SUPREME COURT
EN BANC

CENTRAL BANK (now Bangko Sentral ng Pilipinas) EMPLOYEES ASSOCIATION, INC.,
Petitioner,

-versus-

G.R. No. 148208
December 15, 2004

BANGKO SENTRAL NG PILIPINAS and the EXECUTIVE SECRETARY,
Respondents.
x----------x

DECISION

PUNO, *J.*:

Can a provision of law, initially valid, become subsequently unconstitutional, on the ground that its continued operation would violate the equal protection of the law? We hold that with the passage of the subsequent laws amending the charter of seven (7) other governmental financial institutions (GFIs), the continued operation of the last *proviso* of Section 15(c), Article II of Republic Act (R.A.) No. 7653, constitutes invidious discrimination on the 2,994 rank-and-file employees of the *Bangko Sentral ng Pilipinas* (BSP).

I. The Case

First the facts.

On July 3, 1993, R.A. No. 7653 (the New Central Bank Act) took effect. It abolished the old Central Bank of the Philippines, and created a new BSP.

On June 8, 2001, almost eight years after the effectivity of R.A. No. 7653, petitioner Central Bank (now BSP) Employees Association, Inc., filed a petition for prohibition against BSP and the Executive Secretary of the Office of the President, to restrain respondents from further implementing the last *proviso* in Section 15(c), Article II of R.A. No. 7653, on the ground that it is unconstitutional.

Article II, Section 15(c) of R.A. No. 7653 provides:

Section 15. *Exercise of Authority* - In the exercise of its authority, the Monetary Board shall:

x x x x x x x x x

(c) establish a human resource management system which shall govern the selection, hiring, appointment, transfer, promotion, or dismissal of all personnel. Such system shall aim to establish professionalism and excellence at all levels of the *Bangko Sentral* in accordance with sound principles of management.

A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the *Bangko Sentral's* human resource development program: *Provided,* That the Monetary Board shall make its own system conform as closely as possible with the principles provided for under Republic Act No. 6758 [Salary Standardization Act]. *Provided, however*, That compensation and wage structure of employees whose positions fall under salary grade 19 and below shall be in accordance with the rates prescribed under Republic Act No. 6758. [*emphasis supplied*]

The thrust of petitioner's challenge is that the above *proviso* makes an unconstitutional cut between two classes of employees in the BSP, *viz*: (1) the BSP officers or those exempted from the coverage of the Salary Standardization Law (SSL) (exempt class); and (2) the rank-and-file (Salary Grade [SG] 19 and below), or those not exempted from the coverage of the SSL (non-exempt class). It is contended that this classification is "a classic case of class legislation," allegedly not based on substantial distinctions which make real differences, but solely on the SG of the BSP personnel's position. Petitioner also claims that it is not germane to the purposes of Section 15(c), Article II of R.A. No. 7653, the most important of which is to establish professionalism and excellence at all levels in the BSP.[1] Petitioner offers the following sub-set of arguments:

a. the legislative history of R.A. No. 7653 shows that the questioned *proviso* does not appear in the original and amended versions of House Bill No. 7037, nor in the original version of Senate Bill No. 1235; [2]

b. subjecting the compensation of the BSP rank-and-file employees to the rate prescribed by the SSL actually defeats the purpose of the law[3] of establishing professionalism and excellence at all levels in the BSP; [4] (*emphasis supplied*)

c. the assailed *proviso* was the product of amendments introduced during the deliberation of Senate Bill No. 1235, without showing its relevance to the objectives of the law, and even admitted by one senator as discriminatory against low-salaried employees of the BSP;[5]

d. GSIS, LBP, DBP and SSS personnel are all exempted from the coverage of the SSL; thus within the class of rank-and-file personnel of government financial institutions (GFIs), the BSP rank-and-file are also discriminated upon;[6] and

e. the assailed *proviso* has caused the demoralization among the BSP rank-and-file and resulted in the gross disparity between their compensation and that of the BSP officers'.[7]

In sum, petitioner posits that the classification is not reasonable but arbitrary and capricious, and violates the equal protection clause of the Constitution.[8] Petitioner also stresses: (a) that R.A. No. 7653 has a separability clause, which will allow the declaration of the unconstitutionality of the *proviso* in question without affecting the other provisions; and (b) the urgency and propriety of the petition, as some 2,994 BSP rank-and-file employees have been prejudiced since 1994 when the *proviso* was implemented. Petitioner concludes that: (1) since the inequitable *proviso* has no force and effect of law, respondents' implementation of such amounts to lack of jurisdiction; and (2) it has no appeal nor any other plain, speedy and adequate remedy in the ordinary course except through this petition for prohibition, which this Court should take cognizance of, considering the transcendental importance of the legal issue involved.[9]

Respondent BSP, in its comment,[10] contends that the provision does not violate the equal protection clause and can stand the constitutional test, provided it is construed in harmony with other provisions of the same law, such as "fiscal and administrative autonomy of BSP," and the mandate of the Monetary Board to "establish professionalism and excellence at all levels in accordance with sound principles of management."

The Solicitor General, on behalf of respondent Executive Secretary, also defends the validity of the provision. Quite simplistically, he argues that the classification is based on actual and real differentiation, even as it adheres to the enunciated policy of R.A. No. 7653 to establish professionalism and excellence within the BSP subject to prevailing laws and policies of the national government.[11]

II. Issue

Thus, the sole - albeit significant - issue to be resolved in this case is whether the last paragraph of Section 15(c), Article II of R.A. No. 7653, runs afoul of the constitutional mandate that "No person shall be denied the equal protection of the laws."[12]

III. Ruling

A. UNDER THE PRESENT STANDARDS OF EQUAL PROTECTION, SECTION 15(C), ARTICLE II OF R.A. NO. 7653 IS VALID.

Jurisprudential standards for equal protection challenges indubitably show that the classification created by the questioned *proviso*, on its face and in its operation, bears no constitutional infirmities.

It is settled in constitutional law that the "equal protection" clause does not prevent the Legislature from establishing classes of individuals or objects upon which different rules shall operate - so long as the classification is not unreasonable. As held in Victoriano vs. Elizalde Rope Workers' Union,[13] and reiterated in a long line of cases:[14]

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.
>
> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no

> manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.
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> In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence, legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear. (*citations omitted*)

Congress is allowed a wide leeway in providing for a valid classification.[15] The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class.[16] If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another.[17] The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class.[18]

In the case at bar, it is clear in the legislative deliberations that the exemption of officers (SG 20 and above) from the SSL was intended to address the BSP's lack of competitiveness in terms of attracting competent officers and executives. It was not intended to discriminate against the rank-and-file. If the end-result did in fact lead to a disparity of treatment between the officers and the rank-and-file in terms of salaries and benefits, the discrimination or

distinction has a rational basis and is not palpably, purely, and entirely arbitrary in the legislative sense.[19]

That the provision was a product of amendments introduced during the deliberation of the Senate Bill does not detract from its validity. As early as 1947 and reiterated in subsequent cases,[20] this Court has subscribed to the conclusiveness of an enrolled bill to refuse invalidating a provision of law, on the ground that the bill from which it originated contained no such provision and was merely inserted by the bicameral conference committee of both Houses.

Moreover, it is a fundamental and familiar teaching that all reasonable doubts should be resolved in favor of the constitutionality of a statute.[21] An act of the legislature, approved by the executive, is presumed to be within constitutional limitations.[22] To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal breach.[23]

B. THE ENACTMENT, HOWEVER, OF SUBSEQUENT LAWS - EXEMPTING ALL OTHER RANK-AND-FILE EMPLOYEES OF GFIs FROM THE SSL - RENDERS THE CONTINUED APPLICATION OF THE CHALLENGED PROVISION A VIOLATION OF THE EQUAL PROTECTION CLAUSE.

While R.A. No. 7653 started as a valid measure well within the legislature's power, we hold that the enactment of subsequent laws exempting all rank-and-file employees of other GFIs leeched all validity out of the challenged *proviso*.

1. The concept of relative constitutionality.

The constitutionality of a statute cannot, in every instance, be determined by a mere comparison of its provisions with applicable provisions of the Constitution, since the statute may be constitutionally valid as applied to one set of facts and invalid in its application to another.[24]

A statute valid at one time may become void at another time because of altered circumstances.[25] Thus, if a statute in its practical

operation becomes arbitrary or confiscatory, its validity, even though affirmed by a former adjudication, is open to inquiry and investigation in the light of changed conditions.[26]

Demonstrative of this doctrine is Vernon Park Realty vs. City of Mount Vernon,[27] where the Court of Appeals of New York declared as unreasonable and arbitrary a zoning ordinance which placed the plaintiff's property in a residential district, although it was located in the center of a business area. Later amendments to the ordinance then prohibited the use of the property except for parking and storage of automobiles, and service station within a parking area. The Court found the ordinance to constitute an invasion of property rights which was contrary to constitutional due process. It ruled:

> While the common council has the unquestioned right to enact zoning laws respecting the use of property in accordance with a well-considered and comprehensive plan designed to promote public health, safety and general welfare, such power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably and this is so whenever the zoning ordinance precludes the use of the property for any purpose for which it is reasonably adapted. By the same token, an ordinance valid when adopted will nevertheless be stricken down as invalid when, at a later time, its operation under changed conditions proves confiscatory such, for instance, as when the greater part of its value is destroyed, for which the courts will afford relief in an appropriate case.[28] (*citations omitted, emphasis supplied*)

In the Philippine setting, this Court declared the continued enforcement of a valid law as unconstitutional as a consequence of significant changes in circumstances. Rutter vs. Esteban[29] upheld the constitutionality of the moratorium law - its enactment and operation being a valid exercise by the State of its police power[30] - but also ruled that the continued enforcement of the otherwise valid law would be unreasonable and oppressive. It noted the subsequent changes in the country's business, industry and agriculture. Thus, the law was set aside because its continued operation would be grossly discriminatory and lead to the oppression of the creditors. The landmark ruling states:[31]

The question now to be determined is, is the period of eight (8) years which Republic Act No. 342 grants to debtors of a monetary obligation contracted before the last global war and who is a war sufferer with a claim duly approved by the Philippine War Damage Commission reasonable under the present circumstances?

