

JESUS C. GARCIA, PETITIONER, VS. THE HONORABLE RAY ALAN T. DRILON, PRESIDING JUDGE, REGIONAL TRIAL COURT-BRANCH 41, BACOLOD CITY, AND ROSALIE JAYPE-GARCIA, FOR HERSELF IN BEHALF...

G.R. No. 179267. June 25, 2013

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Hailed as the bastion of Christianity in Asia, the Philippines boasts of 86.8 million Filipinos -or 93 percent of a total population of 93.3 million - adhering to the teachings of Jesus Christ.[1] Yet, the admonition for husbands to love their wives as their own bodies just as Christ loved the church and gave himself up for her[2] failed to prevent, or even to curb, the pervasiveness of violence against Filipino women. The National Commission on the Role of Filipino Women (NCRFW) reported that, for the years 2000-2003, "female violence comprised more than 90% of all forms of abuse and violence and more than 90% of these reported cases were committed by the women's intimate partners such as their husbands and live-in partners." [3]

Thus, on March 8, 2004, after nine (9) years of spirited advocacy by women's groups, Congress enacted Republic Act (R.A.) No. 9262, entitled "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes." It took effect on March 27, 2004.[4]

R.A. 9262 is a landmark legislation that defines and criminalizes acts of violence against women and their children (VAWC) perpetrated by women's intimate partners, i.e, husband; former husband; or any person who has or had a sexual or dating relationship, or with whom the woman has a common child.[5] The law provides for protection orders from the barangay and the courts to prevent the commission of further acts of VAWC; and outlines the duties and responsibilities of barangay officials, law enforcers, prosecutors and court personnel, social workers, health care providers, and other local government officials in responding to complaints of VAWC or requests for assistance.

A husband is now before the Court assailing the constitutionality of R.A. 9262 as being violative of the equal protection and due process clauses, and an undue delegation of judicial power to barangay officials.

The Factual Antecedents

On March 23, 2006, Rosalie Jaype-Garcia (private respondent) filed, for herself and in behalf of her minor children, a verified petition[6] (Civil Case No. 06-797) before the Regional Trial Court (RTC) of Bacolod City for the issuance of a Temporary Protection Order (TPO) against her husband, Jesus C. Garcia (petitioner), pursuant to R.A. 9262. She claimed to be a victim of physical abuse; emotional, psychological, and economic violence as a result of marital infidelity on the part of petitioner, with threats of deprivation of custody of her children and of financial support.[7]

Private respondent's claims

Private respondent married petitioner in 2002 when she was 34 years old and the former was eleven years her senior. They have three (3) children, namely: Jo-Ann J. Garcia, 17 years old, who is the natural child of petitioner but whom private respondent adopted; Jessie Anthone J. Garcia, 6 years old; and Joseph Eduard J. Garcia, 3 years old.[8]

Private respondent described herself as a dutiful and faithful wife, whose life revolved around her husband. On the other hand, petitioner, who is of Filipino-Chinese descent, is dominant, controlling, and demands absolute obedience from his wife and children. He forbade private respondent to pray, and deliberately isolated her from her friends. When she took up law, and even when she was already working part time at a law office, petitioner trivialized her ambitions and prevailed upon her to just stay at home. He was often jealous of the fact that his attractive wife still catches the eye of some men, at one point threatening that he would have any man eyeing her killed.[9]

Things turned for the worse when petitioner took up an affair with a bank manager of Robinson's Bank, Bacolod City, who is the godmother of one of their sons. Petitioner admitted to the affair when private respondent confronted him about it in 2004. He even boasted to the household help about his sexual relations with said bank manager. Petitioner told private respondent, though, that he was just using the woman because of their accounts with the bank.[10]

Petitioner's infidelity spawned a series of fights that left private respondent physically and emotionally wounded. In one of their quarrels, petitioner grabbed private respondent on both arms and shook her with such force that caused bruises and hematoma. At another time, petitioner hit private respondent forcefully on the lips that caused some bleeding. Petitioner sometimes turned his ire on their daughter, Jo-Ann, who had seen the text messages he sent to his paramour and whom he blamed for squealing on him. He beat Jo-Ann on the chest and slapped her many times. When private respondent decided to leave petitioner, Jo-Ann begged her mother to stay for fear that if the latter leaves, petitioner would beat her up. Even the small boys are aware of private respondent's sufferings. Their 6- year-old son said that when he grows up, he would beat up his father because of his cruelty to private respondent.[11]

All the emotional and psychological turmoil drove private respondent to the brink of despair. On December 17, 2005, while at home, she attempted suicide by cutting her wrist. She was found by her son bleeding on the floor. Petitioner simply fled the house instead of taking her to the hospital. Private respondent was hospitalized for about seven (7) days in which time petitioner never bothered to visit, nor apologized or showed pity on her. Since then, private respondent has been undergoing therapy almost every week and is taking anti-depressant medications.[12]

When private respondent informed the management of Robinson's Bank that she intends to file charges against the bank manager, petitioner got angry with her for jeopardizing the manager's job. He then packed his things and told private respondent that he was leaving her for good. He even told private respondent's mother, who lives with them in the family home, that private respondent should just accept his extramarital affair since he is not cohabiting with his paramour and has not sired a child with her.[13]

Private respondent is determined to separate from petitioner but she is afraid that he would take her children from her and deprive her of financial support. Petitioner had previously warned her that if she goes on a legal battle with him, she would not get a single centavo.[14]

Petitioner controls the family businesses involving mostly the construction of deep wells. He is the President of three corporations – 326 Realty Holdings, Inc., Negros Rotadrill Corporation, and J-Bros Trading Corporation –

of which he and private respondent are both stockholders. In contrast to the absolute control of petitioner over said corporations, private respondent merely draws a monthly salary of P20,000.00 from one corporation only, the Negros Rotadrill Corporation. Household expenses amounting to not less than P200,000.00 a month are paid for by private respondent through the use of credit cards, which, in turn, are paid by the same corporation together with the bills for utilities.[15]

On the other hand, petitioner receives a monthly salary of P60,000.00 from Negros Rotadrill Corporation, and enjoys unlimited cash advances and other benefits in hundreds of thousands of pesos from the corporations.[16] After private respondent confronted him about the affair, petitioner forbade her to hold office at JBTC Building, Mandalagan, where all the businesses of the corporations are conducted, thereby depriving her of access to full information about said businesses. Until the filing of the petition a quo, petitioner has not given private respondent an accounting of the businesses the value of which she had helped raise to millions of pesos.[17]

Action of the RTC of Bacolod City

Finding reasonable ground to believe that an imminent danger of violence against the private respondent and her children exists or is about to recur, the RTC issued a TPO[18] on March 24, 2006 effective for thirty (30) days, which is quoted hereunder:

Respondent (petitioner herein), Jesus Chua Garcia, is hereby:

a) Ordered to remove all his personal belongings from the conjugal dwelling or family home within 24 hours from receipt of the Temporary Restraining Order and if he refuses, ordering that he be removed by police officers from the conjugal dwelling; this order is enforceable notwithstanding that the house is under the name of 236 Realty Holdings Inc. (Republic Act No. 9262 states “regardless of ownership”), this is to allow the Petitioner (private respondent herein) to enter the conjugal dwelling without any danger from the Respondent.

After the Respondent leaves or is removed from the conjugal dwelling, or anytime the Petitioner decides to return to the conjugal dwelling to remove things, the Petitioner shall be assisted by police officers when re-entering the family home.

The Chief of Police shall also give the Petitioner police assistance on Sunday, 26 March 2006 because of the danger that the Respondent will attempt to take her children from her when he arrives from Manila and finds out about this suit.

b) To stay away from the petitioner and her children, mother and all her household help and driver from a distance of 1,000 meters, and shall not enter the gate of the subdivision where the Petitioner may be temporarily residing.

c) Not to harass, annoy, telephone, contact or otherwise communicate with the Petitioner, directly or indirectly, or through other persons, or contact directly or indirectly her children, mother and household help, nor send gifts, cards, flowers, letters and the like. Visitation rights to the children may be subject of a modified TPO in the future.

d) To surrender all his firearms including a .9MM caliber firearm and a Walther PPK and ordering the Philippine National Police Firearms and Explosives Unit and the Provincial Director of the PNP to cancel all the Respondent's firearm licenses. He should also be ordered to surrender any unlicensed firearms in his possession or control.

e) To pay full financial support for the Petitioner and the children, including rental of a house for them, and educational and medical expenses.

f) Not to dissipate the conjugal business.

g) To render an accounting of all advances, benefits, bonuses and other cash he received from all the corporations from 1 January 2006 up to 31 March 2006, which himself and as President of the corporations and his Comptroller, must submit to the Court not later than 2 April 2006. Thereafter, an accounting of all these funds shall be reported to the court by the Comptroller, copy furnished to the Petitioner, every 15 days of the month, under pain of Indirect Contempt of Court.

h) To ensure compliance especially with the order granting support pendente lite, and considering the financial resources of the Respondent and his threat that if the Petitioner sues she will not get a single centavo, the Respondent is ordered to put up a BOND TO KEEP THE PEACE in the amount of FIVE MILLION PESOS, in two sufficient sureties.

On April 24, 2006, upon motion[19] of private respondent, the trial court issued an amended TPO,[20] effective for thirty (30) days, which included the following additional provisions:

i) The petitioners (private respondents herein) are given the continued use of the Nissan Patrol and the Starex Van which they are using in Negros Occidental.

j) The petitioners are given the continued use and occupation of the house in Parañaque, the continued use of the Starex van in Metro Manila, whenever they go to Manila.

k) Respondent is ordered to immediately post a bond to keep the peace, in two sufficient sureties.

l) To give monthly support to the petitioner provisionally fixed in the sum of One Hundred Fifty Thousand Pesos (Php 150,000.00) per month plus rental expenses of Fifty Thousand Pesos (Php 50,000.00) per month until the matter of support could be finally resolved.

Two days later, or on April 26, 2006, petitioner filed an Opposition to the Urgent Ex-Parte Motion for Renewal of the TPO[21] seeking the denial of the renewal of the TPO on the grounds that it did not (1) comply with the three-day notice rule, and (2) contain a notice of hearing. He further asked that the TPO be modified by (1) removing one vehicle used by private respondent and returning the same to its rightful owner, the J-Bros Trading Corporation, and (2) cancelling or reducing the amount of the bond from P5,000,000.00 to a more manageable level at P100,000.00.

Subsequently, on May 23, 2006, petitioner moved[22] for the modification of the TPO to allow him visitation rights to his children.

On May 24, 2006, the TPO was renewed and extended yet again, but subject only to the following modifications prayed for by private respondent:

a) That respondent (petitioner herein) return the clothes and other personal belongings of Rosalie and her children to Judge Jesus Ramos, co-counsel for Petitioner, within 24 hours from receipt of the Temporary Protection Order by his counsel, otherwise be declared in Indirect Contempt of Court;

b) Respondent shall make an accounting or list of furniture and equipment in the conjugal house in Pitimini St., Capitolville Subdivision, Bacolod City within 24 hours from receipt of the Temporary Protection Order by his counsel;

c) Ordering the Chief of the Women's Desk of the Bacolod City Police Headquarters to remove Respondent from the conjugal dwelling within eight (8) hours from receipt of the Temporary Protection Order by his counsel, and that he cannot return until 48 hours after the petitioners have left, so that the petitioner Rosalie and her representatives can remove things from the conjugal home and make an inventory of the household furniture, equipment and other things in the conjugal home, which shall be submitted to the Court.

d) Deliver full financial support of Php200,000.00 and Php50,000.00 for rental and Php25,000.00 for clothes

of the three petitioners (sic) children within 24 hours from receipt of the Temporary Protection Order by his counsel, otherwise be declared in indirect contempt of Court;

e) That respondent surrender his two firearms and all unlicensed firearms to the Clerk of Court within 24 hours from receipt of the Temporary Protection Order by his counsel;

f) That respondent shall pay petitioner educational expenses of the children upon presentation of proof of payment of such expenses.[23]

Claiming that petitioner continued to deprive them of financial support; failed to faithfully comply with the TPO; and committed new acts of harassment against her and their children, private respondent filed another application[24] for the issuance of a TPO ex parte. She alleged inter alia that petitioner contrived a replevin suit against himself by J-Bros Trading, Inc., of which the latter was purportedly no longer president, with the end in view of recovering the Nissan Patrol and Starex Van used by private respondent and the children. A writ of replevin was served upon private respondent by a group of six or seven policemen with long firearms that scared the two small boys, Jessie Anthone and Joseph Eduard.[25]

While Joseph Eduard, then three years old, was driven to school, two men allegedly attempted to kidnap him, which incident traumatized the boy resulting in his refusal to go back to school. On another occasion, petitioner allegedly grabbed their daughter, Jo-Ann, by the arm and threatened her.[26] The incident was reported to the police, and Jo-Ann subsequently filed a criminal complaint against her father for violation of R.A. 7610, also known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

Aside from the replevin suit, petitioner's lawyers initiated the filing by the housemaids working at the conjugal home of a complaint for kidnapping and illegal detention against private respondent. This came about after private respondent, armed with a TPO, went to said home to get her and her children's belongings. Finding some of her things inside a housemaid's (Sheryl Jamola) bag in the maids' room, private respondent filed a case for qualified theft against Jamola.[27]

On August 23, 2006, the RTC issued a TPO,[28] effective for thirty (30) days, which reads as follows:

Respondent (petitioner herein), Jesus Chua Garcia, is hereby:

- 1) Prohibited from threatening to commit or committing, personally or through another, acts of violence against the offended party;
- 2) Prohibited from harassing, annoying, telephoning, contacting or otherwise communicating in any form with the offended party, either directly or indirectly;
- 3) Required to stay away, personally or through his friends, relatives, employees or agents, from all the Petitioners Rosalie J. Garcia and her children, Rosalie J. Garcia's three brothers, her mother Primitiva Jaype, cook Novelita Caranzo, driver Romeo Hontiveros, laundrywoman Mercedita Bornales, security guard Darwin Gayona and the petitioner's other household helpers from a distance of 1,000 meters, and shall not enter the gate of the subdivision where the Petitioners are temporarily residing, as well as from the schools of the three children; Furthermore, that respondent shall not contact the schools of the children directly or indirectly in any manner including, ostensibly to pay for their tuition or other fees directly, otherwise he will have access to the children through the schools and the TPO will be rendered nugatory;
- 4) Directed to surrender all his firearms including .9MM caliber firearm and a Walther PPK to the Court;
- 5) Directed to deliver in full financial support of Php200,000.00 a month and Php50,000.00 for rental for the period from August 6 to September 6, 2006; and support in arrears from March 2006 to August 2006 the total amount of Php1,312,000.00;

6) Directed to deliver educational expenses for 2006-2007 the amount of Php75,000.00 and Php25,000.00;

7) Directed to allow the continued use of a Nissan Patrol with Plate No. FEW 508 and a Starex van with Plate No. FFD 991 and should the respondent fail to deliver said vehicles, respondent is ordered to provide the petitioner another vehicle which is the one taken by J Bros Tading;

8) Ordered not to dissipate, encumber, alienate, sell, lease or otherwise dispose of the conjugal assets, or those real properties in the name of Jesus Chua Garcia only and those in which the conjugal partnership of gains of the Petitioner Rosalie J. Garcia and respondent have an interest in, especially the conjugal home located in No. 14, Pitimini St., Capitolville Subdivision, Bacolod City, and other properties which are conjugal assets or those in which the conjugal partnership of gains of Petitioner Rosalie J. Garcia and the respondent have an interest in and listed in Annexes "I," "I-1," and "I-2," including properties covered by TCT Nos. T-186325 and T-168814;

9) Ordered that the Register of Deeds of Bacolod City and E.B. Magalona shall be served a copy of this TEMPORARY PROTECTION ORDER and are ordered not to allow the transfer, sale, encumbrance or disposition of these above-cited properties to any person, entity or corporation without the personal presence of petitioner Rosalie J. Garcia, who shall affix her signature in the presence of the Register of Deeds, due to the fear of petitioner Rosalie that her signature will be forged in order to effect the encumbrance or sale of these properties to defraud her or the conjugal partnership of gains.

In its Order[29] dated September 26, 2006, the trial court extended the aforequoted TPO for another ten (10) days, and gave petitioner a period of five (5) days within which to show cause why the TPO should not be renewed, extended, or modified. Upon petitioner's manifestation,[30] however, that he has not received a copy of private respondent's motion to modify/renew the TPO, the trial court directed in its Order[31] dated October 6, 2006 that petitioner be furnished a copy of said motion. Nonetheless, an Order[32] dated a day earlier, October 5, had already been issued renewing the TPO dated August 23, 2006. The pertinent portion is quoted hereunder:

x x x x

x x x it appearing further that the hearing could not yet be finally terminated, the Temporary Protection Order issued on August 23, 2006 is hereby renewed and extended for thirty (30) days and continuously extended and renewed for thirty (30) days, after each expiration, until further orders, and subject to such modifications as may be ordered by the court.

After having received a copy of the foregoing Order, petitioner no longer submitted the required comment to private respondent's motion for renewal of the TPO arguing that it would only be an "exercise in futility." [33]

Proceedings before the CA

During the pendency of Civil Case No. 06-797, petitioner filed before the Court of Appeals (CA) a petition[34] for prohibition (CA-G.R. CEB- SP. No. 01698), with prayer for injunction and temporary restraining order, challenging (1) the constitutionality of R.A. 9262 for being violative of the due process and the equal protection clauses, and (2) the validity of the modified TPO issued in the civil case for being "an unwanted product of an invalid law."

On May 26, 2006, the appellate court issued a 60-day Temporary Restraining Order[35] (TRO) against the enforcement of the TPO, the amended TPOs and other orders pursuant thereto.

Subsequently, however, on January 24, 2007, the appellate court dismissed[36] the petition for failure of petitioner to raise the constitutional issue in his pleadings before the trial court in the civil case, which is clothed with jurisdiction to resolve the same. Secondly, the challenge to the validity of R.A. 9262 through a petition for prohibition seeking to annul the protection orders issued by the trial court constituted a collateral attack on said

law.

His motion for reconsideration of the foregoing Decision having been denied in the Resolution[37] dated August 14, 2007, petitioner is now before us alleging that –

The Issues

I.

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION ON THE THEORY THAT THE ISSUE OF CONSTITUTIONALITY WAS NOT RAISED AT THE EARLIEST OPPORTUNITY AND THAT, THE PETITION CONSTITUTES A COLLATERAL ATTACK ON THE VALIDITY OF THE LAW.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FAILING TO CONCLUDE THAT R.A. 9262 IS DISCRIMINATORY, UNJUST, AND VIOLATIVE OF THE EQUAL PROTECTION CLAUSE.

III.

THE COURT OF APPEALS COMMITTED GRAVE MISTAKE IN NOT FINDING THAT R.A. 9262 RUNS COUNTER TO THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

IV.

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE LAW DOES VIOLENCE TO THE POLICY OF THE STATE TO PROTECT THE FAMILY AS A BASIC SOCIAL INSTITUTION.

V.

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT DECLARING R.A. No. 9262 AS INVALID AND UNCONSTITUTIONAL BECAUSE IT ALLOWS AN UNDUE DELEGATION OF JUDICIAL POWER TO THE BARANGAY OFFICIALS.[38]

The Ruling of the Court

Before delving into the arguments propounded by petitioner against the constitutionality of R.A. 9262, we shall first tackle the propriety of the dismissal by the appellate court of the petition for prohibition (CA-G.R. CEB-SP. No. 01698) filed by petitioner.

