

SISTER PILAR VERSOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, MICHELINA S. AGUIRRE-OLONDRIZ, PEDRO AGUIRRE, AND DR. MARISSA PASCUAL, RESPONDENTS.

G.R. No. 184535. September 03, 2019

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PER CURIAM:

A petitioner's demise extinguishes his or her legal capacity, which would warrant the dismissal of any of his or her pleadings pending in court. Moreover, when one acts as a private complainant to a criminal action, his or her role is confined to being a mere witness whose interest is limited only to the civil liability. The criminal aspect can only be undertaken by the State through the Office of the Solicitor General or any other person specifically authorized by law. Without any action on their part, the criminal action cannot prosper.

This case involves a man with cognitive disability^[1] who, at 24 years old, was made by his legal guardians to undergo bilateral vasectomy without his consent. Aware of the special circumstances of this case, this Court is called upon to draw the line between a valid exercise of parental authority over a person with disability, and the commission of child abuse as contemplated and penalized by Republic Act No. 7610, or the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act. This case also seeks to establish whether the cause of action and attribution of criminal liability survive the death of petitioner Sister Pilar Versoza (Sister Versoza), pending resolution of her Petition.

This Court resolves the Petition for Review on Certiorari^[2] filed by Sister Versoza, assailing the Decision^[3] and Resolution^[4] of the Court of Appeals. The Court of Appeals affirmed the dismissal of the Information for violation of Republic Act No. 7610 filed against Pedro Aguirre (Pedro), Michelina S. Aguirre-Olondriz (Michelina), and Dr. Marissa Pascual (Dr. Pascual).^[5] Sister Versoza further prays for the issuance of an order directing the Regional Trial Court "to proceed with the indictment and prosecution of the accused-respondents"^[6] and to allow "petitioner through private prosecutor, to prosecute said case under the direction, supervision and control of the public prosecutor."^[7]

Both this case and the 2008 case of *Aguirre v. Secretary of the Department of Justice*^[8] originated from the same set of facts.

Laureano "Larry" Aguirre (Larry) was a ward of the Heart of Mary Villa, a child-caring agency under the Good Shepherd Sisters and licensed by the Department of Social Welfare and Development.^[9] On June 19, 1980, Larry, then two (2) years and nine (9) months old, was taken in as a ward by Pedro and his wife, Lourdes (the Aguirre Spouses).^[10] The Heart of Mary Villa, through Sister Mary Concepta Bellosillo, executed an Affidavit of Consent to Legal Guardianship in favor of the Aguirre Spouses.^[11] Sister Versoza was the nursery supervisor at that time.^[12]

On June 19, 1986, the Regional Trial Court, Branch 3 of Balanga, Bataan appointed the Aguirre Spouses to be the legal guardians of Larry and of his properties.^[13]

Elaborating on Larry's condition, this Court noted in Aguirre:

As Larry was growing up, the Aguirre spouses and their children noticed that his developmental milestones were remarkably delayed. His cognitive and physical growth did not appear normal in that "at age 3 to 4 years, Larry could only crawl on his tummy like a frog . . .;" he did not utter his first word until he was three years of age; did not speak in sentences until his sixth year; and only learned to stand up and walk after he turned five years old. At age six, the Aguirre spouses first enrolled Larry at the Colegio de San Agustin, Dasmariñas Village, but the child experienced significant learning difficulties there. In 1989, at age eleven, Larry was taken to specialists for neurological and psychological evaluations. The psychological evaluation done on Larry revealed the latter to be suffering from a mild mental deficiency. Consequent thereto, the Aguirre spouses transferred Larry to St. John Ma. Vianney, an educational institution for special children.

In November of 2001, respondent Dr. Agatep, a urologist/surgeon, was approached concerning the intention to have Larry, then 24 years of age, vasectomized. Prior to performing the procedure on the intended patient, respondent Dr. Agatep required that Larry be evaluated by a psychiatrist in order to confirm and validate whether or not the former could validly give his consent to the medical procedure on account of his mental deficiency.

In view of the required psychiatric clearance, Larry was brought to respondent Dr. Pascual, a psychiatrist, for evaluation. In a psychiatric report dated 21 January 2002, respondent Dr. Pascual made the following recommendation:

[T]he responsibility of decision making may be given to his parent or guardian.

....

Larry grew up with a very supportive adoptive family. He is the youngest in the family of four sisters. Currently, his adoptive parents are already old and have medical problem and thus, they could no longer monitor and take care of him like before. His adoptive mother has Bipolar Mood Disorder and used to physically maltreat him. A year ago, he had an episode of dizziness, vomiting and headaches after he was hit by his adoptive mother. Consult was done in Makati Medical Center and several tests were done, results of which were consistent with his developmental problem. There was no evidence of acute insults. The family subsequently decided that he should stay with one of his sisters to avoid similar incident and the possibility that he would retaliate although he has never hurt anybody. There has been no episode of violent outburst or aggressive behavior. He would often keep to himself when sad, angry or frustrated.

He is currently employed in the company of his sister and given assignment to do some photocopying, usually in the mornings. He enjoys playing billiards and basketball with his nephews and, he spends most of his leisure time watching TV and listening to music. He could perform activities of daily living without assistance except that he still needs supervision in taking a bath. He cannot prepare his own meal and never allowed to go out and run errands alone. He does not have friends and it is only his adoptive family whom he has significant relationships. He claims that he once had a girlfriend when he was in high school who was more like a best friend to him. He never had sexual relations. He has learned to smoke and drink alcohol few years ago through his cousins and the drivers. There is no history of abuse of alcohol or any prohibited substances.

....

Larry's mental deficiency could be associated with possible perinatal insults, which is consistent with the neuroimaging findings. Mental retardation associated with neurological problems usually has poorer prognosis. Larry is very much dependent on his family for his needs, adaptive functioning, direction and in making major life decisions. At his capacity, he may never understand the nature, the foreseeable risks and benefits, and consequences of the procedure (vasectomy) that, his family wants for his protection. Thus, the responsibility of decision making may be given to his parent or guardian.[14] (Emphasis supplied, citations omitted)

While no explanation was provided in Dr. Marissa Pascual's (Dr. Pascual) psychiatric report, medical journals have discussed perinatal insults as having the effect of altering brain development.[15]

Using this assessment as basis, and upon the instruction and written consent of Pedro, Dr. Juvido Agatep (Dr. Agatep) performed a bilateral vasectomy on Larry on January 31, 2002.[16]

Two (2) cases arose simultaneously after the vasectomy.

The first case, docketed as G.R. No. 170723, was Aguirre.

In Aguirre, Pedro's eldest daughter, Gloria Aguirre (Gloria), filed a criminal case on June 11, 2002 against her father and the doctors who cleared and conducted the procedure on Larry. She alleged that they violated Article 172 for falsification and Article 262 for mutilation, both under the Revised Penal Code, in relation to Sections 3 and 10 of Republic Act No. 7610.[17]

By way of defense, Pedro argued that the decision was a valid exercise of his parental authority as Larry's legal guardian. Moreover, assuming that Larry could make a decision regarding his vasectomy, Pedro argued that Gloria had no legal personality to file the criminal case, "for only Larry would have the right to do so." [18]

In a January 8, 2003 Resolution, the Assistant City Prosecutor recommended that Gloria's Complaint be dismissed for lack of probable cause and for insufficiency of evidence.[19]

On February 18, 2003, Gloria filed before the Department of Justice a Petition for Review.[20] However, in a February 11, 2004 Resolution, her Petition was dismissed.[21] Her subsequent Motion for reconsideration was likewise denied.[22]

Undeterred, Gloria filed before the Court of Appeals a Petition for Certiorari, Prohibition, and Mandamus, praying that the Resolutions of the Department of Justice be reversed.[23]

When the Court of Appeals dismissed the Petition for lack of merit, Gloria brought her case before this Court, which was docketed as G.R. No. 170723,[24] In its March 3, 2008 Decision, this Court later denied the Petition for lack of merit.[25]

The second case is this Petition filed by Sister Versoza.

When she learned about the procedure done on her former ward, Sister Versoza filed a criminal case against Pedro, Dr. Pascual, Dr. Agatep, and Michelina, one (1) of the Aguirre Spouses' children with whom Larry grew up.[26] Sister Versoza, like Gloria, charged them of falsification under Article 172 and mutilation under Article 262, both under the Revised Penal Code and child abuse under Sections 3 and 10 of Republic Act No. 7610.[27]

In its January 8, 2003 Resolution, the Office of the City Prosecutor of Quezon City dismissed Sister Versoza's Complaint.[28]

Thus, she moved for reconsideration, praying that an information for violation of Republic Act No. 7610 be filed instead.[29] However, in an August 26, 2003 Resolution, the Office of the City Prosecutor also denied the Motion.[30]

On May 13, 2005, while Gloria's Rule 65 Petition in Aguirre was pending before the Court of Appeals, the Office of the City Prosecutor granted a Motion for Reconsideration filed by one "Gloria Pilar S. Versoza," which questioned the City Prosecutor's January 8, 2003 Resolution.[31] In granting the Motion, the Office of the City Prosecutor recommended the filing of an information for violation of Sections 3 and 10 of Republic Act No. 7610.[32]

Accordingly, an Information was filed against Pedro, Michelina, and Dr. Pascual for violation of Republic Act No. 7610. The case was subsequently raffled off to Branch 102 of the Regional Trial Court of Quezon City. Warrants of arrest were issued against the accused, who then posted their respective bail bonds.[33]

Pedro and Michelina respectively moved for the dismissal of the case and for the re-determination of probable cause. Dr. Pascual filed several motions seeking the quashal of the information and warrant of arrest and the disqualification of the private prosecutor. In addition, Pedro and Michelina filed a motion requesting a stipulation from the trial prosecutor if she intended to prosecute the case under Republic Act No. 7610 considering that the matter had been previously decided by the Department of Justice and was under the review of the Court of Appeals.[34]

On November 8, 2005, the Regional Trial Court issued an Order[35] dismissing the case as there was "no probable cause ... to hold the accused for trial for violation[s] of Sections 3 and 10 of [Republic Act No.] 7610[.]"[36] In the Order, the Quezon City Regional Trial Court declared:

As to the first issue of whether or not the case should be dismissed, the Court finds merit to grant the motion. After a careful re-evaluation and scrutiny of the records of the case, the Court is inclined to reverse its former Order dated August 26, 2005, finding the existence of probable cause to hold the accused for trial. It was only later after the Court made a determination of probable cause that the supporting documents were attached to the records of the case particularly the Resolution of the Prosecutor's Office dated August 26, 2003 dismissing the Complaint for violation of RA 7610. Further, the Court was not aware that there was already a Decision rendered by the Court of Appeals dismissing the Complaint for falsification and mutilation against the accused because the same evidence was only attached to the records during the filing of the motions of the parties. In the said Decision, bilateral vasectomy performed on Larry does not constitute mutilation, the same issue being raised in the instant case for violation of RA 7610 as bilateral vasectomy has never been a crime and cannot be considered a form of child abuse. It does not find print in the said law. At most, it is a widely accepted and recognized medical procedure.

After going through re-evaluation of the records and evidence of the case, the Court finds merit to re-determine the existence of probable cause.

....

In the case at bar, there was already a pronouncement made by the Court of Appeals, which was learned by this Court only after it made a prior determination of probable cause, that there was neither a case of falsification nor mutilation. This stands to reason that the Court was misled by the circumstances surrounding the case for the determination of probable cause. Had it known that there was already contradictory resolutions issued by the Public Prosecutors and the Decision rendered by the [C]ourt of Appeals touching the core issue of mutilation, this Court would have dismissed the case. However, this Court belatedly learned such facts. Consequently, there is a need to re-determine the existence of probable cause.

....

In the case at bar, the main core for the filing of the instant Information for violation of RA 7610 sprung from the bilateral vasectomy performed on Larry Aguirre. There was already a judicial determination made by the Court of Appeals that no probable cause exists with respect to bilateral vasectomy to be considered as mutilation. Consequently, there would also be no violation of RA 7610. But then, it appears in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion by filing an Information for violation of RA 7610. There is no reason to hold the accused for trial and further expose them to an open and public accusation of the crime when no probable cause exists.

A prosecuting officer is in a peculiar and very definite sense the servant of law, the two fold aim of which is

that the guilt shall not escape or innocence suffers. . . . But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much as (sic) his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just once (sic) (Suarez vs. Judge Platon 69 Phil 556).

It is therefore imperative upon the fiscal or the judge as the case maybe, (sic) to relieve the accused from the pain of going thru a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

In sum the Court finds that no probable cause exists to hold the accused for trial.[37] (Emphasis in the original)

As to Sister Versoza's standing to sue, the Regional Trial Court held:

Under the law, once an adoption has been decreed, the legal ties between the biological parents and the children severed (sic). By analogy, since the subject child, Larry Aguirre was under an authorized adoption agency, the relationship between the said institution and the said child was severed and parental authority is now vested with the adopting parents. This is now safe to assume that Sister Pilar is divested of personality to file a complaint against the accused for violation of Sections 3 and 10 of RA 7610. If at all, it is only the State who has the right to prosecute for violation of the said law.[38]

Sister Versoza moved for reconsideration, but her Motion was denied in the Regional Trial Court's January 31, 2006 Order.[39] The trial court again emphasized her lack of legal capacity to sue:

As to the second issue of the legal capacity of herein movant to participate in the proceedings, the Court has likewise ruled in the questioned order to the effect that inasmuch as herein movant merely represents the institution which took care of the victim Larry Aguirre prior to his adoption and facilitated the same until he was eventually legally adopted, she has, technically, no more legal capacity to appear in his behalf[.][40]

Thus, Sister Versoza appealed the Regional Trial Court Orders.[41]

In its May 16, 2009 Decision,[42] the Court of Appeals denied her appeal and upheld the dismissal of the Information against Pedro, Michelina, and Dr. Pascual. It stated:

[The] bilateral vasectomy performed on Larry Aguirre cannot be considered a form of child abuse. In fact, the bilateral vasectomy is not a surgical procedure that totally divests him of the essential organ of reproduction for the simple reason it does not entail the taking away of a part or portion of the male reproductive organ. Vasectomy as an elective surgical sterilization prevents conception from taking place but the male reproductive organs remain intact as the body continues to produce sperm, the intentional act of vasectomy procedure prevents pregnancy which is not the same thing as saying that the reproductive capacity is permanently impaired While the bilateral vasectomy does not totally preclude him from siring an offspring and/or raising a family, the operation is reversible and therefore, has not caused permanent damage on his person; neither does it demeans, (sic) debases (sic) and degrades (sic) the intrinsic worth and dignity of Larry Aguirre as a person. Thus, the surgical procedure cannot be considered prejudicial to the child's development.