It should be noted that Republic Act No. 342 only extends relief to debtors of prewar obligations who suffered from the ravages of the last war and who filed a claim for their losses with the Philippine War Damage Commission. It is therein provided that said obligation shall not be due and demandable for a period of eight (8) years from and after settlement of the claim filed by the debtor with said Commission. The purpose of the law is to afford to prewar debtors an opportunity to rehabilitate themselves by giving them a reasonable time within which to pay their prewar debts so as to prevent them from being victimized by their creditors. While it is admitted in said law that since liberation conditions have gradually returned to normal, this is not so with regard to those who have suffered the ravages of war and so it was therein declared as a policy that as to them the debt moratorium should be continued in force (Section 1).

But we should not lose sight of the fact that these obligations had been pending since 1945 as a result of the issuance of Executive Orders Nos. 25 and 32 and at present their enforcement is still inhibited because of the enactment of Republic Act No. 342 and would continue to be unenforceable during the eight-year period granted to prewar debtors to afford them an opportunity to rehabilitate themselves, which in plain language means that the creditors would have to observe a vigil of at least twelve (12) years before they could effect a liquidation of their investment dating as far back as 1941. This period seems to us unreasonable, if not oppressive. While the purpose of Congress is plausible, and should be commended, the relief accorded works injustice to creditors who are practically left at the mercy of the debtors. Their hope to effect collection becomes extremely remote, more so if the credits are

unsecured. And the injustice is more patent when, under the law, the debtor is not even required to pay interest during the operation of the relief, unlike similar statutes in the United States.

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In the face of the foregoing observations, and consistent with what we believe to be as the only course dictated by justice, fairness and righteousness, we feel that the only way open to us under the present circumstances is to declare that the continued operation and enforcement of Republic Act No. 342 at the present time is unreasonable and oppressive, and should not be prolonged a minute longer, and, therefore, the same should be declared null and void and without effect. (*emphasis supplied, citations omitted*)

2. Applicability of the equal protection clause.

In the realm of equal protection, the U.S. case of Atlantic Coast Line R. Co. vs. Ivey[32] is illuminating. The Supreme Court of Florida ruled against the continued application of statutes authorizing the recovery of double damages plus attorney's fees against railroad companies, for animals killed on unfenced railroad right of way without proof of negligence. Competitive motor carriers, though creating greater hazards, were not subjected to similar liability because they were not yet in existence when the statutes were enacted. The Court ruled that the statutes became invalid as denying "equal protection of the law," in view of changed conditions since their enactment.

In another U.S. case, Louisville & N.R. Co. vs. Faulkner,[33] the Court of Appeals of Kentucky declared unconstitutional a provision of a statute which imposed a duty upon a railroad company of proving that it was free from negligence in the killing or injury of cattle by its engine or cars. This, notwithstanding that the constitutionality of the statute, enacted in 1893, had been previously sustained. Ruled the Court:

> The constitutionality of such legislation was sustained because it applied to all similar corporations and had for its object the safety of persons on a train and the protection of property.... Of course, there were no automobiles in those days. The subsequent inauguration and development of transportation by motor vehicles on the public highways by common carriers of freight and passengers created even greater risks to the safety of occupants of the vehicles and of danger of injury and death of domestic animals. Yet, under the law the operators of that mode of competitive transportation are not subject to the same extraordinary legal responsibility for killing such animals on the public roads as are railroad companies for killing them on their private rights of way.
>
> The Supreme Court, speaking through Justice Brandeis in Nashville, C. & St. L. Ry. Co. vs. Walters, 294 U.S. 405, 55 S.Ct. 486, 488, 79 L.Ed. 949, stated, "A statute valid when enacted may become invalid by change in the conditions to which it is applied. The police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably." A number of prior opinions of that court are cited in support of the statement. The State of Florida for many years had a statute, F.S.A. § 356.01 et seq. imposing extraordinary and special duties upon railroad companies, among which was that a railroad company was liable for double damages and an attorney's fee for killing livestock by a train without the owner having to prove any act of negligence on the part of the carrier in the operation of its train. In Atlantic Coast Line Railroad Co. vs. Ivey, it was held that the changed conditions brought about by motor vehicle transportation rendered the statute unconstitutional since if a common carrier by motor vehicle had killed the same animal, the owner would have been required to prove negligence in the operation of its equipment. Said the court, "This certainly is not equal protection of the law."[34] (*emphasis supplied*)

Echoes of these rulings resonate in our case law, *viz:*

> Courts are not confined to the language of the statute under challenge in determining whether that statute has any

> discriminatory effect. A statute nondiscriminatory on its face may be grossly discriminatory in its operation. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.[35] (*emphasis supplied, citations omitted*)

We see no difference between a law which denies equal protection and a law which permits of such denial. A law may appear to be fair on its face and impartial in appearance, yet, if it permits of unjust and illegal discrimination, it is within the constitutional prohibition. In other words, statutes may be adjudged unconstitutional because of their effect in operation. If a law has the effect of denying the equal protection of the law it is unconstitutional.[36] (*emphasis supplied, citations omitted*)

3. Enactment of R.A. Nos. 7907 + 8282 + 8289 + 8291 + 8523 + 8763 + 9302 = consequential unconstitutionality of challenged *proviso*.

According to petitioner, the last *proviso* of Section 15(c), Article II of R.A. No. 7653 is also violative of the equal protection clause because after it was enacted, the charters of the GSIS, LBP, DBP and SSS were also amended, but the personnel of the latter GFIs were all exempted from the coverage of the SSL.[37] Thus, within the class of rank-and-file personnel of GFIs, the BSP rank-and-file are also discriminated upon.

Indeed, we take judicial notice that after the new BSP charter was enacted in 1993, Congress also undertook the amendment of the charters of the GSIS, LBP, DBP and SSS, and three other GFIs, from 1995 to 2004, *viz*:

1. R.A. No. 7907 (1995) for Land Bank of the Philippines (LBP);
2. R.A. No. 8282 (1997) for Social Security System (SSS);
3. R.A. No. 8289 (1997) for Small Business Guarantee and Finance Corporation, (SBGFC);

4. R.A. No. 8291 (1997) for Government Service Insurance System (GSIS);
5. R.A. No. 8523 (1998) for Development Bank of the Philippines (DBP);
6. R.A. No. 8763 (2000) for Home Guaranty Corporation (HGC);[38] and
7. R.A. No. 9302 (2004) for Philippine Deposit Insurance Corporation (PDIC).

It is noteworthy, as petitioner points out, that the subsequent charters of the seven other GFIs share this common *proviso*: a blanket exemption of all their employees from the coverage of the SSL, expressly or impliedly, as illustrated below:

1. LBP (R.A. No. 7907)

> Section 10. Section 90 of [R.A. No. 3844] is hereby amended to read as follows:
>
> > Section 90. *Personnel.* -
> >
> > x x x x x x x x x
> >
> > All positions in the Bank shall be governed by a compensation, position classification system and qualification standards approved by the Bank's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. The Bank shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758. (*emphasis supplied*)

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2. SSS (R.A. No. 8282)

Section 1. [Amending R.A. No. 1161, Section 3(c)]:

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> (c)The Commission, upon the recommendation of the SSS President, shall appoint an actuary and such other personnel as may [be] deemed necessary; fix their reasonable compensation, allowances and other benefits; prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: *Provided, however*, That the personnel of the SSS below the rank of Vice President shall be appointed by the SSS President: *Provided, further*, That the personnel appointed by the SSS President, except those below the rank of assistant manager, shall be subject to the confirmation by the Commission; *Provided further*, That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: *Provided, finally*, That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430. (*emphasis supplied*)

3. SBGFC (R.A. No. 8289)

Section 8. [Amending R.A. No. 6977, Section 11]:

x x x x x x x x x

> The Small Business Guarantee and Finance Corporation shall:

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(e) notwithstanding the provisions of Republic Act No. 6758, and Compensation Circular No. 10, series of 1989 issued by the Department of Budget and Management, the Board of Directors of SBGFC shall have the authority to extend to the employees and personnel thereof the allowance and fringe benefits similar to those extended to and currently enjoyed by the employees and personnel of other government financial institutions. (*emphases supplied*)