As a general rule, the question of constitutionality must be raised at the earliest opportunity so that if not raised in the pleadings, ordinarily it may not be raised in the trial, and if not raised in the trial court, it will not be considered on appeal.[39] Courts will not anticipate a question of constitutional law in advance of the necessity of deciding it.[40]

In defending his failure to attack the constitutionality of R.A. 9262 before the RTC of Bacolod City, petitioner argues that the Family Court has limited authority and jurisdiction that is “inadequate to tackle the complex issue of constitutionality.”[41]

We disagree.

Family Courts have authority and jurisdiction to consider the constitutionality of a statute.

At the outset, it must be stressed that Family Courts are special courts, of the same level as Regional Trial Courts. Under R.A. 8369, otherwise known as the “Family Courts Act of 1997,” family courts have exclusive original jurisdiction to hear and decide cases of domestic violence against women and children.[42] In accordance with said law, the Supreme Court designated from among the branches of the Regional Trial Courts at least one Family Court in each of several key cities identified.[43] To achieve harmony with the first mentioned law, Section 7 of

R.A. 9262 now provides that Regional Trial Courts designated as Family Courts shall have original and exclusive jurisdiction over cases of VAWC defined under the latter law, viz:

SEC. 7. Venue. – The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant. (Emphasis supplied)

In spite of its designation as a family court, the RTC of Bacolod City remains possessed of authority as a court of general original jurisdiction to pass upon all kinds of cases whether civil, criminal, special proceedings, land registration, guardianship, naturalization, admiralty or insolvency.[44] It is settled that RTCs have jurisdiction to resolve the constitutionality of a statute,[45] “this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law.”[46] The Constitution vests the power of judicial review or the power to declare the constitutionality or validity of a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation not only in this Court, but in all RTCs.[47] We said in *J.M. Tuason and Co., Inc. v. CA*[48] that, “[p]lainly the Constitution contemplates that the inferior courts should have jurisdiction in cases involving constitutionality of any treaty or law, for it speaks of appellate review of final judgments of inferior courts in cases where such constitutionality happens to be in issue.” Section 5, Article VIII of the 1987 Constitution reads in part as follows:

SEC. 5. The Supreme Court shall have the following powers:

x x x

2. Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

x x x x

Thus, contrary to the posturing of petitioner, the issue of constitutionality of R.A. 9262 could have been raised at the earliest opportunity in his Opposition to the petition for protection order before the RTC of Bacolod City, which had jurisdiction to determine the same, subject to the review of this Court.

Section 20 of A.M. No. 04-10-11-SC, the Rule on Violence Against Women and Their Children, lays down a new kind of procedure requiring the respondent to file an opposition to the petition and not an answer.[49] Thus:

SEC. 20. Opposition to petition. – (a) The respondent may file an opposition to the petition which he himself shall verify. It must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.

(b) Respondent shall not include in the opposition any counterclaim, cross-claim or third-party complaint, but any cause of action which could be the subject thereof may be litigated in a separate civil action. (Emphasis supplied)

We cannot subscribe to the theory espoused by petitioner that, since a counterclaim, cross-claim and third-party complaint are to be excluded from the opposition, the issue of constitutionality cannot likewise be raised therein. A counterclaim is defined as any claim for money or other relief which a defending party may have against an opposing party.[50] A cross-claim, on the other hand, is any claim by one party against a co-party arising out of

the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein.[51] Finally, a third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.[52] As pointed out by Justice Teresita J. Leonardo-De Castro, the unconstitutionality of a statute is not a cause of action that could be the subject of a counterclaim, cross-claim or a third-party complaint. Therefore, it is not prohibited from being raised in the opposition in view of the familiar maxim *expressio unius est exclusio alterius*.

Moreover, it cannot be denied that this issue affects the resolution of the case *a quo* because the right of private respondent to a protection order is founded solely on the very statute the validity of which is being attacked[53] by petitioner who has sustained, or will sustain, direct injury as a result of its enforcement. The alleged unconstitutionality of R.A. 9262 is, for all intents and purposes, a valid cause for the non-issuance of a protection order.

That the proceedings in Civil Case No. 06-797 are summary in nature should not have deterred petitioner from raising the same in his Opposition. The question relative to the constitutionality of a statute is one of law which does not need to be supported by evidence.[54] Be that as it may, Section 25 of A.M. No. 04-10-11-SC nonetheless allows the conduct of a hearing to determine legal issues, among others, viz:

SEC. 25. Order for further hearing. - In case the court determines the need for further hearing, it may issue an order containing the following:

- (a) Facts undisputed and admitted;
- (b) Factual and legal issues to be resolved;
- (c) Evidence, including objects and documents that have been marked and will be presented;
- (d) Names of witnesses who will be ordered to present their direct testimonies in the form of affidavits; and
- (e) Schedule of the presentation of evidence by both parties which shall be done in one day, to the extent possible, within the 30-day period of the effectivity of the temporary protection order issued. (Emphasis supplied)

To obviate potential dangers that may arise concomitant to the conduct of a hearing when necessary, Section 26 (b) of A.M. No. 04-10-11- SC provides that if a temporary protection order issued is due to expire, the trial court may extend or renew the said order for a period of thirty (30) days each time until final judgment is rendered. It may likewise modify the extended or renewed temporary protection order as may be necessary to meet the needs of the parties. With the private respondent given ample protection, petitioner could proceed to litigate the constitutional issues, without necessarily running afoul of the very purpose for the adoption of the rules on summary procedure.

In view of all the foregoing, the appellate court correctly dismissed the petition for prohibition with prayer for injunction and temporary restraining order (CA-G.R. CEB - SP. No. 01698). Petitioner may have proceeded upon an honest belief that if he finds succor in a superior court, he could be granted an injunctive relief. However, Section 22(j) of A.M. No. 04-10-11-SC expressly disallows the filing of a petition for certiorari, mandamus or prohibition against any interlocutory order issued by the trial court. Hence, the 60-day TRO issued by the appellate court in this case against the enforcement of the TPO, the amended TPOs and other orders pursuant thereto was improper, and it effectively hindered the case from taking its normal course in an expeditious and summary manner.

As the rules stand, a review of the case by appeal or certiorari before judgment is prohibited. Moreover, if the appeal of a judgment granting permanent protection shall not stay its enforcement,[55] with more reason that a TPO, which is valid only for thirty (30) days at a time,[56] should not be enjoined.

The mere fact that a statute is alleged to be unconstitutional or invalid, does not of itself entitle a litigant to have the same enjoined.[57] In *Younger v. Harris, Jr.*,[58] the Supreme Court of the United States declared, thus:

Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and, hence, unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. (Citations omitted)

The sole objective of injunctions is to preserve the status quo until the trial court hears fully the merits of the case. It bears stressing, however, that protection orders are granted *ex parte* so as to protect women and their children from acts of violence. To issue an injunction against such orders will defeat the very purpose of the law against VAWC.

Notwithstanding all these procedural flaws, we shall not shirk from our obligation to determine novel issues, or issues of first impression, with far-reaching implications. We have, time and again, discharged our solemn duty as final arbiter of constitutional issues, and with more reason now, in view of private respondent's plea in her Comment[59] to the instant Petition that we should put the challenge to the constitutionality of R.A. 9262 to rest. And so we shall.

Intent of Congress in enacting R.A. 9262.

Petitioner claims that since R.A. 9262 is intended to prevent and criminalize spousal and child abuse, which could very well be committed by either the husband or the wife, gender alone is not enough basis to deprive the husband/father of the remedies under the law.[60]

A perusal of the deliberations of Congress on Senate Bill No. 2723,[61] which became R.A. 9262, reveals that while the sponsor, Senator Luisa Pimentel-Ejercito (better known as Senator Loi Estrada), had originally proposed what she called a “synthesized measure”[62] – an amalgamation of two measures, namely, the “Anti-Domestic Violence Act” and the “Anti- Abuse of Women in Intimate Relationships Act”[63] – providing protection to “all family members, leaving no one in isolation” but at the same time giving special attention to women as the “usual victims” of violence and abuse,[64] nonetheless, it was eventually agreed that men be denied protection under the same measure. We quote pertinent portions of the deliberations:

Wednesday, December 10, 2003

Senator Pangilinan. I just wanted to place this on record, Mr. President. Some women's groups have expressed concerns and relayed these concerns to me that if we are to include domestic violence apart from against women as well as other members of the household, including children or the husband, they fear that this would weaken the efforts to address domestic violence of which the main victims or the bulk of the victims really are the wives, the spouses or the female partners in a relationship. We would like to place that on record. How does the good Senator respond to this kind of observation?

Senator Estrada. Yes, Mr. President, there is this group of women who call themselves “WIIR” Women in Intimate Relationship. They do not want to include men in this domestic violence. But plenty of men are also being abused by women. I am playing safe so I placed here members of the family, prescribing penalties therefor and providing protective measures for victims. This includes the men, children, live-in, common-law

wives, and those related with the family.[65]

x x x x

Wednesday, January 14, 2004

x x x x

The President Pro Tempore. x x x

Also, may the Chair remind the group that there was the discussion whether to limit this to women and not to families which was the issue of the AWIR group. The understanding that I have is that we would be having a broader scope rather than just women, if I remember correctly, Madam sponsor.

Senator Estrada. Yes, Mr. President.

As a matter of fact, that was brought up by Senator Pangilinan during the interpellation period.

I think Senator Sotto has something to say to that.

Senator Legarda. Mr. President, the reason I am in support of the measure. Do not get me wrong. However, I believe that there is a need to protect women's rights especially in the domestic environment.

As I said earlier, there are nameless, countless, voiceless women who have not had the opportunity to file a case against their spouses, their live-in partners after years, if not decade, of battery and abuse. If we broaden the scope to include even the men, assuming they can at all be abused by the women or their spouses, then it would not equalize the already difficult situation for women, Mr. President.

I think that the sponsor, based on our earlier conversations, concurs with this position. I am sure that the men in this Chamber who love their women in their lives so dearly will agree with this representation. Whether we like it or not, it is an unequal world. Whether we like it or not, no matter how empowered the women are, we are not given equal opportunities especially in the domestic environment where the macho Filipino man would always feel that he is stronger, more superior to the Filipino woman.

x x x x

The President Pro Tempore. What does the sponsor say?

Senator Estrada. Mr. President, before accepting this, the committee came up with this bill because the family members have been included in this proposed measure since the other members of the family other than women are also possible victims of violence. While women are most likely the intended victims, one reason incidentally why the measure focuses on women, the fact remains that in some relatively few cases, men also stand to be victimized and that children are almost always the helpless victims of violence. I am worried that there may not be enough protection extended to other family members particularly children who are excluded. Although Republic Act No. 7610, for instance, more or less, addresses the special needs of abused children. The same law is inadequate. Protection orders for one are not available in said law.

I am aware that some groups are apprehensive about granting the same protection to men, fearing that they may use this law to justify their abusive behavior against women. However, we should also recognize that there are established procedures and standards in our courts which give credence to evidentiary support and cannot just arbitrarily and whimsically entertain baseless complaints.

Mr. President, this measure is intended to harmonize family relations and to protect the family as the basic social institution. Though I recognize the unequal power relations between men and women in our society, I believe we have an obligation to uphold inherent rights and dignity of both husband and wife and their immediate family members, particularly children.

While I prefer to focus mainly on women, I was compelled to include other family members as a critical input arrived at after a series of consultations/meetings with various NGOs, experts, sports groups and other affected sectors, Mr. President.

Senator Sotto. Mr. President.

The President Pro Tempore. Yes, with the permission of the other senators.

Senator Sotto. Yes, with the permission of the two ladies on the Floor. The President Pro Tempore. Yes, Sen. Vicente C. Sotto III is recognized. Senator Sotto. I presume that the effect of the proposed amendment of

Senator Legarda would be removing the “men and children” in this particular bill and focus specifically on women alone. That will be the net effect of that proposed amendment. Hearing the rationale mentioned by the distinguished sponsor, Sen. Luisa “Loi” Ejercito Estrada, I am not sure now whether she is inclined to accept the proposed amendment of Senator Legarda.

I am willing to wait whether she is accepting this or not because if she is going to accept this, I will propose an amendment to the amendment rather than object to the amendment, Mr. President.

x x x x

Senator Estrada. The amendment is accepted, Mr. President. The President Pro Tempore. Is there any objection?

x x x x

Senator Sotto. x x x May I propose an amendment to the amendment. The President Pro Tempore. Before we act on the amendment? Senator Sotto. Yes, Mr. President.

The President Pro Tempore. Yes, please proceed.

Senator Sotto. Mr. President, I am inclined to believe the rationale used by the distinguished proponent of the amendment. As a matter of fact, I tend to agree. Kung may maaabuso, mas malamang iyong babae kaysa sa lalake. At saka iyong mga lalake, puwede na talagang magulpi iyan. Okey lang iyan. But I cannot agree that we remove the children from this particular measure.

So, if I may propose an amendment –

The President Pro Tempore. To the amendment.

Senator Sotto. – more than the women, the children are very much abused. As a matter of fact, it is not limited to minors. The abuse is not limited to seven, six, 5-year-old children. I have seen 14, 15-year-old children being abused by their fathers, even by their mothers. And it breaks my heart to find out about these things.

Because of the inadequate existing law on abuse of children, this particular measure will update that. It will enhance and hopefully prevent the abuse of children and not only women.

SOTTO-LEGARDA AMENDMENTS

Therefore, may I propose an amendment that, yes, we remove the aspect of the men in the bill but not the children.

Senator Legarda. I agree, Mr. President, with the Minority Leader.

The President Pro Tempore. Effectively then, it will be women AND CHILDREN.

Senator Sotto. Yes, Mr. President.

Senator Estrada. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] There being none, the amendment, as amended, is approved.[66]

It is settled that courts are not concerned with the wisdom, justice, policy, or expediency of a statute.[67] Hence, we dare not venture into the real motivations and wisdom of the members of Congress in limiting the protection against violence and abuse under R.A. 9262 to women and children only. No proper challenge on said grounds may be entertained in this proceeding. Congress has made its choice and it is not our prerogative to supplant this judgment. The choice may be perceived as erroneous but even then, the remedy against it is to seek its amendment or repeal by the legislative. By the principle of separation of powers, it is the legislative that determines the necessity, adequacy, wisdom and expediency of any law.[68]

We only step in when there is a violation of the Constitution. However, none was sufficiently shown in this case.

R.A. 9262 does not violate the guaranty of equal protection of the laws.

Equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. The oft-repeated disquisition in the early case of *Victoriano v. Elizalde Rope Workers' Union*[69] is instructive:

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. (Emphasis supplied)

Measured against the foregoing jurisprudential yardstick, we find that R.A. 9262 is based on a valid classification as shall hereinafter be discussed and, as such, did not violate the equal protection clause by favoring women over men as victims of violence and abuse to whom the State extends its protection.

I. R.A. 9262 rests on substantial distinctions.

The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. As Justice McIntyre succinctly states, “the accommodation of differences ... is the essence of true equality.”[70]

A. Unequal power relationship between men and women

According to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), violence against women (VAW) is deemed to be closely linked with the unequal power relationship between women and men otherwise known as “gender-based violence”. Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And VAW is a form of men's expression of controlling women to retain power.[71]

The United Nations, which has long recognized VAW as a human rights issue, passed its Resolution 48/104 on the Declaration on Elimination of Violence Against Women on December 20, 1993 stating that “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions, compared with men.”[72]

Then Chief Justice Reynato S. Puno traced the historical and social context of gender-based violence and developments in advocacies to eradicate VAW, in his remarks delivered during the Joint Launching of R.A. 9262 and its Implementing Rules last October 27, 2004, the pertinent portions of which are quoted hereunder:

History reveals that most societies sanctioned the use of violence against women. The patriarch of a family was accorded the right to use force on members of the family under his control. I quote the early studies:

Traditions subordinating women have a long history rooted in patriarchy – the institutional rule of men. Women were seen in virtually all societies to be naturally inferior both physically and intellectually. In ancient Western societies, women whether slave, concubine or wife, were under the authority of men. In law, they were treated as property.

The Roman concept of patria potestas allowed the husband to beat, or even kill, his wife if she endangered his property right over her. Judaism, Christianity and other religions oriented towards the patriarchal family strengthened the male dominated structure of society.

English feudal law reinforced the tradition of male control over women. Even the eminent Blackstone has been quoted in his commentaries as saying husband and wife were one and that one was the husband. However, in the late 1500s and through the entire 1600s, English common law began to limit the right of husbands to chastise their wives. Thus, common law developed the rule of thumb, which allowed husbands to beat their wives with a rod or stick no thicker than their thumb.

In the later part of the 19[th] century, legal recognition of these rights to chastise wives or inflict corporeal punishment ceased. Even then, the preservation of the family was given more importance than preventing violence to women.

The metamorphosis of the law on violence in the United States followed that of the English common law. In 1871, the Supreme Court of Alabama became the first appellate court to strike down the common law right of a husband to beat his wife:

The privilege, ancient though it may be, to beat one's wife with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law... In person, the wife is entitled to the same protection of the law that the husband can invoke for himself.

As time marched on, the women's advocacy movement became more organized. The temperance leagues initiated

it. These leagues had a simple focus. They considered the evils of alcoholism as the root cause of wife abuse. Hence, they demonstrated and picketed saloons, bars and their husbands' other watering holes. Soon, however, their crusade was joined by suffragette movements, expanding the liberation movement's agenda. They fought for women's right to vote, to own property, and more. Since then, the feminist movement was on the roll.

The feminist movement exposed the private invisibility of the domestic violence to the public gaze. They succeeded in transforming the issue into an important public concern. No less than the United States Supreme Court, in 1992 case *Planned Parenthood v. Casey*, noted:

In an average 12-month period in this country, approximately two million women are the victims of severe assaults by their male partners. In a 1985 survey, women reported that nearly one of every eight husbands had assaulted their wives during the past year. The [American Medical Association] views these figures as "marked underestimates," because the nature of these incidents discourages women from reporting them, and because surveys typically exclude the very poor, those who do not speak English well, and women who are homeless or in institutions or hospitals when the survey is conducted. According to the AMA, "researchers on family violence agree that the true incidence of partner violence is probably double the above estimates; or four million severely assaulted women per year."

Studies on prevalence suggest that from one-fifth to one-third of all women will be physically assaulted by a partner or ex-partner during their lifetime... Thus on an average day in the United States, nearly 11,000 women are severely assaulted by their male partners. Many of these incidents involve sexual assault... In families where wife beating takes place, moreover, child abuse is often present as well.

Other studies fill in the rest of this troubling picture. Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common.

Many victims of domestic violence remain with their abusers, perhaps because they perceive no superior alternative... Many abused women who find temporary refuge in shelters return to their husbands, in large part because they have no other source of income... Returning to one's abuser can be dangerous. Recent Federal Bureau of Investigation statistics disclose that 8.8 percent of all homicide victims in the United States are killed by their spouses... Thirty percent of female homicide victims are killed by their male partners.

Finally in 1994, the United States Congress enacted the Violence Against Women Act.

In the International front, the women's struggle for equality was no less successful. The United States Charter and the Universal Declaration of Human Rights affirmed the equality of all human beings. In 1979, the UN General Assembly adopted the landmark Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). In 1993, the UN General Assembly also adopted the Declaration on the Elimination of Violence Against Women. World conferences on the role and rights of women have been regularly held in Mexico City, Copenhagen, Nairobi and Beijing. The UN itself established a Commission on the Status of Women.