Neither is the bilateral vasectomy considered an act of cruelty. Black's Law Dictionary defines "cruelty" as the intentional and malicious infliction of physical or mental suffering upon living creatures, particularly human beings, or, as applied to the latter, the wanton, malicious and unnecessary infliction of pain upon the body, or the feelings and emotions. The test is whether the accused deliberately and sadistically augmented the victim's suffering by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged (sic)

It is settled that once an information has been filed in Court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. The Court remains the best and sole judge on what to do with the case before it notwithstanding the power of the prosecutor to retain the direction and control of the

prosecution of criminal cases. The determination of the case is within its exclusive jurisdiction and competence[.][43] (Citations omitted)

Affirming the trial court's finding that Sister Versoza had "no personality to prosecute the [criminal] complaint[.]"[44] the Court of Appeals declared that her being part of Heart of Mary Villa did not authorize her to appear as a private complainant. It found that she was not Larry's parent, adopter, or legal guardian, and was at most only a witness who "was not actually or directly injured by the punishable act or omission complained of." [45] Citing Article 189 of the Family Code, the Court of Appeals also noted that the ties between Larry and Heart of Mary Villa were severed after adoption, when the parental authority or legal guardianship had been transferred to Larry's adopters.[46]

Sister Versoza moved for reconsideration, but her Motion was denied in the Court of Appeals' September 17, 2008 Resolution.[47] Hence, she filed this Petition.[48]

Petitioner asserts that as the nursery supervisor of the child-caring agency where Larry was a former ward, she had the duty to continuously be concerned about his welfare. She argues that, as an officer of a licensed child-caring agency, she qualifies under Section 27 of Republic Act No. 7610, which enumerates those who may "file a complaint for unlawful acts committed against children.[49]

Petitioner also argues that this Court's ruling in Aguirre—that bilateral vasectomy was not mutilation under Article 262 of the Revised Penal Code—does not apply to this case. She posits that mutilation and child abuse are two (2) distinct criminal offenses. Although bilateral vasectomy does not constitute mutilation, it is still punishable as child abuse under Republic Act No. 7610. She asserts that vasectomy is an act of cruelty, especially if it is performed on a child who cannot by himself give consent, such as Larry.[50]

Though chronologically, Larry was a 24-year-old man when the procedure was conducted, petitioner claims that he was "comparable to a 7-8 year old[.]"[51] Legally, he should have been considered a child, and the forced commission of the bilateral vasectomy robbed him of his worth and dignity.[52] Petitioner says that tampering with Larry's anatomy, without his consent, "debases, degrades[,] or demeans [his] intrinsic worth and dignity . . . as a human being." [53] It is prejudicial to Larry's overall development.[54]

Respondents Michelina and Pedro counter that according merit to petitioner's line of reasoning would result in a situation where "any person from any licensed child caring agency can file a case for child abuse without need of showing one's private interest or personal knowledge on the circumstances of the alleged abuse[,] thus flooding the Court's dockets with baseless complaints." [55] They further assert that petitioner's failure to file the Petition with the conformity of the Office of the Solicitor General renders her case procedurally defective.[56]

Respondents Michelina and Pedro also argue that vasectomy is a legal, safe, and widely-accepted procedure with "little or no known side effects"[57] and has even been promoted by the government as a safe and effective family planning method.[58] Hence, they say that it can neither be considered a form of cruelty or an act that debases, degrades, or demeans the intrinsic worth and dignity of a person.[59]

Respondent Dr. Pascual also argues that Republic Act No. 7610 does not expressly categorize vasectomy as an act of child abuse.[60] She then points out that the issue being raised is one of morality, which is not cognizable by courts.[61]

The Office of the Solicitor General, on behalf of respondent People of the Philippines, argues that petitioner neither has legal interest nor the authority to file the complaint.[62] First, petitioner is not the offended party.[63]

Second, she is not covered under Rule 110, Section 3 of the Revised Rules of Criminal Procedure as she was not a peace officer or public officer charged with enforcement of the law violated.[64]

The Office of the Solicitor General further argues that the right and duty to assume care and custody of Larry belong to the Aguirre Spouses' under Rule 96, Section 1 of the Rules of Court.[65] It posits that the Aguirre Spouses' appointment "as Larry's legal guardians severed the ties between the child-caring agency and Larry." [66] In supporting this claim, it quoted a portion of the Decision of the Court of Appeals, which read:

Under the law, once an adoption has been decreed, the legal ties between the biological parents and the child severed (sic). By analogy, since the subject child, Larry Aguirre was under an authorized adoption agency, the relationship between the said institution and the said child was severed and parental authority is now vested with the adopting parents. This is now (sic) safe to assume that Sister Pilar is divested of personality to file a complaint against the accused for violation of Sections 3 and 10 of RA 7610. If at all, it is only the State who has the right to prosecute for violation of the said law[.][67]

On November 6, 2012, respondents Michelina and Pedro moved to dismiss the Petition due to petitioner's untimely demise on September 9, 2012.[68] They posit that petitioner's death extinguished her alleged cause of action against them, if any. As such, they claim that whether she had legal standing has become a moot issue. They also reiterate that petitioner failed to explain why she may be allowed to appear as a private complainant, stressing that she was not Larry's guardian and had no private interest in the case.[69]

On November 20, 2012, petitioner's counsel, Atty. Jose C. Sison (Atty. Sison), filed an Opposition[70] underscoring that the principal party in this case is respondent People of the Philippines. He argued that the main issue in this case is respondent People of the Philippines. He argued that the main issue to be resolved is whether the bilateral vasectomy performed on Larry constitutes child abuse under Republic Act No. 7610.[71] Consequently, petitioner's death did not render the case moot and the criminal case can still proceed "should this Court resolve the issue in the affirmative." [72]

Atty. Sison also categorized the issue as one of "transcendent importance[.]" which survives petitioner's death.[73]

This case presents the following issues for this Court's resolution:

First, whether or not the death of petitioner Sister Pilar Versoza warrants the case's dismissal;

Second, whether or not petitioner has the legal personality to institute the criminal case against respondents Michelina S. Aguirre-Olondriz, Pedro Aguirre, and Dr. Marissa Pascual; and

Finally, whether or not respondents committed a violation of Republic Act No. 7610.

The Petition is denied.

I

This Court has consistently held that "[t]he authority to represent the State in appeals of criminal cases before the Supreme Court and the [Court of Appeals] is solely vested in the Office of the Solicitor General[.]" [74] with the private complainant's role as only that of a witness.[75] In *Chiok v. People*: [76]

The OSG is the law office of the Government.

To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil - liability of the accused is concerned. . . .

....

The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal

action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal, but may only do so as to the civil aspect of the case.[77] (Citations omitted)

As a private complainant to the criminal action, petitioner's role is confined to being a mere witness, her interest in the case limited to only the civil liability. Only the State, through the Office of the Solicitor General, can appeal the criminal aspect of the case. Thus, absent any action on the part of the Office of the Solicitor General, the appeal cannot prosper.

Moreover, considering that petitioner died during the pendency of this case, she no longer has the legal capacity to pursue the appeal.

For these reasons, the Petition should be denied.

II

The prosecution of criminal offenses begins with the filing of a complaint or an information. Ordinarily, a complaint is "subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated." [78] On the other hand, an information is subscribed by a prosecutor.[79] It is usually the offended party or a law enforcer who commences the case's prosecution. This is the traditional concept of the prosecution of criminal offenses.

However, the rule is different in cases involving private crimes and those punishable under special laws. The crimes of adultery, concubinage, seduction, abduction, acts of lasciviousness,[80] and defamation[81] cannot be prosecuted except at the instance of certain persons. Rule 110, Section 5 of the Revised Rules of Criminal Procedure enumerates crimes that require the intervention of specific individuals before criminal proceedings can be had:

SECTION 5. Who must prosecute criminal actions. — ...

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.

The prosecution for violation of special laws shall be governed by the provisions thereof. (Emphasis supplied)

As to offenses punished under special laws, their prosecution would be governed by the relevant provisions of the special law violated.[82]

In cases concerning violations of Republic Act No. 7610, Section 27 enumerates seven (7) classes of persons who may initiate criminal proceedings, namely:

SECTION 27. Who May File a Complaint. — Complaints on cases of unlawful acts committed against children as enumerated herein may be filed by the following:

- (a) Offended party;
- (b) Parents or guardians;
- (c) Ascendant or collateral relative within the third degree of consanguinity;
- (d) Officer, social worker or representative of a licensed child-caring institution;
- (e) Officer or social worker of the Department of Social Welfare and Development;
- (f) Barangay chairman; or
- (g) At least three (3) concerned responsible citizens where the violation occurred.

The literal meaning of a statute must prevail if the text is clear. In *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*:[83]

Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[84] (Citations omitted)

Here, petitioner hinged her legal standing on being a representative of a licensed child-caring institution under Section 27(d) of Republic Act No. 7610.[85] She brought this case as an officer or representative of the Heart of Mary Villa, the foster home that had custody of Larry before his guardianship was passed to the Aguirre Spouses.

Respondents Michelina and Pedro oppose this and claim that the Aguirre Spouses' appointment as Larry's legal guardians divested petitioner of the authority to file a criminal case for child abuse. They further argue that the parental authority and responsibility over Larry were transferred to the Aguirre Spouses, to the exclusion of all others, including the child-caring agency that took in Larry as a ward.[86]

By itself, respondents' position of an almost jealous monopoly of parental authority may seem to have basis. Guardianship, similar to adoption, is one (1) of the instances under the Family Code where parental authority may be legally transferred:

TITLE IX
Parental Authority

....

ARTICLE 210. Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law.

....

ARTICLE 222. The courts may appoint a guardian of the child's property, or a guardian ad litem when the best interests of the child so require.

However, these provisions do not exist independently of other Family Code provisions pertaining to parental authority. In particular, Article 220 enumerates the rights and duties that parents and those exercising parental authority have to their children or wards:

ARTICLE 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or 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 enhance, protect, preserve and maintain their physical and mental health at all times;

(5)

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;

(6)

To represent them, in all matters affecting their interests;

(7)

To demand from them respect and obedience;

(8)

To impose discipline on them as may be required under the circumstances; and

(9)

To perform such other duties as are imposed by law upon parents and guardians. (Emphasis supplied)

Taken together, the exercise of parental authority should be understood more as "a sum of duties"[87] to be exercised in favor of the child's best interest. The nature of parental authority was explained in Santos, Sr. v. Court of Appeals:[88]

The right of custody accorded to parents springs from the exercise of parental authority. Parental authority or patria potestas in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs. It is a mass of rights and

obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, "there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor." [89] (Emphasis supplied, citations omitted)

The authority granted to the Aguirre Spouses to raise Larry as their ward is a responsibility that went beyond the mere transfer of the child's physical custody. When they were granted guardianship, the Aguirre Spouses committed themselves to protect and uphold Larry's best interests. The State entrusted Larry's growth and development to the Aguirre Spouses, so that when the time comes, he may be an empowered citizen of the country, capable of making his own choices and fully undertaking his own responsibilities.

Granted, family affairs cannot always be subject to the State's inquiry, especially if no one comes forward to shed light on ongoing abuses, or worse still, if the abused merely sees the acts as matters of fact. Indeed, in child abuse cases, the parents or guardians may be the abusers themselves. Those entrusted with the care and protection of the child could very well be complicit in the abuse, if not its perpetrators. In these situations, allowing another person to represent the abused becomes apparent and more urgent, which is why barangay chairs, social workers, and concerned responsible citizens are enjoined to file a complaint.[90] When the abuse happens, no one else will protect them from such harm.

Thus, the argument that the transfer of parental authority has severed all ties between Larry and Heart of Mary Villa does not hold water. To tolerate this line of reasoning would be to allow the persistence of abuses against children. Under no circumstances must child abuse be allowed to hide behind a shroud of secrecy, even more so if it is committed under the guise of parental authority. The title of a parent or guardian is not a magic word to be wielded with immunity. With it comes the ultimate responsibility of raising the child or ward under the best conditions, allowing him or her to mature into an empowered individual.

III

The protection afforded under Republic Act No. 7610 recognizes persons with mental or intellectual impairments that prevent them from fully engaging in the community. Our laws accord a high level of protection to those with cognitive disability.

Section 3(a) of Republic Act No. 7610 states:

SECTION 3. Definition of Terms. —

(a)

"Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]

The provision recognizes a distinction between a person's chronological age and mental age, such that someone with cognitive disability, regardless of his or her chronological age, would automatically be entitled to the protective mantle of the law.

A person's mental age and chronological age were differentiated in *People v. Quintos*, [91] a case involving the rape of a person with intellectual disability. This Court defined "twelve (12) years of age" under Article 266-A(1)(d) of the Revised Penal Code as either the chronological age of a child or the mental age if a person has intellectual disability:

We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented," however, should be differentiated from

the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A (1) (d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.[92] (Emphasis supplied)

In light of this interpretation, and based on the distinction set forth in Section 3(a), a person who has a cognitive disability would be considered a child under Republic Act No. 7610 based on his or her mental age, not chronological age.

In this case, it is without question that, despite his chronological age, Larry is a child under the law. He has a mild mental deficiency rendering him incapable of making crucial decisions on his own, let alone fend for himself. At the time of the vasectomy, he had a mental age of an 8-year-old.

While the case before us presents a novel issue, this Court reached the consensus that the action must be denied for lack of a party, on account of petitioner's death, and for lack of an appeal from the Office of the Solicitor General. Therefore, the substantive issue of whether there was a violation of Republic Act No. 7610 will not be tackled here. However, in light of the ramifications and gravity of the issue involved, the ponente submits his own opinion separate from the opinion of this Court En Banc.

WHEREFORE, the Petition is DENIED.

SO ORDERED.

Carpio, Perlas-Bernabe, Gesmundo, Reyes, J., Jr., Hernando, Carandang, Lazaro-Javier, Inting, and Zalameda, JJ., concur.

Bersamin, C.J., Joins the separate opinion of J. Peralta, J. Jardeleza and J. Caguioa.

Peralta, Leonen, Jardeleza, Caguioa, and Reyes, A., Jr., JJ., see separate opinion.

[1] While a legitimate medical term, "mental retardate" is no longer preferred due to its derogatory implications. Cognitive disability or intellectual disability was explained in *People v. Quintos*, 746 Phil. 809 (2014) [Per J. Leonen, Second Division]: "[a]n intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility." (Citations omitted)

[2] Rollo, pp. 9-23. Filed under Rule 45 of the Rules of Court.

[3] Id. at 24-39. The Decision dated May 16, 2008 in CA-G.R. CR. No. 30082 was penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Isaias P. Dicdican and Ramon R. Garcia of the Twelfth Division, Court of Appeals, Manila.

[4] Id. at 46-47. The Resolution dated September 17, 2008 in CA-G.R. CR. No. 30082 was penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Isaias P. Dicdican and Ramon R. Garcia of the Former Twelfth Division, Court of Appeals, Manila.

[5] Id. at 14.

[6] Id. at 20.

[7] Id.

[8] 571 Phil. 138 (2008) [Per J. Chico-Nazario, Third Division].

[9] Id. at 143.

[10] Rollo, p. 12.

[11] Id. at 12 and *Aguirre v. Secretary of Justice*, 571 Phil. 138, 143 (2008) [Per J. Chico-Nazario, Third Division].

[12] Id. at 12.

[13] *Aguirre v. Secretary of the Department of Justice*, 571 Phil. 138, 143 (2008) [Per J. Chico-Nazario, Third Division].

[14] Id. at 143-147.

[15] Id. at 146-147. See Tiago Savignon, Everton Costa, Frank Tenorio, Alex C. Manhães, and Penha C. Barradas, Prenatal Hypoxic-Ischemic Insult Changes the Distribution and Number of NADPH- Diaphorase Cells in the Cerebellum (2012), available at <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0035786>> (last visited on September 2, 2019). See also Abstract of the article by Richard Berger, Yves Garnier, and Arne Jensen, Perinatal Brain Damage: Underlying Mechanisms and Neuroprotective Strategies, 9 Journal of the Society for Gynecologic Investigation 319 (2002), available at <https://www.researchgate.net/publication/11022719_Perinatal_brain_damage_Underlying_mechanisms_and_neuroprotective_strategies> (last visited on September 2, 2019).

[16] Id. at 147.

[17] Id. at 154.

[18] Id. at 151.

[19] Id. at 155.

[20] Id.

[21] Id. at 156.

[22] Id.

[23] Id. at 158.