4. GSIS (R.A. No. 8291)

Section 1. [Amending Section 43(d)].

x x x x x x x x x

Sec. 43. *Powers and Functions of the Board of Trustees*. - The Board of Trustees shall have the following powers and functions:

x x x x x x x x x

(d) upon the recommendation of the President and General Manager, to approve the GSIS' organizational and administrative structures and staffing pattern, and to establish, fix, review, revise and adjust the appropriate compensation package for the officers and employees of the GSIS with reasonable allowances, incentives, bonuses, privileges and other benefits as may be necessary or proper for the effective management, operation and administration of the GSIS, which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law and Republic Act No. 7430, otherwise known as the Attrition Law. (e*mphasis supplied*)

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5. DBP (R.A. No. 8523)

Section 6. [Amending E.O. No. 81, Section 13]:

> Section 13. *Other Officers and Employees*. - The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standards. The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended). (*emphasis supplied*)

6. HGC (R.A. No. 8763)

Section 9. *Powers, Functions and Duties of the Board of Directors*. - The Board shall have the following powers, functions and duties:

x x x x x x x x x

> (e) To create offices or positions necessary for the efficient management, operation and administration of the Corporation: *Provided*, That all positions in the Home Guaranty Corporation (HGC) shall be governed by a compensation and position classification system and qualifications standards approved by the Corporation's Board of Directors based on a comprehensive job analysis

and audit of actual duties and responsibilities: *Provided, further,* That the compensation plan shall be comparable with the prevailing compensation plans in the private sector and which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law, and from other laws, rules and regulations on salaries and compensations; and to establish a Provident Fund and determine the Corporation's and the employee's contributions to the Fund; (*emphasis supplied*)

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7. PDIC (R.A. No. 9302)

Section 2. Section 2 of [Republic Act No. 3591, as amended] is hereby further amended to read:

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3.

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A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the Corporation's human resource development program: *Provided*, That all positions in the Corporation shall be governed by a compensation, position classification system and qualification standards approved by the Board based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans of other government financial institutions and shall be subject to review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. The Corporation shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its system conform as closely

> as possible with the principles under Republic Act No. 6758, as amended. (*emphases supplied*)
>
> Thus, eleven years after the amendment of the BSP charter, the rank-and-file of seven other GFIs were granted the exemption that was specifically denied to the rank-and-file of the BSP. And as if to add insult to petitioner's injury, even the Securities and Exchange Commission (SEC) was granted the same blanket exemption from the SSL in 2000![39]

The prior view on the constitutionality of R.A. No. 7653 was confined to an evaluation of its classification between the rank-and-file and the officers of the BSP, found reasonable because there were substantial distinctions that made real differences between the two classes.

The above-mentioned subsequent enactments, however, constitute significant changes in circumstance that considerably alter the reasonability of the continued operation of the last *proviso* of Section 15(c), Article II of Republic Act No. 7653, thereby exposing the *proviso* to more serious scrutiny. This time, the scrutiny relates to the constitutionality of the classification - albeit made indirectly as a consequence of the passage of eight other laws - between the rank-and-file of the BSP and the seven other GFIs. The classification must not only be reasonable, but must also apply equally to all members of the class. The *proviso* may be fair on its face and impartial in appearance but it cannot be grossly discriminatory in its operation, so as practically to make unjust distinctions between persons who are without differences.[40]

Stated differently, the second level of inquiry deals with the following questions: Given that Congress chose to exempt other GFIs (aside the BSP) from the coverage of the SSL, can the exclusion of the rank-and-file employees of the BSP stand constitutional scrutiny in the light of the fact that Congress did not exclude the rank-and-file employees of the other GFIs? Is Congress' power to classify so unbridled as to sanction unequal and discriminatory treatment, simply because the inequity manifested itself, not instantly through a single overt act, but gradually and progressively, through seven separate acts of Congress? Is the right to equal protection of the law bounded in time and space that: (a) the right can only be invoked against a classification made

directly and deliberately, as opposed to a discrimination that arises indirectly, or as a consequence of several other acts; and (b) is the legal analysis confined to determining the validity within the parameters of the statute or ordinance (where the inclusion or exclusion is articulated), thereby proscribing any evaluation vis-à-vis the grouping, or the lack thereof, among several similar enactments made over a period of time?

In this second level of scrutiny, the inequality of treatment cannot be justified on the mere assertion that each exemption (granted to the seven other GFIs) rests "on a policy determination by the legislature." All legislative enactments necessarily rest on a policy determination - even those that have been declared to contravene the Constitution. Verily, if this could serve as a magic wand to sustain the validity of a statute, then no due process and equal protection challenges would ever prosper. There is nothing inherently sacrosanct in a policy determination made by Congress or by the Executive; it cannot run riot and overrun the ramparts of protection of the Constitution.

In *fine*, the "policy determination" argument may support the inequality of treatment between the rank-and-file and the officers of the BSP, but it cannot justify the inequality of treatment between BSP rank-and-file and other GFIs' who are similarly situated. It fails to appreciate that what is at issue in the second level of scrutiny is not the declared policy of each law *per se*, but the oppressive results of Congress' inconsistent and unequal policy towards the BSP rank-and-file and those of the seven other GFIs. At bottom, the second challenge to the constitutionality of Section 15(c), Article II of Republic Act No. 7653 is premised precisely on the irrational discriminatory policy adopted by Congress in its treatment of persons similarly situated. In the field of equal protection, the guarantee that "no person shall be denied the equal protection of the laws" includes the prohibition against enacting laws that allow invidious discrimination, directly or indirectly. If a law has the effect of denying the equal protection of the law, or permits such denial, it is unconstitutional.[41]

It is against this standard that the disparate treatment of the BSP rank-and-file from the other GFIs cannot stand judicial scrutiny. For as regards the exemption from the coverage of the SSL, there exist no

substantial distinctions so as to differentiate, the BSP rank-and-file from the other rank-and-file of the seven GFIs. On the contrary, our legal history shows that GFIs have long been recognized as comprising one distinct class, separate from other governmental entities.

Before the SSL, Presidential Decree (P.D.) No. 985 (1976) declared it as a State policy (1) to provide equal pay for substantially equal work, and (2) to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. P.D. No. 985 was passed to address disparities in pay among similar or comparable positions which had given rise to dissension among government employees. But even then, GFIs and government-owned and/or controlled corporations (GOCCs) were already identified as a distinct class among government employees. Thus, Section 2 also provided, "[t]hat notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporation and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies."[42]

The same favored treatment is made for the GFIs and the GOCCs under the SSL. Section 3(b) provides that one of the principles governing the Compensation and Position Classification System of the Government is that: "basic compensation for all personnel in the government and government-owned or controlled corporations and financial institutions shall generally be comparable with those in the private sector doing comparable work, and must be in accordance with prevailing laws on minimum wages."

Thus, the BSP and all other GFIs and GOCCs were under the unified Compensation and Position Classification System of the SSL,[43] but rates of pay under the SSL were determined on the basis of, among others, prevailing rates in the private sector for comparable work. Notably, the Compensation and Position Classification System was to be governed by the following principles: (a) just and equitable wages, with the ratio of compensation between pay distinctions maintained at equitable levels;[44] and (b) basic compensation generally comparable with the private sector, in accordance with prevailing

laws on minimum wages.[45] Also, the Department of Budget and Management was directed to use, as guide for preparing the Index of Occupational Services, the Benchmark Position Schedule, and the following factors:[46]

(1) the education and experience required to perform the duties and responsibilities of the positions;
(2) the nature and complexity of the work to be performed;
(3) the kind of supervision received;
(4) mental and/or physical strain required in the completion of the work;
(5) nature and extent of internal and external relationships;
(6) kind of supervision exercised;
(7) decision-making responsibility;
(8) responsibility for accuracy of records and reports;
(9) accountability for funds, properties and equipment; and
(10) hardship, hazard and personal risk involved in the job.

The Benchmark Position Schedule enumerates the position titles that fall within Salary Grades 1 to 20.

Clearly, under R.A. No. 6758, the rank-and-file of all GFIs were similarly situated in all aspects pertaining to compensation and position classification, in consonance with Section 5, Article IX-B of the 1997 Constitution.[47]

Then came the enactment of the amended charter of the BSP, implicitly exempting the Monetary Board from the SSL by giving it express authority to determine and institute its own compensation and wage structure. However, employees whose positions fall under SG 19 and below were specifically limited to the rates prescribed under the SSL.

Subsequent amendments to the charters of other GFIs followed. Significantly, each government financial institution (GFI) was not only expressly authorized to determine and institute its own compensation and wage structure, but also explicitly exempted - without distinction as to salary grade or position - all employees of the GFI from the SSL.