The Philippines has been in cadence with the half – and full – steps of all these women's movements. No less than Section 14, Article II of our 1987 Constitution mandates the State to recognize the role of women in nation building and to ensure the fundamental equality before the law of women and men. Our Senate has ratified the CEDAW as well as the Convention on the Rights of the Child and its two protocols. To cap it all, Congress, on March 8, 2004, enacted Rep. Act No. 9262, entitled "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefor and for other Purposes." (Citations omitted)

B. Women are the "usual" and "most likely" victims of violence.

At the time of the presentation of Senate Bill No. 2723, official statistics on violence against women and children show that –

xxx physical injuries had the highest number of cases at 5,058 in 2002 representing 55.63% of total cases reported (9,903). And for the first semester of 2003, there were 2,381 reported cases out of 4,354 cases which represent 54.31%. xxx (T)he total number of women in especially difficult circumstances served by the Department of Social Welfare and Development (DSWD) for the year 2002, there are 1,417 physically abused/maltreated cases out of the total of 5,608 cases. xxx (T)here are 1,091 DSWD cases out of a total number of 3,471 cases for the first semester of 2003. Female violence comprised more than 90% of all forms of abuse and violence and more than 90% of these reported cases were committed by the women's intimate partners such as their husbands and live-in partners.[73]

Recently, the Philippine Commission on Women presented comparative statistics on violence against women across an eight-year period from 2004 to August of 2011 with violations under R.A. 9262 ranking first among the different VAW categories since its implementation in 2004,[74] thus:

Table 1. Annual Comparative Statistics on Violence Against Women, 2004 - 2011*

Reported Cases

2004

2005

2006

2007

2008

2009

2010

2011

Rape

997

927

659

837

811

770

1,042

832

Incestuous Rape

38

46

26

22

28

27

19

23

Attempted Rape

194

148

185

147

204

167

268

201

Acts of Lasciviousness

580

536

382

358

445

485

745

625

Physical Injuries

3,553

2,335

1,892

1,505

1,307

1,498

2,018

1,588

Sexual Harassment

53

37

38

46

18

54

83

63

RA 9262

218

924

1,269

2,387

3,599

5,285

9,974

9,021

Threats

319

223

199

182

220

208

374

213

Seduction

62

19

29

30

19

19

25

15

Concubinage

121

102

93

109

109

99

158

128

RA 9208

17

11

16

24

34

152

190

62

Abduction /Kidnapping

29

16

34

23

28

18

25

22

Unjust Vexation

90

50

59

59

83

703

183

155

Total

6,271

5,374

4,881

5,729

6,905

9,485

15,104

12,948

*2011 report covers only from January to August

Source: Philippine National Police – Women and Children Protection Center (WCPC)

On the other hand, no reliable estimates may be obtained on domestic abuse and violence against men in the Philippines because incidents thereof are relatively low and, perhaps, because many men will not even attempt to report the situation. In the United Kingdom, 32% of women who had ever experienced domestic violence did so four or five (or more) times, compared with 11% of the smaller number of men who had ever experienced domestic violence; and women constituted 89% of all those who had experienced 4 or more incidents of domestic violence.[75] Statistics in Canada show that spousal violence by a woman against a man is less likely to cause injury than the other way around (18 percent versus 44 percent). Men, who experience violence from their spouses are much less likely to live in fear of violence at the hands of their spouses, and much less likely to experience sexual assault. In fact, many cases of physical violence by a woman against a spouse are in self-defense or the result of many years of physical or emotional abuse.[76]

While there are, indeed, relatively few cases of violence and abuse perpetrated against men in the Philippines, the

same cannot render R.A. 9262 invalid.

In a 1960 case involving the violation of a city ordinance requiring drivers of animal-drawn vehicles to pick up, gather and deposit in receptacles the manure emitted or discharged by their vehicle-drawing animals in any public highways, streets, plazas, parks or alleys, said ordinance was challenged as violative of the guaranty of equal protection of laws as its application is limited to owners and drivers of vehicle-drawing animals and not to those animals, although not utilized, but similarly pass through the same streets.

The ordinance was upheld as a valid classification for the reason that, while there may be non-vehicle-drawing animals that also traverse the city roads, “but their number must be negligible and their appearance therein merely occasional, compared to the rig-drawing ones, as not to constitute a menace to the health of the community.”[77] The mere fact that the legislative classification may result in actual inequality is not violative of the right to equal protection, for every classification of persons or things for regulation by law produces inequality in some degree, but the law is not thereby rendered invalid.[78]

C. Gender bias and prejudices

From the initial report to the police through prosecution, trial, and sentencing, crimes against women are often treated differently and less seriously than other crimes. This was argued by then United States Senator Joseph R. Biden, Jr., now Vice President, chief sponsor of the Violence Against Women Act (VAWA), in defending the civil rights remedy as a valid exercise of the U.S. Congress' authority under the Commerce and Equal Protection Clauses. He stressed that the widespread gender bias in the U.S. has institutionalized historic prejudices against victims of rape or domestic violence, subjecting them to “double victimization” – first at the hands of the offender and then of the legal system.[79]

Our own Senator Loi Estrada lamented in her Sponsorship Speech for Senate Bill No. 2723 that “(w)henver violence occurs in the family, the police treat it as a private matter and advise the parties to settle the conflict themselves. Once the complainant brings the case to the prosecutor, the latter is hesitant to file the complaint for fear that it might later be withdrawn. This lack of response or reluctance to be involved by the police and prosecution reinforces the escalating, recurring and often serious nature of domestic violence.”[80]

Sadly, our own courts, as well, have exhibited prejudices and biases against our women.

In a recent case resolved on March 9, 2011, we fined RTC Judge Venancio J. Amila for Conduct Unbecoming of a Judge. He used derogatory and irreverent language in reference to the complainant in a petition for TPO and PPO under R.A. 9262, calling her as “only a live-in partner” and presenting her as an “opportunist” and a “mistress” in an “illegitimate relationship.” Judge Amila even called her a “prostitute,” and accused her of being motivated by “insatiable greed” and of absconding with the contested property.[81] Such remarks betrayed Judge Amila's prejudices and lack of gender sensitivity.

The enactment of R.A. 9262 aims to address the discrimination brought about by biases and prejudices against women. As emphasized by the CEDAW Committee on the Elimination of Discrimination against Women, addressing or correcting discrimination through specific measures focused on women does not discriminate against men.[82] Petitioner's contention,[83] therefore, that R.A. 9262 is discriminatory and that it is an “anti-male,” “husband-bashing,” and “hate-men” law deserves scant consideration. As a State Party to the CEDAW, the Philippines bound itself to take all appropriate measures “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”[84] Justice Puno correctly pointed out that “(t)he paradigm shift changing the

character of domestic violence from a private affair to a public offense will require the development of a distinct mindset on the part of the police, the prosecution and the judges.”[85]

II. The classification is germane to the purpose of the law.

The distinction between men and women is germane to the purpose of R.A. 9262, which is to address violence committed against women and children, spelled out in its Declaration of Policy, as follows:

SEC. 2. Declaration of Policy. – It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

In 1979, the U.N. General Assembly adopted the CEDAW, which the Philippines ratified on August 5, 1981. Subsequently, the Optional Protocol to the CEDAW was also ratified by the Philippines on October 6, 2003.[86] This Convention mandates that State parties shall accord to women equality with men before the law[87] and shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations on the basis of equality of men and women.[88] The Philippines likewise ratified the Convention on the Rights of the Child and its two protocols.[89] It is, thus, bound by said Conventions and their respective protocols.

III. The classification is not limited to existing conditions only, and apply equally to all members

Moreover, the application of R.A. 9262 is not limited to the existing conditions when it was promulgated, but to future conditions as well, for as long as the safety and security of women and their children are threatened by violence and abuse.

R.A. 9262 applies equally to all women and children who suffer violence and abuse. Section 3 thereof defines VAWC as:

x x x any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

A. "Physical Violence" refers to acts that include bodily or physical harm;

B. "Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) Prostituting the woman or child.

C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

D. "Economic abuse" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. destroying household property;
4. controlling the victims' own money or properties or solely controlling the conjugal money or properties.

It should be stressed that the acts enumerated in the aforequoted provision are attributable to research that has exposed the dimensions and

dynamics of battery. The acts described here are also found in the U.N. Declaration on the Elimination of Violence Against Women.[90] Hence, the argument advanced by petitioner that the definition of what constitutes abuse removes the difference between violent action and simple marital tiffs is tenuous.

There is nothing in the definition of VAWC that is vague and ambiguous that will confuse petitioner in his defense. The acts enumerated above are easily understood and provide adequate contrast between the innocent and the prohibited acts. They are worded with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited, and need not guess at its meaning nor differ in its application.[91] Yet, petitioner insists[92] that phrases like "depriving or threatening to deprive the woman or her child of a legal right," "solely controlling the conjugal or common money or properties," "marital infidelity," and "causing mental or emotional anguish" are so vague that they make every quarrel a case of spousal abuse. However, we have stressed that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld – not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions.[93]

There is likewise no merit to the contention that R.A. 9262 singles out the husband or father as the culprit. As defined above, VAWC may likewise be committed "against a woman with whom the person has or had a sexual or dating relationship." Clearly, the use of the gender-neutral word "person" who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the principle of conspiracy under the Revised Penal Code (RPC). Thus, in the

case of *Go-Tan v. Spouses Tan*,^[94] the parents-in-law of Sharica Mari L. Go- Tan, the victim, were held to be proper respondents in the case filed by the latter upon the allegation that they and their son (Go-Tan's husband) had community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically.

R.A. 9262 is not violative of the due process clause of the Constitution.

Petitioner bewails the disregard of R.A. 9262, specifically in the issuance of POs, of all protections afforded by the due process clause of the Constitution. Says he: “On the basis of unsubstantiated allegations, and practically no opportunity to respond, the husband is stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened.”^[95]

A protection order is an order issued to prevent further acts of violence against women and their children, their family or household members, and to grant other necessary reliefs. Its purpose is to safeguard the offended parties from further harm, minimize any disruption in their daily life and facilitate the opportunity and ability to regain control of their life.^[96]

“The scope of reliefs in protection orders is broadened to ensure that the victim or offended party is afforded all the remedies necessary to curtail access by a perpetrator to the victim. This serves to safeguard the victim from greater risk of violence; to accord the victim and any designated family or household member safety in the family residence, and to prevent the perpetrator from committing acts that jeopardize the employment and support of the victim. It also enables the court to award temporary custody of minor children to protect the children from violence, to prevent their abduction by the perpetrator and to ensure their financial support.”^[97]

The rules require that petitions for protection order be in writing, signed and verified by the petitioner^[98] thereby undertaking full responsibility, criminal or civil, for every allegation therein. Since “time is of the essence in cases of VAWC if further violence is to be prevented,”^[99] the court is authorized to issue ex parte a TPO after raffle but before notice and hearing when the life, limb or property of the victim is in jeopardy and there is reasonable ground to believe that the order is necessary to protect the victim from the immediate and imminent danger of VAWC or to prevent such violence, which is about to recur.^[100]

There need not be any fear that the judge may have no rational basis to issue an ex parte order. The victim is required not only to verify the allegations in the petition, but also to attach her witnesses' affidavits to the petition.^[101]

The grant of a TPO ex parte cannot, therefore, be challenged as violative of the right to due process. Just like a writ of preliminary attachment which is issued without notice and hearing because the time in which the hearing will take could be enough to enable the defendant to abscond or dispose of his property,^[102] in the same way, the victim of VAWC may already have suffered harrowing experiences in the hands of her tormentor, and possibly even death, if notice and hearing were required before such acts could be prevented. It is a constitutional commonplace that the ordinary requirements of procedural due process must yield to the necessities of protecting vital public interests,^[103] among which is protection of women and children from violence and threats to their personal safety and security.

It should be pointed out that when the TPO is issued ex parte, the court shall likewise order that notice be immediately given to the respondent directing him to file an opposition within five (5) days from service. Moreover, the court shall order that notice, copies of the petition and TPO be served immediately on the

respondent by the court sheriffs. The TPOs are initially effective for thirty (30) days from service on the respondent.[104]

Where no TPO is issued ex parte, the court will nonetheless order the immediate issuance and service of the notice upon the respondent requiring him to file an opposition to the petition within five (5) days from service. The date of the preliminary conference and hearing on the merits shall likewise be indicated on the notice.[105]

The opposition to the petition which the respondent himself shall verify, must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.[106]

It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. Thus, the fear of petitioner of being “stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened” is a mere product of an overactive imagination. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. “To be heard” does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[107]

It should be recalled that petitioner filed on April 26, 2006 an Opposition to the Urgent Ex-Parte Motion for Renewal of the TPO that was granted only two days earlier on April 24, 2006. Likewise, on May 23, 2006, petitioner filed a motion for the modification of the TPO to allow him visitation rights to his children. Still, the trial court in its Order dated September 26, 2006, gave him five days (5) within which to show cause why the TPO should not be renewed or extended. Yet, he chose not to file the required comment arguing that it would just be an “exercise in futility,” conveniently forgetting that the renewal of the questioned TPO was only for a limited period (30 days) each time, and that he could prevent the continued renewal of said order if he can show sufficient cause therefor. Having failed to do so, petitioner may not now be heard to complain that he was denied due process of law.

Petitioner next laments that the removal and exclusion of the respondent in the VAWC case from the residence of the victim, regardless of ownership of the residence, is virtually a “blank check” issued to the wife to claim any property as her conjugal home.[108]

The wording of the pertinent rule, however, does not by any stretch of the imagination suggest that this is so. It states:

SEC. 11. Reliefs available to the offended party. -- The protection order shall include any, some or all of the following reliefs:

x x x x

(c) Removing and excluding the respondent from the residence of the offended party, regardless of ownership of the residence, either temporarily for the purpose of protecting the offended party, or permanently where no property rights are violated. If the respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until the respondent has gathered his things and escort him from the residence;

x x x x

Indubitably, petitioner may be removed and excluded from private respondent's residence, regardless of ownership, only temporarily for the purpose of protecting the latter. Such removal and exclusion may be permanent only where no property rights are violated. How then can the private respondent just claim any

property and appropriate it for herself, as petitioner seems to suggest?

The non-referral of a VAWC case to a mediator is justified.

Petitioner argues that “by criminalizing run-of-the-mill arguments, instead of encouraging mediation and counseling, the law has done violence to the avowed policy of the State to “protect and strengthen the family as a basic autonomous social institution.”[109]

Under Section 23(c) of A.M. No. 04-10-11-SC, the court shall not refer the case or any issue thereof to a mediator. The reason behind this provision is well-explained by the Commentary on Section 311 of the Model Code on Domestic and Family Violence as follows:[110]

This section prohibits a court from ordering or referring parties to mediation in a proceeding for an order for protection. Mediation is a process by which parties in equivalent bargaining positions voluntarily reach consensual agreement about the issue at hand. Violence, however, is not a subject for compromise. A process which involves parties mediating the issue of violence implies that the victim is somehow at fault. In addition, mediation of issues in a proceeding for an order of protection is problematic because the petitioner is frequently unable to participate equally with the person against whom the protection order has been sought. (Emphasis supplied)

There is no undue delegation of judicial power to barangay officials.

Petitioner contends that protection orders involve the exercise of judicial power which, under the Constitution, is placed upon the “Supreme Court and such other lower courts as may be established by law” and, thus, protests the delegation of power to barangay officials to issue protection orders.[111] The pertinent provision reads, as follows:

SEC. 14. Barangay Protection Orders (BPOs); Who May Issue and How.

– Barangay Protection Orders (BPOs) refer to the protection order issued by the Punong Barangay ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) of this Act. A Punong Barangay who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after ex parte determination of the basis of the application. If the Punong Barangay is unavailable to act on the application for a BPO, the application shall be acted upon by any available Barangay Kagawad. If the BPO is issued by a Barangay Kagawad, the order must be accompanied by an attestation by the Barangay Kagawad that the Punong Barangay was unavailable at the time of the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an ex parte BPO, the Punong Barangay or Barangay Kagawad shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the Punong Barangay.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[112] On the other hand, executive power “is generally defined as the power to enforce and administer the laws. It is the power of carrying the laws into practical operation and enforcing their due observance.”[113]

As clearly delimited by the aforequoted provision, the BPO issued by the Punong Barangay or, in his unavailability, by any available Barangay Kagawad, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (2) threatening to cause the woman or her child physical harm. Such function of the Punong Barangay is, thus, purely executive in nature, in pursuance of his duty under the Local

Government Code to “enforce all laws and ordinances,” and to “maintain public order in the barangay.”[114]

We have held that “(t)he mere fact that an officer is required by law to inquire into the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be and the fact that these acts may affect private rights do not constitute an exercise of judicial powers.”[115]

In the same manner as the public prosecutor ascertains through a preliminary inquiry or proceeding “whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof,” the Punong Barangay must determine reasonable ground to believe that an imminent danger of violence against the woman and her children exists or is about to recur that would necessitate the issuance of a BPO. The preliminary investigation conducted by the prosecutor is, concededly, an executive, not a judicial, function. The same holds true with the issuance of a BPO.

We need not even belabor the issue raised by petitioner that since barangay officials and other law enforcement agencies are required to extend assistance to victims of violence and abuse, it would be very unlikely that they would remain objective and impartial, and that the chances of acquittal are nil. As already stated, assistance by barangay officials and other law enforcement agencies is consistent with their duty to enforce the law and to maintain peace and order.

Conclusion

Before a statute or its provisions duly challenged are voided, an unequivocal breach or a clear conflict with the Constitution, not merely a doubtful or argumentative one, must be demonstrated in such a manner as to leave no doubt in the mind of the Court. In other words, the grounds for nullity must be beyond reasonable doubt. [116] In the instant case, however, no concrete evidence and convincing arguments were presented by petitioner to warrant a declaration of the unconstitutionality of R.A. 9262, which is an act of Congress and signed into law by the highest officer of the co-equal executive department. As we said in *Estrada v. Sandiganbayan*, [117] courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and passed laws with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority.

We reiterate here Justice Puno's observation that “the history of the women's movement against domestic violence shows that one of its most difficult struggles was the fight against the violence of law itself. If we keep that in mind, law will not again be a hindrance to the struggle of women for equality but will be its fulfillment.”[118] Accordingly, the constitutionality of R.A. 9262 is, as it should be, sustained.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED for lack of merit.

SO ORDERED.

Sereno, C.J. Carpio, Velasco, Jr., Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, and Reyes, JJ., concur.

Leonardo-De Castro, Abad, and Leonen, JJ., see separate concurring opinion.

Brion, J., see concurring opinion.

Peralta, J., on official leave.

[*]On official leave.

[1] “Philippines still top Christian country in Asia, 5th in world,” *Philippine Daily Inquirer*, December 21, 2011.

[2] *Ephesians* 5:25-28.

[3] RATIONALE OF THE PROPOSED RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, citing statistics furnished by the National Commission on the Role of Filipino Women.

[4] Id.

[5] Section 3(a), R.A. 9262.

[6] Rollo, pp. 63-83.

[7] Id. at 66-67.

[8] Id. at 64.

[9] Id. at 67-68.

[10] Id. at 68-70.

[11] Id. at 70-71.

[12] Id. at 72.

[13] Id. at 73.

[14] Id. at 74.

[15] Id. at 65-66.

[16] Id. at 66.

[17] Id. at 70.

[18] Id. at 84-87.