[24] Id. at 156.

[25] Id. at 169.

[26] Rollo, pp. 10 and 12.

[27] Id.

[28] Id.

[29] Id. at 11.

[30] Id.

[31] Id. at 26.

[32] Id.

[33] Id. at 27.

[34] Id. at 48.

[35] Id. at 48-55. The Order was penned by Judge Ma. Lourdes A. Giron of Branch 102, Regional Trial Court, Quezon City.

[36] Id. at 55.

[37] Id. at 49-53.

[38] Id. at 54-55.

[39] Id. at 27.

[40] Id. at 37.

[41] Id. at 24.

[42] Id. at 24-39.

[43] Id. at 33-34.

[44] Id. at 38.

[45] Id.

[46] Id.

[47] Id. at 46-47.

[48] Id. at 9-23.

[49] Id. at 19-20.

[50] Id. at 14-15.

[51] Id. at 15.

[52] Id. at 15-17.

[53] Id. at 16.

[54] Id. at 16-18.

[55] Id. at 145.

[56] Id.

[57] Id. at 139.

[58] Id. at 139-140.

[59] Id. at 139-143.

[60] Id. at 109.

[61] Id. at 113.

[62] Id. at 188.

[63] Id.

[64] Id. RULES OF COURT, Rule 110, sec. 3 provides:

SECTION 3. Complaint defined. —A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.

[65] Id. at 188-190. RULES OF COURT, Rule 96, sec. 1 provides:

SECTION 1, To what guardianship shall extend.— A guardian appointed shall have the care and custody of the person of his ward, and the management of his estate, or the management of the estate only, as the case may be. The guardian of the estate of a non-resident shall have the management of all the estate of the ward within the Philippines, and no court other than that in which such guardian was appointed shall have jurisdiction over the guardianship.

[66] Id.

[67] Id. at 189.

[68] Id. at 210-214. They cite reports from Inquirer.net and the Catholic Bishops' Conference of the Philippines.

[69] Id. at 211.

[70] Id. at 215-217.

[71] Id. at 215.

[72] Id. at 216.

[73] Id.

[74] *Chiok v. People*, 774 Phil. 230, 245 (2015) [Per J. Jardeleza, Third Division] citing *Villareal v. Aliga*, 724 Phil. 47 (2014) [Per J. Peralta, Third Division].

[75] Id.

[76] 774 Phil. 230 (2015) [Per J. Jardeleza, Third Division].

[77] Id. at 245-246.

- [78] RULES OF COURT, Rule 110, sec. 3.
- [79] RULES OF COURT, Rule 110, sec. 4.
- [80] REVISED PENAL CODE, art. 344.
- [81] REVISED PENAL CODE, art. 360.
- [82] RULES OF COURT, Rule 110, sec. 5.
- [83] 283 Phil. 649 (1992) [Per J. Romero, En Banc].
- [84] Id. at 660.
- [85] Rollo, p. 20.
- [86] Id. at 144-145 and 190.
- [87] Santos, Sr. v. Court of Appeals, 312 Phil. 482, 488 (1995) [Per J. Romero, Third Division].
- [88] 312 Phil. 482 (1995) [Per J. Romero, Third Division].
- [89] Id. at 487-488.
- [90] Republic Act No. 7610 (1992), sec. 27.
- [91] 746 Phil. 809 (2014) [Per J. Leonen, Second Division].
- [92] Id. at 830-831.

SEPARATE OPINION

PERALTA, J.:

I agree with the Resolution that the Petition for Review on Certiorari should be dismissed for lack of party, considering the death of the petitioner Sister Pilar Versoza and absent an appeal from the Office of the Solicitor General. However, I also partly agree with Justice Marvic Mario Victor F. Leonen that because of the novelty and importance of the issue, which deals with special protection to children from all forms of abuse, the Court should still resolve the issue of whether bilateral vasectomy constitutes child abuse under Section 3(b),[1] Republic Act (R.A.) No. 7610 (An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties For Its Violation and For Other Purposes), as well as whether the Court of Appeals committed reversible error in affirming the trial court's dismissal of the child abuse complaint against accused-respondents for lack of probable cause.

On the merits, however, I join the opinion of Justice Alfredo Benjamin S. Caguioa inasmuch as the ponencia held that the vasectomy performed on Laureano "Larry" Aguirre constitutes a form of cruelty which qualifies as an act of child abuse under Section 10(a) of R.A. No. 7610. I find that the Court of Appeals committed no reversible error in affirming the Order of the trial court dismissing the child abuse case for lack of probable cause. Based on the evidence on record, the vasectomy performed on Larry does not constitute child abuse or cruelty to a child as contemplated under Section 10(a)[2] of R.A. No. 7610.

With the untimely demise of Versoza, I agree with the ponencia that such supervening event warrants the dismissal of the case. At any rate, for the guidance of the Bench and the Bar, the novel issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse under R.A. No. 7610 should be resolved. I also

have to agree that the issue of whether the bilateral vasectomy performed on Larry constitutes child abuse under R.A. No. 7610 is one of transcendental importance to others similarly situated due to mental deficiency, inasmuch as the term "child" not only refers to "a person below eighteen (18) years of age, but also to one over said age who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself [/or herself] from abuse." [3]

Besides, even if petitioner Versoza had already passed away during the pendency of the instant petition, Section 2, Article XI of R.A. No. 7610 mandates that the State shall intervene on behalf of the child when acts of abuse, exploitation and discrimination against the child are committed by the parent, guardian, [as in the case of respondent Pedro Aguirre] teacher or person having care and custody of the same. Section 2, Article XI explicitly states that the best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. It is in line with this provision that the Court may, in the interest of justice, resolve the issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse under R.A. 7610. After all, it is not Larry who died, but Versoza, his former guardian who was then a social worker or representative of a licensed child-caring institution when she filed the complaint on behalf of Larry. It is safe to say that Larry is still alive today, there being no showing to the contrary, bearing the lingering effect of his bilateral vasectomy.

On the merits of the case, I join Justice Francis H. Jardeleza and Justice Caguioa in disagreeing with the ponencia that the bilateral vasectomy conducted on Larry is an act of child abuse.

In *P/C Supt. Pfeleider v. People*, [4] it was held that "the determination of probable cause is not lodged with this Court. Its duty, in an appropriate case, is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction." This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule, some of which are enumerated in *Brocka v. Enrile*. [5] None of such exceptions obtain in this case.

Moreover, this Court is not a trier of facts, and the determination of probable cause is and will always entail a review of the facts of the case.

In finding that no probable cause exists to hold the accused for trial, the RTC ruled as follows:

In the case at bar, there was already a pronouncement made by the Court of Appeals, which was learned by this Court only after it made a prior determination of probable cause, that there was neither a case of falsification or mutilation. This stands to reason that the Court was misled by the circumstances surrounding the case or the determination of probable cause. Had it known that there was already contradictory resolutions issued by the Public Prosecutors and the Decision rendered by the Court of Appeals touching the core issue of mutilation, this Court would have dismissed the case. However, this Court belatedly learned of such facts. Consequently, there is a need to re-determine the existence of probable cause.

xxx the main core for the filing of the instant information for violation of RA 7610 sprung from the bilateral vasectomy performed on Larry Aguirre. There was already a judicial determination made by the Court of Appeals that no probable cause exists with respect to the bilateral vasectomy to be considered as mutilation. Consequently, there would be no violation of RA 7610. But then it appears that in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion in filing an Information for violation of RA 7610. There is no reason to hold the accused for trial and further expose them to an open and public accusation of the crime when no probable cause exists.

In upholding the dismissal of the complaint for child abuse, the CA aptly held, thus:

Bilateral vasectomy performed on Larry Aguirre cannot be considered a form of child abuse. In fact, the bilateral vasectomy is not a surgical procedure which totally divests him of the essential organ of reproduction for the simple reason that it does not entail the taking away of a part of portion of the male reproductive organ. Vasectomy as an effective surgical sterilization prevents conception from taking place but the male reproductive organs remain intact as the body continues to produce sperm, the intentional act of vasectomy procedure prevents pregnancy which is not the same thing as saying that the reproductive incapacity is permanently impaired. While the bilateral vasectomy does not totally preclude him from siring an offspring and/or raising a family, the operation is reversible and therefore has not caused permanent damage on his person, neither does it demean, debase and degrade the intrinsic worth and dignity of Larry Aguirre as a person. Thus, the surgical procedure cannot be considered prejudicial to the child's development.

On the issue of whether the bilateral vasectomy performed on Larry constitutes child abuse as contemplated in R.A. No. 7610, I quote with approval the opinion of Justice Caguioa, thus:

To sustain a conviction under Section 10(a) of RA 7610, proof of the accused's intent to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should be established beyond reasonable doubt.

In this regard, the records show that while general allegations anent the purported degrading and demeaning effects of the vasectomy performed on Larry had been repeatedly made by Versoza during the course of the proceedings, not a single shred of evidence was offered to show that the respondents were impelled by any ill-motive in facilitating the questioned procedure. To my mind, no specific intent to debase, degrade or demean Larry's intrinsic worth as a human being had been convincingly shown, thereby negating respondents' criminal liability under Section 10(a) of RA 7610.

Quite the contrary, assessed in light of their intent as Larry's parents, the act of respondents cannot, by any stretch of imagination, be characterized as debasing, degrading or demeaning. Indeed, my own appreciation of that intent is that it was borne out of care and love for Larry, and by extension, for any offspring Larry may bear x x x.

Probable cause is defined as the existence of facts and circumstances that engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty of that crime and should be held for trial. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.

Based on the records, the specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse,[6] was absent on the part of accused-respondents when they had Larry undertake bilateral vasectomy. Hence, the Court of Appeals committed no reversible error in affirming the Order of the RTC, which dismissed the child abuse case against respondents for lack of probable cause. Be that as it may, the petition should be dismissed for lack of party, in light of the death of petitioner Sister Versoza and the absence of an appeal from the Office of the Solicitor General.

[1] Section 3. Definition of Terms. -

x x x x

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

[2] Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. -

- (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

[3] Section 2(b) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

[4] 811 Phil. 151, 159(2017).

[5] 270 Phil. 271, 276-277 (1990).

- a. To afford adequate protection to the constitutional rights of the accused (*Hernandez v. Albano*, et al., 125 Phil. 513 [1967].
 - b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. v. Fernandez*, 43 Phil. 304 [1922]; *Hernandez v. Albano*, supra; *Fortun v. Labang, et al.*, 192 Phil. 125 [1981];
 - c. When there is a pre-judicial question which is sub judice (*De Leon v. Mabanag*, 70 Phil. 202 [1940]);
 - d. When the acts of the officer are without or in excess of authority (*Planas v. Gil*, 67 Phil. 62 [1938]);
 - e. Where the prosecution is under an invalid law, ordinance or regulation (*Young v. Rafferty*, 33 Phil. 556 [1916]; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389 [1925]);
 - f. When double jeopardy is clearly apparent (*Sangalang v. People and Avendia*, 109 Phil. 1140 [1960]);
 - g. Where the court has no jurisdiction over the offense (*Lopez v. City Judge*, 124 Phil. 1211 [1996]).
 - h. Where it is a case of persecution rather than prosecution (*Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960);
 - i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L.J., [1953], cited in *Ranoa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; Cf. *Guingona, Jr., et al. v. City Fiscal of Manila, et al.*, 213 Phil. 516 [1984]); and. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga v. Hon. Pano, etc., et al.*, 219 Phil. 402 (1985).
- [6] *Bongalon v. People*, 707 Phil. 11, 21 (2013).

SEPARATE OPINION

"Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and

full as possible. "[1]

United Nations Declaration on the Rights of Disabled Persons, 1975[2]

LEONEN, J.:

While there were doctrinal points that this Court unanimously agreed upon, I feel that we could have gone further. There are points that should have been discussed.

Parents and legal guardians have a duty to enable their children or their wards. Legal guardians commit to take care of their wards as if they were their own. They are to love and to sacrifice always in the child's best interest. They have no prerogative to deprive them of any of their faculties. Parents and legal guardians have no right to decide on the reproductive rights of their children or wards.

Society has the general duty to protect its children. The Constitution declares the State to be the ultimate defender of a child's right to a full, decent, and dignified life.[3] This role is of even greater importance in this case. Apart from being a child, Laureano "Larry" Aguirre (Larry) has a cognitive disability that rendered him incapable of fully comprehending the repercussions of a vasectomy. At the time of the procedure, he was chronologically a 24-year-old man with a mental age of an 8-year-old. It would have been impossible for him to consent to the procedure. Undergoing bilateral vasectomy requires personal reflection as it involves one's reproductive health.

This Court was confronted with a novel issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse. Cases involving child abuse are public matters in which the State is necessarily involved.[4] This case is of unique importance because it deals with the rights of a child with disability, who is under the People of the Philippines' special mantle of protection no less.[5]

Child abuse is often committed in the confines of a home, in secret and away from public notice. The child suffers silently, powerless against the abusive parent or guardian, and will most likely frame a world that justifies the despicable acts done to him or her. In the same vein, the child's self-esteem suffers, and he or she will grow to believe that all adults will be like their parent or guardian.

Indeed, child abuse is a crime with among the greatest propensities to remain hidden but causes the most damage.

Our traditional concept for the prosecution of crimes is that it should be initiated by a private offended party or by a law enforcer. But, definitely in this case, Larry could not have done so. Chances are, no social worker or law enforcer would have noticed the procedure done on him. The crime's novelty as a potential form of abuse conspire with the act itself having no visible consequences to ensure that the act remains hidden.

Vasectomy, in general, refers to a sterilization procedure for men[6] where a segment of the vas deferens is cut to obstruct the flow of spermatozoa.[7]

Medical practitioners use various techniques in performing vasectomy.[8] The transection of the vas deferens can be done through a conventional vasectomy, where the vas deferens "usually is grasped with a towel clip or an Allis forceps." [9] A more recent method is the no-scalpel vasectomy, which uses a minimally invasive technique. Both types are done by making a midline incision or bilateral scrotal incisions using a scalpel.[10]

The most common type of vasectomy, which was conducted on Larry, is called bilateral vasectomy[11] or bilateral partial vasectomy. In this procedure, the vas deferens in both scrotums are cut and removed or obstructed.[12]

There is a common misconception that vasectomy is a permanent method of birth control. On the contrary, it is medically possible to restore fertility through vasectomy reversal,[13] where the cut ends of the vas deferens are

reattached through microsurgery. The most common procedures are vasovasostomy and vasoepididymostomy.[14] Reversal may even happen accidentally as a result of other medical procedures.[15]

The success of vasectomy reversal, however, depends on several factors. Patient evaluation is important. Factors such as the surgical skill, the patient's medical history, and antibodies may influence its success rate.[16]

The gravity of the procedure conducted on Larry presents before this Court important questions on the extent of the right to a full and dignified life of a child with cognitive disability vis-a-vis parental authority as contemplated by law.

Therefore, it is necessary to determine, for the guidance of the bench, the bar, and the public, whether the bilateral vasectomy conducted on Larry is a form of child abuse. In the 17 years[17] that have passed since his unconsented vasectomy, Larry's cognition may have developed enough for him to become more aware of the procedure's ramifications.

Vital for discussion are the following: (1) whether Larry qualifies as a child under the law; (2) how abuse, neglect, and cruelty are defined in jurisprudence; and (3) whether the vasectomy made on Larry constitutes abuse, cruelty, neglect, or exploitation, or is prejudicial to his development.

I

Child abuse, as contemplated in Republic Act No. 7610,[18] is a general concept consisting of several punishable acts. Section 3(b) of Republic Act No. 7610 provides its definition:

SECTION 3. Definition of Terms. —

....