It has been proffered that legislative deliberations justify the grant or withdrawal of exemption from the SSL, based on the perceived need "*to fulfill the mandate of the institution concerned considering, among others, that: (1) the GOCC or GFI is essentially proprietary in character; (2) the GOCC or GFI is in direct competition with their* [*sic*] *counterparts in the private sector, not only in terms of the provisions of goods or services, but also in terms of hiring and retaining competent personnel; and (3) the GOCC or GFI are or were* [*sic*] *experiencing difficulties filling up plantilla positions with competent personnel and/or retaining these personnel. The need for the scope of exemption necessarily varies with the particular circumstances of each institution, and the corresponding variance in the benefits received by the employees is merely incidental.*"

The fragility of this argument is manifest. First, the BSP is the central monetary authority,[48] and the banker of the government and all its political subdivisions.[49] It has the sole power and authority to issue currency;[50] provide policy directions in the areas of money, banking, and credit; and supervise banks and regulate finance companies and non-bank financial institutions performing quasi-banking functions, including the exempted GFIs.[51] Hence, the argument that the rank-and-file employees of the seven GFIs were exempted because of the importance of their institution's mandate cannot stand any more than an empty sack can stand.

Second, it is certainly misleading to say that "*the need for the scope of exemption necessarily varies with the particular circumstances of each institution.*" Nowhere in the deliberations is there a cogent basis for the exclusion of the BSP rank-and-file from the exemption which was granted to the rank-and-file of the other GFIs and the SEC. As point in fact, the BSP and the seven GFIs are similarly situated in so far as Congress deemed it necessary for these institutions to be exempted from the SSL. True, the SSL-exemption of the BSP and the seven GFIs was granted in the amended charters of each GFI, enacted separately and over a period of time. But it bears emphasis that, while each GFI has a mandate different and distinct from that of another, the deliberations show that the *raison d'être* of the SSL-exemption was *inextricably linked to* and *for the most part based* on factors common to the eight GFIs, *i.e.*, (1) the pivotal role they play in the economy; (2) the necessity of hiring and retaining qualified and

effective personnel to carry out the GFI's mandate; and (3) the recognition that the compensation package of these GFIs is not competitive, and fall substantially below industry standards. Considering further that (a) the BSP was the first GFI granted SSL exemption; and (b) the subsequent exemptions of other GFIs did not distinguish between the officers and the rank-and-file; it is patent that the classification made between the BSP rank-and-file and those of the other seven GFIs was inadvertent, and NOT intended, *i.e.*, it was not based on any substantial distinction vis-à-vis the particular circumstances of each GFI. Moreover, the exemption granted to two GFIs makes express reference to *allowance and fringe benefits similar to those extended to and currently enjoyed by the employees and personnel of other GFIs*,[52] underscoring that GFIs are a particular class within the realm of government entities.

It is precisely this unpremeditated discrepancy in treatment of the rank-and-file of the BSP - made manifest and glaring with each and every consequential grant of blanket exemption from the SSL to the other GFIs - that cannot be rationalized or justified. Even more so, when the SEC - which is not a GFI - was given leave to have a compensation plan that "shall be comparable with the prevailing compensation plan in the [BSP] and other [GFIs],"[53] then granted a blanket exemption from the SSL, and its rank-and-file endowed a more preferred treatment than the rank-and-file of the BSP.

The violation to the equal protection clause becomes even more pronounced when we are faced with this undeniable truth: that if Congress had enacted a law for the sole purpose of exempting the eight GFIs from the coverage of the SSL, the exclusion of the BSP rank-and-file employees would have been devoid of any substantial or material basis. It bears no moment, therefore, that the unlawful discrimination was not a direct result arising from one law. "*Nemo potest facere per alium quod non potest facere per directum.*" No one is allowed to do indirectly what he is prohibited to do directly.

It has also been proffered that "similarities alone are not sufficient to support the conclusion that rank-and-file employees of the BSP may be lumped together with similar employees of the other GOCCs for purposes of compensation, position classification and qualification standards. The fact that certain persons have some attributes in

common does not automatically make them members of the same class with respect to a legislative classification." Cited is the ruling in Johnson vs. Robinson:[54] "this finding of similarity ignores that a common characteristic shared by beneficiaries and nonbeneficiaries alike, is not sufficient to invalidate a statute when other characteristics peculiar to only one group rationally explain the statute's different treatment of the two groups."

The reference to Johnson is *inapropos*. In Johnson, the US Court sustained the validity of the classification as there were quantitative and qualitative distinctions, expressly recognized by Congress, which formed a rational basis for the classification limiting educational benefits to military service veterans as a means of helping them readjust to civilian life. The Court listed the peculiar characteristics as follows:

> First, the disruption caused by military service is quantitatively greater than that caused by alternative civilian service. A conscientious objector performing alternative service is obligated to work for two years. Service in the Armed Forces, on the other hand, involves a six-year commitment.
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> Second, the disruptions suffered by military veterans and alternative service performers are qualitatively different. Military veterans suffer a far greater loss of personal freedom during their service careers. Uprooted from civilian life, the military veteran becomes part of the military establishment, subject to its discipline and potentially hazardous duty. Congress was acutely aware of the peculiar disabilities caused by military service, in consequence of which military servicemen have a special need for readjustment benefits.[55] (*citations omitted*)

In the case at bar, it is precisely the fact that as regards the exemption from the SSL, there are no characteristics peculiar only to the seven GFIs or their rank-and-file so as to justify the exemption which BSP rank-and-file employees were denied (not to mention the anomaly of the SEC getting one). The distinction made by the law is not only

superficial,[56] but also arbitrary. It is not based on substantial distinctions that make real differences between the BSP rank-and-file and the seven other GFIs.

Moreover, the issue in this case is not - as the dissenting opinion of Mme. Justice Carpio-Morales would put it - whether "being an employee of a GOCC or GFI is reasonable and sufficient basis for exemption" from R.A. No. 6758. It is Congress itself that distinguished the GFIs from other government agencies, not once but eight times, through the enactment of R.A. Nos. 7653, 7907, 8282, 8289, 8291, 8523, 8763, and 9302. These laws may have created a "preferred sub-class within government employees," but the present challenge is not directed at the wisdom of these laws. Rather, it is a legal conundrum involving the exercise of legislative power, the validity of which must be measured not only by looking at the specific exercise *in and by itself* (R.A. No. 7653), but also as to the *legal effects* brought about by seven separate exercises - albeit indirectly and without intent.

Thus, even if petitioner had not alleged "a comparable change in the factual milieu as regards the compensation, position classification and qualification standards of the employees of the BSP (whether of the executive level or of the rank-and-file) since the enactment of the new Central Bank Act" is of no moment. In *GSIS vs. Montesclaros,*[57] this Court resolved the issue of constitutionality notwithstanding that claimant had manifested that she was no longer interested in pursuing the case, and even when the constitutionality of the said provision was not squarely raised as an issue, because the issue involved not only the claimant but also others similarly situated and whose claims GSIS would also deny based on the challenged *proviso*. The Court held that social justice and public interest demanded the resolution of the constitutionality of the *proviso*. And so it is with the challenged *proviso* in the case at bar.

It bears stressing that the exemption from the SSL is a "privilege" fully within the legislative prerogative to give or deny. However, its subsequent grant to the rank-and-file of the seven other GFIs and continued denial to the BSP rank-and-file employees breached the latter's right to equal protection. In other words, while the granting of a privilege *per se* is a matter of policy exclusively within the domain

and prerogative of Congress, *the validity or legality of the exercise* of this prerogative is subject to judicial review.[58] So when the distinction made is superficial, and not based on substantial distinctions that make real differences between those included and excluded, it becomes a matter of arbitrariness that this Court has the duty and the power to correct.[59] As held in the United Kingdom case of Hooper vs. Secretary of State for Work and Pensions,[60] once the State has chosen to confer benefits, "discrimination" contrary to law may occur where favorable treatment already afforded to one group is refused to another, even though the State is under no obligation to provide that favorable treatment. [61]

The disparity of treatment between BSP rank-and-file and the rank-and-file of the other seven GFIs definitely bears the unmistakable badge of invidious discrimination - no one can, with candor and fairness, deny the discriminatory character of the subsequent blanket and total exemption of the seven other GFIs from the SSL when such was withheld from the BSP. Alikes are being treated as unalikes without any rational basis.

Again, it must be emphasized that the equal protection clause does not demand absolute equality but it requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest.[62]

In light of the lack of real and substantial distinctions that would justify the unequal treatment between the rank-and-file of BSP from the seven other GFIs, it is clear that the enactment of the seven subsequent charters has rendered the continued application of the challenged *proviso* anathema to the equal protection of the law, and the same should be declared as an outlaw.

IV. Equal Protection Under International Lens

In our jurisdiction, the standard and analysis of equal protection challenges in the main have followed the "rational basis" test, coupled with a deferential attitude to legislative classifications[63] and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution.[64]

A. Equal Protection in the United States

In contrast, jurisprudence in the U.S. has gone beyond the static "rational basis" test. Professor Gunther highlights the development in equal protection jurisprudential analysis, to wit:[65]

Traditionally, equal protection supported only minimal judicial intervention in most contexts. Ordinarily, the command of equal protection was only that government must not impose differences in treatment "except upon some reasonable differentiation fairly related to the object of regulation." The old variety of equal protection scrutiny focused solely on the *means* used by the legislature: it insisted merely that the classification in the statute reasonably relates to the legislative purpose. Unlike substantive due process, equal protection scrutiny was not typically concerned with identifying "fundamental values" and restraining legislative ends. And usually the rational classification requirement was readily satisfied: the courts did not demand a tight fit between classification and purpose; perfect congruence between means and ends was not required.