[19] Urgent Ex-Parte Motion for Renewal of Temporary Protection Order (TPO) or Issuance of Modified TPO. Id. at 90-93.

[20] Id. at 94-97.

[21] Id. at 98-103.

[22] Id. at 138-140.

[23] Order dated May 24, 2006. Id. at 148-149.

[24] Id. at 154-166.

[25] Id. at 156.

[26] Id. at 157.

[27] Id. at 158-159.

[28] Id. at 167-174.

[29] Id. at 182.

[30] Id. at 183-184.

[31] Id. at 185.

[32] Id. at 186-187.

[33] See Manifestation dated October 10, 2006. Id. at 188-189.

[34] Id. at 104-137.

[35] Id. at 151-152.

[36] Decision dated January 24, 2007. Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Arsenio J. Magpale and Romeo F. Barza, concurring. Id. at 47-57.

[37] Id. at 60-61.

[38] Petition, id. at 22.

[39] ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc., G.R. Nos. 175769-70, January 19, 2009, 576 SCRA 262, 289.

[40] Philippine National Bank v. Palma, 503 Phil. 917, 932 (2005).

[41] Petition, rollo, p. 24.

[42] SEC. 5. Jurisdiction of Family Courts. - The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

x x x x

k) Cases of domestic violence against:

1) Women - which are acts of gender based violence that results, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom movement; and

2) Children - which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

[43] Sec. 17, R.A. 8369.

[44] Manalo v. Mariano, 161 Phil. 108, 120 (1976).

[45] Planters Products, Inc. v. Fertiphil Corporation, G.R. No. 166006, March 14, 2008, 548 SCRA 485, 504.

[46] Drilon v. Lim, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140.

[47] Planters Products, Inc. v. Fertiphil Corporation, supra note 45, at 505, citing Mirasol v. CA, 403 Phil. 760 (2001).

[48] G.R. Nos. L-18128 & L-18672, December 26, 1961, 3 SCRA 696, 703-704.

[49] RATIONALE OF THE PROPOSED RULES ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN.

[50] Korea Exchange Bank v. Hon. Rogelio C. Gonzales, 496 Phil. 127, 143-144 (2005); Spouses Sapugay v. CA, 262 Phil. 506, 513 (1990).

[51] Sec. 8, Rule 6, 1997 Rules of Civil Procedure.

[52] Sec. 11, Rule 6, 1997 Rules of Civil Procedure.

- [53] See *People of the Philippine Islands and Hongkong & Shanghai Banking Corporation v. Vera*, 65 Phil 199 (1937); *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*, G.R. Nos. 177857-58, January 24, 2012, 663 SCRA 514, 594.
- [54] *Recreation and Amusement Association of the Philippines v. City of Manila*, 100 Phil 950, 956 (1957).
- [55] Secs. 22 and 31, A.M. No. 04-10-11-SC.
- [56] Sec. 26 (b), A.M. No. 04-10-11-SC.
- [57] *Sto. Domingo v. De Los Angeles*, 185 Phil. 94, 102 (1980).
- [58] 27 L.Ed.2d 669 (1971), cited in *The Executive Secretary v. Court of Appeals*, 473 Phil. 27, 56-57 (2004).
- [59] Rollo, pp. 214-240, 237.
- [60] Petition, *id.* at 26-27.
- [61] An Act Defining Violence Against Women and Members of the Family, Prescribing Penalties Therefor, Providing for Protective Measures for Victims and for Other Purposes.
- [62] Congressional Records, Vol. III, No. 45, December 10, 2003, p. 27.
- [63] *Id.* at 25.
- [64] *Id.* at 27.
- [65] *Id.* at 43-44.
- [66] Congressional Records, Vol. III, No. 51, January 14, 2004, pp. 141-147.
- [67] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 391.
- [68] *Garcia v. Commission on Elections*, G.R. No. 111511, October 5, 1993, 227 SCRA 100, 113-114.
- [69] 158 Phil. 60, 86-87 (1974).
- [70] *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, p. 169.
- [71] Philippine Commission on Women, National Machinery for Gender Equality and Women's Empowerment, "Violence Against Women (VAW)," (visited November 16, 2012).
- [72] (visited November 16, 2012).
- [73] As reported by Senator Loi Estrada in her Sponsorship Speech, Congressional Records, Vol. III, No. 45, December 10, 2003, p. 22.
- [74] Philippine Commission on Women, "Statistics on Violence Against Filipino Women," (visited October 12, 2012).
- [75] Women's Aid, "Who are the victims of domestic violence?," citing Walby and Allen, 2004,
- [76] Toronto District School Board, Facts and Statistics (visited November 16, 2012).
- [77] *People v. Solon*, 110 Phil. 39, 41 (1960).
- [78] *Victoriano v. Elizalde Rope Workers' Union*, *supra* note 69, 90.

- [79] Biden, Jr., Joseph R., "The Civil Rights Remedy of the Violence Against Women Act: A Defense," 37 Harvard Journal on Legislation 1 (Winter, 2000).
- [80] Congressional Records, Vol. III, No. 45, December 10, 2003, pp. 22-23.
- [81] Benancio v. Amila, A.M. No. RTJ-08-2149, March 9, 2011, 645 SCRA 1, 8.
- [82] "General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures" (visited January 4, 2013).
- [83] Petition, rollo, p. 27.
- [84] Article 5(a), CEDAW.
- [85] "The Rule on Violence Against Women and Their Children," Remarks delivered during the Joint Launching of R.A. 9262 and its Implementing Rules last October 27, 2004 at the Session Hall of the Supreme Court.
- [86] Supra note 49.
- [87] Article 15.
- [88] Article 16.
- [89] Supra note 49.
- [90] Supra note 49.
- [91] Estrada v. Sandiganbayan, 421 Phil 290, 351-352 (2001).
- [92] Petition, rollo, p. 35.
- [93] Estrada v. Sandiganbayan, supra note 91, at 352-353.
- [94] G.R. No. 168852, September 30, 2008, 567 SCRA 231.
- [95] Petition, rollo, p. 31.
- [96] Sec. 4 (o), A.M. No. 04-10-11-SC.
- [97] Supra note 49.
- [98] Sec. 7, A.M. No. 04-10-11-SC.
- [99] Supra note 49.
- [100] Id.
- [101] Supra note 85.
- [102] Cuartero v. CA, G.R. No. 102448, August 5, 1992, 212 SCRA 260, 265.
- [103] Laguna Lake Development Authority v. Court of Appeals, G.R. No. 110120, March 16, 1994, 231 SCRA 292, 307, citing Pollution Adjudication Board v. Court of Appeals, G.R. No. 93891, March 11, 1991, 195 SCRA 112.
- [104] Sec. 15, A.M. No. 04-10-11-SC.
- [105] Sec. 16, A.M. No. 04-10-11-SC.

[106] Sec. 20, A.M. No. 04-10-11-SC.

[107] *Esperida v. Jurado, Jr.*, G.R. No. 172538, April 25, 2012, 671 SCRA 66, 74.

[108] Petition, rollo, pp. 30-31.

[109] *Id.* at 36.

[110] *Supra* note 49.

[111] Petition, rollo, pp. 130-131.

[112] Sec. 1, Article VIII, 1987 Constitution.

[113] *Laurel v. Desierto*, 430 Phil. 658 (2002).

[114] *People v. Tomaquin*, 478 Phil. 885, 899 (2004), citing Section 389, Chapter 3, Title One, Book III, Local Government Code of 1991, as amended.

[115] *Lovina and Montilla v. Moreno and Yonzon*, 118 Phil 1401, 1406 (1963).

[116] *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, G.R. No. 171101, July 5, 20 II, 653 SCRA 154, 258.

[117] *Supra* note 91.

[118] *Supra* note 85.

CONCURRING OPINION

LEONARDO-DE CASTRO, J.:

I concur with the conclusion reached in the ponencia ably written by the Honorable Estela Perlas-Bernabe. With due respect, however, I submit that the test to determine an equal protection challenge against the law, denying statutory remedies to men who are similarly situated as the women who are given differential treatment in the Jaw, on the basis of sex or gender, should be at the level of intermediate scrutiny or middle-tier judicial scrutiny rather than the rational basis test used in the ponencia of Justice Bernabe.

This Petition for Review on Certiorari assails: (1) the Decision dated January 24, 2007 of the Court of Appeals in CA-G.R. CEB-SP No. 01698 dismissing the Petition for Prohibition with Injunction and Temporary Restraining Order (Petition for Prohibition) which questioned the constitutionality of Republic Act No. 9262, otherwise known as the "Anti- Violence Against Women and Their Children Act of 2004," and sought a temporary restraining order and/or injunction to prevent the implementation of the Temporary Protection Order (TPO) and criminal prosecution of herein petitioner Jesus A. Garcia under the law; and (2) the Resolution dated August 14, 2007, denying petitioner's Motion for Reconsideration of the said Decision.

At the outset, it should be stressed that the Court of Appeals, in its assailed Decision and Resolution, did not pass upon the issue of constitutionality of Republic Act No. 9262 and instead dismissed the Petition for Prohibition on technical grounds, as follows:

1. The constitutional issue was raised for the first time on appeal before the Court of Appeals by petitioner and not at the earliest opportunity, which should be before the Regional Trial Court (RTC), Branch 41, Bacolod City, acting as a Family Court, where private respondent Rosalie Garcia, wife of petitioner, instituted a Petition for

Temporary and Permanent Protection Order[s] [1] under Republic Act No. 9262, against her husband, petitioner Jesus C. Garcia; and

2. The constitutionality of Republic Act No. 9262 can only be questioned in a direct action and it cannot be the subject of a collateral attack in a petition for prohibition, as the inferior court having jurisdiction on the action may itself determine the constitutionality of the statute, and the latter's decision on the matter may be reviewed on appeal and not by a writ of prohibition, as it was held in *People v. Vera*. [2]

Hence, the Court of Appeals Decision and Resolution denied due course to the Petition for Prohibition "for being fraught with fatal technical infirmities" and for not being ripe for judicial review. Nevertheless, four out of the five issues raised by the petitioner here dealt with the alleged unconstitutionality of Republic Act No. 9262. More accurately put, however, the Court of Appeals refrained from touching at all those four substantive issues of constitutionality. The Court of Appeals cannot therefore be faulted for any erroneous ruling on the aforesaid substantive constitutional issues.

In this instant Petition for Review, the only issue directly in point that can be raised against the Court of Appeals Decision and Resolution is the first one cited as a ground for the appeal, which I quote:

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION ON THE THEORY THAT THE ISSUE OF CONSTITUTIONALITY WAS NOT RAISED AT THE FIRST OPPORTUNITY AND THAT, THE PETITION WAS A COLLATERAL ATTACK ON THE VALIDITY OF THE LAW. [3]

Under the circumstances, whether this Court should consider this Petition for Review as a proper occasion to pass upon the constitutionality of Republic Act No. 9262 shall be a separate subject matter that is tackled below after the above-quoted first issue is disposed of.

On the Propriety of Raising the Issue
of Constitutionality in a Summary
Proceeding Before the RTC Designated
as a Family Court

Petitioner assails the Court of Appeals ruling that he should have raised the issue of constitutionality in his Opposition [4] to private respondent's petition for protective orders pending before the RTC for the following reasons:

1. The Rules on Violence Against Women and Children (A.M. No. 04-10-11-SC), particularly Section 20 thereof, expressly prohibit him from alleging any counterclaim, cross-claim or third party claim, all of which are personal to him and therefore with more reason, he cannot impugn the constitutionality of the law by way of affirmative defense. [5]
2. Since the proceedings before the Family Court are summary in nature, its limited jurisdiction is inadequate to tackle the complex issue of constitutionality. [6]

I agree with Justice Bernabe that the RTC, designated as a Family Court, is vested with jurisdiction to decide issues of constitutionality of a law, and that the constitutionality of Republic Act No. 9262 can be resolved in a summary proceeding, in accordance with the rule that the question of constitutionality must be raised at the earliest opportunity, otherwise it may not be considered on appeal.

Section 20 of A.M. No. 04-10-11-SC, the Rule on Republic Act No. 9262 provides:

Sec. 20. Opposition to Petition. – (a) The respondent may file an opposition to the petition which he himself shall verify. It must be accompanied by the affidavits of witnesses and shall show cause why a temporary or

permanent protection order should not be issued.

(b) Respondent shall not include in the opposition any counterclaim, cross-claim or third-party complaint, but any cause of action which could be the subject thereof may be litigated in a separate civil action. (Emphasis supplied.)

Petitioner cites the above provision, particularly paragraph (b) thereof, as one of his grounds for not challenging the constitutionality of Republic Act No. 9262 in his Opposition. The error of such reasoning is that it treats “any cause of action” mentioned in Section 20(b) as distinct from the “counterclaim, cross-claim or third-party complaint” referred to in the said Section 20(b). On the contrary, the language of said section clearly refers to a cause of action that is the “subject” of the counterclaim, cross-claim, or third-party complaint, which is barred and which may be litigated in a separate civil action. The issue of constitutionality is not a “cause of action” that is a subject of the aforementioned prohibited pleadings. In fact, petitioner admitted that such prohibited pleadings would allege “claims which are personal to him.”[7] Hence, Section 20(b) cannot even be invoked as a basis for filing the separate special civil action of Petition for Prohibition before the Court of Appeals to question the constitutionality of Republic Act No. 9262.

What obviously escapes petitioner’s understanding is that the contents of the Opposition are not limited to mere refutations of the allegations in the petition for temporary and permanent protection order. While it is true that A.M. No. 04-10-11-SC requires the respondent to file an Opposition and not an Answer, [8] it does not prevent petitioner from challenging the constitutionality of Republic Act No. 9262 in such Opposition. In fact, Section 20(a) directs petitioner to state in his Opposition why a temporary or permanent protection order should not be issued against him. This means that petitioner should have raised in his Opposition all defenses available to him, which may be either negative or affirmative. Section 5(b), Rule 6 of the Rules of Court define negative and affirmative defenses as follows:

(a) A negative defense is the specific denial of the material fact or facts alleged in the pleading of the claimant essential to his cause or causes of action.

(b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

In *Bayog v. Hon. Natino*, [9] the respondent, in a complaint for ejectment before the Municipal Circuit Trial Court (MCTC), raised as one of his defenses, the MCTC’s lack of jurisdiction over the case in light of the agricultural tenancy relationship between him and the petitioner. The MCTC applied the Rule on Summary Procedure and issued an Order stating that it could not take cognizance of the Answer, for being filed belatedly. This Court ruled that while the MCTC was correct in applying the Rule on Summary Procedure as the complaint was one for ejectment, it should have met and ruled squarely on the issue of jurisdiction, as there was nothing in the rules that barred it from admitting the Answer. Hence, the MCTC should have heard and received evidence for the precise purpose of determining whether or not it possessed jurisdiction over the case.[10]

Similarly, the alleged unconstitutionality of Republic Act No. 9262 is a matter that would have prevented the trial court from granting the petition for protection order against the petitioner. Thus, petitioner should have raised it in his Opposition as a defense against the issuance of a protection order against him.

For all intents and purposes, the Petition for Prohibition filed before the Court of Appeals was precipitated by and was ultimately directed against the issuance of the TPO, an interlocutory order, which under Section 22(j) of A.M. No. 04-10-11-SC is a prohibited pleading. An action questioning the constitutionality of the law also cannot be

filed separately even with another branch of the RTC. This is not technically feasible because there will be no justiciable controversy or an independent cause of action that can be the subject of such separate action if it were not for the issuance of the TPO against the petitioner. Thus, the controversy, subject of a separate action, whether before the Court of Appeals or the RTC, would still have to be the issuance of the TPO, which is the subject of another case in the RTC.

Moreover, the challenge to the constitutionality of the law must be raised at the earliest opportunity. In *Dasmariñas Water District v. Monterey Foods Corporation*,^[11] we said:

A law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity. x x x. The settled rule is that courts will not anticipate a question of constitutional law in advance of the necessity of deciding it. (Citation omitted.)

This Court held that such opportunity is in the pleadings before a competent court that can resolve it, such that “if it is not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal.” ^[12] The decision upon the constitutional question is necessary to determine whether the TPO should be issued against petitioner. Such question should have been raised at the earliest opportunity as an affirmative defense in the Opposition filed with the RTC handling the protection order proceedings, which was the competent court to pass upon the constitutional issue. This Court, in *Drilon v. Lim*,^[13] held:

We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, BP 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. (Citation omitted, emphases ours.)

Furthermore, the filing of a separate action before the Court of Appeals or the RTC for the declaration of unconstitutionality of Republic Act No. 9262 would result to multiplicity of suits. It is clear that the issues of constitutionality and propriety of issuing a protection order raised by petitioner are inextricably intertwined. Another court, whether it is an appellate court or a trial court, cannot resolve the constitutionality question in the separate action without affecting the petition for the issuance of a TPO. Bringing a separate action for the resolution of the issue of constitutionality will result in an unresolved prejudicial question to the validity of issuing a protection order. If the proceedings for the protection order is not suspended, it does create the danger of having inconsistent and conflicting judgments between the two separate courts, whether of the same or different levels in the judicial hierarchy. These two judgments would eventually be the subject of separate motions for reconsideration, separate appeals, and separate petitions for review before this Court – the exact scenario the policy against multiplicity of suits is avoiding. As we previously held, “the law and the courts frown upon split jurisdiction and the resultant multiplicity of actions.”^[14]

It must be remembered that aside from the “earliest opportunity” requirement, the court’s power of judicial review is subject to other limitations. Two of which are the existence of an actual case or controversy and standing. An aspect of the actual case or controversy requirement is the requisite of “ripeness.” This is generally treated in terms of actual injury to the plaintiff. Thus, a question is ripe for adjudication when the act being challenged had a direct adverse effect on the individual challenging it. This direct adverse effect on the individual

will also be the basis of his standing as it is necessary that the person challenging the law must have a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result of its enforcement.[15]

In this case, the petitioner's challenge on the constitutionality of Republic Act No. 9262 was on the basis of the protection order issued against him. Verily, the controversy became ripe only when he was in danger of or was directly adversely affected by the statute mandating the issuance of a protection order against him. He derives his standing to challenge the statute from the direct injury he would sustain if and when the law is enforced against him. Therefore, it is clear that the proper forum to challenge the constitutionality of the law was before the RTC handling the protection order proceedings. The filing of a separate action to question the constitutionality of the law amounts to splitting a cause of action that runs counter to the policy against multiplicity of suits.

Moreover, the filing of the Petition for Prohibition with the Court of Appeals countenanced the evil that the law and the rules sought to avoid. It caused the delay in the proceedings and inconvenience, hardship and expense on the part of the parties due to the multiplicity of suits between them at different court levels. The RTC where the petition for protection orders is filed should be trusted, instead of being doubted, to be able to exercise its jurisdiction to pass upon the issue of constitutionality within the mandatory period set by the rules.

In gist, there is no statutory, reglementary, or practical basis to disallow the constitutional challenge to a law, which is sought to be enforced, in a summary proceeding. This is particularly true considering that the issue of a statute's constitutionality is a question of law which may be resolved without the reception of evidence or a full-blown trial. Hence, said issue should have been raised at the earliest opportunity in the proceedings before the RTC, Bacolod City and for failure of the petitioner to do so, it cannot be raised in the separate Petition for Prohibition before the Court of Appeals, as correctly ruled by the latter, nor in a separate action before the RTC.

