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The Women's Movement and Legal
Reform in Thailand

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Virada Somswasdi, *The Women's Movement and Legal Reform in Thailand*, April 1st, 2003. Cornell Law School.

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Good afternoon friends of women!

I'd like to thank profusely those who have the part in bringing me here...especially Prof. Barcelo, Dean Teitelbaum, Larry Bush and Tara Maria.

I'm sure you know that I'm not exaggerating in saying that I'm so overwhelmed to be here revisiting the "dungeon" (this was how I referred to the Law School to friends in 1970). My relationship with the Law School in those days was both bitter and sweet. I reckon that some of you might bear the same temperament at times as well.

Why was it bitter? In 1973, when I first presented my LL.M. thesis, entitled "Comparative Studies in Matrimonial Property Laws of the United States and Thailand", questions were raised from the Chair of the Committee toward my approach in criticizing the laws that were discriminatory against women in the area of matrimonial property management.

On top of that, the book by Professor Leo Kanowitz of the University of New Mexico, in paperback entitled "Women and the Law: The Unfinished Revolution" published in 1970 and used as a reference in my thesis was rejected for "being a non-legal text." I regrettably removed it from the bibliography, yet did willingly remove the Chair of the Committee of my thesis. Subsequently, a more liberal replacement of his was granted through my request.

Apparently, this latter part is sweet.

The topic of my talk today covers the women's movement and its activism around the legal reform in Thailand. Considering the time constraints, I will capture only the significant activism of the late 1960's onward, and hope to cover three decades in thirty minutes or less!

In the late 1960's, during the time of dictatorial rule, a group of educated upper class women in legal and business professions had actively taken up the call for a reform in the family law, which was actually a continuation of the activism of the mid 1950's. The focal issues included the right of a wife to matrimonial property management and the prevention of double marital registration.

The strategies adopted were to lobby with high policy level and juridical members. The campaign was held at academic institutions and professional associations, not public institutions. The issues were thus not exposed to the majority of society, be

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they men or women. Its contexts were not extensively publicized since it found expression solely in the form of debates, speeches, and very few documents.

The campaign, even though contributed greatly in allowing women a better status in society, was seen by many as an outcry of wealthy elitist women whose concerns were vested in personal economic interests and in the widespread infidelity problem of their husbands having minor wives. It did not touch upon any societal patriarchal structural problems or gender equality. Nor did it touch upon problems of the low income and rural women.

I, at the age of mid-twenty, did not have any other agenda except for equality between men and women.

Here is the ending sentence of my thesis written in 1973. "... most of the Thais are not yet ready for the recognition of women's competency, while equality is far beyond imagination. Ironically, it is reasonably predictable that modernization of the Thai Civil and Commercial Code to relate it to the legal rights of women in a changing world is not to come within the next decade."

It did not seem that I was wrong in putting it as such.

Since leaving Cornell Law School in 1973, I have been involving in the women's movement in Thailand, witnessing many positive legal changes for Thai women. Yet, I have also been disheartened and disillusioned on many occasions and times because women's dignity and human rights are still so often denied.

The October 1973 student uprising against the dictatorial regime was suppressed by the military. Subsequently, hundreds of lives were lost, a lot of people were disabled, and the civil population was left horrified. This suppression is one of the political mishaps, which until today have not yet been accounted for by government after government. At any rate, the October 1973 event, devised by male and female students, yet, it was the male actors who had the show. It did bring about dramatic political change and paved the path to democratization. A new civilian government was set up through an intervention by the King; while the constitutional drafting process allowed for wider participation from various groups of citizens.

The constitution came into force in 1974 encompassing the most liberal principles Thailand had ever carried. With heavy lobbying from democratization groups including some women and intellectuals, an equal rights protection clause was for the first time put into the constitution. It is considered a milestone as women's issues and the concept of gender equality were addressed for the first time in Thai political and legal history.

The democratization process, which was led mainly by intellectuals from various groups, was gradually built up with the purpose of mobilizing the public with a rights based approach to civil, political, socio cultural and economic problems. Women's groups started to emerge in academic institutions with the support of a small faction of female journalists.