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[From marginal intervention to major cutting edge: The Warren Court's "new equal protection" and the two-tier approach.]

From its traditional modest role, equal protection burgeoned into a major intervention tool during the Warren era, especially in the 1960s. The Warren Court did not abandon the deferential ingredients of the old equal protection: in most areas of economic and social legislation, the demands imposed by equal protection remained as minimal as ever. But the Court launched an equal protection revolution by finding large new areas for strict rather than deferential scrutiny. A sharply differentiated two-tier approach evolved by the late 1960s: in addition to the deferential "old" equal protection, a

"new" equal protection, connoting strict scrutiny, arose. The intensive review associated with the new equal protection imposed two demands - a demand not only as to means but also one as to ends. Legislation qualifying for strict scrutiny required a far closer fit between classification and statutory purpose than the rough and ready flexibility traditionally tolerated by the old equal protection: means had to be shown "necessary" to achieve statutory ends, not merely "reasonably related" ones. Moreover, equal protection became a source of ends scrutiny as well: legislation in the areas of the new equal protection had to be justified by "compelling" state interests, not merely the wide spectrum of "legitimate" state ends.

The Warren Court identified the areas appropriate for strict scrutiny by searching for two characteristics: the presence of a "suspect" classification; or an impact on "fundamental" rights or interests. In the category of "suspect classifications," the Warren Court's major contribution was to intensify the strict scrutiny in the traditionally interventionist area of racial classifications. But other cases also suggested that there might be more other suspect categories as well: illegitimacy and wealth for example. But it was the 'fundamental interests" ingredient of the new equal protection that proved particularly dynamic, open-ended, and amorphous. [Other fundamental interests included voting, criminal appeals, and the right of interstate travel.]

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The Burger Court and Equal Protection.

The Burger Court was reluctant to expand the scope of the new equal protection, although its best established ingredient retains vitality. There was also mounting discontent with the rigid two-tier formulations of the Warren Court's equal protection doctrine. It was prepared to use the clause as an interventionist tool without resorting to the strict language of the new equal protection. [Among the fundamental interests identified during this time were voting and access to the ballot, while "suspect" classifications included sex, alienage and illegitimacy.]

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Even while the two-tier scheme has often been adhered to in form, there has also been an increasingly noticeable resistance to the sharp difference between deferential "old" and interventionist "new" equal protection. A number of justices sought formulations that would blur the sharp distinctions of the two-tiered approach or that would narrow the gap between strict scrutiny and deferential review. The most elaborate attack came from Justice Marshall, whose frequently stated position was developed most elaborately in his dissent in the *Rodriguez* case: [66]

The Court apparently seeks to establish [that] equal protection cases fall into one of two neat categories which dictate the appropriate standard of review - strict scrutiny or mere rationality. But this (*sic*) Court's [decisions] defy such easy categorization. A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of the equal protection clause. This spectrum clearly comprehends variations in the degree of care with which Court will scrutinize particular classification, depending, I believe, on the constitutional and societal importance of the interests adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn.

Justice Marshall's "sliding scale" approach describes many of the modern decisions, although it is a formulation that the majority refused to embrace. But the Burger Court's results indicate at least two significant changes in equal protection law: *First*, invocation of the "old" equal protection formula no longer signals, as it did with the Warren Court, an extreme deference to legislative classifications and a virtually automatic validation of challenged statutes. Instead, several cases, even while voicing the minimal "rationality" "hands-off" standards of the old equal protection, proceed to find the statute unconstitutional. *Second*, in some areas the modern Court has put forth standards for equal protection review that, while clearly more intensive than the deference of the "old" equal protection, are less demanding than the strictness of the "new" equal protection. Sex discrimination is the best established example of an "intermediate" level of review. Thus, in one case, the Court said that "classifications by gender must serve *important* governmental objectives and must

be *substantially related* to achievement of those objectives." That standard is "intermediate" with respect to both ends and means: where ends must be "compelling" to survive strict scrutiny and merely "legitimate" under the "old" mode, "important" objectives are required here; and where means must be "necessary" under the "new" equal protection, and merely "rationally related" under the "old" equal protection, they must be "substantially related" to survive the "intermediate" level of review. (*emphasis supplied, citations omitted*)

B. Equal Protection in Europe

The United Kingdom and other members of the European Community have also gone forward in discriminatory legislation and jurisprudence. Within the United Kingdom domestic law, the most extensive list of protected grounds can be found in Article 14 of the European Convention on Human Rights (ECHR). It prohibits discrimination on grounds such as "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." This list is illustrative and not exhaustive. Discrimination on the basis of race, sex and religion is regarded as grounds that require strict scrutiny. A further indication that certain forms of discrimination are regarded as particularly suspect under the Covenant can be gleaned from Article 4, which, while allowing states to derogate from certain Covenant articles in times of national emergency, prohibits derogation by measures that discriminate solely on the grounds of "race, colour, language, religion or social origin."[67]

Moreover, the European Court of Human Rights has developed a test of justification which varies with the ground of discrimination. In the Belgian Linguistics case[68] the European Court set the standard of justification at a low level: discrimination would contravene the Convention only if it had no legitimate aim, or there was no reasonable relationship of proportionality between the means employed and the aim sought to be realised.[69] But over the years, the European Court has developed a hierarchy of grounds covered by Article 14 of the ECHR, a much higher level of justification being required in respect of those regarded as "suspect" (sex, race, nationality, illegitimacy, or sexual orientation) than of others. Thus, in Abdulaziz, [70] the European Court declared that:

> [t]he advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention.

And in Gaygusuz vs. Austria,[71] the European Court held that "very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention."[72] The European Court will then permit States a very much narrower margin of appreciation in relation to discrimination on grounds of sex, race, etc., in the application of the Convention rights than it will in relation to distinctions drawn by states between, for example, large and small land-owners. [73]

C. Equality under International Law

The principle of equality has long been recognized under international law. 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. [74]

Most, if not all, international human rights instruments include some prohibition on discrimination and/or provisions about equality.[75] The general international provisions pertinent to discrimination and/or equality are the International Covenant on Civil and Political Rights (ICCPR);[76] the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD);[77] the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC).

In the broader international context, equality is also enshrined in regional instruments such as the American Convention on Human Rights;[78] the African Charter on Human and People's Rights;[79] the

European Convention on Human Rights;[80] the European Social Charter of 1961 and revised Social Charter of 1996; and the European Union Charter of Rights (of particular importance to European states). Even the Council of the League of Arab States has adopted the Arab Charter on Human Rights in 1994, although it has yet to be ratified by the Member States of the League.[81]

The equality provisions in these instruments do not merely function as traditional "first generation" rights, commonly viewed as concerned only with constraining rather than requiring State action. Article 26 of the ICCPR requires "guarantee[s]" of "equal and effective protection against discrimination" while Articles 1 and 14 of the American and European Conventions oblige States Parties "to ensure the full and free exercise of [the rights guaranteed] without any discrimination" and to "secure without discrimination" the enjoyment of the rights guaranteed.[82] These provisions impose a measure of positive obligation on States Parties to take steps to eradicate discrimination.

In the employment field, basic detailed minimum standards ensuring equality and prevention of discrimination, are laid down in the ICESCR[83] and in a very large number of Conventions administered by the International Labour Organisation, a United Nations body.[84] Additionally, many of the other international and regional human rights instruments have specific provisions relating to employment.[85]

The United Nations Human Rights Committee has also gone beyond the earlier tendency to view the prohibition against discrimination (Article 26) as confined to the ICCPR rights.[86] In Broeks[87] and Zwaan-de Vries,[88] the issue before the Committee was whether discriminatory provisions in the Dutch Unemployment Benefits Act (WWV) fell within the scope of Article 26. The Dutch government submitted that discrimination in social security benefit provision was not within the scope of Article 26, as the right was contained in the ICESCR and not the ICCPR. They accepted that Article 26 could go beyond the rights contained in the Covenant to other civil and political rights, such as discrimination in the field of taxation, but contended that Article 26 did not extend to the social, economic, and cultural rights contained in ICESCR. The Committee rejected this

argument. In its view, Article 26 applied to rights beyond the Covenant including the rights in other international treaties such as the right to social security found in ICESCR:

> Although Article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it does not, for example, require any state to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with Article 26 of the Covenant.[89]

Breaches of the right to equal protection occur directly or indirectly. A classification may be struck down if it has the purpose or effect of violating the right to equal protection. International law recognizes that discrimination may occur indirectly, as the Human Rights Committee[90] took into account the definitions of discrimination adopted by CERD and CEDAW in declaring that:

> "discrimination" as used in the [ICCPR] should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.[91] (*emphasis supplied*)

Thus, the two-tier analysis made in the case at bar of the challenged provision, and its conclusion of unconstitutionality by subsequent operation, are in cadence and in consonance with the progressive trend of other jurisdictions and in international law. There should be no hesitation in using the equal protection clause as a major cutting edge to eliminate every conceivable irrational discrimination in our society. Indeed, the social justice imperatives in the Constitution, coupled with the special status and protection afforded to labor, compel this approach.[92]

Apropos the special protection afforded to labor under our Constitution and international law, we held in International School Alliance of Educators vs. Quisumbing:[93]

> That public policy abhors inequality and discrimination is beyond contention. 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 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."
>
> International law, which springs from general principles of law, likewise proscribes discrimination. General principles of law include principles of equity, *i.e.*, the general principles of fairness and justice, based on the test of what is reasonable. The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation - all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.
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> In the workplace, where the relations between capital and labor are often skewed in favor of capital, inequality and discrimination by the employer are all the more reprehensible.
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> The Constitution specifically provides that labor is entitled to "humane conditions of work." These conditions are not restricted to the physical workplace - the factory, the office or the field - but include as well the manner by which employers treat their employees.