On the Court Resolving the Issue
of Constitutionality of Republic
Act No. 9262

Notwithstanding my position that the Court of Appeals properly dismissed the Petition for Prohibition because of petitioner's failure to raise the issue of constitutionality of Republic Act No. 9262 at the earliest opportunity, I concur that the Court, in the exercise of its sound discretion,[16] should still pass upon the said issue in the present Petition. Notable is the fact that not only the petitioner, but the private respondent as well,[17] pray that the Court resolve the constitutional issue considering its novelty and paramount importance. Indeed, when public interest requires the resolution of the constitutional issue raised, and in keeping with this Court's duty of determining whether other agencies or even co-equal branches of government have remained within the limits of the Constitution and have not abused the discretion given them, the Court may brush aside technicalities of procedure and resolve the constitutional issue.[18]

Aside from the technical ground raised by petitioner in his first assignment of error, petitioner questions the constitutionality of Republic Act No. 9262 on the following grounds:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FAILING TO CONCLUDE THAT R.A. NO. 9262 IS DISCRIMINATORY, UNJUST, AND VIOLATIVE OF THE EQUAL PROTECTION CLAUSE. THE COURT OF APPEALS COMMITTED GRAVE MISTAKE IN NOT FINDING THAT R.A. NO. 9262 RUNS COUNTER TO THE DUE PROCESS CLAUSE OF THE CONSTITUTION. THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE LAW DOES VIOLENCE TO THE POLICY OF THE STATE TO PROTECT THE FAMILY AS A BASIC SOCIAL INSTITUTION. THE COURT OF APPEALS SERIOUSLY ERRED IN NOT DECLARING R.A. NO. 9262 AS INVALID AND UNCONSTITUTIONAL BECAUSE IT ALLOWS AN UNDUE DELEGATION OF JUDICIAL POWER TO THE BARANGAY

OFFICIALS.[19]

On the Constitutional Right to Equal Protection of the Laws

Petitioner challenges the constitutionality of Republic Act No. 9262 for making a gender-based classification, thus, providing remedies only to wives/women and not to husbands/men. He claims that even the title of the law, “An Act Defining Violence Against Women and Their Children” is already pejorative and sex-discriminatory because it means violence by men against women.[20] The law also does not include violence committed by women against children and other women. He adds that gender alone is not enough basis to deprive the husband/father of the remedies under it because its avowed purpose is to curb and punish spousal violence. The said remedies are discriminatory against the husband/male gender. There being no reasonable difference between an abused husband and an abused wife, the equal protection guarantee is violated.

Pertinently, Section 1, Article III of the 1987 Constitution states:

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. (Emphasis supplied.)

The above provision was lifted verbatim from the 1935 and 1973

Constitutions, which in turn was a slightly modified version of the equal protection clause in Section 1, Amendment 14[21] of the United States Constitution.

In 1937, the Court established in *People v. Vera*[22] the four-fold test to measure the reasonableness of a classification under the equal protection clause, to wit:

This basic individual right sheltered by the Constitution is a restraint on all the three grand departments of our government and on the subordinate instrumentalities and subdivisions thereof, and on many constitutional powers, like the police power, taxation and eminent domain. The equal protection of the laws, sententiously observes the Supreme Court of the United States, “is a pledge of the protection of equal laws.” Of course, what may be regarded as a denial of the equal protection of the laws is a question not always easily determined. No rule that will cover every case can be formulated. Class legislation discriminating against some and favoring others is prohibited. But classification on a reasonable basis, and not made arbitrarily or capriciously, is permitted. The classification, however, to be reasonable must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only, and must apply equally to each member of the class. (Citations omitted, emphasis supplied.)

In our jurisdiction, the standard and analysis of equal protection challenges in the main have followed the foregoing “rational basis” test, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution.[23]

However, over time, three levels of tests were developed, which are to be applied in equal protection cases, depending on the subject matter [24]involved:

- Rational Basis Scrutiny – the traditional test, which requires “only that government must not impose differences in treatment except upon some reasonable differentiation fairly related to the object of regulation.” Simply put, it merely demands that the classification in the statute reasonably relates to the legislative purpose.[25]
- Intermediate Scrutiny – requires that the classification (means) must serve an important governmental objective (ends) and is substantially related to the achievement of such objective. A classification based on sex is the best-established example of an intermediate level of review.[26]

- Strict Scrutiny – requires that the classification serve a compelling state interest and is necessary to achieve such interest. This level is used when suspect classifications or fundamental rights are involved.[27]

Recent Philippine jurisprudence has recognized the need to apply different standards of scrutiny in testing the constitutionality of classifications. In *British American Tobacco v. Camacho*,[28] this Court held that since the case therein neither involved a suspect classification nor impinged on a fundamental right, then “the rational basis test was properly applied to gauge the constitutionality of the assailed law in the face of an equal protection challenge.”[29] We added:

It has been held that “in the areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” Under the rational basis test, it is sufficient that the legislative classification is rationally related to achieving some legitimate State interest. x x x.[30] (Citations omitted.)

Echoing the same principle, this Court, speaking through then Chief Justice Puno in *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[31] stated:

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. 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.

x x x x

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.

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. (Citations omitted.)

This was reiterated in *League of Cities of the Philippines v. Commission on Elections*,[32] and *Ang Ladlad LGBT Party v. Commission on Elections*,[33] wherein the Court, although applying the rational basis test, noted that there are tests, which are more appropriate in other cases, especially those involving suspect classes and fundamental rights. In fact, Chief Justice Puno expounded on this in his Separate Concurring Opinion in the *Ang Ladlad* case. He said that although the assailed resolutions therein were correctly struck down, since the classification was based on gender or sexual orientation, a quasi-suspect classification, a heightened level of review should have been applied and not just the rational basis test, which is the most liberal basis of judicial scrutiny. Citing American authority, Chief Justice Puno continued to elucidate on the three levels of scrutiny and the classes falling within each level, to wit:

If a legislative classification disadvantages a “suspect class” or impinges upon the exercise of a “fundamental right,” then the courts will employ strict scrutiny and the statute must fall unless the government can demonstrate that the classification has been precisely tailored to serve a compelling governmental interest. Over the years, the United States Supreme Court has determined that suspect classes for equal protection

purposes include classifications based on race, religion, alienage, national origin, and ancestry. The underlying rationale of this theory is that where legislation affects discrete and insular minorities, the presumption of constitutionality fades because traditional political processes may have broken down. In such a case, the State bears a heavy burden of justification, and the government action will be closely scrutinized in light of its asserted purpose.

On the other hand, if the classification, while not facially invidious, nonetheless gives rise to recurring constitutional difficulties, or if a classification disadvantages a “quasi-suspect class,” it will be treated under intermediate or heightened review. To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations. Noteworthy, and of special interest to us in this case, quasi-suspect classes include classifications based on gender or illegitimacy.

If neither strict nor intermediate scrutiny is appropriate, then the statute will be tested for mere rationality. This is a relatively relaxed standard reflecting the Court’s awareness that the drawing of lines which creates distinctions is peculiarly a legislative task and an unavoidable one. The presumption is in favor of the classification, of the reasonableness and fairness of state action, and of legitimate grounds of distinction, if any such grounds exist, on which the State acted.[34] (Citations omitted, emphases supplied.)

This case presents us with the most opportune time to adopt the appropriate scrutiny in deciding cases where the issue of discrimination based on sex or gender is raised. The assailed Section 3, among other provisions, of Republic Act No. 9262 provides:

SEC. 3. Definition of Terms. – As used in this Act:

(a) “Violence against women and their children” refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. x x x. (Emphases supplied.)

The aforesaid law also institutionalized remedies such as the issuance of protection orders in favor of women and children who are victims of violence and prescribed public penalties for violation of the said law.

Petitioner questions the constitutionality of Republic Act No. 9262 which denies the same protection orders to husbands who are victims of wife-abuse. It should be stressed that under aforesaid section of said law violence may not only be physical or sexual but also psychological and economic in nature.

The Honorable Justice Marvic Mario Victor F. Leonen in his concurring opinion notes that “Husband abuse maybe an under reported form of family violence.” While concurring with the majority opinion, he opines as follows:

Nevertheless, in a future case more deserving of our attention, we should be open to realities which may challenge the dominant conception that violence in intimate relationships only happens to women and children. This may be predominantly true, but even those in marginal cases deserve fundamental constitutional and statutory protection. We should be careful that in correcting historical and cultural injustices, we may typecast all women as victims, stereotype all men as tormentors or make invisible the possibility that in some intimate relationships, men may also want to seek succor against acts defined in Section 5 of Republic Act No. 9262 in an expeditious manner.

Since statutory remedies accorded to women are not made available to men, when the reality is that there are men, regardless of their number, who are also suffering from domestic violence, the rational basis test may be too wide

and liberal to justify the statutory classification which in effect allows different treatment of men who are similarly situated. In the context of the constitutional policy to “ensure the fundamental equality before the law of women and men”[35] the level of scrutiny applicable, to test whether or not the classification in Republic Act No. 9262 violates the equal protection clause, is the middle-tier scrutiny or the intermediate standard of judicial review.

To survive intermediate review, the classification in the challenged law must (1) serve important governmental objectives, and (2) be substantially related to the achievement of those objectives.[36]

Important and Essential Governmental
Objectives: Safeguard Human Rights,
Ensure Gender Equality and Empower Women

Republic Act No. 9262 is a legislation that furthers important, in fact essential, governmental objectives as enunciated in the law’s Declaration of Policy, as quoted below:

SEC. 2. Declaration of Policy.- It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

This policy is in consonance with the constitutional provisions, [37] which state:

SEC. 11. The State values the dignity of every human person and guarantees full respect for human rights.

SEC. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x.

By constitutional mandate, the Philippines is committed to ensure that human rights and fundamental freedoms are fully enjoyed by everyone. It was one of the countries that voted in favor of the Universal Declaration of Human Rights (UDHR), which was a mere two years after it gained independence from the United States of America. In addition, the Philippines is a signatory to many United Nations human rights treaties such as the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Rights of the Child, among others.

As a signatory to the UDHR, the Philippines pledged itself to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms,[38] keeping in mind the standards under the Declaration. Among the standards under the UDHR are the following:

Article 1. 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.

x x x x

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. (Emphasis ours.)

The Declaration of Policy in Republic Act No. 9262 enunciates the purpose of the said law, which is to fulfill the government's obligation to safeguard the dignity and human rights of women and children by providing effective remedies against domestic violence or physical, psychological, and other forms of abuse perpetuated by the husband, partner, or father of the victim. The said law is also viewed within the context of the constitutional mandate to ensure gender equality, which is quoted as follows:

Section 14. The State recognizes the role of women in nation- building, and shall ensure the fundamental equality before the law of women and men.[39]

It has been acknowledged that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." [40] Republic Act No. 9262 can be viewed therefore as the Philippines' compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is committed to condemn discrimination against women and directs its members to undertake, without delay, all appropriate means to eliminate discrimination against women in all forms both in law and in practice.[41] Known as the International Bill of Rights of Women,[42] the CEDAW is the central and most comprehensive document for the advancement of the welfare of women.[43] It brings the women into the focus of human rights concerns, and its spirit is rooted in the goals of the UN: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.[44] The CEDAW, in its preamble, explicitly acknowledges the existence of extensive discrimination against women, and emphasized that such is a violation of the principles of equality of rights and respect for human dignity.

In addition, as a state party to the CEDAW, the Philippines is under legal obligation to to ensure their development and advancement for the improvement of their position from one of de jure as well as de facto equality with men. [45] The CEDAW, going beyond the concept of discrimination used in many legal standards and norms, focuses on discrimination against women, with the emphasis that women have suffered and are continuing to suffer from various forms of discrimination on account of their biological sex.[46]

The Philippines' accession to various international instruments requires it to promote and ensure the observance of human rights and "continually affirm its commitment to ensure that it pursues gender equality in all aspects of the development process to eventually make real, a gender- responsive society." [47] Thus, the governmental objectives of protecting human rights and fundamental freedoms, which includes promoting gender equality and empowering women, as mandated not only by our Constitution, but also by commitments we have made in the international sphere, are undeniably important and essential.

The Gender-Based Classification in Republic Act No. 9262 is Substantially Related to the Achievement of Governmental Objectives

As one of the country's pervasive social problems, violence against women is deemed to be closely linked with the unequal power relationship between women and men and is otherwise known as "gender-based violence." [48] Violent acts towards women has been the subject of an examination on a historic world-wide perspective.[49] The exhaustive study of a foreign history professor noted that "[f]rom the earliest civilizations on, the subjugation of women, in the form of violence, were facts of life,"[50] as three great bodies of thought, namely: Judeo-Christian religious ideas; Greek philosophy; and the Common Law Legal Code, which have influenced western society's views and treatment of women, all "assumed patriarchy as natural; that is, male

domination stemming from the view of male superiority.”[51] It cited 18th century legal expert William Blackstone, who explained that the common law doctrine of coverture reflected the theological assumption that husband and wife were ‘one body’ before God; thus “they were ‘one person’ under the law, and that one person was the husband,”[52] a concept that evidently found its way in some of our Civil Code provisions prior to the enactment of the Family Code.

Society and tradition dictate that the culture of patriarchy continue. Men are expected to take on the dominant roles both in the community and in the family. This perception naturally leads to men gaining more power over women – power, which must necessarily be controlled and maintained. Violence against women is one of the ways men control women to retain such power.[53]

The enactment of Republic Act No. 9262 was in response to the undeniable numerous cases involving violence committed against women in the Philippines. In 2012, the Philippine National Police (PNP) reported[54] that 65% or 11,531 out of 15,969 cases involving violence against women were filed under Republic Act No. 9262. From 2004 to 2012, violations of Republic Act No. 9262 ranked first among the different categories of violence committed against women. The number of reported cases showed an increasing trend from 2004 to 2012, although the numbers might not exactly represent the real incidence of violence against women in the country, as the data is based only on what was reported to the PNP. Moreover, the increasing trend may have been caused by the continuous information campaign on the law and its strict implementation. [55] Nonetheless, statistics show that cases involving violence against women are prevalent, while there is a dearth of reported cases involving violence committed by women against men, that will require legislature intervention or solicitous treatment of men.

Preventing violence against women and children through their availment of special legal remedies, serves the governmental objectives of protecting the dignity and human rights of every person, preserving the sanctity of family life, and promoting gender equality and empowering women. Although there exists other laws on violence against women[56] in the Philippines, Republic Act No. 9262 deals with the problem of violence within the family and intimate relationships, which deserves special attention because it occurs in situations or places where women and children should feel most safe and secure but are actually not. The law provides the widest range of reliefs for women and children who are victims of violence, which are often reported to have been committed not by strangers, but by a father or a husband or a person with whom the victim has or had a sexual or dating relationship. Aside from filing a criminal case in court, the law provides potent legal remedies to the victims that theretofore were not available. The law recognizes, with valid factual support based on statistics that women and children are the most vulnerable victims of violence, and therefore need legal intervention. On the other hand, there is a dearth of empirical basis to anchor a conclusion that men need legal protection from violence perpetuated by women.

The law takes into account the pervasive vulnerability of women and children, and the seriousness and urgency of the situation, which, in the language of the law result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.[57] Hence, the law permits the issuance of protection orders and the granting of certain reliefs to women victims, even without a hearing. The law has granted authority for barangay officials to issue a protection order against the offender, based on the victim’s application. The RTC may likewise grant an application for a temporary protection order (TPO) and provide other reliefs, also on the mere basis of the application. Despite the ex parte issuance of these protection orders, the temporary nature of these remedies allow them to be availed of by the victim without violating the offender’s right to due process as it is only when a full-blown hearing has been done that a permanent protection order may be issued. Thus, these remedies are suitable, reasonable, and justified. More importantly, they serve the objectives of the law by providing the victims

necessary immediate protection from the violence they perceive as threats to their personal safety and security. This translates to the fulfillment of other governmental objectives as well. By assuring the victims instant relief from their situation, they are consequently empowered and restored to a place of dignity and equality. Such is embodied in the purpose to be served by a protection order, to wit:

SEC. 8. Protection Orders.- A protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. x x x. (Emphasis supplied.)

In furtherance of the governmental objectives, especially that of protecting human rights, violence against women and children under this Act has been classified as a public offense,[58] making its prosecution independent of the victim's initial participation.

Verily, the classification made in Republic Act No. 9262 is substantially related to the important governmental objectives of valuing every person's dignity, respecting human rights, safeguarding family life, protecting children, promoting gender equality, and empowering women.

The persistent and existing biological, social, and cultural differences between women and men prescribe that they be treated differently under particular conditions in order to achieve substantive equality for women. Thus, the disadvantaged position of a woman as compared to a man requires the special protection of the law, as gleaned from the following recommendations of the CEDAW Committee:

8. [T]he Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

9. Equality of results is the logical corollary of de facto or substantive equality. These results may be quantitative and/or qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.[59] (Emphases supplied.)

The government's commitment to ensure that the status of a woman in all spheres of her life are parallel to that of a man, requires the adoption and implementation of ameliorative measures, such as Republic Act No. 9262. Unless the woman is guaranteed that the violence that she endures in her private affairs will not be ignored by the government, which is committed to uplift her to her rightful place as a human being, then she can neither achieve substantive equality nor be empowered.

The equal protection clause in our Constitution does not guarantee an absolute prohibition against classification. The non-identical treatment of women and men under Republic Act No. 9262 is justified to put them on equal footing and to give substance to the policy and aim of the state to ensure the equality of women and men in light of the biological, historical, social, and culturally endowed differences between men and women.

Republic Act No. 9262, by affording special and exclusive protection to women and children, who are vulnerable victims of domestic violence, undoubtedly serves the important governmental objectives of protecting human rights, insuring gender equality, and empowering women. The gender-based classification and the special

remedies prescribed by said law in favor of women and children are substantially related, in fact essentially necessary, to achieve such objectives. Hence, said Act survives the intermediate review or middle-tier judicial scrutiny. The gender-based classification therein is therefore not violative of the equal protection clause embodied in the 1987 Constitution.

The Issuance of the TPO did not Violate Petitioner's Right to Due Process

A protection order is issued under Republic Act No. 9262 for the purpose of preventing further acts of violence against a woman or her child. [60] The circumstances surrounding the availment thereof are often attended by urgency; thus, women and child victims must have immediate and uncomplicated access to the same. Hence, Republic Act No. 9262 provides for the issuance of a TPO:

SEC. 15. Temporary Protection Orders. – Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after ex parte determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

The ex parte issuance of the TPO does not make it unconstitutional. Procedural due process refers to the method or manner by which the law is enforced. It consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. [61] However, it is a constitutional commonplace that the ordinary requirements of procedural due process yield to the necessities of protecting vital public interests like those involved herein. Republic Act No. 9262 and its implementing regulations were enacted and promulgated in the exercise of that pervasive, sovereign power of the State to protect the safety, health, and general welfare and comfort of the public (in this case, a particular sector thereof), as well as the protection of human life, commonly designated as the police power.[62]

In *Secretary of Justice v. Lantion*, [63] the Court enumerated three instances when notice and/or hearing may be dispensed with in administrative proceedings:

These twin rights may, however, be considered dispensable in certain instances, such as:

- In proceedings where there is an urgent need for immediate action, like the summary abatement of a nuisance per se (Article 704, Civil Code), the preventive suspension of a public servant facing administrative charges (Section 63, Local Government Code, B. P. Blg. 337), the padlocking of filthy restaurants or theaters showing obscene movies or like establishments which are immediate threats to public health and decency, and the cancellation of a passport of a person sought for criminal prosecution;
- Where there is tentativeness of administrative action, that is, where the respondent is not precluded from enjoying the right to notice and hearing at a later time without prejudice to the person affected, such as the summary distraint and levy of the property of a delinquent taxpayer, and the replacement of a temporary appointee; and
- Where the twin rights have previously been offered but the right to exercise them had not been claimed.