(b) "Child abuse " refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1)

Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2)

Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3)

Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4)

Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

The acts constituting child abuse are amplified in the succeeding provisions of Republic Act No. 7610. Sections 5 and 6 deal with child prostitution and other forms of sexual abuse; Sections 7 and 8 cover child trafficking; Section 9 punishes obscene publications and indecent shows that involve a child.

To provide further protection to children, Republic Act No. 7610 expands the concept of child abuse to cover other acts of abuse.[19] Section 10(a) of Republic Act No. 7610 states:

SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the

Child's Development.

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prison mayor in its minimum period. (Emphasis supplied)

Section 10(a) punishes four (4) distinct acts in addition to those already covered by Article 59 of Presidential Decree No. 603, as amended, namely: (1) other acts of child abuse; (2) cruelty; (3) exploitation; and (4) being responsible for conditions prejudicial to the child's development.[20] These offenses are independent of the child abuse acts specified in Republic Act No. 7610.[21]

For the acts in Section 10(a) to be punishable, the following elements must be accounted for: (1) the victim must be a child under the law; (2) the act committed is either abusive, cruel, or exploitative of the child, or is prejudicial to the child's development; and (3) the accused committed or is responsible for the act.[22]

Recognizing an individual with cognitive disability as a child is nothing new in this jurisdiction. In *People v. Spouses Ybañez*,[23] the accused were convicted of qualified trafficking of persons. Among the three (3) victims was a girl who was more than 18 years old but was found to be "functioning within a mildly retarded level[.]"[24] She was deemed a child under Republic Act No. 9208:

Trafficking in Persons refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. When the trafficked person is a child, a person below 18 years of age or one who is over 18 but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, the offense becomes qualified. As supported by their birth certificates, Bonete was merely 15 years old and Antonio was 16 when they were hired in 2006. Although Turado was more than 18 years old when she started at Kiray, she was found to be functioning within a mildly retarded level, and therefore, incapable of protecting herself from abuse and exploitation[25] (Emphasis supplied, citations omitted)

Section 3(a) of Republic Act No. 7610 defines a child as a "person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]" Recognizing the concept of mental age, the law deems that a person with cognitive disability is a child regardless of his or her chronological age. He or she would still be under the protection of the law.

In *People v. Quintos*,[26] where a person with intellectual disability was raped, this Court defined "twelve (12) years of age" under Article 266-A(1)(d) of the Revised Penal Code as either the chronological age of a child or the mental age if a person has intellectual disability. We held:

We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social

responsibility."

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A(1)(d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.[27] (Emphasis supplied, citations omitted)

Though Larry was chronologically 24 years old when the procedure was conducted on him, he actually had a mental age of an 8-year-old. He also has a mild mental deficiency, which rendered him unfit to decide on matters on his own. Larry is, therefore, a child under the law.

Notably, psychiatrist Marissa B. Pascual (Dr. Pascual) reported that Larry's disability "could be associated with possible perinatal insults[.]"[28] While no explanation was provided in Dr. Pascual's psychiatric report, medical journals have discussed "perinatal insults" as having the effect of altering brain development.[29]

Perinatal brain injury commonly manifests with neonatal encephalopathy or brain malfunctions, including seizures.[30] It is usually brought about by "cerebral ischemia, cerebral hemorrhage, or an ascending intrauterine infection." [31] The most severe forms of perinatal brain damage lead to cerebral palsy, while a less severe damage may result in subtle changes in the child's neurodevelopment.[32] Children "who suffer from perinatal brain injury often deal with dramatic consequences of this misfortune for the rest of their lives." [33]

Through no fault of his own, Larry's cognitive development has been severely hampered. Rather than the unfounded judgment that he would be incapable of making his own choices eventually as an adult, Pedro and Lourdes Aguirre (the Aguirre Spouses) should have extended their understanding and guidance to Larry as one would to a child, for however long it takes, to prepare him for the life to which he was entitled.

The Aguirre Spouses may have the authority to substitute Larry's . decision with their own, but they must make one that is always in favor of Larry's best interests. Their failure to do so allows the State to intervene, especially if the act is tantamount to abuse, neglect, cruelty, or one that prejudices Larry's development.

II

Section 10(a) of Republic Act No. 7610 is unique in that it was designed to protect children from any and all forms of abuse. It broadened the definition and scope of child abuse to supply inadequacies in our existing laws, thus strengthening the State's policy on the protection of "the most vulnerable members of the population, the Filipino children[.]"[34]

Araneta v. People[35] laid the rule that Section 10(a) punishes four (4) separate and distinct acts, thus:

Article VI of the statute enumerates the "other acts of abuse." Paragraph (a) of Section 10 thereof states:

Article VI

OTHER ACTS OF ABUSE

SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —

(a) Any person who shall commit any other acts of abuse, cruelty or exploitation or be responsible for other

conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prison mayor in its minimum period. . . .

As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, i.e., (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10 (a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10 (a) of Republic Act No. 7610 before the phrase "be responsible for other conditions prejudicial to the child's development" supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.[36] (Emphasis supplied, citations omitted)

The important element in determining if there was a violation of Section 10(a) of Republic Act No. 7610 is whether the act is or can be prejudicial to a child's development. This should be read together with Section 3(b). A fundamental rule of statutory construction is that courts should not distinguish where the law does not distinguish—"ubi lex non distinguit, nee nos distinguere debemus." [37]

It should be remembered that the Philippines is a signatory[38] to the Convention on the Rights of Persons with Disabilities. Its salient provisions state:

Article 1: Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 23: Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

a)

The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

b)

The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their

children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

c)

Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families. (Emphasis supplied)

This commitment to uphold everyone's fundamental right to human dignity is echoed in our very own Constitution. Article XIII, Section 1 states:

ARTICLE XIII

Social Justice and Human Rights

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

To this end and in relation to family and reproductive rights, laws have been enacted with no less than the express recognition of equality and non-discrimination. The Responsible Parenthood and Reproductive Health Act of 2012,[39] for one, declares as state policy the eradication of "discriminatory practices, laws and policies that infringe on a person's exercise of reproductive health rights."[40] The reproductive concerns of men are also recognized as part of male responsibility.[41] An entire section devoted on programs for persons with disabilities was included:

SECTION 18. Sexual and Reproductive Health Programs for Persons with Disabilities (PWDs). — The cities and municipalities shall endeavor that barriers to reproductive health services for PWDs are obliterated by the following:

- (a) Providing physical access, and resolving transportation and proximity issues to clinics, hospitals and places where public health education is provided, contraceptives are sold or distributed or other places where reproductive health services are provided;
- (b) Adapting examination tables and other laboratory procedures to the needs and conditions of PWDs;
- (c) Increasing access to information and communication materials on sexual and reproductive health in braille, large print, simple language, sign language and pictures;
- (d) Providing continuing education and inclusion of rights of PWDs among health care providers; and
- (e) Undertaking activities to raise awareness and address misconceptions among the general public on the stigma and their lack of knowledge on the sexual and reproductive health needs and rights of PWDs. (Emphasis supplied)

For guidance, the Implementing Rules and Regulations of Republic Act No. 761042 defines "child abuse,"

"cruelty," "neglect," and "exploitation" as:

SECTION 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise —

b) "Child abuse" refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child;

c) "Cruelty" refers to any act by word or deed which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein;

....

f) "Neglect" means failure to provide, for reasons other than poverty, adequate food, clothing, shelter, basic education or medical care so as to seriously endanger the physical, mental, social and emotional growth and development of the child;

....

i) "Exploitation" means the hiring, employment, persuasion, inducement, or coercion of a child to perform in obscene exhibitions and indecent shows, whether live or in video or film, or to pose or act as a model in obscene publications or pornographic materials, or to sell or distribute said materials[.]

The infliction of physical injury as abuse is not difficult to comprehend. In *Torres v. People*[43] this Court deemed the act of whipping a child thrice with a wet t-shirt as child abuse:

[P]etitioner's intention to debase, degrade, and demean the intrinsic worth and dignity of a child can be inferred from the manner in which he committed the act complained of.

To note, petitioner used a wet t-shirt to whip the child not just once but three (3) times. Common sense and human experience would suggest that hitting a sensitive body part, such as the neck, with a wet t-shirt would cause an extreme amount of pain, especially so if it was done several times. There is also reason to believe that petitioner used excessive force. Otherwise, AAA would not have fallen down the stairs at the third strike. AAA would likewise not have sustained a contusion.

Indeed, if the only intention of petitioner were to discipline AAA and stop him from interfering, he could have resorted to other less violent means. Instead of reprimanding AAA or walking away, petitioner chose to hit the latter.

We find petitioner liable for other acts of child abuse under Article VI, Section 10 (a) of Republic Act No. 7610, which provides that "a person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development. . . shall suffer the penalty of prison mayor in its minimum a period." [44] (Citations omitted)

Unlike physical abuse, which ordinarily requires overt acts, neglect is committed by omission. It pertains to the withholding of a child's needs to fully participate in society, such as access to food, education, shelter, and care, all of which children are legally entitled to in recognition of their right to grow into adulthood under the best circumstances.[45]

Neglect may be typified as: (1) physical; (2) educational; (3) emotional; and (4) medical.[46]

Physical neglect refers to the failure to provide a child's basic needs, which consists of food, clothing, and shelter. Educational neglect consists in the failure to ensure that the child receives proper and adequate education. Emotional neglect is the failure to nurture by, among others, ignoring or isolating the child. Medical neglect

pertains to the failure to provide proper healthcare to a child, as when, for instance, one ignores medical recommendations.[47]

Neglect has also been expanded to recognize environmental neglect and supervisory neglect.[48] Environmental neglect pertains to a situation where a child is left in a hazardous or unclean location. Supervisory neglect refers to a situation where a child is abandoned or left under the custody of an inappropriate substitute.[49]

Cruelty, on the other hand, is a much broader term as it includes acts done by word or deed. In any case, the act targets the child's intrinsic worth and dignity without regard to his or her humanity.

What comprises abuse depends on the circumstances of each case. For instance, this Court held in *Bongalon v. People*[50] that not every physical harm done on the child is child abuse:

Not every instance of the laying of hands on a child constitutes the crime of child abuse under Section 10 (a) of Republic Act No. 7610. Only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse.

...

The records showed the laying of hands on Jayson to have been done at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse.[51] (Citation omitted)

Although the intent of Republic Act No. 7610 was recognized in *Amanquiton v. People*,[52] this Court cautioned that:

... this noble statute should not be used as a sharp sword, ready to be brandished against an accused even if there is a patent lack of proof to convict him of the crime. The right of an accused to liberty is as important as a minor's right not to be subjected to any form of abuse. Both are enshrined in the Constitution. One need not be sacrificed for the other.[53]

In reconciling the guidelines, courts should carefully examine the particular act that is alleged to constitute child abuse with due regard to the child's intrinsic worth and dignity. The ultimate determination depends on whether the act done on the child debilitates or debases his fundamental integrity, harming his or her future growth and development.

III

The vasectomy conducted on Larry violates his fundamental right to life and liberty.

Article III, Section 1 of the Constitution states that "[n]o 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." In *Rubi v. The Provincial Board of Mindoro*,[54] Associate Justice George Malcolm elaborated on the right to liberty:

Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of

the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.

In general, it may be said that liberty means the opportunity to do those things which are ordinarily done by free men.[55] (Emphasis supplied)

Granted, this liberty is not impenetrable from interference. As early as 1910, this Court has recognized in *U.S. v. Toribio*[56] that "the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests." [57]

However, when public interest is not under threat, neither the State nor any individual may forcibly interfere with the life and choices of another.

There will always be a sphere of autonomy within an individual's life with which the State cannot interfere. This pertains to the exercise of his or her basic human rights. The protection of the inherent dignity of every individual is guaranteed by no less than the Constitution.[58] The State is obliged to ensure that every individual can make choices free from personal restraint, especially if what is at stake is a fundamental human right.

This is relevant in reproductive health rights. The area of freedom where decisions surrounding one's right to procreate are made is sacrosanct, the protection further bolstered by one's right to privacy.

Although the right to privacy is intertwined with the right to liberty, it is a distinct right that is equally entitled to protection under the Constitution.[59] Article III, Section 3(1) states that "[t]he privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

The right to privacy, however, not only pertains to privacy of one's communication and correspondence. It has many dimensions, referred to as "zones of privacy," which are embedded in other constitutionally guaranteed freedoms. In *Morfe v. Mutuc*: [60]

[I]n view of the fact that there is an express recognition of privacy, specifically that of communication and correspondence which "shall be inviolable except upon lawful order of Court or when public safety and order" may otherwise require, and implicitly in the search and seizure clause, and the liberty of abode, the alleged repugnancy of such statutory requirement of further periodical submission of a sworn statement of assets and liabilities deserves to be further looked into.

In that respect the question is one of first impression, no previous decision having been rendered by this Court. It is not so in the United States where, in the leading case of *Griswold v. Connecticut*, Justice Douglas, speaking for five members of the Court, stated: "Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'" After referring to various American Supreme Court decisions, Justice Douglas continued: "These cases bear witness that the right of privacy which presses for recognition is a legitimate one."

The Griswold case invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons; rightfully it stressed "a relationship lying within the zone of privacy created by several fundamental constitutional guarantees." It has wider implication though. The constitutional right to privacy has come into its own.

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: "The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society." [61] (Citations omitted)

Apart from the Constitution, our laws also recognize the zones of privacy. In *Ople v. Torres*: [62]

Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution. It is expressly recognized in Section 3(1) of the Bill of Rights:

"Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

Other facets of the right to privacy are protected in various provisions of the Bill of Rights, viz:

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

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

....

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

....

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Sec. 17. No person shall be compelled to be a witness against himself."

Zones of privacy are likewise recognized and protected in our laws. The Civil Code provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another. It also holds a

public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act and the Intellectual Property Code. The Rules of Court on privileged communication likewise recognize the privacy of certain information.[63] (Emphasis supplied, citations omitted)

In his speech, "The Common Right to Privacy," retired Chief Justice Reynato S. Puno distinguished among three (3) different aspects or "strands" of the right to privacy, namely: (1) locational privacy; (2) informational privacy; and (3) decisional privacy.[64]

Locational privacy, also known as situational privacy, pertains to privacy that is felt in a physical space. It may be violated through an act of trespass or through an unlawful search.[65] Meanwhile, informational privacy refers to one's right to control "the processing—i.e., acquisition, disclosure, and use—of personal information." [66]

Decisional privacy, regarded as the most controversial among the three, refers to one's right "to make certain kinds of fundamental choices with respect to their personal and reproductive autonomy." [67] It finds relevance in matters that involve one's reproductive health.

Several provisions in our Constitution, though not in express terms, are essentially related to reproductive health:

Article II, Section 12 of the Constitution states:

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Article XV, Sections 1 and 3(1) state:

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 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[.]

One's autonomy over his or her life and body, therefore, is inextricably linked with the right to privacy.[68]

Reproductive health rights, being within the sphere of autonomy, are protected from interference by private individuals, including parents and guardians. At most, they can only provide guidance and education. Larry will still grow, and his mental capacity will be beyond 18 at some point. In their premature judgment that Larry would be incapable of becoming a responsible adult, the Aguirre Spouses curtailed his liberty and violated his decisional privacy.