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The women's movement was more or less born out of the democratization movement, which was comprised mainly of young radical members who were under the influence of communist China. They focused on socialist theory as well as the practical approaches mapped out by Chairman Mao. The liberal faction of the women's movement was mainly composed of professional women while the more radical women workers emerged in parallel.

The movement slowly started to depart from issues such as the right to manage marital property, extra marital affairs and double marital registration to include a more liberal approach to the campaign against discriminatory laws and regulations. Gender equality in education; human rights, the rights to life, liberty and body integrity; the right to abortion and divorce were some focuses of the campaign.

The 1974 Constitution stipulated two years as a grace period to revise all laws that were contradictory to the equal rights protection clause between men and women. Amongst the outcome were new legislations allowing women to sit as judges in the court of justice and as public prosecutors; and equal wages for male/female workers etc. Parts of the Family Law were revised, but nonetheless, a lot of provisions still maintain gender inequality and a violation of women's human rights. Significantly enough, the rights of men, be they fiancées or husbands, over women's sexuality remain intact.

Despite being hardly fought for, the constitution was a short-lived one. It was exactly two years after the promulgation, in October 1976, when Thailand's most liberal constitution ever was abrogated by the military's bloodiest coup d'état. People's power was again overcome by force.

The democratization and women's movement died down for a good many years under the military controlled governments. The majority of social, political, and student activists, both male and female, fled to the jungle to join the Communist Party of Thailand, hoping to form a people's movement and liberate the country from military domination and American imperialism.

There have been a number of constitutions since 1976. All were fruits of coup d'état, which periodically occurred throughout the years. Thus one can forget about genuine democratization structures and principles, not to mention equality between the sexes.

The political wind changed course in the late 1970's-early 1980's when China stopped giving assistance to the Communist Party of Thailand, and political activists who were embraced by the Communist Party of Thailand became disillusioned with its policy and hierarchical structure. They returned to different sectors of society and tried to get on with life in their own capacities. Gradually, the country's political climate allowed the social and women's movements to reemerge.

Many diverse groups of women with varying issues and concerns have been slowly building up the movement with steady pace and weight.

The United Nations' organizational strategy in using international pressure to force governments to adopt policies and legislative measures on advancing the status of women seemed to work at a certain level in the case of Thailand. The International Women's Decade of 1975-1985 had a certain role in influencing the Thai women's

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movement. And, in 1985 when the Third World Conference on Women took place in Nairobi, the Thai government acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) notably with 7 reservations.

A year later, women's studies programs were incidentally set up in three universities, namely Chulalongkorn, Chiangmai and Thammasat. Not all of them were given support by the university administrators or the Thai government.

The equal rights between men and women clause was brought back in the 1991 Constitution as propaganda in the State Policy Section. It was the 1995 Constitution that the gender equality clause was put into the Section on Rights and Freedom of the People.

The latest (should I say the 'last') coup d'état took place in 1991 and the Operation Black May took place in 1992, when people's peaceful demonstrations and protests against the illegitimate Prime Minister, an army general who led the coup d'état, were suppressed with military force. The specific figures of victims, death toll and responsible parties have not yet been accounted for up until this day.

The 1992 Operation Black May was again brought to a halt by the King. The military brutality had caused public outcry for political reform to lay down structures and mechanisms hoping to prevent future political violence instigated by the military and its associates and to move forward with democracy and human rights protection. The first attempt was to push for a drafting of a new constitution to safeguard reform.

During that period, the women's groups working on "women and law" were successful in changing the laws to extend maternity leave from thirty to ninety days; gain nationality for children of foreign fathers born to Thai mothers in Thailand; and they were able to revise laws regarding prostitution and anti trafficking to reflect harsher punishment for procurers, pimps, brothel owners and sellers, be they parents or not. Male clients will now be punished if found with child prostitutes under 18 years of age. More women's groups including those of the grassroots and rural women were informed and got involved in those campaign.

The current 1997 Constitution is recognized as the "people's constitution" as it allowed for public participation in the making process and beyond. It has set up political structures and processes to safeguard monitoring, checking and a balance of powers. It vividly withholds the principle of gender equality and builds grounds for positive action to realize such equality. It includes a provision on protection from domestic violence. It requires one third of the Parliament extraordinary committee to be constituted by women's organizations when the agenda is relevant to women's issues. It carries all fine symbols and reflections of determination towards people's participatory democracy and human rights protection, away from representational democracy.