The principles behind the aforementioned exceptions may also apply in the case of the ex parte issuance of the TPO, although it is a judicial proceeding. As mentioned previously, the urgent need for a TPO is inherent in its nature and purpose, which is to immediately provide protection to the woman and/or child victim/s against further violent acts. Any delay in the issuance of a protective order may possibly result in loss of life and limb of the

victim. The issuing judge does not arbitrarily issue the TPO as he can only do so if there is reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur based on the verified allegations in the petition of the victim/s.[64] Since the TPO is effective for only thirty (30) days,[65] any inconvenience, deprivation, or prejudice the person enjoined – such as the petitioner herein – may suffer, is generally limited and temporary. Petitioner is also not completely precluded from enjoying the right to notice and hearing at a later time. Following the issuance of the TPO, the law and rules require that petitioner be personally served with notice of the preliminary conference and hearing on private respondent's petition for a Permanent Protection Order (PPO)[66] and that petitioner submit his opposition to private respondent's petition for protection orders. [67] In fact, it was petitioner's choice not to file an opposition, averring that it would only be an "exercise in futility." Thus, the twin rights of notice and hearing were subsequently afforded to petitioner but he chose not to take advantage of them. Petitioner cannot now claim that the ex parte issuance of the TPO was in violation of his right to due process.

There is No Undue Delegation of Judicial Power to Barangay Officials

A Barangay Protection Order (BPO) refers to the protection order issued by the Punong Barangay, or in his absence the Barangay Kagawad, ordering the perpetrator to desist from committing acts of violence against the family or household members particularly women and their children.[68] The authority of barangay officials to issue a BPO is conferred under Section 14 of Republic Act No. 9262:

SEC. 14. Barangay Protection Orders (BPOs); Who May Issue and How. - Barangay Protection Orders (BPOs) refer to the protection order issued by the Punong Barangay ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) of this Act. A Punong Barangay who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after ex parte determination of the basis of the application. If the Punong Barangay is unavailable to act on the application for a BPO, the application shall be acted upon by any available Barangay Kagawad. If the BPO is issued by a Barangay Kagawad the order must be accompanied by an attestation by the Barangay Kagawad that the Punong Barangay was unavailable at the time for the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an ex parte BPO, the Punong Barangay or Barangay Kagawad shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the Punong Barangay.

Once more, the urgency of the purpose for which protection orders under Republic Act No. 9262 are issued justifies the grant of authority to barangay officials to issue BPOs. Barangay officials live and interact closely with their constituents and are presumably easier to approach and more readily available than any other government official. Their issuance of the BPO is but part of their official executive function of enforcing all laws and ordinances within their barangay[69] and maintaining public order in the barangay.[70] It is true that the barangay officials' issuance of a BPO under Republic Act No. 9262 necessarily involves the determination of some questions of fact, but this function, whether judicial or quasi-judicial, are merely incidental to the exercise of the power granted by law.[71] The Court has clarified that:

"The mere fact that an officer is required by law to inquire the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be and the fact that these acts may affect private rights do not constitute an exercise of judicial powers. Accordingly, a statute may give to non-judicial officers the power to declare the existence of facts which call into operation its provisions, and similarly may grant to commissioners and other subordinate officers power to ascertain and determine appropriate facts as a basis for procedure in the enforcement of particular laws." (11 Am. Jur., Const. Law, p. 950, sec. 235)[72]

Furthermore, while judicial power rests exclusively in the judiciary, it may be conceded that the legislature may confer on administrative boards or bodies, or even particular government officials, quasi-judicial power involving the exercise of judgment and discretion, as incident to the performance of administrative functions. But in so doing, the legislature must state its intention in express terms that would leave no doubt, as even such quasi-judicial prerogatives must be limited, if they are to be valid, only to those incidental to or in connection with the performance of administrative duties, which do not amount to conferment of jurisdiction over a matter exclusively vested in the courts.[73] In the case of a BPO, it is a mere provisional remedy under Republic Act No. 9262, meant to address the pressing need of the victims for instant protection. However, it does not take the place of appropriate judicial proceedings and remedies that provide a more effective and comprehensive protection to the victim. In fact, under the Implementing Rules of Republic Act No. 9262, the issuance of a BPO or the pendency of an application for a BPO shall not preclude the victim from applying for, or the court from granting, a TPO or PPO. Where a TPO has already been granted by any court, the barangay official may no longer issue a BPO.[74] The same Implementing Rules also require that within twenty-four (24) hours after the issuance of a BPO, the barangay official shall assist the victim in filing an application for a TPO or PPO with the nearest court in the victim's place of residence. If there is no Family Court or RTC, the application may be filed in the Municipal Trial Court, the Municipal Circuit Trial Court or the Metropolitan Trial Court.[75]

All things considered, there is no ground to declare Republic Act No. 9262 constitutionally infirm.

[1] Rollo, pp. 63-83.

[2] 65 Phil. 56 (1937).

[3] Rollo, p. 22.

[4] Id. at 98-103.

[5] Id. at 23.

[6] Id. at 24.

[7] Id. at 309, Petitioner's Memorandum.

[8] Rationale of the Proposed Rule on Violence against Women and their Children, 15[th] Salient Feature.

[9] 327 Phil. 1019 (1996).

[10] Id. at 1036-1037.

[11] G.R. No. 175550, September 17, 2008, 565 SCRA 624, 637.

[12] *Matibag v. Benipayo*, 429 Phil. 554, 578 (2002).

[13] G.R. No. 112497, August 4, 1994, 235 SCRA 135, 139-140.

[14] *Presidential Commission on Good Government v. Peña*, 243 Phil. 93, 106 (1988).

[15] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 383-384.

[16] *People v. Vera*, *supra* note 2.

[17] Rollo, p. 237, Private Respondents' Comment.

[18] *Matibag v. Benipayo*, supra note 12 at 579.

[19] *Rollo*, p. 22.

[20] *Id.* at 26.

[21] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[22] *Supra* note 2 at 125-126.

[23] *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 583-584 (2004).

[24] *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010, 618 SCRA 32, citing *BERNAS, THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY*, pp. 139-140 (2009).

[25] *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, supra note 23.

[26] *Id.*

[27] *Id.*

[28] G.R. No. 163583, April 15, 2009, 585 SCRA 36.

[29] *Id.* at 40.

[30] *Id.* at 40-41.

[31] *Supra* note 23 at 597-600.

[32] G.R. Nos. 176951, 177499, and 178056, November 18, 2008, 571 SCRA 263.

[33] *Supra* note 24.

[34] *Id.* at 93-95.

[35] 1987 Constitution, Article II, Section 14.

[36] *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, supra note 23 at 586, citing Justice Marshall's dissent in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

[37] 1987 Constitution, Article II.

[38] Universal Declaration of Human Rights.

[39] 1987 Constitution, Article II.

[40] General Recommendation No. 19, CEDAW/par. 1 (1992).

[41] CEDAW, Article 2.

[42] <http://pcw.gov.ph/international-commitments/cedaw> last visited on April 9, 2013.

- [43] CEDAW, Introduction.
- [44] Id.
- [45] General Recommendation No. 25, CEDAW/par. 4 (2004).
- [46] Id., par. 5 (2004).
- [47] <http://pcw.gov.ph/international-commitments> last visited on April 9, 2013.
- [48] <http://pcw.gov.ph/focus-areas/violence-against-women> last visited on April 10, 2013.
- [49] Historical Perspectives on Violence Against Women. November 2002.
- [50] Vivian C. Fox, Ph.D. Journal of International Women's Studies Vol. 4 #1, Historical Perspectives on Violence Against Women. November 2002. p. 20.
- [51] Id. at 15.
- [52] Id. at 19.
- [53] <http://pcw.gov.ph/focus-areas/violence-against-women> last visited on April 10, 2013.
- [54] As Submitted by the Philippine Commission on Women.
- [55] <http://pcw.gov.ph/statistics/201210/statistics-violence-against-filipino-women>, last visited on March 18, 2013.
- [56] Republic Act No. 3815, The Revised Penal Code; Republic Act No. 7877, The Anti-Sexual Harassment Act of 1995; Republic Act No. 8353, The Anti-Rape Law of 1997; Republic Act No. 8505, The Rape Victims Assistance Act of 1998; Republic Act No. 6955; Republic Act No. 9208, The Anti-Trafficking in Persons Act of 2003; Republic Act No. 8369: The Family Courts Act of 1997; and Republic Act No. 9710, The Magna Carta of Women of 2009.
- [57] Republic Act No. 9262, Section 3.
- [58] Id., Section 25.
- [59] General Recommendation No. 25, CEDAW/pars. 8-9 (2004).
- [60] Section 8.
- [61] China Banking Corporation v. Lozada, G.R. No. 164919, July 4, 2008, 557 SCRA 177, 193.
- [62] Pollution Adjudication Board v. Court of Appeals, G.R. No. 93891, March 11, 1991, 195 SCRA 112, 123.
- [63] 379 Phil. 165, 203-204 (2000).
- [64] A.M. No. 04-10-11-SC, Section 15(a).
- [65] Id.
- [66] Id., Section 15(b).
- [67] Id., Section 15(c).
- [68] Id., Section 4(p).
- [69] Section 389(b)(1), Chapter III, Title I, Book III of Republic Act No. 7160, otherwise known as The Local

Government Code of 1991.

[70] Section 389(b)(3), Chapter III, Title I, Book III of The Local Government Code of 1991.

[71] *Lovina v. Moreno*, 118 Phil. 1401, 1405 (1963).

[72] *Id.* at 1406.

[73] *Miller v. Mardo*, 112 Phil. 792, 802 (1961).

[74] Section 14(g).

[75] Section 14(d).

CONCURRING OPINION

BRION, J.:.

I concur with the ponencia's conclusion that Republic Act (R.A.) No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore and for Other Purposes) is constitutional and does not violate the equal protection clause. As traditionally viewed, the constitutional provision of equal protection simply requires that similarly situated persons be treated in the same way. It does not connote identity of rights among individuals, nor does it require that every person is treated identically in all circumstances. It acts as a safeguard to ensure that State-drawn distinctions among persons are based on reasonable classifications and made pursuant to a proper governmental purpose. In short, statutory classifications are not unconstitutional when shown to be reasonable and made pursuant to a legitimate government objective.

In my view, Congress has presented a reasonable classification that focuses on women and children based on protective provisions that the Constitution itself provides. Section 11, Article II of the Constitution declares it a state policy to value the dignity of every human person and guarantees full respect for human rights. Further, under Section 14, Article II of the Constitution, the State recognizes the role of women in nation-building and ensures fundamental equality before the law of women and men. These policies are given purposeful meaning under Article XV of the Constitution on family, which states:

Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Section 3. The State shall defend:

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development[.]

From the terms of the law, I find it plain that Congress enacted R.A. No. 9262 as a measure intended to strengthen the family. Congress found that domestic and other forms of violence against women and children contribute to the failure to unify and strengthen family ties, thereby impeding the State's mandate to actively promote the

family's total development. Congress also found, as a reality, that women and children are more susceptible to domestic and other forms of violence due to, among others, the pervasive bias and prejudice against women and the stereotyping of roles within the family environment that traditionally exist in Philippine society. On this basis, Congress found it necessary to recognize the substantial distinction within the family between men, on the one hand, and women and children, on the other hand. This recognition, incidentally, is not the first to be made in the laws as our law on persons and family under the Civil Code also recognize, in various ways, the distinctions between men and women in the context of the family.[1]

To be sure, Congress has not been alone in addressing violence committed against women and children as this move is "in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party." [2] The only question perhaps is whether the considerations made in these international instruments have reason or basis for recognition and active application in the Philippines.

I believe that the policy consideration Congress made in this regard is not without basis in history and in contemporary Philippine society so that Congress was acting well within its prerogative when it enacted R.A. No. 9262 "to protect the family and its members particularly women and children, from violence and threats to their personal safety and security." [3]

I consider, too, the statutory classification under R.A. No. 9262 to be valid, and that the lowest level of scrutiny of review should be applied in determining if the law has established a valid classification germane to the Constitution's objective to protect the family by protecting its women and children members. In my view, no need exists to further test the law's validity from the perspective of an expanded equal protection based on social justice. The Constitution itself has made special mention of women and their role in society (Article II) and the assistance and protection that must be given to children irrespective of sex. It appears highly inconsistent to me under this situation if the Court would impose a strict level of scrutiny on government – the primary implementor of constitutional policies – and lay on it the burden of establishing the validity of an Act directly addressing violence against women and children.

My serious reservation on the use of an expanded equal protection clause and in applying a strict scrutiny standard is, among others, based on lack of necessity; we do not need these measures when we can fully examine R.A. No. 9262's constitutionality using the reasonableness test. The family is a unit, in fact a very basic one, and it cannot operate on an uneven standard where measures beyond what is necessary are extended to women and children as against the man – the head of the family and the family provider. The use of an expanded equal protection clause only stresses the concept of an uneven equality that cannot long stand in a unit living at close quarters in a situation of mutual dependency on one another. The reasonableness test, on the other hand, has been consistently applied to allow the courts to uphold State action as long as the action is found to be germane to the purpose of the law, in this case to support the unity and development of the family. If we are to deviate from or to modify this established standard of scrutiny, we must do so carefully and for strong justifiable reasons.

If we are to use a strict level of scrutiny of government action, we must be aware of the risks that this system of review may open. A very real risk is to open the possibility that our social legislations will always be subject to heightened scrutiny. Are we sure of what this approach entails for the government and for our society in the long run? How will this approach affect the social legislation that our society, particularly the most vulnerable members, need? What other effects will a system of review – that regards governmental action as illegal unless the government can actively justify the classifications it has made in the course of pursuing its actions – have? These are the questions that, in the long run, we have to contend with, and I hate to provide an answer through a

case that is not, on its face and even in deeper reality, representative of the questions we are asking or need to ask.

The cases of *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*[4] and *Serrano v. Gallant Maritime Services, Inc.*[5] demonstrate the Court's application of a heightened sense of scrutiny on social legislations. In *Central Bank* and *Serrano*, we held that classifications in the law that result in prejudice to persons accorded special protection by the Constitution require a stricter judicial scrutiny.[6] In both cases, the question may well be asked: was there an absolute necessity for a strict scrutiny approach when, as in *Serrano*, the same result emerges when using the lowest level of scrutiny? In short, I ask if a strict scrutiny is needed under the circumstances of the present case as the Concurring Opinion of J.

Roberto Abad suggests.

Not to be forgotten or glossed over in answering this question is the need to consider what a strict scrutiny requires, as well as the consequences of an expanded concept of equal protection clause and the accompanying use of a strict scrutiny standard. Among others, this approach affects the application of constitutional principles that we vigilantly adhere to in this jurisdiction.

I outline below what a strict scrutiny approach entails.

First, the use of strict scrutiny only applies when the challenged law or clause results in a "suspect classification";

Second, the use of a strict scrutiny standard of review creates a reverse onus: the ordinary presumption of constitutionality is reversed and the government carries the burden of proving that the challenged law or clause is constitutional;

And third, the reverse onus in a strict scrutiny standard of review directly strikes, in the most glaring manner, at the regularity of the performance of functions of a co-equal branch of government.

When the court uses a strict standard for review to evaluate the constitutionality of a law, it proceeds from the premise that the law established a "suspect classification." A suspect classification is one where distinctions are made based on the most invidious bases for classification that violate the most basic human rights, i.e., on the basis of race, national origin, alien status, religious affiliation and, to a certain extent, sex and sexual orientation.[7] With a suspect classification, the most stringent scrutiny of the classification is applied: the ordinary presumption of constitutionality is reversed and the government carries the burden of proving the statute's constitutionality. This approach is unlike the lowest level of scrutiny (reasonableness test) that the Court has applied in the past where the classification is scrutinized and constitutionally upheld if found to be germane to the purpose of the law. Under a reasonableness test, there is a presumption of constitutionality and that the laws enacted by Congress are presumed to fall within its constitutional powers.

To pass strict scrutiny, the government must actively show that the classification established in the law is justified by a compelling governmental interest and the means chosen by the State to effectuate its purpose must be narrowly tailored to the achievement of that goal.[8] In the context of the present case, is the resulting classification in the present law so outstandingly harmful to men in general so that a strict scrutiny is called for?

I do not really see any indication that Congress actually intended to classify women and children as a group against men, under the terms of R.A. No. 9262. Rather than a clear intent at classification, the overriding intent of the law is indisputably to harmonize family relations and protect the family as a basic social institution.[9] After sifting through the comprehensive information gathered, Congress found that domestic and

other forms of violence against women and children impedes the harmony of the family and the personal growth and development of family members. In the process, Congress found that these types of violence must pointedly

be addressed as they are more commonly experienced by women and children due to the unequal power relations of men and women in our society; Congress had removed these types of violence as they are impediments that block the harmonious development that it envisions for the family, of which men are important component members.

Even granting that a classification resulted in the law, I do not consider the classification of women and children to be within the “suspect classification” that jurisprudence has established. As I mentioned earlier, suspect classifications are distinctions based on the most invidious bases for classification that violate the most basic human rights. Some criteria used in determining suspect classifications are: (1) the group possesses an immutable and/or highly visible trait;^[10] and (2) they are powerless to protect themselves via the political process.^[11] The group is a “discrete” and “insular” minority.^[12] Women and children, to my mind, simply do not fall within these criteria.

In my view, a suspect classification and the accompanying strict scrutiny should depend on the circumstances of the case, on the impact of the illegal differential treatment on the group involved, on the needed protection and the impact of recognizing a suspect classification on future classification.^[13] A suspect classification label cannot solely and automatically be triggered by the circumstance that women and children are accorded special protection by the Constitution. In fact, there is no place for a strict level of scrutiny when the Constitution itself has recognized the need for special protection; where such recognition has been made, congressional action should carry the presumption of validity.

Similarly, a suspect classification and the accompanying strict scrutiny standard cannot be solely based on the circumstance that the law has the effect of being “gender-specific.” I believe that the classification in the law was not immediately brought on by considerations of gender or sex; it was simply a reality as unavoidable as the reality that in Philippine society, a marriage is composed of a man, a woman and their children. An obvious reason, of course, why the classification did not solely depend on gender is because the law also covers children, without regard to their sex or their sexual orientation.

Congress was sensitive to these realities and had to address the problem as it existed in order to pinpoint and remove the obstacles that lay along the way. With this appreciation of reality, Congress had no recourse but to identify domestic and other forms of violence committed on women and their children as among the obstacles that intrude on the development, peace and harmony of the family. From this perspective, the objective of the law – the productive development of the family as a whole and the Congress’ view of what may be done in the area of violence – stand out.

Thus, with the objective of promoting solidarity and the development of the family, R.A. No. 9262 provides the legal redress for domestic violence that particularly affects women and their children. Significantly, the law does not deny, restrict or curtail civil and human rights of other persons falling outside the classification, particularly of the men members of the family who can avail of remedies provided by other laws to ensure the protection of their own rights and interests. Consequently, the resulting classification under R.A. No. 9262 is not wholly intended and does not work an injustice by removing remedies that are available to men in violence committed against them. The law furthermore does not target men against women and children and is there simply to achieve a legitimate constitutional objective, and it does not achieve this by a particularly harmful classification that can be labeled “suspect” in the sense already established by jurisprudence. Under the circumstances, the use and application of strict scrutiny review, or even the use of an expanded equal protection perspective, strike me as both unnecessary and disproportionate.