Ignorance and fear have infantilized persons with intellectual disability, broadly categorizing them as asexual juveniles. As a result, their display of affection and sexual behaviors are dismissed as less acceptable.[69]

Historically, this led to practices of "selective breeding" through surgical sterilization, which prevented persons

with intellectual disability from fully realizing their sexual rights.[70]

At present, there are available therapies and interventions that target and minimize the impairment level and improve the functionality of one with such disability.[71] Intellectual disability does not disqualify an individual from becoming a parent.[72] With adequate support and education, those with intellectual disability may have a healthy, appropriate expression of sexuality, and eventually, parenting skills and capacity to raise their own children.[73]

The possibility of Larry understanding his right to reproduce in the future should not be disregarded simply because his development is medically considered "slow." As a child in need of greater care and consideration, respondents should have acted more humanely and responsibly.

Moreover, Larry's ability to exercise his right to procreate goes beyond a mere invocation of his reproductive health rights. It seeps into his capacity to form relationships, to start a family, to be a responsible parent, and to live his life as fully and as meaningfully as possible. Taking away his ability to sire children effectively debilitates him as a child and a human being. While Larry is not barred from engaging in a relationship or sexual relations that could lead to having a child, the vasectomy has severely limited his options to start a family of his own. The decision to undergo vasectomy, whether reversible or not, involves an act that is part of private rights. The right to reproduce forms part of how humans define themselves. The choice of whether to reproduce should be respected, even if the person has cognitive disability.

Thus, the vasectomy on someone with cognitive disability, without his' or her consent, is both an act of cruelty and an act prejudicial to the person's' development.

Cruelty refers to something that debases, degrades, or demeans the intrinsic value of a child.[74] This may be seen in two (2) ways. On one hand, it can refer to an act and the manner by which it was done. On the other hand, it can also refer to the result of an act.

The unconsented vasectomy on Larry is clearly a case of cruelty, not so much for the manner it was done, but because of the circumstances surrounding its commission and the resulting limitations to the way Larry will be able to live the rest of his life.

The vasectomy was a decision made by respondents despite the medical finding that Larry, at that time, was unable to comprehend the procedure's long-term ramifications. While parents are capable of exercising authority over their children, this authority is by no means unlimited. Parental authority is both a right and an obligation, granted by law under the presumption that it will be exercised for the full development of a child's mind, heart, and senses.[75] Under no circumstances is it allowed to be exercised in a way that is violative of human dignity or will diminish another's intrinsic worth. Santos, Sr. v. Court of Appeals[76] describes the nature of parental authority as a "sum of duties":

[Parental authority] is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, "there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor." [77]

The mark of a good parent is not measured by his or her material wealth or mental faculties. Rather, a good parent is one who exhibits the patience, love, and ability to sacrifice so that the child discovers what it is to be nurtured, protected, and resilient.

Being cognitively disabled is not a barrier to parenthood. A person's disability has no direct correlation to being a good parent:[78]

It is important to separate personality from disability, to acknowledge that cognitive limitation is only about how people learn. Rarely is it the most significant factor in deciding whether someone can parent adequately.

A parent's disability, in itself, does not necessarily determine whether a parent will be a "good enough" parent. While the individual characteristics of the parent are important, the characteristics of the supports available have a lot of influence over whether parents will succeed.[79]

Under the philosophy of supported parenting, persons who are cognitively disabled are fully capable of being parents themselves if given wholehearted support by both their family and community.[80] This requires that their needs be identified, including "the parent's individual learning style; the parent's current knowledge, behavior, attitudes, beliefs, values; available support systems, and available resources." [81]

Yet, Larry's legal guardians, instead of acting only for his best interests, substituted his consent with their own under the guise of "protection." [82] There were other options for Larry who, in time, could have children of his own. But this was taken away from him by the people who should have acted in Larry's best interest. To deprive him of all the options his life had to offer is an act of cruelty. It was an act borne out of selfishness, not love. It was not for them to conclude that Larry cannot become a parent or care for someone other than himself.

The State's responsibility to protect children with disabilities is both an international and constitutional commitment. When no one else is willing to take up the cudgels for Larry, the State must not renege on its duty to ensure the protection of his human dignity simply on the ground of procedural infirmity. The State must not allow the violation of a child's right made even in the misguided concept of parental authority.

ACCORDINGLY, I vote that the bilateral vasectomy conducted on Larry be considered as child abuse and a violation of Republic Act No. 7610.

[1] United Nations Declaration on the Rights of Disabled Persons, 1975. This Declaration called for a national and international framework for the protection of the rights of persons with disabilities. The result was the United Nations Convention on the Rights of Persons with Disabilities, to which the Philippines became a state party on September 25, 2007, and which it ratified on April 15, 2008.

[2] Though the Declaration used "Disabled Persons," the United Nations has since adopted a People First Language, using "Persons with Disabilities." On its website < <https://www.un.org/development/desa/disabilities/about-us/frequently-asked-questions-faqs.html#7> >, the United Nations noted that disability is an evolving concept, along with its language:

"The language used to refer to persons with disabilities has played a significant role in the persistence of negative stereotypes. Clearly, terms such as "crippled" or "mentally retarded" are derogative. Other terms such as "wheelchair-bound" or "disabled persons" emphasize the disability before the person.

"The drafters of this Convention were clear that disability should be seen as the result of the interaction between a person and his or her environment. Disability is not something that resides in the individual as the result of some impairment. This convention recognizes that disability is an evolving concept and that legislation may adapt to reflect positive changes within society."

[3] CONST., art. XV, sec. 3(2) provides:

SECTION 3. The State shall defend:

....

(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.

[4] Republic Act No. 7610 (1992), sec. 2 provides:

SECTION 2. Declaration of State Policy and Principles. — It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial [to] their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

[5] Republic Act No. 7610 (1992), sec. 2

[6] L. I. Smith-Harrison and Ryan P. Smith, Vasectomy reversal for post-vasectomy pain syndrome (2016), available at < <http://tau.amegroups.com/article/view/14896/15147> > last visited on September 2, 2019).

[7] Aaron M. Bernia, et al., Vasectomy reversal in humans (2012), available at < <https://www.ncbi.nlm.nih.gov/pmc/articles/pmc3521749/pdf/spmg-2-273.pdf> > last visited on September 2, 2019).

[8] See Ira D. Sharlip, et al., Vasectomy: American Urological Association Guideline (2012), available at < <https://www.auajournals.org/doi/pdf/10.1016/j.juro.2012.09.080> > (last accessed on September 2, 2019).

[9] Id. at 2485.

[10] Id.

[11] Rollo, p. 13.

[12] Id.

[13] Abhishek P Patel and Ryan P. Smith, Vasectomy Reversal: a clinical update (2016), available at < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4854082/pdf/AJA-18-365.pdf> > (last accessed on September 2, 2019).

[14] The American Society for Reproductive Medicine, Birmingham, Alabama in collaboration with the Society for Male Reproduction and Urology Vasectomy reversal, 90 FERTILITY AND STERILITY 78 (2008), available at <[http://www.fertstert.org/article/S0015-0282\(08\)03721-7/pdf](http://www.fertstert.org/article/S0015-0282(08)03721-7/pdf)> (last visited on September 2, 2019); Jacob C. Parke, M.D., Vasovasostomy and Vasoepididymostomy, MEDSCAPE, December 21, 2016, available at (last visited on September 2, 2019).

[15] David Rosenbloom, M.D., Reversal of Sterility Due to Vasectomy 7 FERTILITY AND STERILITY 540 (1956), available at <[http://www.fertstert.org/article/S0015-0282\(16\)32525-0/pdf](http://www.fertstert.org/article/S0015-0282(16)32525-0/pdf) > (last visited on September 2, 2019).

[16] Abhishek P Patel and Ryan P. Smith, Vasectomy Reversal: a clinical update (2016), available at < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4854082/pdf/AJA-18-365.pdf> > (last accessed on September 2, 2019).

[17] Rollo, p. 13. The vasectomy was conducted on January 31, 2002.

[18] Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

[19] Araneta v. People, 578 Phil. 876, 884 (2008) [Per J. Chico-Nazario, Third Division].

[20] Id. at 884-886.

[21] *People v. Rayon, Sr*, 702 Phil. 672, 682 (2013) [Per J. Brion, Second Division].

[22] Republic Act No. 7610 (1992), sec. 10(a).

[23] 793 Phil. 877 (2016) [Per J. Peralta, Third Division],

[24] Id. at 884.

[25] Id. at 883-884.

[26] 746 Phil. 809 (2014) [Per J. Leonen, Second Division].

[27] Id. at 830-831.

[28] *Aguirre v. Secretary of the Department of Justice*, 571 Phil. 138, 147 (2008) [Per J. Chico-Nazario, Third Division].

[29] Tiago Savignon, Everton Costa, Frank Tenorio, Alex C. Manhães, and Penha C. Barradas, Prenatal Hypoxic-Ischemic Insult Changes the Distribution and Number of NADPH-Diaphorase Cells in the Cerebellum (2012), available at < <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0035786> > (last visited on September 2, 2019).

[30] Henrik Hagberg, A. David Edwards, and Floris Groenendaal, Perinatal brain damage: The Term Infant, 92 NEUROBIOLOGY OF DISEASE 102, 102 (2016), available at < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915441/pdf/main.pdf> > (last visited on September 2, 2019).

[31] Berger, R., et al. Perinatal brain damage: underlying mechanisms and neuroprotective strategies, 9 J SOC GYNECOL INVESTIG. 319 (2002), available at <<https://www.ncbi.nlm.nih.gov/pubmed/12445595>> (last visited on September 2, 2019).

[32] Henrik Hagberg, A. David Edwards, and Floris Groenendaal, Perinatal brain damage: The Term Infant, 92 NEUROBIOLOGY OF DISEASE 102, 108 (2016), available at < <https://www.ncbi.nlm.nih.gov/pmc/articles/pmc4915441/pdf/main.pdf> > (last visited on September 2, 2019).

[33] Berger, R., et al. Perinatal brain damage: underlying mechanisms and neuroprotective strategies, 9 J SOC GYNECOL INVESTIG. 319 (2002), available at < <https://www.ncbi.nlm.nih.gov/pubmed/12445595> > (last visited on September 2, 2019).

[34] *Araneta v. People*, 578 Phil. 876, 883-884 (2008) [Per J. Chico-Nazario, Third Division].

[35] 578 Phil. 876 (2008) [Per J. Chico-Nazario, Third Division].

[36] Id. at 884-886.

[37] *United BF Homeowners' Association, Inc. v. The Barangay Chairman and the Sangguniang Barangay of BF Homes Parañaque*, 532 Phil. 660, 669 (2006) [Per J. Corona, Second Division].

[38] See United Nations Treaty Collection, available at < https://treaties.un.org/pages/viewdetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en > (last visited on September 2, 2019). The Philippines became a state party on September 25, 2007. The Convention was ratified on April 15, 2008.

[39] Republic Act No. 10354 (2012).

[40] Republic Act No. 10354 (2012), sec. 2(6).

[41] Republic Act No. 10354 (2012), sec. 4(i).

[42] Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (1993).

[43] 803 Phil. 480 (2017) [Per J. Leonen, Second Division].

[44] Id. at 490-491.

[45] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. The Philippines ratified the Convention on August 21, 1990.

[46] National Security for the Prevention of Cruelty to Children, Neglect <<https://www.nspcc.org.uk/what/is-child-abuse/types-of-abuse/neglect/#types>> (last visited on September 2, 2019).1234

[47] Id.

[48] Ferol E. Mennen, Kihyun Kim, Jina Sang, Penelope Trickett, Child neglect: Definition and identification of youth's experiences in official reports of maltreatment, 34 CHILD ABUSE AND NEGLECT THE INTERNATIONAL JOURNAL 647 (2011), available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2949068/>> (last visited on September 2, 2019).

[49] Id.

[50] 707 Phil. 11 (2013) [Per J. Bersamin, First Division].

[51] Id. at 14-21.

[52] 612 Phil. 1253 (2009) [Per J. Corona, First Division].

[53] Id. at 1263.

[54] 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

[55] Id. at 705.

[56] 15 Phil. 85 (1910) [Per J. Carson, First Division].

[57] Id. at 98 citing *Lawson v. Steele*, 152 U.S., 133, 136.

[58] CONST., art. II, sec. 11 provides:

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

[59] See *Morfe v. Mutuc*, 130 Phil. 415 (1968) [Per J. Fernando, En Banc] and *Ople v. Torres*, 354 Phil. 948 (1998) [Per J. Puno, En Banc].

[60] 130 Phil. 415 (1968) [Per J. Fernando, En Banc].

[61] Id. at 434-436.

[62] 354 Phil. 948 (1998) [Per J. Puno En Banc].

[63] Id. at 972-974.

[64] *Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Jr., Third Division] citing Retired Chief Justice Reynato S. Puno, *The Common Right to Privacy* (Forum on The Writ of Habeas Data and Human

Rights, Innotech Seminar Hall, Commonwealth Avenue, Quezon City), March 12, 2008.

[65] See footnote 21 in *Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Jr., Third Division].

[66] William L. Prosser, *Privacy*, 48 Cal. L. REV. 382, 389 (1960), available at <<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3157&context=californialawreview>> (last visited on September 2, 2019); Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 Stan L. Rev. 1193, 1203 (1998), available at <<https://www.ntia.doc.gov/legacy/ntiahome/privacy/files/CPRIVACY.PDF>> (last visited on September 2, 2019).

[67] See footnote 22 in *Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Jr., Third Division].

[68] See J. Leonen, *Dissenting Opinion in Spouses Imbong v. Ochoa*, 732 Phil. 1, 554-666 (2014) [Per J. Mendoza, En Banc].

[69] Abbas Ali Hosseinkhanzadeh, et al., *Attitudes to Sexuality in Individuals with Mental Retardation from Perspectives of their Parents and Teachers*, 4 INT. J. SOCIOLOG. ANTHROPOLOGY. 134, 135 (2012), available at <https://academicjournals.org/article/article1379603739_Hosseinkhanzadeh%20et%20al.pdf> (last visited on September 2, 2019).

[70] *Id.*

[71] Sharma A. Sane, et al., *Cellular Therapy, a Novel Treatment Option for Intellectual Disability: A Case Report*, 5 J. CLIN. CASE REP. 483 (2015), available at <<https://www.neurogen.in/assets/frontend/pdf/scientific-publications/ID/03-ID.pdf>> (last visited on September 2, 2019); Sabyasachi Bhaumik, et al., *Psychological Treatments in Intellectual Disability: The Challenges of Building a Good Evidence Base*, 198 THE BRITISH JOURNAL OF PSYCHIATRY 428 (2011), available at (last visited on September 2, 2019).

[72] 1 Sherri Melrose, et al., *Supporting Individuals with Intellectual Disabilities and Mental Illness: What Caregivers Need to Know* 86-88, 93 (2015), available at <https://web2.mlp.cz/koweb/00/04/24/15/72/supporting_individuals_with_intellectual_disabilities.pdf> (last accessed on September 2, 2019).

[73] *Id.*

[74] *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*, sec. 2(c).

[75] *Santos, Sr. v. Court of Appeals*, 312 Phil. 482, 487-488 (1995) [Per J. Romero, Third Division].

[76] *Id.*

[77] *Id.* at 487-488.

[78] Howard Mandeville, *Supported Parenting*, Wisconsin Coalition for Advocacy 181 <<http://www.disabilityrightswi.org/wp-content/uploads/2018/09/Supported-Parenting.pdf>> (last visited on September 2, 2019).

[79] *Id.*

[80] *Id.*

[81] Id.

[82] Rollo, p. 143. According to accused-respondent Pedro, he was prompted to act because of Larry's "emerging sexuality."

SEPARATE OPINION

JARDELEZA, J.:

I CONCUR with the majority that the petition should be dismissed.