More significantly, it's the product of the women's movement. The Women and Constitution Network was the core group in lobbying throughout the drafting process. Another remarkable success of the Network was being able to push for representation of 5 women in the 12-membership committee of the National Commission on Human Rights. There is no visibility of women in other independent bodies, the parliament or council of ministers. The women's movement has recently

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been active in calling for a positive action for women in decision-making level especially in local politics. I am personally favorable for the push of all levels including national and international.

Here we are today in 2003, facing reality.

Even though most reservations of CEDAW have been removed but the one in relation to marriage and family life are still there. This means that women's sexuality continues to be under the control of men. For example, she can still be bought by the man who wishes to engage with her under the name of "engagement property" given to her and "sin sod" or property to her parents or elder relatives in return for her agreeing to engage with him. He is entitled to decline to marry her if she is raped or has consensual sexual affairs with another man, not vice versa. He can file for a divorce for a single act of extra marital affairs. But, the only divorce ground for her is to prove that he openly recognizes the other woman (women) as his wife (wives) and/or financially supports her (them). In addition, marital rape is not punishable and not deemed a ground for divorce.

Children have to carry the father's last name unless the man is unknown.

Furthermore, the Convention is not directly applicable in the courtroom.

I'd like to address some concerns of women's movement as follows:

- Lack of effective law enforcement mechanisms and cases filed by women in the courts on the basis of constitutional guarantees;
- Absence of a separate law dealing exclusively with discrimination against women;
- Lack of qualified judicial personnel who are gender sensitized;(I have personally started to campaign for special courts for cases on women's human rights)
- Prevailing traditional attitudes affecting the advancement of women;
- Reproductive rights and right to abortion are still very limited;
- The under-representation of women in politics and decision-making structures; including the judicial system;
- The early drop-out of girls from school and their early entry into the labor force;
- The status of women migrant workers and, in particular, cross-border trafficking in women and girls, prostitution and trafficking in women and girls;
- Hill-tribe women are not effectively protected by national laws;
- The high suicide rate and the prevalence of mental illness among women;
- Women's health are at risk with STD and HIV/aids resulted from promiscuity of male partners/husbands
- Traditional stereotypes of women are reflected in some laws and portrayed in school text books and through the media;
- The current Names Act and other laws which restrict women's access to credit and to land ownership in cases where they marry foreigners.
- Violence against women, including sexual harassment and domestic violence whether taking place in the family, the community or the workplace is still largely considered by the society as a "private matter" or "trivial issue". Often enough, women are the party to be blamed as the provocateurs of such sexual crimes. Yet, the government has taken few measures to give effect to the new constitutional guarantees.

It has been six years since the "People's Constitution" has taken effect; nonetheless, there is no concrete evidence of the government's sheer political will to realize gender equality and the protection of women's human rights, unless they are pushed by the women's movement.

.• Last but not least, lack of support of the establishments in building and strengthening women's studies program.

I'd like to bring to your attention two recent cases in which the women's movement was challenged and the conscience of the public tested.

The first one is about a very competent medical doctor in one of the best hospitals being acquitted by the Public Prosecutors Office of the wife murder charge for insufficient evidence. After some heavy protests from many women's rights groups and media criticism, the decision was revoked and the case filed to the court with reference to the same loads of evidence from the police.

The second case is about a university professor who assaulted his wife to death by using a golf club, among other things. The defendant pleaded guilty claiming that his wife aggravated him. The Criminal Court of First Instance gave a light punishment basing on the high educational background and social status of the defendant, leading to a suspension of imprisonment and community service. The Public Prosecutors' Office did not plan to appeal. Again, the women's rights groups demanded access to the file documents of the case and pushed that the case be appealed. After a lot of "noisy" commotion, the case has now reached the Court of Appeals.

So, there's still some light at the end of the tunnel despite the fact that the women's movement has to ignite it.

In concluding, I note that the women's movement for legal reform cannot afford to be isolated from other social or women's movement. With predominant male cultural, social, economic and political structure, it has to fight against gender bias cross cutting over other biases stemmed from privileges such as class, ethnicity, race, age, religion and military might.

Thank you!

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