As my final point, the level of review that the Court chooses to apply is crucial as it determines both the process

and the outcome of a given case. The reverse onus that a strict scrutiny brings ignores the most basic presumption of constitutionality that the courts consistently adhere to when resolving issues of constitutionality. It also infringes on the regularity of performance of functions of co-equal branches of government. As the Court pronounced *Drilon v. Lim*:^[14]

In the exercise of this jurisdiction, lower courts are advised to act with the utmost circumspection, bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers. As the questioned act is usually the handiwork of the legislative or the executive departments, or both, it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better detennined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.

It is also emphasized that every court, including this Court, is charged with the duty of a purposeful hesitation before declaring a law unconstitutional, on the theory that the measure was first carefully studied by the executive and the legislative departments and determined by them to be in accordance with the fundamental law before it was finally approved. To doubt is to sustain. The presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

Inter-government harmony and courtesy demand that we reserve the strict scrutiny standard of review to the worst possible cases of unacceptable classification, abject forms of discrimination, and the worst violations of the Constitution.^[15] R.A. No. 9262 does not present such a case.

In these lights, I conclude that a valid classification exists to justify whatever differential treatment may exist in the law. I vote to deny the petition and uphold the constitutionality of R.A. No. 9262 using the lowest level of scrutiny under the reasonableness test.

[1] Examples of this distinction are found in the following provisions of the Family Code, as amended:

On the Ownership, Administrative, Enjoyment and Disposition of the Community Property:

“Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.”

On the Liquidation of the Absolute Community Assets and Liabilities:

“Art. 102. Upon dissolution of the absolute community regime, the following procedure shall apply:

x x x x

(6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there in no such majority, the court shall decide, taking into consideration the best interests of said children.” (emphases ours)

On the Administration of the Conjugal Partnership Property:

“Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper

remedy, which must be availed of within five years from the date of the contract implementing such decision.” (emphasis ours)

On the Liquidation of the Conjugal Partnership Assets and Liabilities:

“Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

x x x x

(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.” (emphases ours)

On Parental Authority:

“Art. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

x x x x

Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.” (emphasis ours)

On the Effect of Parental Authority Upon the Persons of the Children:

“Art. 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:

- (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
- (2) To give them love and affection, advice and counsel, companionship and understanding;
- (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self- discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
- (4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
- (5) To represent them in all matters affecting their interests; (6) To demand from them respect and obedience;
- (7) To impose discipline on them as may be required under the circumstances; and
- (8) To perform such other duties as are imposed by law upon parents and guardians. On the Effect of Parental Authority Upon the Property of the Children:

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.”

[2] R.A. No. 9262, Section 2.

[3] Ibid; italics ours.

[4] 487 Phil. 531 (2004).

[5] G.R. No. 167614, March 24, 2009, 582 SCRA 254.

[6] See note 4. In *Central Bank*, the classification was based on salary grade or officer-employee status. In the words of the decision, “It is akin to a distinction based on economic class and status, with higher grades as recipients of a benefit specifically withheld from the lower grades” (p. 391).

[7] See note 5, at 321. Citing *City of Cleburn, Texas v. Cleburne Living Center*, 413 U.S. 432 (1985); *Loving v. Commonwealth of Virginia*, 388 U.S. 1 (1967).

[8] *Grutter v. Bollinger*, 539 U.S. 306 (2003). See *Pamore v. Sidoti*, 466 U.S. 429,432 (1984); *Loving v. Commonwealth of Virginia*, supra note 7; and *Graham v. Richardson*, 403 U.S. 365, 375 (1971).

[9] Congressional Records, Vol. III, No. 51, January 14, 2004, pp. 141-147. See p. 25 of the ponencia.

[10] 477 U.S. 635 (1986).

[11] *United States v. Carolene Products Company*, 304 U.S. 144 (1938).

[12] *Frontiero v. Richardson*, 411 U.S. 677 (1973).

[13] Concurring Opinion in *Serrano v. Gallant Maritime Services, Inc.*, supra note 5, at 322.

[14] G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140; citation omitted.

[15] Concurring Opinion in *Serrano v. Gallant Maritime Services, Inc.*, supra note 5, at 322.

SEPARATE CONCURRING OPINION

ABAD, J.:

Republic Act 9262 (R.A. 9262) or the Anti-Violence against Women and their Children Act is a historic step in the Filipino women's long struggle to be freed from a long-held belief that men are entitled, when displeased or minded, to hit their wives or partners and their children. This law institutionalizes prompt community response to this violent behavior through barangay officials who can command the man to immediately desist from harming his home partner and their children. It also establishes domestic violence as a crime, not only against its victims but against society as well. No longer is domestic violence lightly dismissed as a case of marital dispute that law enforcers ought not to get into.[1]

Almost eight years after the passage of this landmark legislation, petitioner Jesus C. Garcia, a husband charged with the offense, claims before the Court that R.A. 9262 violates his constitutional rights to due process and equal protection and that it constitutes an undue delegation of judicial power to barangay officials with respect to the Temporary Protection Order (TPO) that the latter could issue against him for his alleged maltreatment of his wife and children.

This separate concurring opinion will address the issue of equal protection since it presents the more serious challenge to the constitutionality of the law. Men and women are supposed to be equal yet this particular law provides immediate relief to complaining women and harsh consequences to their men even before the matter

reaches the courtroom, a relief not available to the latter. The law, Garcia says, violates his right to equal protection because it is gender-specific, favoring only women when men could also be victims of domestic violence.

Justice Estela Perlas-Bernabe ran the issue of equal protection in her ponencia through the litmus test for holding a law valid even when it affects only a particular class, a test that the Court laid down in *People v. Vera*.^[2] A legislative classification, according to *Vera*, is reasonable as long as: 1) it rests on substantial distinctions which make real differences; 2) it is germane to the purpose of the law; 3) it is not limited to existing conditions but applies as well to future identical conditions; and 4) it applies equally to all members of the same class.^[3] I dare not improve on Justice Bernabe's persuasive reasoning and conclusions.

I agree with her but would like to hinge my separate concurring opinion on the concept of an Expanded Equal Protection Clause that former Chief Justice Reynato S. Puno espouses in his book: *Equal Dignity and Respect: The Substance of Equal Protection and Social Justice*.

Chief Justice Puno's thesis is that the right to equal protection casts another shadow when the issue raised under it involves persons protected by the social justice provision of the Constitution, specifically, Section 1, Article XIII. The equal protection clause can no longer be interpreted as only a guarantee of formal equality^[4] but of substantive equality. "It ought to be construed," said the Chief Justice, "in consonance with social justice as 'the heart' particularly of the 1987 Constitution—a transformative covenant in which the Filipino people agreed to enshrine asymmetrical equality to uplift disadvantaged groups and build a genuinely egalitarian democracy."^[5]

This means that the weak, including women in relation to men, can be treated with a measure of bias that they may cease to be weak.

Chief Justice Puno goes on: "The Expanded Equal Protection Clause, anchored on the human rights rationale, is designed as a weapon against the indignity of discrimination so that in the patently unequal Philippine society, each person may be restored to his or her rightful position as a person with equal moral status."^[6] Specifically, the expanded equal protection clause should be understood as meant to "reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good."^[7] Borrowing the language of *Law v. Canada*^[8] case and adding his own thoughts, the Chief Justice said:

The purpose of the Expanded Equal Protection Clause is to protect and enhance the right to dignity by: 1) preventing the imposition, perpetuation and aggravation "of disadvantage, stereotyping, or political [economic, cultural,] or social prejudice;" and 2) promo[ting a Philippine] society in which all persons enjoy equal recognition at law as human beings.^[9]

Chief Justice Puno points out that the equal protection clause must be interpreted in connection with the social justice provisions of the Constitution "so as not to frustrate or water down the constitutional commitment to promote substantive equality and build the genuinely "just and humane society" that Filipinos aspire for, as stated in the Preamble of the 1987 Constitution."

But the expanded concept of equal protection, said Chief Justice Puno, only applies to the government's ameliorative action or discriminatory actions intended to improve the lot of the disadvantaged. Laws challenged for invalid classification because of being unreasonable or arbitrary, but not discriminatory, are outside the scope of the expanded equal protection clause. Such cases fall under the traditional equal protection clause which protects the right to formal equality and determines the validity of classifications through the well established reasonableness test.^[10]

Here, petitioner Garcia argues that R.A. 9262 violates the guarantee of equal protection because the remedies

against personal violence that it provides may be invoked only by the wives or women partners but not by the husbands or male partners even if the latter could possibly be victims of violence by their women partners. Women, he claims, are also capable of committing physical, psychological, emotional, and even sexual abuse against their husbands and children.

Garcia further assails the title of the law—“An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes”—as pejorative and sex-discriminatory. R.A. 9262 is an “anti-male,” “husband- bashing,” and “hate-men” law. It establishes a special category of domestic violence offenses which is akin to legislating hate crimes and imposes penalties based solely on gender; it singles out the husband or father as the culprit, a clear form of “class legislation.”

But the Constitution requires the State to “ensure the fundamental equality before the law of men and women.” Further, it commands Congress to “give highest priority to the enactment of measures that protect and enhance the rights of all the people to human dignity x x x.” and this includes women. In his speech during the joint launching on October 27, 2004 of R.A. 9262 and its Implementing Rules, Chief Justice Puno recalled the historical and social context of gender-based violence that underpin its enactment. Thus:

History reveals that most societies sanctioned the use of violence against women. The patriarch of a family was accorded the right to use force on members of the family under his control. I quote the early studies:

Traditions subordinating women have a long history rooted in patriarchy—the institutional rule of men. Women were seen in virtually all societies to be naturally inferior both physically and intellectually. In ancient western societies, women whether slave, concubine or wife, were under the authority of men. In law, they were treated as property.

The Roman concept of patria potestas allowed the husband to beat, or even kill, his wife if she endangered his property right over her. Judaism, Christianity and other religions oriented towards the patriarchal family strengthened the male dominated structure of society.

English feudal law reinforced the tradition of male control over women. Even the eminent Blackstone has been quoted in his commentaries as saying husband and wife were one and that one was the husband. However, in the late 1500s and through the entire 1600s, English common law began to limit the right of husbands to chastise their wives. Thus, common law developed the rule of thumb, which allowed husbands to beat their wives with a rod or stick no thicker than their thumb.

Article II, Section 14 of the 1987 Constitution states:

The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

Also, Article XIII, Section 1 of the 1987 Constitution further states:

The Congress shall give highest priority to the enactment of measures that protect and enhance the rights 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.

x x x x

The above provisions of the Constitution abundantly authorize Congress or the government to actively undertake ameliorative action that would remedy existing inequalities and inequities experienced by women and children brought about by years of discrimination. The equal protection clause when juxtaposed to this provision provides

a stronger mandate for the government to combat such discrimination. Indeed, these provisions order Congress to “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.”

No doubt, historically, the Philippine tribal and family model hews close to patriarchy, a pattern that is deeply embedded in the society’s subconscious. Consequently, it can be said that in enacting R.A. 9262, Congress has taken an ameliorative action that would address the evil effects of such social model on Filipino women and children and elevate their status as human beings on the same level as the father or the husband.

What remedies does R.A. 9262 especially provide women and children? The law is gender-specific as only they may file the prescribed actions against offenders, whether men or women, with whom the victims are or were in lesbian relationships.[11] The definition includes past or present marital, live-in, sexual or dating relationships.

This law also provides for the remedy of a protection order in a civil action or in a criminal action, aside from the criminal action for its violation. It makes the process of securing a restraining order against perpetrators easier and more immediate by providing for the legal remedy of protection orders from both the courts and barangay officials.

R.A. 9262 aims to put a stop to the cycle of male abuses borne of discrimination against women. It is an ameliorative measure, not a form of “reverse discrimination” against men as Garcia would have it. Ameliorative action “is not, as Hogg remarked, an exception to equality, but an expression and attainment of de facto equality, the genuine and substantive equality which the Filipino people themselves enshrined as a goal of the 1987 Constitution.”[12] Ameliorative measures are necessary as a redistributive mechanism in an unequal society to achieve substantive equality.[13]

In the context of women’s rights, substantive equality has been defined by the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) as equality which requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.

Women’s struggle for equality with men has evolved under three models:

1. Formal equality - women and men are to be regarded and treated as the same. But this model does not take into account biological and socially constructed differences between women and men.[14] It uses male standards and assumes that women have equal access to such standards.[15] By failing to take into account these differences, a formal equality approach may in fact perpetuate discrimination and disadvantage.[16]
2. Protectionist model – this recognizes differences between women and men but considers women’s weakness as the rationale for different treatment.[17] This approach reinforces the inferior status of women and does not address the issue of discrimination of women on account of their gender.[18]
3. Substantive equality model – this assumes that women are “not vulnerable by nature, but suffer from imposed disadvantage” and that “if these imposed disadvantages were eliminated, there was no further need for protection.”[19] Thus, the substantive equality model gives prime importance to women’s contexts, realities, and experiences, and the outcomes or results of acts and measures directed, at or affecting them, with a view to eliminating the disadvantages they experience as women.[20]

Clearly, the substantive equality model inspired R.A. 9262. For one thing, Congress enacted it because of

compelling interest in preventing and addressing the serious problem of violence against women in the context of intimate relationships—recognized all over the world as one of the most insidious forms of gender discrimination.[21] For another, R.A. 9262 is based on the experiences of women who have been victims of domestic violence. The list of acts regarded as forms of violence[22] come from true-to-life stories of women who have suffered abuses from their male partners. Finally, R.A. 9262 seeks women's full participation in society. Hence, the law grants them needed relief to ensure equality, protection, and personal safety, enabling them to enjoy their civil, political, social, and economic rights. The provision on protection orders, for instance, precisely aims to safeguard "the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life." [23]

For the above reasons, I vote to dismiss the petition for lack of merit.

[1] SALIGAN Women's Unit, "'Strengthening Responses to Violence against Women: Overcoming Legal Challenges in the Anti-Violence Against Women and their Children Act" (March 2008), Ateneo Law Journal.

[2] 65 Phil. 56 (1937).

[3] Id. at 126.

[4] It holds that two persons with equal status in at least one normatively relevant respect must be treated equally with regard to this respect.

[5] Chief Justice Reynato S. Puno (ret.), "Equal Dignity and Respect: The Substance of Equal Protection and Social Justice," (2012), p. 546.

[6] Id. at 523.

[7] 1987 Philippine Constitution, Art. XIII, Section 1.

[8] 1 S.C.R. 497 (1999).

[9] Supra note 5, at 512-513.

[10] Id. at 543-544.

[11] Maria Rowena Amelia V. Guanzon, "The Anti-Violence Against Women and Their Children Act of 2004 (Republic Act No. 9262)," 2009.

[12] Supra note 5 at 527.

[13] Id. at 497.

[14] IWRAW Asia Pacific Manual on CEDAW: Building Capacity for Change

[15] Id.

[16] Supra note 11, at 42, citing Fredman, S. and Spencer, S., "Beyond Discrimination: It's Time for Enforceable Duties on Public Bodies to promote Equality of Outcomes", E.H.R.L.R. Issue 6, 601 (2006)"

[17] Supra note 14.

[18] Supra note 11, at 43.

[19] Id. at 43-44, citing Goonesekere.

[20] Id. at 44.

[21] Id. at 45.

[22] SEC. 3. Definition of Terms.- As used in this Act.

(a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. (Emphasis supplied)

[23] REPUBLIC ACT 9262, Sec. 8.

CONCURRING OPINION

LEONEN, J.:

I join the ponencia in denying the challenge to the constitutionality of Republic Act No. 9262 otherwise known as the "Anti-Violence against Women and their Children Act of 2004" at least for this case. I write separately to clarify the basis of my agreement.

The petitioner is not the victim in this case. He does not have legal standing to raise the constitutional issue.

He appears to have inflicted violence against private respondents. Petitioner admitted having an affair with a bank manager. He callously boasted about their sexual relations to the household help. His infidelity emotionally wounded private respondent. Their quarrels left her with bruises and hematoma. Petitioner also unconscionably beat up their daughter, Jo- ann, whom he blamed for squealing on him.

All these drove respondent to despair causing her to attempt suicide on December 17, 2005 by slitting her wrist. Instead of taking her to the hospital, petitioner left the house. He never visited her when she was confined for seven (7) days. He even told his mother-in-law that respondent should just accept his extramarital affair since he is not cohabiting with his paramour and has not sired a child with her.

The private respondent was determined to separate from petitioner. But she was afraid he would take away their children and deprive her of financial support. He warned her that if she pursued legal battle, she would not get a single centavo from him. After she confronted him of his affair, he forbade her to hold office at JBTC Building. This deprived her of access to full information about their businesses.

Thus, the Regional Trial Court found reasonable ground to believe there was imminent danger of violence against respondent and her children and issued a series of Temporary Protection Orders (TPO) ordering petitioner, among other things, to surrender all his firearms including a .9MM caliber firearm and a Walther PPK.

This is the quintessential case where the full effects of Republic Act No. 9262 or the "VAWC" should take effect.

Seen in this light, petitioner's belated challenge to the law is nothing but a cheap attempt to raise cherished fundamental constitutional principles to escape legal responsibility for causing indignities in another human being. There is enough in our legal order to prevent the abuse of legal principles to condone immoral acts.

For us to proceed to rule on Constitutional issues, we have required that: (1) there must be an actual case or

controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[1]

Legal standing in cases that raise constitutional issues is essential. *Locus standi* is defined as "a right of appearance in a court of justice on a given question." [2] The fundamental question is "whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." [3]

In private suits, standing is governed by the "real-parties-in-interest" rule under Section 2, Rule 3 of the 1997 Rules of Civil Procedure in that "every action must be prosecuted or defended in the name of the real party-in-interest." [4] "Interest" means material interest or an interest in issue to be affected by the judgment of the case, as distinguished from mere curiosity about the question involved. [5]

Thus, there must be a present substantial interest as distinguished from a mere inchoate expectancy or a future, contingent, subordinate, or consequential interest. [6] Standing is based on one's own right to the relief sought.

The doctrine of *locus standi* in cases raising constitutional issues frames the power of judicial review that we wield. This is the power "to settle actual controversies involving rights which are legally demandable and enforceable" as well as "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess jurisdiction on the part of any branch or instrumentality of the Government." [7]

The presence of an "actual case" prevents this Court from providing advisory opinions or using its immense power of judicial review absent the presence of a party with real and substantial interests to clarify the issues based upon his/her experience and standpoint. It prevents this Court from speculating and rendering rulings on the basis of pure theory. Our doctrines on justiciability are self-imposed applications of a fundamental view that we accord a presumption of constitutionality to acts done by the other constitutional organs and departments of government. Generally, we do not strike down acts done by co-equal departments until their repugnancy to the Constitution can be shown clearly and materially.

I am aware of our precedents where this Court has waived questions relating to the justiciability of the constitutional issues raised when they have "transcendental importance" to the public. [8] In my view, this accommodates our power to promulgate guidance "concerning the protection and enforcement of constitutional rights." [9] We choose to rule squarely on the constitutional issues in a petition wanting all or some of the technical requisites to meet our general doctrines on justiciability but raising clear conditions showing imminent threat to fundamental rights. The imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. In a sense, our exceptional doctrine relating to constitutional issues of "transcendental importance" prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.