I submit this Opinion, however, to respond to the following views offered by Associate Justice Marvic Leonen in his Separate Opinion: (1) a person with intellectual disability[1] has a fundamental right to procreation and parenthood; (2) sterilization[2] performed on the individual, at the instance of his/her parents or guardian without the individual's express consent, violates this right; and (3) sterilization under such circumstances is punishable as a crime of cruelty or child abuse under Section 10(a) of Republic Act No. 7610 (RA 7610).[3]

I also submit this Opinion to clarify the concept of fundamental rights under constitutional law.

I

The following facts[4] of this case are not disputed:

Larry was a charge of the Heart of Mary Villa. In June 1980, he was, formally taken in as a ward by respondents Pedro Aguirre and the latter's spouse Lourdes S. Aguirre (Aguirres) by virtue of an Affidavit of Consent to Legal Guardianship executed by Sister Mary Concepta Bellosillo, Superior of the Heart of Mary Villa. Several years later, or on June 19, 1980, the Regional Trial Court (RTC), Balanga, Bataan, granted the Aguirres joint guardianship of Larry's person and property. In 1989, when Larry was eleven years old, and given his "somewhat slow mental development,"[5] he was taken to specialists for neurological and psychological evaluations which revealed that he had mild mental deficiency. In 2001, when Larry was 21 years old, the Aguirres approached respondent Dr. Juvido Agatep (Dr. Agatep), a urologist/surgeon, concerning their intention to have Larry vasectomized. Dr. Agatep, however, required that Larry first be evaluated by a psychiatrist to determine whether Larry is able, given his mental deficiency, to give consent to the requested medical procedure. In a psychiatric report dated January 21, 2002, respondent psychiatrist Dr. Marissa Pascual (Dr. Pascual) confirmed Larry's mental deficiency, finding that he is "very much dependent on his family for his needs, adaptive functioning, direction and in making major life decisions." [6] According to Dr. Pascual, Larry, "[a]t his capacity, x x x may never understand the nature, the foreseeable risks and benefits, and consequences of the procedure (vasectomy) that his family wants for his protection. Thus, the responsibility of decision making may be given to his parent or guardian." [7] On January 31, 2002, and with respondent Pedro's written consent, respondent Dr. Agatep performed bilateral vasectomy on Larry. [8]

In two complaint-affidavits dated September 9, 2002, Gloria Pilar S. Aguirre and Sister Pilar Versoza (Versoza) charged respondents Pedro, his daughter Michelina Aguirre-Olondriz, Dr. Agatep, and Dr. Pascual of falsification and mutilation under Articles 172 and 262, respectively, of the Revised Penal Code (RPC) and/or Child Abuse under Sections 3 and 10 of RA 7610. The complaints for falsification and mutilation were dismissed by the Office of the City Prosecutor (OCP) for insufficiency of evidence. [9]

It appears, however, that the OCP reconsidered its earlier resolution and ordered the filing of criminal Informations against respondents with the RTC for violation of RA 7610. Upon respondents' motions, the RTC, in an Order [10] dated November 8, 2005, nevertheless dismissed the case for lack of probable cause. Petitioner thus

elevated the matter to the Court of Appeals (CA). In its Decision[11] dated May 16, 2008, the CA held that the bilateral vasectomy performed on Larry is neither child abuse nor cruelty punishable under RA 7610. It also held that then appellant (now petitioner) Versoza is neither Larry's parent, adopter, or legal guardian, and therefore had no legal personality to institute the complaint against respondents. Aggrieved, petitioner filed this action before the Court.

In the meantime, respondents Michelina S. Aguirre-Olondriz and Pedro B. Aguirre, in a motion to dismiss, informed this Court that petitioner died on September 9, 2012, three days after suffering from a brain aneurysm.[12] This was not denied by petitioner's counsel, who also maintained that, given the "transcendent importance" of the issue at hand, the case survives petitioner Versoza's death.[13]

II

In my view, RA 7610 does not criminalize vasectomy. There is no showing of any clear legislative intent to make sterilization of intellectually-disabled individuals, conducted with the consent of their parents or legally-constituted guardians, a criminal act.[14] In fact, and contrary to what Justice Leonen suggests,[15] legislative deliberations would appear to define acts of cruelty as "unreasonable infliction of physical injury or inhuman treatment on the physical being of a child"[16] citing physical maltreatment and beatings, as examples.[17] Basic rules of statutory construction would therefore instruct against such reading, especially when, as pointed out by the Office of the Solicitor General, such procedure, a "recognized" and "medically accepted"[18] method of contraception, was conducted with the consent of Larry's legally-appointed guardian, after much deliberation and in consultation with a psychiatrist.[19]

Existing laws also militate against Justice Leonen's proposed reading of RA 7610. The Congress, through several legislative enactments, has identified other equally important interests, including those of parents and the State, which arguably have a direct bearing on the asserted liberty interest to procreation and parenthood. These should be properly taken into account.

A

Republic Act No. 10354 (RA 10354), otherwise known as the "Responsible Parenthood and Reproductive Health Act of 2012," and which the Separate Opinion makes fleeting reference to,[20] provides for, and lays down, a "national policy" on "responsible parenthood and reproductive health." Examination of the provisions of RA 10354 in its entirety shows how the Congress struck a balance between the demands of responsible parenthood and reproductive rights, resting on the fulcrum of free, informed consent.

RA 10354 declares as national policy the recognition of human rights and the right to non-discrimination. It declares that the right to health includes reproductive health which, in turn, refers to the rights of individuals to decide freely and responsibly whether or not to have children.[21] It recognizes a mental health aspect to reproductive health[22] and, in fact, defines the latter to refer to a state of, among others, mental well-being as to imply that people have the capability to reproduce and the freedom to decide if, when, and how often to do so.[23] RA 10354 also defines responsible parenthood as follows:

Sec. 4. Definition of Terms. — For the purpose of this Act, the following terms shall be defined as follows:

x x x x

(v) Responsible parenthood refers to the will and ability of a parent to respond to the needs and aspirations of the family and children. It is likewise a shared responsibility between parents to determine and achieve the desired number of children, spacing and timing of their children according to their own family life aspirations, taking into account psychological preparedness, health status, sociocultural and economic concerns consistent with their religious convictions. (Emphasis supplied.)

It also provides that all individuals shall have access to family planning, which is the full range of safe, affordable, effective, non-abortifacient modern methods of planning pregnancy.[24]

RA 10354 recognizes the parents' shared responsibility to decide when to have children, their number and spacing, and to make the decision in light of their family life aspirations, health, and economic circumstances. Arguably, this same responsibility applies to parents of the intellectually-disabled child, over whom they owe the duty to determine, using the same guidelines, whether to beget children. This responsibility springs from the fundamental right and interest of parents over children under their care.

In the United States (US), this interest of parents in the "care, custody, and control of their children" has been held by the US Supreme Court in *Troxel v. Granville*[25] as "perhaps the oldest of the fundamental liberty interests recognized by this Court." [26] Similarly, this Court, in *Imbong v. Ochoa, Jr.*, [27] upheld the primacy of parental authority over their children when it struck down a provision in RA 10354 which does away with the consent of parents for the conduct of a family planning procedure on their child in cases where said child is already a parent or has had a miscarriage:

It is precisely in such situations when a minor parent needs the comfort, care, advice, and guidance of her own parents. The State cannot replace her natural mother and father when it comes to providing her needs and comfort. To say that their consent is no longer relevant is clearly anti-family. It does not promote unity in the family. It is an affront to the constitutional mandate to protect and strengthen the family as an inviolable social institution.

More alarmingly, it disregards and disobeys the constitutional mandate that "the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government." In this regard, Commissioner Bernas wrote:

The 1987 provision has added the adjective "primary" to modify the right of parents. It imports the assertion that the right of parents is superior to that of the State.[28] (Emphasis supplied; citations omitted.)

Vasectomy is a legitimate modern family planning method under RA 10354.[29] As such, and consistent with *Imbong* where the Court recognized as constitutionally permissible family planning methods which work prior to fertilization, parents/legal guardians of an intellectually-disabled child can arguably claim a constitutional right and duty to decide whether vasectomy or tubal ligation would be in the latter's best interests. Whether the decision is in the best interest of said child in a particular case would, of course, be a triable question of fact to be resolved after the reception of evidence on the condition of the child and the situation of the parent/legal guardian.

Here, Justice Leonen cannot cite from the record sufficient scientific and medical evidence to show that Larry understands the nature and consequences of his sexuality, of his having a child, and of his being a parent. Dr. Pascual's conclusion that Larry may never understand the nature and consequences of vasectomy does not substitute for evidence that he understands the nature and consequences of bearing a child and being a parent. Neither is there evidence introduced below to show that Larry is 'possessed of the will and ability to respond to the "needs and aspirations" of children he may beget, taking into account his (Larry's) "psychological preparedness, health status" and attendant "sociocultural and economic concerns," according to the provisions of RA 10354 on responsible parenthood.

On the contrary, Dr. Pascual, after examining Larry, noted that he "still needs supervision in taking a bath," "cannot prepare his own meal" or run errands alone, and whose human figure "is comparable to a 7-8 year old." [30] Larry also does not appear to have a source of income independent from his family. These, it must be emphasized, were never controverted by petitioner.

Similarly, there is no medical or scientific evidence on record to support either Justice Leonen's claim that Larry's

mental age will grow to be 18 years of age or beyond at some point in the future or its theory of "supported parenting." Given the advancing age and medical problems of Larry's guardians, and their financial standing, it is imperative that there must be some showing that they are (or will still be) possessed with the resources to meet the requirements of "supported parenting" for any of Larry's future children.

Notably, Justice Leonen himself, in his Opinion holding curfew ordinances on minors unconstitutional, has characterized a parent's rights with respect to his/her family as no less "fundamental," "an integral aspect of liberty and privacy," which ought to "receive the support of Government," their interests being "superior" to the State whose decision can only substitute or supplement "when parental authority is established to be absent or grossly deficient." [31]

Here, Larry's guardians claim that they made the decision to sterilize him due to the following considerations: they "are already old and have medical problem and x x x could no longer monitor and take care of him like before," [32] and "because of Larry's emerging sexuality and inability to take care of himself much less a child." [33] Absent any clear showing that this exercise of parental authority is absent or grossly deficient, it should be considered that respondent Pedro, as Larry's legally-constituted guardian with the obligation to ensure his well-being, has an equally important right to decide matters affecting the latter. Justice Leonen conspicuously fails to cite any basis on the record which would show how respondent Pedro's exercise of parental authority in this particular instance was absent or grossly deficient, much less that it actually operated to Larry's detriment.

With respect, I also take exception to Justice Leonen's insinuation that respondent Pedro "deprive[d] him of all the options [that] his life had to offer," [34] even expressly characterizing their decision as "an act of selfishness; not one borne out of love." [35] First, and considering that there is simply no evidence on record to support these statements, I find Justice Leonen's conclusions to be unfounded and unfair. Furthermore, parents, probably more than anyone else, are the ones expected to love and care for their child, to do their best to ensure and look after their child's best interests. This is even acknowledged by the law which provides a father's diligence as the default standard of care required in the general performance of obligations. [36] Absent evidence to the contrary, respondent Pedro is presumed to always act in Larry's best interests; he would never have been granted guardianship over Larry otherwise. Respondent Pedro has taken Larry, an orphan, into his house and, from all available indications, brought him up like one of his own. I thus hesitate to be so harsh as to question respondent Pedro's motivations and impute bad faith on his parenting on account of Justice Leonen's disagreement (with the decision to vasectomize) based on a still to be established legal "principle."

B

We should also consider the provisions of the Family Code which prohibits persons under the age of 18 from contracting marriage; [37] and ' allows the annulment of marriages contracted by parties between the ages of 18 and 21 when parental consent is not secured [38] or when either party was of unsound mind at the time of marriage. [39] These provisions evince a State interest to ensure that parties contracting a marriage know their enormous responsibilities as future parents. The Family Code is replete with provisions making up the bundle of duties and responsibilities imposed upon parents/guardians with respect to their children/wards, [40] including the duty to support, educate and provide for the child's upbringing. Pursuant thereto, should the State issue a marriage license in favor of an intellectually-disabled individual? A case can arguably be made that the same State interest (which allows the State to prohibit minors from contracting marriage) applies in cases of intellectually-disabled individuals who may wish to marry and have children. To my mind, an assertion of an unqualified right of an intellectually-disabled person to have children, because it implicates State interests, would require the reception of evidence to prove that the individual is willing and able to meet the bundle of duties and responsibilities imposed by the State as a consequence of parenthood. [41]

C

There is also Republic Act No. 11036 (RA 11036), otherwise known as the "Mental Health Act," which was approved only in June of last year. Under this law, the Congress, after consultation with a wide range of public mental health individuals, experts, academics, professionals, governmental and non-government associations,[42] declared as policy that mental health conditions be treated and that persons affected by mental health conditions are able to exercise the full range of human rights.[43] RA 11036 further states as an objective the protection of the rights and freedoms of persons with psychiatric, neurologic, and psychosocial health needs.[44] After defining a mental health condition as follows:

Sec. 4. x x x

xxxx

(k) Mental Health Condition refers to a neurologic or psychiatric condition characterized by the existence of a recognizable, clinically-significant disturbance in an individual's cognition, emotional regulation, or behavior that reflects a genetic or acquired dysfunction in the neurobiological, psychosocial, or developmental processes underlying mental functioning. The determination of neurologic and psychiatric conditions shall be based on scientifically-accepted medical nomenclature and best available scientific and medical evidence[.][45]

the law goes on to enumerate the rights of the person with a health condition, whom it calls the service user. These include: (1) the right against treatment that are cruel, inhumane, harmful or degrading and invasive procedures not backed by scientific evidence;[46] (2) the right to give informed consent before receiving treatment, such consent is required to be in writing and recorded in the service user's record;[47] and (3) the right to designate a person of legal age as his or her legal representative, who may act as substitute decision maker.[48]Where the service user fails to appoint, RA 11036 identifies the persons qualified to be his/her legal representative, in a prescribed order, as follows:

Sec. 10. xxx

xxxx

(c) Failure to Appoint. If the service user fails to appoint a legal representative, the following persons shall act as the service user's legal representative, in the order provided below:

(1)

The spouse, if any, unless permanently separated from the service user by a decree issued by a court of competent jurisdiction, or unless such spouse has abandoned or been abandoned by the service user for any period which has not yet come to an end;

(2)

Non-minor children;

(3)

Either parent by mutual consent, if the service user is a minor;

(4)

Chief, administrator, or medical director of a mental health care facility; or

(5)

A person appointed by the court. (Emphasis supplied.)

RA 11036 further requires public and private health facilities to create internal review boards to assess and decide, *motu proprio* or upon written complaint or petition, all cases, disputes and controversies involving the treatment, restraint or confinement of service users within their facilities.[49] Mental health professionals are also given the right to advocate for the rights of a service user, where the latter's wishes are deemed to be at odds with those of his/her family or legal representative.[50]

Through RA 11036, the Congress has put in place a legal regime requiring the informed consent of the service user prior to treatment. In the same measure, it nevertheless provided for: (1) exceptions to the requirement of informed consent, in cases of emergencies, or "when there is impairment x x x of decision-making capacity on the part of a service user,"[51] subject to certain safeguards and conditions;[52] and (2) penalties in case of violation of its provisions.[53]

Both RA 10354 and RA 11036 make possible alternative views on sterilization in relation to intellectually-disabled individuals. Under RA 10354, for example, vasectomy can be viewed as a family planning procedure that the parent/legal guardian of an intellectually-disabled child/individual may decide that the latter should undergo. In like manner, vasectomy can arguably qualify as a possible treatment or medical intervention for an individual with a mental health condition (to which his/her parents can give substituted consent to under certain specified conditions). By these lights, the view that vasectomy on intellectually-disabled individuals is criminal should be tested in a proper, prospective case.