> The Constitution also directs the State to promote "equality of employment opportunities for all." Similarly, the Labor Code provides that the State shall "ensure equal work opportunities regardless of sex, race or creed." It would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes to unequal and discriminatory terms and conditions of employment.
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> Notably, the International Covenant on Economic, Social, and Cultural Rights, in Article 7 thereof, provides:
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> > The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and [favorable] conditions of work, which ensure, in particular:
> >
> > a. Remuneration which provides all workers, as a minimum, with:
> >
> > i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
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> The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of "equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. (citations omitted)

Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution.[94] The deference stops where the classification

violates a fundamental right, or prejudices persons accorded special protection by the Constitution. When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, and require a stricter and more exacting adherence to constitutional limitations. Rational basis should not suffice.

Admittedly, the view that prejudice to persons accorded special protection by the Constitution requires a stricter judicial scrutiny finds no support in American or English jurisprudence. Nevertheless, these foreign decisions and authorities are not *per se* controlling in this jurisdiction. At best, they are persuasive and have been used to support many of our decisions.[95] We should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decisions through the employment of our own endowments. We live in a different ambience and must decide our own problems in the light of our own interests and needs, and of our qualities and even idiosyncrasies as a people, and always with our own concept of law and justice.[96] Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language of each law and the context of other local legislation related thereto. More importantly, they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others.[97]

In the 2003 case of *Francisco vs. House of Representatives*, this Court has stated that: "[A]merican jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only limited persuasive merit insofar as Philippine constitutional law is concerned. [I]n resolving constitutional disputes, [this Court] should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs."[98] Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged.[99]

Further, the quest for a better and more "equal" world calls for the use of equal protection as a tool of effective judicial intervention.

Equality is one ideal which cries out for bold attention and action in the Constitution. The Preamble proclaims "equality" as an ideal precisely in protest against crushing inequities in Philippine society. The command to promote social justice in Article II, Section 10, in "all phases of national development," further explicitated in Article XIII, are clear commands to the State to take affirmative action in the direction of greater equality. [T]here is thus in the Philippine Constitution no lack of doctrinal support for a more vigorous state effort towards achieving a reasonable measure of equality.[100]

Our present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including labor.[101] Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law.[102] And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality.[103] Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.[104]

V. A Final Word

Finally, concerns have been raised as to the propriety of a ruling voiding the challenged provision. It has been proffered that the remedy of petitioner is not with this Court, but with Congress, which alone has the power to erase any inequity perpetrated by R.A. No. 7653. Indeed, a bill proposing the exemption of the BSP rank-and-file from the SSL has supposedly been filed.

Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment. [105]

But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor. [106]

Accordingly, when the grant of power is qualified, conditional or subject to limitations, the issue on whether or not the prescribed qualifications or conditions have been met, or the limitations respected, is justiciable or non-political, the crux of the problem being one of legality or validity of the contested act, not its wisdom. Otherwise, said qualifications, conditions or limitations - particularly those prescribed or imposed by the Constitution - would be set at naught. What is more, the judicial inquiry into such issue and the settlement thereof are the main functions of courts of justice under the Presidential form of government adopted in our 1935 Constitution, and the system of checks and balances, one of its basic predicates. As a consequence, We have neither the authority nor the discretion to decline passing upon said issue, but are under the ineluctable obligation - made particularly more exacting and peremptory by our oath, as members of the highest Court of the land, to support and defend the Constitution - to settle it. This explains why, in Miller vs. Johnson, it was held that courts have a "duty, rather than a power", to determine whether another branch of the government has "kept within constitutional limits." Not satisfied with this postulate, the court went farther and stressed that, if the Constitution provides how it may be amended - as it is in our 1935 Constitution - "then, unless the manner is followed, the judiciary as the interpreter of that constitution, will declare the amendment invalid." In fact, this very Court - speaking through Justice Laurel, an outstanding authority on Philippine Constitutional Law, as well as one of the highly respected and foremost leaders of the Convention that drafted the 1935 Constitution - declared, as early as July 15, 1936, that "(i)n times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not

entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments" of the government.[107] (*citations omitted; emphasis supplied*)

In the case at bar, the challenged *proviso* operates on the basis of the salary grade or officer-employee status. It is akin to a distinction based on economic class and status, with the higher grades as recipients of a benefit specifically withheld from the lower grades. Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank - possessing higher and better education and opportunities for career advancement - are given higher compensation packages to entice them to stay. Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they - and not the officers - who have the real economic and financial *need* for the adjustment This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all."[108] Any act of Congress that runs counter to this constitutional *desideratum* deserves strict scrutiny by this Court before it can pass muster.

To be sure, the BSP rank-and-file employees merit greater concern from this Court. They represent the more impotent rank-and-file government employees who, unlike employees in the private sector, have no specific right to organize as a collective bargaining unit and negotiate for better terms and conditions of employment, nor the power to hold a strike to protest unfair labor practices. Not only are they impotent as a labor unit, but their efficacy to lobby in Congress is almost nil as R.A. No. 7653 effectively isolated them from the other GFI rank-and-file in compensation. These BSP rank-and-file employees represent the politically powerless and they should not be compelled to seek a political solution to their unequal and iniquitous treatment. Indeed, they have waited for many years for the legislature to act. They cannot be asked to wait some more for

discrimination cannot be given any waiting time. Unless the equal protection clause of the Constitution is a mere platitude, it is the Court's duty to save them from reasonless discrimination.

IN VIEW WHEREOF, we hold that the continued operation and implementation of the last *proviso* of Section 15(c), Article II of Republic Act No. 7653 is unconstitutional.

DAVIDE, JR., *C.J.*, PANGANIBAN, QUISUMBING, YNARES-SANTIAGO, SANDOVAL-GUTIERREZ, CARPIO, AUSTRIA-MARTINEZ, CARPIO-MORALES, AZCUNA, TINGA, CHICO-NAZARIO, and GARCIA, *JJ.*, concur.
CORONA, *J.*, on leave.
CALLEJO, SR., *J.*, on leave.

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* On leave.
[1] Rollo, p. 7.
[2] Id., p. 9.
[3] i.e., (1) make the salary of the BSP personnel competitive to attract highly competent personnel; (2) establish professionalism and excellence at all levels in the BSP; and (3) ensure the administrative autonomy of the BSP as the central monetary authority
[4] Rollo, pp. 8-10.
[5] Id., pp. 10-12, quoting Former Senator Maceda, Record of the Senate, First Regular Session, March 15 to June 10, 1993, Vol. IV, No. 86, p. 1087.
[6] Id., pp. 12-14.
[7] Id., p. 14.
[8] Id., pp. 2-5.
[9] Id., pp. 14-15.
[10] Id., pp. 62-75.
[11] Id., pp. 76-90.
[12] 1987 Constitution, Art. III, § 1.
[13] No. L-25246, 59 SCRA 54, 77-78 (September 12, 1974).
[14] Basa vs. Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas (FOITAF), No. L-27113, 61 SCRA 93, 110-111 (November 19, 1974); Anucension vs. National Labor Union, No. L-26097, 80 SCRA 350, 372-373 (November 29, 1977); Villegas vs. Hiu Chiong Tsai Pao Ho, No. L-29646, 86 SCRA 270, 275 (November 10, 1978); Dumlao vs. Comelec, No. L-52245, 95 SCRA 392, 404 (January 22, 1980); Ceniza vs. Comelec, G.R. No. L-52304, 95 SCRA 763, 772-773 (January 28, 1980); Himagan vs. People, G.R. No. 113811, 237 SCRA 538 (October 7, 1994); The Conference of Maritime Manning Agencies, Inc. vs. POEA, G.R. No. 114714, 243 SCRA

666, 677 (April 21, 1995); JMM Promotion and Management, Inc. vs. Court of Appeals, G.R. No. 120095, 260 SCRA 319, 331–332 (August 5, 1996); and Tiu vs. Court of Appeals, G.R. No. 127410, 301 SCRA 278, 288-289 (January 20, 1999). See also Ichong vs. Hernandez, No. L-7995, 101 Phil. 1155 (May 31, 1957); Vera vs. Cuevas, Nos. L-33693-94, 90 SCRA 379, 388 (May 31, 1979); and Tolentino vs. Secretary of Finance, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873, and 115931, 235 SCRA 630, 684 (August 25, 1994).

[15] Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, and 79777, 175 SCRA 343 (July 14, 1989). See Tiu vs. Court of Appeals, G.R. No. 127410, 301 SCRA 278 (January 20, 1999).