That necessity is wanting in this case.

The extraordinary discretion to move beyond the well established doctrines on justiciability must be carefully exercised in cases involving social legislation that seeks to rectify historical and cultural injustices present in our communities and societies. As carefully pointed out in the erudite ponencia of Justice Perlas-Bernabe, Republic Act No. 9262 was borne out of the struggles of countless women who suffered indignities. It cannot be undone by a petition filed by someone who cannot, by any stretch of the most fertile imagination, be considered the victim.

Nevertheless, in a future case more deserving of our attention, we should be open to realities which may challenge

the dominant conception that violence in intimate relationships only happens to women and children. This may be predominantly true, but even those in marginal cases deserve fundamental constitutional and statutory protection. We should be careful that in correcting historical and cultural injustices, we may typecast all women as victims, stereotype all men as tormentors or make invisible the possibility that in some intimate relationships, men may also want to seek succor against acts defined in Section 5 of Republic Act No. 9262[10] in an expeditious manner.

Husband abuse may be an underreported form of family violence.[11] According to a Quezon City Police District Crime Laboratory chief, in his 10 years as medico-legal officer, he had only received three cases of men complaining of spousal abuse.[12]

Another recent study found the same underreporting but explored the experiences of abuse in intimate relationships of six Filipino husbands.[13]

Their experiences were described as follows:

All the participants acknowledged that they experienced abuse, but the forms differed from one husband to another. Four out of the six participants admitted that their spouses' abusive behavior would initially start with verbal attacks and put-downs then would shift to physical abuse as their verbal tussle intensified. Most of the abuses cited by the participants happened in the confines of their home, but could also happen in public places.

The constant threats, in the long term, affected the emotional and psychological well being of the participants. Four of the husbands felt that their spouses were capable of carrying out their threats. The frequent and long fights could be emotionally draining. Throughout the duration of marriage, EC suffered emotionally from the "weird" marital set-up. For TG, emotional abuse was associated with shattered trust.

The physical abuse for some participants became life-threatening to the extent that the injury incurred needed medical attention. Their spouses could use weapons against them. Four participants described the incidents that led to their injuries. Coming home one night, RE saw "this mono block chair flying...hit me...right on the nose." DL narrated "...pumunta ako ng doctor on my own para ipalinis yung sugat ko." According to HM, his wound from a knife attack was wide and deep and needed "...some stitches." JL had to contend with the long scratches in his chest and back. RE almost lost an eye when he was hit with a straight punch of the spouse. JL, RE, and DL would lie to colleagues to avoid being laughed at. DL had to be absent from his work after being hit by a flying de lata (canned good) thrown at him during a fight.

Emotional abuse co-existed with verbal and/or physical abuse. The participants who were recipients of physical abuse were also emotionally abused when they became susceptible to stress and threats of the abuser. JL felt guilty when the spouse carried out her threat of killing herself by intentionally taking an overdose of pills in the middle of an intense disagreement.

Emotional abuse could occur without physical abuse and yet its effects were still devastating. For instance, EC and TG were devastated by the lies and deceit of their spouses. The spouse's threats of suicide (JL), abandonment (RE), or taking their children away after a fight (DL) were as distressing as the other forms of abuse experienced by the participants.[14]

Social and cultural expectations on masculinity and male dominance urge men to keep quiet about being a victim, adding to the unique experience of male victims of domestic abuse.[15] This leads to latent depression among boys and men.[16] In a sense, patriarchy while privileging men also victimizes them.

It is true that numerous literature relate violence against women with the historically unequal power relations between men and women, leading to domination over and discrimination against the latter.[17] Sociologists cite the 18th-century English legal tradition on the "rule of thumb" giving husbands the right to beat their wives with a stick no thicker than a thumb.[18] In America, women were regarded as property until the latter half of the 19th

century with marital violence considered a husband's privilege and men, as of right, exercised physical domination over women.[19]

The perspective portraying women as victims with a heritage of victimization[20] results in the unintended consequence of permanently perceiving all women as weak. This has not always been accepted by many other strands in the Feminist Movement.

As early as the 70s, the nationalist movement raised questions on the wisdom of a women's movement and its possible divisive effects, as "class problems deserve unified and concentrated attention [while] the women question is vague, abstract, and does not have material base."[21]

In the early 80s, self-identifying feminist groups were formed.[22] The "emancipation theory" posits that female crime has increased and has become more masculine in character as a result of the women's liberation movement.[23]

Feminism also has its variants among Muslims. In 2009, Musawah ("equality" in Arabic) was launched as a global movement for equity and justice in the Muslim family. It brought together activists, scholars, legal practitioners, policy makers, and grassroots women and men from all over the world.[24] Their belief is that there cannot be justice without equality, and its holistic framework integrates Islamic teachings, universal human rights, national constitutional guarantees of equality, and the lived realities of women and men.[25]

There is now more space to believe that portraying only women as victims will not always promote gender equality before the law. It sometimes aggravates the gap by conceding that women have always been dominated by men. In doing so, it renders empowered women invisible; or, in some cases, that men as human beings can also become victims.

In this light, it may be said that violence in the context of intimate relationships should not be seen and encrusted as a gender issue; rather, it is a power issue.[26] Thus, when laws are not gender-neutral, male victims of domestic violence may also suffer from double victimization first by their abusers and second by the judicial system.[27] Incidentally, focusing on women as the victims entrenches some level of heteronormativity.[28] It is blind to the possibility that, whatever moral positions are taken by those who are dominant, in reality intimate relationships can also happen between men.[29]

I accept that for purposes of advocacy and for a given historical period, it may be important to highlight abuse of women qua women.[30] This strategy was useful in the passing of Republic Act No. 9262. It was a strategy that assured that the problem of battered women and children in the context of various intimate relationships becomes publicly visible. However, unlike advocacy, laws have the tendency to be resilient and permanent. Its existence may transcend historical periods that dictate effective advocacy. Laws also have a constitutive function - the tendency to create false consciousness when the labels and categories it mandates succeed in reducing past evils but turn a blind eye to other issues.

For instance, one of the first cases that laid down the requisites for determining whether there was a violation of the equal protection of the law clause of the Constitution was the 1939 case of *People v. Cayat*.^[31] It laid down the requirements of reasonable classification which requires that it (a) must rest on substantial distinctions, (b) must be germane to the purposes of the law, (c) must not be limited to existing conditions only, and (d) must apply equally to all members of the same class.^[32] Even as early as 1919, the Court in *Rubi v. Provincial Board of Mindoro*^[33] recognized the concept of reasonable classification holding that "[t]he pledge that no person shall be denied the equal protection of the laws is not infringed by a statute which is applicable to all of a class. The classification must have a reasonable basis and cannot be purely arbitrary in nature."^[34]

Yet, it is in these two cases that the Court concluded the following:

As authority of a judicial nature is the decision of the Supreme Court in the case of *United States vs. Tubban [Kalinga]* ([1915], 29, Phil., 434). The question here arose as to the effect of a tribal marriage in connection with article 423 of the Penal Code concerning the husband who surprises his wife in the act of adultery. In discussing the point, the court makes use of the following language:

x x x we are not advised of any provision of law which recognizes as legal a tribal marriage of so-called non-Christians or members of uncivilized tribes, celebrated within that province without compliance with the requisites prescribed by General Orders No. 68 x x x. We hold also that the fact that the accused is shown to be a member of an uncivilized tribe, of a low order of intelligence, uncultured and uneducated, should be taken into consideration as a second marked extenuating circumstance...[35] (Emphasis supplied)

The description of the label and the stereotype of “non-Christian tribe” would later on be corrected by the Constitution,[36] law,[37] and jurisprudence.[38]

The description of the label and the stereotype that only women can be considered victims may also evolve in the same way. We should hope that the situation of patriarchy will not be permanent. Better cultural structures more affirming of human dignity should evolve.[39]

In a future case, the fact that there may be battered men should not cause the nullification of protections given to women and children.

The Constitution states that: “[t]he State values the dignity of every human person and guarantees full respect for human rights.”[40] The guarantee of full respect should not mean that protections already given to those who suffer historical or cultural prejudices should be automatically rescinded if only the scope of the law is found wanting.

Our Constitution also mandates that the State “shall ensure the fundamental equality before the law of women and men.”[41] This is similar to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[42] which requires that the Philippines as state party take all appropriate measures “[to] modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”[43] The use of affirmative language should imply that in the proper suit, a declaration of unconstitutionality on the ground of the equal protection should not automatically mean that the entire social legislation that provides effective and efficient protection of women be set aside.

We have declared that “[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is x x x as inoperative as though it had never been passed.”[44] However, the seemingly all-inclusive statement of absolute retroactive invalidity may not always be justified.[45] One established exception is the doctrine of operative fact.

The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.

The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.[46]

The possibility that the constitutionality of Republic Act No. 9262 may be challenged by male victims of abuse in intimate relationships ventures to carve another exception if this court is to ensure the guarantee of . fundamental

equality before the law of women and men [47] as well as value the dignity of every human person.[48] Applying the general rule or the existing doctrine of operative facts would mean removing the protection afforded to women. It will thus contradict the very reason it is being assailed and result to an even worse state of laws where none is protected from intimate violence.

But again, it is not in this case that we consider these possibilities.

By concurring with these statements I express a hope: that the normative constitutional requirements of human dignity and fundamental equality can become descriptive reality. The socially constructed distinctions between women and men that have afflicted us and spawned discrimination and violence should be eradicated sooner. Power and intimacy should not co-exist.

The intimate spaces created by our human relationships are our safe havens from the helter skelter of this world. It is in that space where we grow in the safety of the special other who we hope will be there for our entire lifetime. If that is not possible, then for such time as will be sufficient to create cherished memories enough to last for eternity.

I concur in the ponencia. Against abominable acts, let this law take its full course.

[1] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936), *People v. Vera*, 65 Phil. 56 (1937). See also *Mariano Jr. v. Commission on Elections*, 312 Phil. 259, 270 (1995); *Funa v. Executive Secretary Ermita*, G.R. No. 184740, February 11, 2010, 612 SCRA 308, 317.

[2] *David v. Macapagal-Arroyo*, 522 Phil. 705, 755 (2006) citing *Black's LAW DICTIONARY* 941 (Sixth Edition, 1991).

[3] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 170.

[4] *Baltazar v. Ombudsman*, 539 Phil. 131, 139 (2006).

[5] *Goco, et al. v. Court of Appeals*, G.R. No. 157449, April 6, 2010, 617 SCRA 397, 405. See also *IBP v. Zamora*, 392 Phil. 618, 633 (2000).

[6] *Galicto v. Aquino III*, *supra*.

[7] CONSTITUTION, Art. VIII, Sec. 1, par. (2).

[8] *Kilosbayan, Incorporated v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 139. See also *Francisco v. House of Representatives*, 460 Phil. 830, 899 (2003), *Funa v. Villar*, G.R. No. 192791, April 24, 2012, 670 SCRA 579, 595.

[9] CONSTITUTION, Art. VIII, Sec. 5, par. (5) relates to the power of the Court to promulgate rules concerning the protection and enforcement of constitutional rights. It was introduced only in the 1987 Constitution borne of historical experiences where judicial succor was wanting.

[10] Section 5. Acts of Violence Against Women and Their Children.- The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm; (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

- (1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
- (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
- (3) Depriving or threatening to deprive the woman or her child of a legal right;
- (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

- (1) Stalking or following the woman or her child in public or private places;
- (2) Peering in the window or lingering outside the residence of the woman or her child;
- (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
- (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
- (5) Engaging in any form of harassment or violence

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.

[11] T. Lewin, Battered Men Sounding Equal-Rights Battle Cry, THE NEW YORK TIMES NATIONAL (April 20, 1992) (visited May 27, 2013). See also C. M. RENZETTI AND D. J. CURRAN, WOMEN, MEN AND SOCIETY 164 (Second Edition, 1992) citing Steinmetz, 1978.

[12] C. Delfin, Ever Heard of Battered Husbands? GMA NEWS ONLINE (February 13, 2008) (visited May 27, 2013). See also ATTY. A. ORDOÑEZ SISON, ABUSED AND THE BATTERED MAN (2009).

[13] J. J. Jurisprudencia, Coming out of the Shadows: Husbands Speak About Their Experience of Abuse in Intimate Relationships, 40 PHILIPPINE JOURNAL OF PSYCHOLOGY NO. 2 (2007). In the study, JL was a teacher in one of the schools in Metro Manila. RE was a university teacher. HM is a medical doctor. DL was a Physics and Engineering graduate. EC was a teacher. TG finished his MBA as well as his Bachelor of Laws at a reputable institution but did not take the bar.

[14] Id. at 41-42.

[15] K. F. Hogan, J. R. Hegarty, T. Ward, and L. J. Dodd, Counsellors' Experiences of Working with Male

Victims of Female-Perpetrated Domestic Abuse, COUNSELLING AND PSYCHOTHERAPY RESEARCH (2011).

[16] See S. V. Cochran and F. E. Rabinowitz, Men and Depression: Clinical and Empirical Perspectives (2000). (visited March 7, 2013).

Early workers in the field including Pleck and Sawyer (1974), Farrell (1975), Fasteau (1974) and Goldberg (1976) took up the challenge to traditional masculine values that feminists had made and began to examine the negative and oppressive aspects of traditionally constructed gender roles. These efforts included an examination of the psychologically restrictive nature of most of the cultural conditioning little boys and men experience. Pleck (1981), in his seminal critique of male gender identity ideology, introduced the concept of male gender role strain and conflict.

See also J. H. Pleck, The Gender Role Strain: An Update and S. J. Bergman, Men's Psychological Development: A Relational Perspective, in R. F. LEVANT and W. S. POLLACK, A NEW PSYCHOLOGY OF MEN 11-32 and 68-90 (1995). Also T. REAL, I DON'T WANT TO TALK ABOUT IT: OVERCOMING THE SECRET LEGACY OF MALE DEPRESSION (1997) and HOW CAN I GET THROUGH TO YOU? CLOSING THE INTIMACY GAP BETWEEN MEN AND WOMEN (2002).

[17] Domestic Violence Against Women and Girls, No. 6, UNICEF Innocenti Digest (2000).

[18] S.D. Amussen, Being Stirred to Much Unquietness: Violence and Domestic Violence in Early Modern England, Vol. 6 No. 2 JOURNAL OF WOMEN'S HISTORY, 70-89 (1994).

[19] P. M. Jablow, Victims of Abuse and Discrimination: Protecting Battered Homosexuals Under Domestic Violence Legislation, 28 Hofstra L Rev 1096-1097 (2000).

[20] C. Sorisio, A Tale of Two Feminism: Power and Victimization in Contemporary Feminist Debate, 137 in THIRD WAVE AGENDA: BEING FEMINIST, DOING FEMINISM, edited by L. Heywood and J. Drake (1997).

[21] See C. I. Sobritchea, The Second Wave of the Women's Movement in the Philippines and the Evolution of Feminist Politics, 47, quoting A. F. Santos from The Philippine Women's Movement: Problems of Perception, GENDER CULTURE AND SOCIETY: SELECTED READINGS IN WOMEN STUDIES IN THE PHILIPPINES (2004).

[22] Id. at 44.

[23] See C. M. Renzetti and D. J. Curran, Chapter 9 on Gender, Crime and Justice, WOMEN, MEN AND SOCIETY 220-249 (Second Edition, 1992).

[24] See (visited February 26, 2013). MUSAWAH is considered a movement rather than an organization.

[25] Id. Musawa is represented in the Philippines by Nisa Ul Haqq Fi Bangsamoro or "Women for Justice in the Bangsamoro."

[26] A. Detschelt, Recognizing Domestic Violence Directed Towards Men: Overcoming Societal Perceptions, Conducting Accurate Studies, and Enacting Responsible Legislation, 12 KAN. J.L. & PUB. POL'Y 249 (2003).

[27] Id.

[28] "[H]eteronormativity is defined as the predominance and privileging of a definitively heterosexual- based ideology and social structure that acts as the exclusive interpreter of itself and of all other sexualities in relation to it." Definition found in A. Ponce, Shoring up Judicial Awareness: LGBT Refugees and the Recognition of Social

Categories, 18 NEW ENG. J. INT'L & COMP. L. 185 (2012) citing M. Warner, FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY (1993).

[29] For a comparative analysis of lesbian, gay, bisexual and transgender (LGBT) issues and strategies, see M. P. Ofreneo and T. Casal de Vela, Spheres of Lesbian, Gay, Bisexual and Transgender Struggles: A Comparative Feminist Analysis, 14 GENDER TECHNOLOGY AND DEVELOPMENT No. 2, 197-215 (July 2010). For an understanding, see B. Fone, HOMOPHOBIA: A HISTORY (2000).

[30] x x x essentialism is, among other things, a tool for redressing power imbalances, as when the group under study is seen by the dominant group as illegitimate or trivial, or when a stigmatized group forms an oppositional identity to counter such negative ideologies. Essentialism may therefore be a deliberate move to enable scholarly activity, to forge a political alliance through the creation of a common identity, or to otherwise provide a temporarily stable ground for further social action. Such uses of essentialism have been termed strategic essentialism (Spivak 1988) as discussed in M. Buchotz, SOCIOLINGUISTIC NOSTALGIA AND THE AUTHENTICATION OF IDENTITY, 401 (2003). See also M. Lloyd, BEYOND IDENTITY POLITICS: FEMINISM, POWER AND POLITICS, 64-67 (2005). Similarly, D. Fuss, ESSENTIALLY SPEAKING: FEMINISM, NATURE AND DIFFERENCE (1989).

[31] 68 Phil. 12 (1939).

[32] Id. at 18.

[33] 39 Phil. 660 (1919).

[34] Id. at 707.

[35] Id. at 686.

[36] Indigenous Cultural Communities, See CONSTITUTION, Art. II, Sec. 22; Art. XII, Sec. 5; Art. XIII, Sec 1.

[37] Republic Act No. 8371; see also the Manahan amendments in Com. Act No. 141 sec. 48 (c).

[38] See for instance Pit-og v. People of the Philippines, 268 Phil. 413 (1990) and Cruz v. DENR Secretary, et al. 400 Phil. 904 (2000).

[39] See S. Walby, The 'Declining Significance' or the 'Changing Forms' of Patriarchy? in PATRIARCHY AND ECONOMIC DEVELOPMENT: WOMEN'S POSITIONS AT THE END OF THE TWENTIETH CENTURY (1996).

[40] CONSTITUTION, Art. II, Sec.11. See also the Universal Declaration of Human Rights which similarly provides that “all human beings are born free and equal in dignity and rights” (Art. 1, UDHR) and “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Art. 2, UDHR)

[41] CONSTITUTION, Art. II, Sec.14.

[42] The Philippines signed the CEDAW on July 15, 1980 and ratified the same on August 5, 1981. Available at

[43] Convention on the Elimination of all Forms of Discrimination against Women, Article 5(a).

[44] Municipality of Malabang, Lanao Del Sur v. Benito, et al., 137 Phil. 358, 364 (1969) citing Norton v. Shelby County, 118 U.S. 425, 442 (1886).

[45] Id.

[46] Chavez v. Judicial and Bar Council, GR. No. 202242, July 17, 2012, 676 SCRA 579, 608 citing Planters Products Inc. v. Fertiphil Corporation, GR. No. [66006, March 14, 2008. 548 SCRA 485, 516-517.

[47] CONSTITUTION, Art. II, Sec. 14.

[48] CONSTITUTION, Art. II, Sec. II.

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