D

More, it should also be considered that there are differing kinds and levels of intellectual disabilities; treating all of them similarly and without due consideration of their differences may only end up doing the concerned intellectually-disabled individual a disservice. The US Supreme Court, for example, has acknowledged the existence of levels of intellectual disabilities and how, in the context of the constitutional right forbidding the execution of the intellectually-disabled, they play a critical role in providing information on how intellectual disability should be measured and assessed.[54] Aside from acknowledging that its decisions on the matter is better informed by the views and assessments of medical experts and the professional medical community, the Court also recognized DSM-5, which provides for four severity levels for intellectual disability, namely: mild, moderate, severe and profound, as an authoritative reference.[55]

This Court, in a prosecution for rape and sexual assault of a 21 year-old intellectually-disabled person with a mental age of six years and an IQ of 38, has itself acknowledged differences with respect to mental/intellectual deficiencies:

The term, "deprived of reason," is associated with insanity or madness. A person deprived of reason has mental abnormalities that affect his or her reasoning and perception of reality and, therefore, his or her capacity to resist, make decisions, and give consent.

The term, "demented," refers to a person who suffers from a mental condition called dementia. Dementia refers to the deterioration or loss of mental functions such as memory, learning, speaking, and social condition, which impairs one's independence in everyday activities.

We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented," however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of

such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."

xxx Decision-making is a function of the mind, x x x[56] (Citations omitted.)

These viewpoints, to me, show that Justice Leonen's grand assertion of a "fundamental" right on the part of the intellectually-disabled to procreation and parenthood is not as self-evident as he makes it appear. The cited laws and court holdings, both here and abroad, underscore that rights do not exist in isolation; one man's liberty ends where another man's begins.[57] As a constitutional scholar writes:

Even when it has recognized a core kind of fundamental right, such as the right to autonomy in procreative matters, the Court should be reluctant to extend the protected interest to novel circumstances without considering countervailing factors, xxx Instead, it should be recognized that there is a needed region of legislative flexibility to prevent negative consequences of these endeavors in which the State has legitimate interests and in which a "right" may destroy countervailing "rights." xxx [T]he initial decision to recognize the interest as a fundamental right should not be undertaken without an inquiry into other individual interests that might be compromised by the categorization.[58] (Emphasis supplied.)

Ignoring the reality of competing interests would mean wrongly presupposing, in the words of Justice Scalia, that "x x x there is only one side to this controversy—that one disposition can expand a 'liberty' of sorts-without contracting an equivalent 'liberty' on the other side. Such a happy, choice is rarely available." [59] The "ramifications and gravity of the issue involved" [60] simply does not justify traversing the complex issues pertaining to the reproductive rights of the intellectually-disabled, absent any evidence supporting the conflicting claims and arguments surveyed.

III

My views on the prematurity of reaching the constitutional issues notwithstanding, I take this occasion to discuss the concept of fundamental rights. I do so in response to Justice Leonen's assertion that the vasectomy conducted on Larry, an intellectually-disabled person, violated his "fundamental right to life and liberty," [61] particularly, his rights "to procreate," [62] to "start a family," [63] to be a "parent," [64] and that the decision to subject him to vasectomy required Larry's consent. [65]

A

The concept of fundamental rights, once described as "liberties that operate as trumps," [66] was first extensively covered by the Court, through Chief Justice Puno, in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, [67] There, the Court, citing Gerald Gunther, traced its history and development in the context of American constitutional equal protection analysis. [68] The liberty interests declared by the US Supreme Court to be "fundamental" are the right to procreation, the right to marry, the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, the right to travel and the right to vote. [69] By way of continued acceptance of the concept, this Court, very recently in *Republic v. Manalo* [70] and applying equal protection analysis, identified marriage, among others, as a fundamental right.

The recognition of an asserted liberty interest as "fundamental" has significant legal consequences. Traditionally, liberty interests are protected only against arbitrary government interference. If the government can show a rational basis for believing that its interference advances a legitimate legislative objective, a claim to a liberty interest may fail. [71] Where, however, a liberty interest has been accorded an "elevated" status by characterizing it as a right (or a fundamental right), then the government is subject to a higher burden of proof to justify intrusions into these interests, namely, the requirements of strict scrutiny in equal protection cases [72] and that of compelling State interest in due process cases. [73] As the US Supreme Court has warned, affixing the label "fundamental" to such liberty interests would place them outside the arena of public debate and legislative

action.[74] Resultantly, and as is also true in this jurisdiction, fundamental rights have been deemed to include only those basic liberties explicitly or implicitly guaranteed by the Bill of Rights of the Constitution.[75]

B

There seems to me little disagreement as to the "fundamental" nature of an asserted liberty interest when the same can be read from the text of the Bill of Rights of the Constitution itself. Thus, when a State act is alleged to have implicated an explicit "fundamental right," i.e., a right textually found in the Bill of Rights, the Court has been wont to subject the government to a higher burden to justify its challenged action:

In *Ebralinag v. The Division Superintendent of Schools of Cebu*,^[76] the Court annulled and set aside orders expelling petitioners from school, thereby upholding their right under the Constitution to refuse to salute the Philippine flag on account of their religious beliefs as guaranteed under Section 5, Article III.^[77]

In *Legaspi v. Civil Service Commission (CSC)*,^[78] the CSC was ordered, via mandamus, to open its register of eligibles for the position of sanitarian, and to confirm or deny, the civil service eligibility of certain identified individuals for said position in the Health Department of Cebu City, in furtherance of the fundamental right of the people to information on matters of public concern provided under Section 7, Article III of the Constitution.^[79]

In *Disini, Jr. v. Secretary of Justice*^[80] the Court struck down as unconstitutional Sections 4(c)(3), 12, and 19 of the Cybercrime Law^[81] for being violative of the right to freedom of expression, right to privacy, and right against unreasonable searches and seizures, as explicitly provided under Sections 4, 3, and 2, respectively, of Article III of the Constitution.^[82]

The case of *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*^[83] involved a challenge against curfew ordinances for minors for being violative of the constitutional right to travel. There, the Court chose to apply the strict scrutiny test and found that while the government was able to show a compelling State interest, it failed to show that the regulation set forth was the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.

In *Chavez v. Gonzales*,^[84] the Court nullified the official government statements warning the media against airing the alleged wiretapped conversation between the President and other personalities. According to the Court, any attempt to restrict the exercise of freedom of the press guaranteed under Section 4, Article III must be met with "an examination so critical that only a danger that is clear and present would be allowed to curtail it."^[85]

In *Newsounds Broadcasting Network, Inc. v. Dy*,^[86] on the other hand, the Court held that respondents' actions, which ranged from withholding permits to operate to the physical closure of those stations under color of legal authority, failed to pass the test of strict scrutiny which it deemed appropriate to assess content-based restrictions on free speech and press. According to the Court, "[a]s content regulation cannot be done in the absence of any compelling reason, the burden lies with the government to establish such compelling reason to infringe the right to free expression."^[87] Due to the government's failure to show a compelling State interest, the Court granted petitioner's prayer for a writ of mandamus and ordered respondents to immediately issue the requisite permits.

In *Kabataan Party-List v. Commission on Elections (COMELEC)*,^[88] a challenge was made against a COMELEC resolution setting a shorter deadline for voter registration, one outside of the period provided by Section 8 of Republic Act No. 8189, otherwise known as the "Voter's Registration Act of 1996." The Court found that existing laws grant the COMELEC the power to fix other periods and dates for pre-election activities only if the same cannot be reasonably held within the period provided by law. Since the COMELEC was unable to justify why the mandate of continuing voter registration cannot be reasonably held within the period provided, the Court nullified the deadline set by the COMELEC for being unduly restrictive of the people's right to vote.^[89]

Justice Harlan of the US Supreme Court has famously noted that "the full scope of the liberty guaranteed by the Due Process Clause cannot be found in, or limited by, the precise terms of the specific guarantees elsewhere provided in the Constitution."^[90] Thus, American jurisprudence is replete with instances wherein their Supreme Court has given "fundamental" status to otherwise unenumerated rights.

The first unenumerated right to be widely recognized was the liberty of contract in the 1905 landmark case of *Lochner v. New York*.^[91] In *Lochner*, the US Supreme Court invalidated a New York statute which provided that employees shall not be required to work in bakeries for more than 60 hours in a week, or 10 hours a day. It found the regulation "an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract in relation to labor, and, as such, it is in conflict with, and void under, the Federal Constitution."^[92]

In what became known as the *Lochner*-era, the US Supreme Court during this time focused on the term "liberty" under the Due Process Clause, construed it to include the "freedom of contract," and subjected any attempt by the State to regulate contractual relations to a level of review "that was as demanding as implied by the modern term 'strict scrutiny.'"^[93] Thus, "liberty of contract" was used as basis to invalidate laws providing for maximum working hours,^[94] minimum wage laws,^[95] and even those which allowed employers to require, as a condition for hiring or continued employment, non-membership in unions.^[96]

Interestingly, around this time, the US Supreme Court also had occasion to interpret "liberty" outside of contracts and in the specific context of family relations. In *Meyer v. Nebraska*,^[97] the US Supreme Court reversed a conviction of an instructor in a parochial school who taught the subject of reading in German language to a child of 10 years and who had not attained and successfully passed the eighth grade. It found that Meyer's right thus to teach foreign languages and the right of parents to engage him so to instruct their children fall within the liberty of the Fourth Amendment.^[98]

Similarly, in *Pierce v. Society of Sisters*,^[99] the US Supreme Court invalidated a State statute mandating, with limited exceptions, the enrollment of children in public schools within their residential districts. According to the Court, the challenged law "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control:"^[100]

[A]s often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.^[101] (Emphasis supplied.)

Come 1937, the US Supreme Court would abandon its "broad" stance on economic liberties, signaling the decline of the *Lochner*-era.. Scholars would debate that this new attitude (reduction of judicial intervention in economic regulation) was a reaction to then President Franklin D. Roosevelt's "Court-Packing Plan,"^[102] purportedly an attempt by the president to stem the Court's continuous invalidation of federal New Deal statutes.^[103] In any case, by 1937, the Court would decide *West Coast Hotel Co. v. Parrish*,^[104] upholding a statute providing for minimum wages (and expressly reversing its earlier ruling in *Adkins*). In a sharp retreat from the philosophy characteristic of its *Lochner*-era, holdings, the Court in *Parrish* found that the liberty protected by the Due Process Clause was neither absolute nor uncontrollable but rather subject to regulation which is reasonable in relation to its subject.

From then on, the Court never looked back, marking the demise of the now infamous *Lochner*-era. With *Parrish*,

the practice of subjecting to rigid scrutiny government regulation of business and commercial matters (in the name of protecting constitutional liberty) was stopped. The Court thereafter shifted its focus to deciding "substantive" rights under the Due Process and Equal Protection Clauses. While the aspect of *Lochner* severely curtailing economic regulation waned, the future significant cases touching on fundamental "non-economic" rights would build on *Lochner* insofar as it protected "fundamentals" which, as demonstrated by *Meyer* and *Pierce*, was "not wholly limited to economic rights: to the Court of that era, there was no sharp distinction between economic and non-economic, 'personal' liberties x xx." [105]

In *Skinner v. Oklahoma ex rel Williamson*, [106] the US Court struck down a state statute providing for compulsory sterilization after a third conviction for a felony "involving moral turpitude," but excluding felonies such as embezzlement, for being violative of the guarantee of equal protection. There, it declared that the challenged legislation involved "one of the basic civil rights of man," marriage and procreation both being "fundamental to the very existence and survival of the race." [107] Gunther writes:

[T]he 1942 reference in *Skinner* to "fundamental," "basic" liberties in the area of marriage and procreation was extraordinary: that decision mixing due process and equal protection considerations was virtually the only one in that period from the demise of *Lochner* x x x to exercise special scrutiny in favor of a "basic liberty" not tied to or justifiable by a specific constitutional guarantee. [108]

Subsequently, in the 1967 case of *Loving v. Virginia* [109] the freedom to marry was recognized such that any restriction of such freedom based solely on racial classifications violates the central meaning of the Equal Protection Clause.

In *Lawrence v. Texas*, [110] the Supreme Court reversed its earlier ruling in *Bowers v. Hardwick* [111] and recognized a liberty of consensual sexual conduct.

In *Cruzan v. Director, Missouri Department of Health*, [112] the Court found a constitutionally protected liberty interest in refusing unwanted medical treatment.

Furthermore, while the US Constitution does not explicitly mention it, the US Supreme Court, in a line of cases, has recognized a general right to personal privacy, finding that liberties extend to "certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs." [113] In *Griswold v. Connecticut*, [114] the Court recognized a privacy right in favour of married couples to use contraceptives. [115] A similar right would later on be recognized in *Eisenstadt v. Baird* [116] in favor of unmarried individuals. [117] *Roe v. Wade* [118] would find the Court holding that the right of privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy and under what conditions. [119] Two decades later, the Court would reaffirm the essential ruling in *Roe* through its 1992 decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*. [120]

More recently, the American Supreme Court, in *Obergefell v. Hodges*, [121] held that the right of same-sex couples to marry is part of the liberty under both the Due Process and Equal Protection Clauses; that these couples may exercise their fundamental right to marry in all States; and that States have no legal basis to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

Not all assertions to unenumerated fundamental rights, however, are able to obtain recognition from the Court:

San Antonio Independent School District v. Rodriguez [122] involved a suit brought by Mexican-American parents on behalf of school children said to be members of poor families who reside in school districts having a low property tax base. Asserting an implied right to education, which they claim is necessary for their effective exercise of their rights to free speech and suffrage, petitioners challenged the Texas system of financing public

education (which provides that State funding for basic education is to be supplemented by each district through an ad valorem tax on property within its jurisdiction) insofar as it allegedly favored children from more affluent neighborhoods, in violation of equal protection requirements. The Court found unpersuasive, the reasons for the asserted liberty claim and held as follows:

Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected, x x x It is appellees' contention, however, that education is distinguishable from other services and benefits provided by the State, because it bears a peculiarly close relationship to other rights and liberties accorded protection under the Constitution. Specifically, they insist that education is itself a fundamental personal right, because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote, xxx

x x x x

We need not dispute any of these propositions. The Court has long afforded zealous protection against unjustifiable governmental interference with the individual's rights to speak and to vote. Yet we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most effective speech or the most informed electoral choice. That these may be desirable goals of a system of freedom of expression and of a representative form of government is not to be doubted, x x x These are indeed goals to be pursued by a people whose thoughts and beliefs are freed from governmental interference. But they are not values to be implemented by judicial intrusion into otherwise legitimate state activities.

Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short. Whatever merit appellees' argument might have if a State's financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and where — as is true in the present case — no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.[123] (Emphasis and underscoring supplied.)

The US Supreme Court has also refused to recognize an asserted implied fundamental right to die in *Washington v. Glucksberg*.^[124] In *Glucksberg*, which involved the constitutionality of a Washington statute prohibiting persons from aiding another to attempt suicide, the Court was confronted with the issue of whether the "liberty" protected under the Due Process Clause includes a right to commit suicide (as well as a right to assistance in doing so). After examining relevant history, tradition and practice, the Court ruled in the negative and held:

That many of the rights and liberties protected by the Due Process Clause sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected, *San Antonio Independent School Dist. v. Rodriguez* x x x and *Casey* did not suggest otherwise.

