

Are men and women
equal?

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (Article 1, UDHR)

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. (Article 26, International Covenant on Civil and Political Rights)

The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men. (Article 2, Section 14, Philippine Constitution)

No person shall be deprived of life
liberty and property without the due
process of law, nor shall any person be
denied of the equal protection of the
laws. (Article 3, Section 1 Philippine
Constitution)

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or oppression. It requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities imposed. (Conrado L. Tiu vs. Court of Appeals G.R. No. 127410 January 20, 1999)

Are men and women equal before
the Revised Penal Code?

Who are guilty of adultery. - Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by prision correccional in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed. (Article 333, Revised Penal Code)

Elements of Adultery:

1. That the woman is married;
2. That she has sexual intercourse with a man not her husband;
3. That as regards the man with whom she has sexual intercourse, he must know her to be married.

Each sexual intercourse
constitutes a crime of adultery.
(People v. Zapata and Bondoc,
88 Phil. 688)

Concubinage. - Any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prision correccional in its minimum and medium periods.

The concubine shall suffer the penalty of destierro. (Article 334, Revised Penal Code)

Elements of Concubinage:

1. That the man must be married.
2. That he committed any of the following acts:
 - a. Keeping a mistress in the conjugal dwelling,
 - b. Having sexual intercourse under scandalous circumstances with a woman who is not his wife;
 - c. Cohabiting with her in any other place.
3. That as regards the woman she must know her to be married.

A married man is not liable for concubinage for mere sexual relations with a woman not his wife. (People vs. Santos, et al., CA., 45 O.G. 2116)

Adultery may be distinguished from concubinage in the following manner:

1. In adultery the married woman's act of sexual intercourse to a man not her husband consummates the crime of adultery, while in Concubinage the married man's act of sexual intercourse with a woman who is not his wife is not yet concubinage unless it was done under scandalous circumstances.
2. The penalty for adultery is *prision correccional* in its medium and maximum periods (2 years, 4 months and 1 to 6 years) day, while that of concubinage is *prision correccional* in its minimum and medium period (6 months and 1 day to 4 years and 2 months)

In the crimes of Adultery and Concubinage under the Revised Penal Code, the legislature made a classification of crimes based on gender. However, the classification should not be made for the following reasons:

1. Both crimes involve essentially the same act which is the violation of the marital vow.
2. Being a woman does not make a person more criminal that would warrant the imposition of higher penalty or easy prosecution.
3. The classification is against the principle of proportionality in the imposition of penalty.
4. The classification is a violation of the Constitution and International Law.

It is humbly recommended by the researcher that the provisions of the Revised Penal Code concerning Adultery and Concubinage be reviewed and revised by the legislature in order to ensure the fundamental equality before the law of women and men.