[16] Ichong, etc., et al. vs. Hernandez, etc. and Sarmiento, No. L-7995, 101 Phil. 1155 (May 31, 1957), citing 2 Cooley, Constitutional Limitations, pp. 824-825.

[17] Tiu vs. Court of Appeals, G.R. No. 127410, 301 SCRA 278 (January 20, 1999); Dumlao vs. Comelec, No. L-52245, 95 SCRA 392, 404 (January 22, 1980); and Himagan vs. People, G.R. No. 113811, 237 SCRA 538 (October 7, 1994). See also JMM Promotion and Management, Inc. vs. Court of Appeals, G.R. No. 120095, 260 SCRA 319, 331-332 (August 5, 1996); The Conference of Maritime Manning Agencies, Inc. vs. POEA, G.R. No. 114714, 243 SCRA 666, 677 (April 21, 1995); Ceniza vs. Comelec, No. L-52304, 95 SCRA 763, 772 (January 28, 1980); Vera vs. Cuevas, Nos. L-33693-94, 90 SCRA 379 (May 31, 1979); and Tolentino vs. Secretary of Finance, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873 and 115931, 235 SCRA 630 (August 25, 1994).

[18] Dumlao vs. Comelec, No. L-52245, 95 SCRA 392, 405 (January 22, 1980), citing Peralta vs. Comelec, No. L-47771, No. L-47803, No. L-47816, No. L-47767, No. L-47791 and No. L-47827, 82 SCRA 30 (March 11, 1978); Rafael vs. Embroidery and Apparel Control and Inspection Board, No. L-19978, 21 SCRA 336 (September 29, 1967); and Ichong, etc., et al. vs. Hernandez, etc. and Sarmiento, No. L-7995, 101 Phil 1155 (May 31, 1957). See also JMM Promotion and Management, Inc. vs. Court of Appeals, G.R. No. 120095, 260 SCRA 319 (August 5, 1996); Philippine Judges Association vs. Prado, G.R. No. 105371, 227 SCRA 703 (November 11, 1993); and Villegas vs. Hiu Chiong Tsai Pao Ho, No. L-29646, 86 SCRA 270, 275 (November 10, 1978).

[19] People vs. Carlos, No. L-239, 78 Phil. 535 (June 30, 1947).

[20] See Mabanag vs. Lopez Vito, No. L-1123, 78 Phil. 1 (March 5, 1947); Casco Philippine Chemical Co., Inc. vs. Gimenez, No. L-17931, 7 SCRA 347 (February 28, 1963); Morales vs. Subido, No. L-29658, 27 SCRA 131 (February 27, 1969); and Philippine Judges Association vs. Prado, G.R. No. 105371, 227 SCRA 703 (November 11, 1993).

[21] People vs. Vera, No. 45685, 65 Phil. 56 (November 16, 1937).

[22] Id., citing U. S. vs. Ten Yu, 24 Phil. 1, 10 (December 28, 1912); Case vs. Board of Health, 24 Phil. 250, 276 (February 4, 1913); and U. S. vs. Joson, No. 7019, 26 Phil. 1 (October 29, 1913).

[23] Dumlao vs. COMELEC, No. L-52245, 95 SCRA 392, 404 (January 22, 1980).

[24] Medill vs. State, 477 N.W.2d 703 (Minn. 1991) (followed with reservations by, In re Cook, 138 B.R. 943 [Bankr. D. Minn. 1992]).
[25] Nashville, C. & St. L. Ry. vs. Walters, 294 U.S. 405, 55 S. Ct. 486, 79 L. Ed. 949 (1935); Atlantic Coast Line R. Co. vs. Ivey, 148 Fla. 680, 5 So. 2d 244, 139 A.L.R. 973 (1941); Louisville & N. R. Co. vs. Faulkner, 3 G.R. No. L-29646 07 S.W.2d 196 (Ky. 1957); and Vernon Park Realty vs. City of Mount Vernon, 307 N.Y. 493, 121 N.E.2d 517 (1954).
[26] Murphy vs. Edmonds, 325 Md. 342, 601 A.2d 102 (1992).
[27] 307 N.Y. 493, 121 N.E.2d 517 (1954).
[28] Id.
[29] No. L-3708, 93 Phil. 68 (May 18, 1953).
[30] On the constitutionality of Republic Act No. 342, Section 2 provides that all debts and other monetary obligations contracted before December 8, 1941, any provision in the contract creating the same or in any subsequent agreement affecting such obligation to the contrary notwithstanding, shall not be due and demandable for a period of eight (8) years from and after settlement of the war damage claim of the debtor by the Philippine War Damage Commission; and Section 3 of said Act provides that should the provision of Section 2 be declared void and unenforceable, then as regards the obligation affected thereby, the provisions of Executive Order No. 25 dated November 18, 1944, as amended by Executive Order No. 32, dated March 10, 1945, relative to debt moratorium, shall continue to be in force and effect, any contract affecting the same to the contrary notwithstanding, until subsequently repealed or amended by a legislative enactment. It thus clearly appears in said Act that the nullification of its provisions will have the effect of reviving the previous moratorium orders issued by the President of the Philippines.
[31] Rutter vs. Esteban, G.R. No. L-3708, 93 Phil. 68 (May 18, 1953).
[32] 148 Fla. 680, 5 So. 2d 244, 139 A.L.R. 973 (1941).
[33] 307 S.W.2d 196 (Ky. 1957).
[34] Id.
[35] People vs. Dela Piedra, G.R. No. 121777, 350 SCRA 163 (January 24, 2001).
[36] People vs. Vera, No. 45685, 65 Phil. 56 (November 16, 1937). Parenthetically, this doctrine was first enunciated in the 1886 case of Yick Wo vs. Hopkins (118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220), wherein the U.S. Supreme Court, speaking through Justice Matthews, declared: "...Though the law itself be fair on its face and impartial in appearances, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."
[37] Rollo, pp. 12-14.
[38] Formerly the Home Insurance and Guaranty Corporation (HIGC).
[39] R.A. No. 8799 (2000), Section 7.2 provides: All positions of the Commission shall be governed by a compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities.

The compensation plan shall be comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. The Commission shall, therefore, be exempt from laws, rules, and regulations on compensation, position classification and qualification standards. The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

[40] People vs. Dela Piedra, G.R. No. 121777, 350 SCRA 163 (January 24, 2001).

[41] People vs. Vera, No. 45685, 65 Phil. 56 (November 16, 1937).

[42] P.D. No. 985 (August 22, 1976).

[43] R.A. No. 6758, Section 2, the policy of which is to "provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."

[44] Section 3(a) provides that "All government personnel shall be paid just and equitable wages; and while pay distinctions must necessarily exist in keeping with work distinctions, the ratio of compensation for those occupying higher ranks to those at lower ranks should be maintained at equitable levels giving due consideration to higher percentages of increases to lower level positions and lower percentage increases to higher level positions."

[45] Section 3(b) states that "Basic compensation for all personnel in the government, and government-owned or controlled corporations (GOCCs) and financial institutions (GFIs) shall generally be comparable with those in the private sector doing comparable work, and must be in accordance with prevailing laws on minimum wages."

[46] Id., Section 9.

[47] Section 5 of the 1987 Constitution provides: "The Congress shall provide for the standardization of compensation of government officials, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions."

[48] R.A. No. 7653, Sections 1 and 3.

[49] Id., Sections 110 and 113.

[50] R.A. No. 7653, Section 50.

[51] Id., Sections 1 and 3.

[52] R.A. No. 8289 [SBGFC], Section 8; R.A. No. 9302 [PDIC], Section 2.

[53] R.A. No. 8799 (2000), Section 7.2.

[54] 415 U.S. 361 (1974).

[55] Id.

[56] Philippine Judges Association vs. Prado, G.R. No. 105371, 227 SCRA 703 (November 11, 1993).

[57] G.R. No. 146494 (July 14, 2004).

[58] Constitution, Article VIII, Section 1.

