participation that comes with these are closely related to the gender roles and stereotypes that society has ascribed. On the other hand, while working mothers are now common and accepted, there is still social pressure to stay at home to focus on taking care of the kids. Same may be true for stay-at-home dads, the role of being a provider dictates the need to choose certain occupations over the other just because of gender stereotyping. According to Hammell (2018), focus on human well-being, on the contribution of occupational engagement to well-being, and thus on the right to equitable occupational opportunities and choices. Similarly, it relates to the occupational right to a range of occupations.

Research has consistently found that the LGBT community faces greater stigma, prejudice, and discrimination than cisgender persons over the past 25 years. Stigma and discrimination in sectors, including employment, school, housing, and health care, have been related to poor physical and mental health outcomes, as well as health disparities between LGBT and cisgender persons. Nonetheless, the LGBT community may now find safe locations to express their gender identity in most developed countries (ILGA Europe, 2017). Hence, the proposed bill will bridge gaps in these sectors through stipulations of its various sections.

Now, these ideas may be framed using the possible benefits of the anti-discrimination bill based on SOGIE. One example would be the possible resolution on the salary differences that may eradicate the emphasis on SOGIE as a deciding factor for promotions, salary increase, among others. In the Philippines, there is an unadjusted pay gap of 4.84% against women according to the results of the July 2018 Labor Force Survey. This difference is also reflective of the current status of gender equality in our country. Even with the adjusted pay gap, where the educational attainment and primary occupations of the respondents were taken into account, there is still a marked increase in the pay differential at 26.8% and 24.5%, respectively (Engcong et. al, 2019). Moreover, gender inequality in the workplace is not limited to the gender pay gap alone. Under Section 5B of the proposed bill, it highlights the presence of discriminatory practices, such as stigma and disclosure of SOGIE in the hiring process and in other work-related activities, such as 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, career development opportunities, training, and other learning and development interventions, incentives, privileges, benefits or allowances, and other terms and conditions of employment. This might provide all people, regardless of their SOGIE, opportunities to apply to any position they like while disregarding gender stereotypes at work. According to ILO (2015), many have been denied a job, because their gender expression (i.e. clothing, mannerism, voice) do not “match” their legal gender identity. LGBT workers also reported being unfairly dismissed or denied promotions. They are also often typecast as being suitable for some occupations and not others. In addition, discrimination, harassment and exclusion from the labor force often occur due to perceived non-conformity with heteronormativity. Hence, the proposed bill may include programs that both promote equality and diversity in the workplace.

Utilizing the concepts and assumptions above and relating these to the concrete experiences of people, situates the SOGIE Equality Bill as an act of enabling occupational rights among all, especially with the members of the LGBT community. As occupational therapists, or members of the allied health profession, we have the obligation to enable a society and environment that could facilitate health and participation in occupation (Townsend & Marval, 2013). Using an occupational justice perspective, we can advance the vision of an occupationally-just world by enabling empowerment and social inclusion of those routinely exposed to social exclusion (Hammell, 2008). This calls out everyone to understand that gender is supposed to be enacted and be protected because it is a basic occupational and human right. Also, this essay reminds all that SOGIE is not just for the LGBT community but for everyone. The SOGIE Equality Bill may influence the way we see and do things in the society we are in because it can foster acceptance rather than tolerance in our SOGIE- diverse society. This will create a paradigm shift from the black and white idea of gender to a more gender-diverse society that seeks to uphold the occupational rights of each individual, knowing that the value of their

occupations are also mirrored by their SOGIE. An occupational justice perspective in the bill incorporates facets that are not usually taken into consideration, which impact meaningful participation in everyday life. Hence, hopefully, this essay could enable all Filipino people to support the proposed bill.

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