[59] See Philippine Judges Association vs. Prado, G.R. No. 105371, 227 SCRA 703, 713-715 (November 11, 1993).
[60] [2002] EWHC 191 (Admin).
[61] Id. The significance of international human rights instruments in the European context should not be underestimated. In Hooper for example, the case was brought on the alleged denial of a right guaranteed by the ECHR, given domestic effect in the U.K. through its Human Rights Act 1998 (HRA), and the ECHR, as one of the contracting parties. Also, in Wilson v United Kingdom, (30668/96) (2002) 35 E.H.R.R. 20 (ECHR), the European Court of Human Rights took into account the requirements of ILO Conventions Nos. 87 and 98, and of the European Social Charter of 1961, in ruling that the United Kingdom had breached the applicants' freedom of association. See Aileen McColgan, Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003).
[62] J.M. Tuason and Co., Inc. vs. Land Tenure Administration, No. L-21064, 31 SCRA 413, 435 (February 18, 1970).
[63] See Association of Small Landowners in the Philippines vs. Secretary of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, and 79777 (July 14, 1989).
[64] People vs. Vera, supra, citing U. S. vs. Ten Yu, 24 Phil. 1, 10 (December 28, 1912); Case vs. Board of Health and Heiser, supra; and U. S. vs. Joson, supra. See Peralta vs. COMELEC, No. L-47771, No. L-47803, No. L-47816, No. L-47767, No. L-47791 and No. L-47826, 82 SCRA 30 (March 11, 1978), citing Cooper vs. Telfair, 4 Dall. 14; DODD, CASES ON CONSTITUTIONAL LAW 56 (3rd ed. 1942).
[65] GERALD GUNTHER, CONSTITUTIONAL LAW 586-589 (11TH ed. 1985).
[66] San Antonio Independent School District vs. Rodriguez, 411 U.S. 1 (1973).
[67] See Gay Moon, Complying with Its International Human Rights Obligations: The United Kingdom and Article 26 of the International Covenant on Civil and Political Rights, 3 E.H.R.L.R. 283-307 (2003).
[68] (No.2) (A/6) 1 E.H.R.R. 252 (1979-80) (ECHR).
[69] The European Court has also taken an even more restricted approach to Article 14, asking only whether the treatment at issue had a justified aim in view or whether the authorities pursued "other and ill-intentioned designs." National Union of Belgian Police vs. Belgium, 1 E.H.R.R. 578 (1979-80); and Swedish Engine Drivers' Union vs. Sweden 1 E.H.R.R. 617 (1979-80).
[70] Abdulaziz vs. United Kingdom, (A/94) 7 E.H.R.R. 471 (1985) (ECHR).
[71] 23 E.H.R.R. 364 (1997).
[72] Id.
[73] Aileen McColgan, Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003).
[74] Aileen McColgan, Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003). See Tufyal Choudhury, Interpreting the Right to Equality under Article 26 of the International Covenant on Civil and Political Rights, 1 E.H.R.L.R. 24-52 (2003).
[75] Aileen McColgan, Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003).
[76] Article 26 of the ICCPR provides that:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

[77] Article 5(b) of CERD requires States to protect individuals from (racially discriminatory) violence "whether inflicted by government officials or by any individual group or institution."

[78] Article 1 of the American Conventions on Human Rights provides that:
"The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition;"

[79] Article 26 of the ICCPR is echoed in its broad proscription of discrimination by Article 3 of the African Charter which provides that:
"1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law."

[80] Article 14 of the European Conventions on Human Rights provides that:
"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

[81] See Aileen McColgan, Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003); and Tufyal Choudhury, Interpreting the Right to Equality under Article 26 of the International Covenant on Civil and Political Rights, 1 E.H.R.L.R. 24-52 (2003).

[82] Also, Articles 2 and 3 of the ICCPR require that Contracting States agree to "respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and (Article 3) "to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." Other examples include: Article 2 of CEDAW, which require States Parties to the Convention not only to "embody the principle of the equality of men and women in their national constitutions or other appropriate legislation" but also "to ensure, through law and other appropriate means, the practical realization of this principle"; and Article 5(b) of CERD requires States to protect individuals from (racially discriminatory) violence "whether inflicted by government officials or by any individual group or institution." See also Articles 2 and 3 CSECR, and Article 2 of the African Charter, which is similar to Article 2 of the ICCPR.

Aileen McColgan, Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003).

[83] Article 7 of the ICESCR provides the right:
"to the enjoyment of just and favourable conditions of work in particular fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work [and] equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence."

[84] See Convention Nos. 100 of 1951, 103 of 1952, 111 of 1958, 118 of 1962 and 156 of 1981 which deal respectively with equal pay for men and women; maternity rights; discrimination in employment and occupation; equality of treatment in social security; and workers with family responsibilities. Convention No. 100 has been ratified by no less than 159 countries and Convention No. 111 by 156 (these being two of the eight fundamental Conventions the ratification of which is all but compulsory). Conventions Nos. 103, 118 and 156 have been ratified by 40, 38 and 34 countries, respectively.

[85] For example, Articles 11, 12 and 13 of CEDAW require the taking of "all appropriate measures" to eliminate discrimination against women in the fields of employment, health care, and other areas of economic life including the right to benefits and financial services. Article 15 of the African Charter provides a right for "every individual" to "equal pay for equal work," which, like Article 7 of the ICESCR, applies whether an individual is employed by the state or by a private body. The Council of Europe's Revised Social Charter provides for the "right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex" and to the protection of workers with family responsibilities. The Social Charter of the Council of Europe also incorporates a commitment on the part of Contracting States to "recognise the right of men and women workers to equal pay for work of equal value" as well as that of children, young persons and women to protection in employment (the latter group in connection with pregnancy and childbirth), and rights for migrant workers. Article 5 CERD does not merely require Contracting States to eliminate race discrimination in their own practices but also obliges them to prohibit race discrimination "in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights," in particular, employment rights including rights to "just and favourable conditions of work", protection against unemployment, "just and favourable remuneration" and to form and join trade unions. See Aileen McColgan, Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003).

[86] Tufyal Choudhury, Interpreting the Right to Equality under Article 26 of the International Covenant on Civil and Political Rights, 1 E.H.R.L.R. 24-52 (2003).

[87] SWM Broeks vs. the Netherlands (172/1984).
[88] F.H. Zwaan-de Vries vs. the Netherlands (182/1984).
[89] S.W.M. Broeks vs. Netherlands (172/1984), paragraph 12.4.
[90] Human Rights Committee, General Comment No. 18 (1989).
[91] Id. In the Belgian Linguistics case, (No.2) (A/6) (1979-80) 1 E.H.R.R. 252 (ECHR), the European Court of Human Rights referred to the "aims and effects" of the measure challenged under Article14 of the European Convention, implying that indirect as well as direct discrimination could be contrary to the provision. And in Thlimmenos v Greece, 31 E.H.R.R. 15 (2001), the European Court ruled that discrimination contrary to the European Convention had occurred when a man who had been criminalised because of his refusal (as a Jehovah's Witness and, therefore, a pacifist) to wear a military uniform during compulsory military service, was subsequently refused access to the chartered accountancy profession because of a rule which barred those with criminal convictions from being chartered. According to the Court:
"[We have] so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification ... However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different."
See also Jordan vs. United Kingdom (App. No. 24746/94), para.154. Aileen McColgan, Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003).
[92] The 1987 Constitutional provisions pertinent to social justice and the protection granted to Labor are:

PREAMBLE:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality and peace, do ordain and promulgate this Constitution.

ARTICLE II: DECLARATION OF PRINCIPLES AND STATE POLICIES: PRINCIPLES

SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

SECTION 10. The State shall promote social justice in all phases of national development.
SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.
SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

ARTICLE III: BILL OF RIGHTS

SECTION 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

ARTICLE IX: CONSTITUTIONAL COMMISSIONS

B. THE CIVIL SERVICE COMMISSION

SECTION 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

ARTICLE XII: NATIONAL ECONOMY AND PATRIMONY

SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

SECTION 22. Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.

ARTICLE XIII: SOCIAL JUSTICE AND HUMAN RIGHTS

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

LABOR

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[93] International School Alliance of Educators vs. Quisumbing, G.R. No. 128845, 333 SCRA 13 (June 1, 2000).

[94] See Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, and 79777, 175 SCRA 343 (July 14, 1989).

[95] Republic vs. MERALCO, G.R. Nos. 141314 and 141369, 401 SCRA 130 (April 9, 2003).

[96] Sanders vs. Veridiano II, No. L-46930, 162 SCRA 88 (June 10, 1988).

[97] Republic vs. MERALCO, G.R. Nos. 141314 and 141369, 401 SCRA 130 (April 9, 2003).

[98] Francisco vs. House of Representatives, G.R. No. 160261, (November 10, 2003).

[99] Id.

[100] JOAQUIN G. BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 160 (2003).

[101] Globe-Mackay Cable and Radio Corp. vs. NLRC, G.R. No. 82511, 206 SCRA 701 (March 3, 1992).

[102] Uy vs. COA, G.R. No. 130685, 328 SCRA 607 (March 21, 2000).

[103] Ibid.

[104] Calalang vs. Williams, No. 47800, 70 Phil. 726 (December 2, 1940).

[105] See Dumlao vs. COMELEC, No. L-52245, 95 SCRA 392, 404 (January 22, 1980); Peralta vs. Comelec, Nos. L-47771, L-47803, L-47816, L-47767, L-47791, and L-47827, 82 SCRA 30 (March 11, 1978); Felwa vs. Salas, No. L-26511, 18 SCRA 606 (October 29, 1966); Rafael vs. Embroidery and Apparel Control and Inspection Board, No. L-19978, 21 SCRA 336, (September 29, 1967); People vs. Carlos, No. L-239, 78 Phil. 535 (June 30, 1947); and Ichong, etc., et. al. vs. Hernandez, etc. and Sarmiento, No. L-7995, 101 Phil. 1155 (May 31, 1957).

[106] Belarmino vs. Employees' Compensation Commission, G.R. No. 90204, 185 SCRA 304 (May 11, 1990).
[107] Javellana vs. The Executive Secretary, No. L-36142, L-36164, L-36165, L-36236 and L-36283, 50 SCRA 30 (March 31, 1973).
[108] 1987 Constitution, Article II, Section 9.