The history of the law's treatment of assisted suicide in this country has been and continues to be one of the rejection of nearly all efforts to permit it. That being the case, our decisions lead us to conclude that the asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause, x x x^[125] (Emphasis supplied.)

The Court also sought to differentiate the liberty interest asserted in *Glucksberg* from that asserted (and recognized) in *Cruzan* which, as earlier stated, involved the right to refuse unwanted medical treatment:

The right assumed in *Cruzan*, however, was not simply deduced from abstract concepts of personal autonomy. Given the common-law rule that forced medication was a battery, and the long legal tradition protecting the

decision to refuse unwanted medical treatment, our assumption was entirely consistent with this Nation's history and constitutional traditions. The decision to commit suicide with the assistance of another may be just as personal and profound as the decision to refuse unwanted medical treatment, but it has never enjoyed similar legal protection. Indeed, the two acts are widely and reasonably regarded as quite distinct, x x x In *Cruzan* itself, we recognized that most States outlawed assisted suicide—and even more do today—and we certainly gave no intimation that the right to refuse unwanted medical treatment could be somehow transmuted into a right to assistance in committing suicide. x x x^[126]

It also found that the Washington ban on assisted suicide was rationally related to (or implicated) legitimate State interests, such as interests in the preservation of human life and protection of the integrity and ethics of the medical profession.

D

In this jurisdiction, this Court has also had some occasions to rule on assertions of unenumerated fundamental rights:

In the 1924 case of *People v. Pomar*,^[127] and reminiscent of the *Lochner*-era rulings, this Court declared unconstitutional provisions of law which required employers to pay a woman employee, who may become pregnant, her wages for 30 days before and 30 days after confinement. Citing a long line of US Supreme Court *Lochner*-era decisions, this Court found that the right to liberty includes the right to enter into (and terminate) contracts. Accordingly, it held:

[S]aid section creates a term or condition in every contract made by every person, firm, or corporation with any woman who may, during the course of her employment, become pregnant, and a failure to include in said contract the terms fixed by the law, makes the employer criminally liable subject to a fine and imprisonment. Clearly, therefore, the law has deprived, every person, firm, or corporation owning or managing a factory, shop or place of labor of any description within the Philippine Islands, of his right to enter into contracts of employment upon such terms as he and the employee may agree upon. The law creates a term in every such contract, without the consent of the parties. Such persons are, therefore, deprived of their liberty to contract. The [C]onstitution of the Philippine Islands guarantees to every citizen his liberty and one of his liberties is the liberty to contract.^[128] (Emphasis supplied.)

Philippine adherence to this ruling would, however, be short-lived.^[129] As Justice Fernando would later explain in *Edu v. Ericta*,^[130] the decision in *Pomar* was largely brought about by the fact that "our Supreme Court had no other choice as the Philippines was then under the United States," where only a year before *Pomar*, a statute providing for minimum wages was declared in *Adkins* to be constitutionally infirm. The Court (and the Constitutional Convention) would adopt a more deferential attitude towards government regulation of economic relations and covering such subjects as "collective bargaining, security of tenure, minimum wages, compulsory arbitration, the regulation of tenancy as well as the issuance of securities, and control of public services."^[131]

In the meantime, and taking its cue from the US Supreme Court, this Court would also go on to recognize unenumerated, yet fundamental, non-economic rights:

Although the Bill of Rights speaks only of a right of privacy over communication and correspondence, the Court, in the 1968 case of *Morfe v. Mutuc*,^[132] adopted the reasoning in *Griswold* and recognized a constitutional right to personal privacy. It declared that "[t]he right to privacy x x x is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection."^[133] *Morfe* concerned the validity of a law requiring the periodic submission of sworn statements of financial conditions, assets and liabilities of an official or employee of the government. Considering the avowed purpose behind the requirement of periodic submission, the Court held:

Even with due recognition of such a view, it cannot be said that the challenged statutory provision calls for disclosure of information which infringes on the right of a person to privacy. It cannot be denied that the rational relationship such a requirement possesses with the objective of a valid statute goes very far in precluding assent to an objection of such character. This is not to say that a public officer, by virtue of a position he holds, is bereft of constitutional protection; it is only to emphasize that in subjecting him to such a further compulsory revelation of his assets and liabilities, including the statement of the amounts and sources of income, the amounts of personal and family expenses, and the amount of income taxes paid for the next preceding calendar year, there is no unconstitutional intrusion into what otherwise would be a private sphere.[134] (Emphasis supplied.)

In *Oposa v. Factor an, Jr.*, [135] this Court accorded fundamental right status to an asserted liberty interest in "a balanced and healthful ecology" under Section 16, Article II of the 1987 Constitution. Petitioners filed suit to question the grant of timber licensing agreements by the Secretary of Environment and Natural Resources, arguing that the continued allowance of timber licenses "to cut and deforest the remaining forest stands will work great damage and irreparable injury to plaintiffs—especially plaintiff minors and their successors—who may never see, use, benefit from and enjoy this rare and unique natural resource treasure." [136] While conceding that the asserted right cannot be found in the Bill of Rights, the Court declared that such right was "no less important" because "it concerns nothing less than self-preservation and self-perpetuation[,] x x x the advancement of which may even be said to predate all governments and constitutions." [137]

In *Imbong v. Ochoa, Jr.*, [138] which involved a number of challenges against the constitutionality of RA 10354, this Court recognized the constitutional right of parents to exercise parental control over their minor-child:

To insist on a rule that interferes with the right of parents to exercise parental control over their minor-child or the right of the spouses to mutually decide on matters which very well affect the very purpose of marriage, that is, the establishment of conjugal and family life, would result in the violation of one's privacy with respect to his family. It would be dismissive of the unique and strongly-held Filipino tradition of maintaining close family ties and violative of the recognition that the State affords couples entering into the special contract of marriage to as one unit in forming the foundation of the family and society.

The State cannot, without a compelling state interest, take over the role of parents in the care and custody of a minor child, whether or not the latter is already a parent or has had a miscarriage. Only a compelling state interest can justify a state substitution of their parental authority. [139]

A liberty interest in the access to safe and non-abortifacient contraceptives, hinged on a right to health under Section 15, Article II, [140] and other sections of the Constitution, was also recognized in *Imbong*. Petitioners therein questioned the inclusion of hormonal contraceptives, intrauterine devices, injectables and family products and supplies in the National Drug Formulary, the use of which, they claimed, greatly increased risks of developing breast and cervical cancer and other serious medical conditions. Although the Court declared that "the constitutional right to health" is a component of the right to life, [141] it, nevertheless, found petitioners' assertion of impairment of said right unfounded [142] and premature: [143]

The distribution of contraceptive drugs and devices must not be indiscriminately done. The public health must be protected by all possible means. As pointed out by Justice De Castro, a heavy responsibility and burden are assumed by the government in supplying contraceptive drugs and devices, for it may be held accountable for any injury, illness or loss of life resulting from or incidental to their use. [144] (Emphasis omitted.)

On the other hand, *Capin-Cadiz v. Brent Hospital and Colleges, Inc.* [145] involved a suit questioning Brent Hospital's act of putting an unwed, pregnant employee on suspension until such time that she married her child's father in accordance with law. The Court there found the employer's condition for re-employment "coercive, oppressive, and discriminatory," depriving the employee of her "freedom to choose her status, which is a privilege

that inheres in her as an intangible and inalienable right." [146] It was also proposed that the constitutional right to personal liberty and privacy should be read to include a woman's right to choose whether to marry and to decide whether she will bear and rear her child outside of marriage. [147]

Most recently, this Court in *Republic v. Manalo*, [148] applying equal protection analysis, upheld, pursuant to the fundamental right to marry, a liberty interest on the part of a Filipino spouse to be recapacitated to marry, in cases where a valid foreign divorce has been obtained.

IV

A

Unlike the case of rights that can be located on the text of the Bill of Rights, the rules with respect to locating unenumerated "fundamental" rights, however, are not clear. According to Justice Harlan, speaking in the context of identifying the full scope of liberty protected under the Due Process Clause, the endeavor essentially entails an attempt at finding a balance between "respect for the liberty of the individual x x x and the demands of organized society." [149]

The question that presents itself then is how one determines whether an implied liberty interest being asserted is "fundamental," as to call for the application of strict scrutiny. For its part, the US Supreme Court has attempted, over time, to craft principled formulations on how to identify such "unenumerated" or "implied" rights:

[T]he Court has used a wide variety of methods, ranging from the restrained approach of locating protected interests in the constitutional text to the generous test of evaluating interests by the importance they have for contemporary individuals. Because the Justices do not uniformly agree upon these methods, it is also understandable that opinions for the Court rarely express consensus about the way the methods are chosen, or whether they fit into the hierarchy, or whether some methods are preferable in some situations and others in other situations, x x x

These methods lie along a continuum, all the way from hair-trigger formulas that can support a cornucopia of fundamental rights to stingy theories that protect virtually nothing that is not undeniably enumerated, x x x [n]o one method is comprehensive or exclusive, and indeed, the Justices themselves often have used two or three different theories in combination while analyzing a single interest, x xx [150] (Citations omitted.)

This Court has not laid down clear guidelines on this matter. Thus, reference to American scholarly commentary is again instructive.

In his article *An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, Robert Farrell wrote that the US Supreme Court uses "a multiplicity of methods of identifying implied fundamental rights." [151] After a survey of US Supreme Court cases, Farrell has classified the different methods used by the Court in categorizing certain rights as fundamental. These are either because the asserted rights: (1) are important; [152] (2) are implicit in the concept of ordered liberty [153] or implicitly guaranteed by the Constitution; [154] (3) are deeply rooted in the Nation's history and tradition; [155] (4) need protection from government action that shocks the conscience; [156] (5) are necessarily implied from the structure of government [157] or from the structure of the Constitution; [158] (6) provide necessary access to government processes; [159] and (7) are identified in previous Supreme Court precedents. [160]

There is no one mode of constitutional interpretation that has been recognized as appropriate under all circumstances. In fact, one would find critiques for every approach in scholarly commentaries on the subject. [161] Nevertheless, and despite the particular shortcomings of each individual approach, it is my view that, the Court

should endeavor to be deliberate and open about its choice of approach in fundamental rights cases. This, to my mind, would help greatly not only in furthering the public's understanding of the Court's decisions in complex constitutional cases; it would reinforce the credibility of Our decisions, by exacting upon the Court and its members the duty to clearly articulate with consistency the bases of its decisions in difficult constitutional cases.

B

With all due respect, Justice Leonen has not provided sufficient basis to justify his view of "fundamental right" status, whether expressly or impliedly sourced, to the asserted liberty interest of an intellectually-disabled person in procreation and parenthood. Firstly, Justice Leonen cites the Constitution's express guarantee to due process of law.[162] An examination of the due process clause, however, will immediately show that it does not textually grant upon an intellectually-disabled person a liberty interest in procreation and parenthood.

Justice Leonen then relies on the fundamental right to privacy, citing *Morfe v. Mutuc*[163] which, in turn, cited *Griswold v. Connecticut*,[164] holding that there are "zones of privacy," including marital privacy, which cannot be unconstitutionally violated.[165] For that matter, *Eisenstadt v. Baird*,[166] building on the foundations of *Griswold*, would provide even stronger precedent. In the context of the right of unmarried persons to access contraceptives, the US Supreme Court held: "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." [167] Despite *Griswold* and *Eisenstadt*, however, the US Supreme Court has yet to recognize a fundamental right to procreation or parenthood on the part of the intellectually-disabled.[168] In fact, the various American State Supreme Courts are split on the issue, depending in part on whether the State legislatures have statutes governing sterilization.[169]

The reason is understandable. Recognizing a fundamental right in a single person to bear or beget a child, and becoming a parent, is a far cry from recognizing in an intellectually-disabled person a fundamental right to make the same decision on procreation or parenthood. The underlying issues that have bedeviled the courts and the state legislatures in the US include whether an intellectually-disabled person can make that decision and whether the parent or guardian can substitute the disabled child or ward in making that decision. As a commentator has so aptly stated, the ruling in *Eisenstadt* begs the question: "[b]ut what happens when that individual lacks the capacity to comprehend the possession of a reproductive function and, right, and is not capable of making any decision regarding that right?" [170] It presents, as the Supreme Court of New Jersey puts it, a "disturbing paradox: how we can preserve the personal freedom of one incapable of exercising it by allowing others to make a profoundly personal decision on her behalf?" [171]

Justice Leonen also cites the Convention on the Rights of Persons with Disabilities (Convention), which guarantees persons with disabilities a right to non-discrimination, i.e., full and effective participation in society on an equal basis with others.[172] There is, however, no law, rule, nor judicial holding which provides that the Convention can operate to "create" a "fundamental" right in the absence of the enactment by a State party of an implementing law precisely creating such substantive right. Secondly, the Convention itself is carefully worded that it does not textually grant persons with disabilities a right to be treated with absolute equality. Rather, its language is carefully parsed to state that equality is "on an equal basis with others." By so qualifying, it is my view that the Convention realizes that the State must not only consider the particular type of disability affected, but also provide for remedies that relate to the specific type of interest to be promoted and their effect of the exercise of the right on "others." In Our case, the State, through the Congress and in explicit recognition of its obligations under the Convention, enacted RA 11036, or the "Mental Health Act." As discussed, RA 11036 does not treat persons with mental health conditions (which includes the intellectually-disabled) on the same footing as persons without such conditions, in terms of the role that their informed consent bears on their access to treatment

(such as vasectomy). The law sought to balance the peculiar interests of the disabled with the interests of the other members of society (which includes their parents) through a very robust and exacting procedure to ensure the exercise of informed consent.

All told, there is no clear showing as to how Justice Leonen has arrived at (much less, justified) his conclusion that the unenumerated liberty interest of an intellectually disabled person to procreation or parenthood warrants accordance of the "fundamental" status. The record is absolutely bereft of evidence to prove the proposition. Thus, and without prejudice to a future and proper case where the modalities/approaches/methods for its analysis and interpretation are clearly and sufficiently set forth and first presented to a trier of fact with supporting evidence, I simply cannot support his view at this time.

V

Finally, I must note the peculiar process by which the asserted "fundamental" right is sought to be established by Justice Leonen in this case. Jurisprudence would show that assertion of fundamental rights, whether on due process or equal protection grounds, are usually made at the heels of a positive act on the part of the State, an exercise of State powers resulting to unwarranted intrusions into the personal life of individuals. Such exercises of governmental powers are typically manifested in the form of laws,[173] ordinances,[174] and executive acts[175] or issuances[176] which are alleged to, either facially or in its operation, actively discriminate and deprive individuals of certain fundamental rights.

Here, while there is an assertion of an infringement of "fundamental" liberties, there is no claim of any law, ordinance, or executive issuance of the State which has caused the infringement alleged. In fact, the specific act" in issue, that is, the vasectomy conducted on Larry, was carried out by medical practitioners, upon guardian Pedro's request/consent, all of whom are private individuals. Clearly, there is no State action as to call for the guarantee of the protection of "fundamental" liberties. As so clearly held by this Court in *People v. Marti*: [177]

That the Bill of Rights embodied in the Constitution is not meant to be invoked against acts of private individuals finds support in the deliberations of the Constitutional Commission. True, the liberties guaranteed by the fundamental law of the land must always be subject to protection. But protection against whom? Commissioner Bernas in his sponsorship speech in the Bill of Rights answers the query which he himself posed, as follows:

First, the general reflections. The protection of fundamental liberties in the essence of constitutional democracy. Protection against whom? Protection against the state. The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder.[178] (Emphasis supplied.)

The Bill of Rights, which Justice Leonen cites among his bases for his proposition, affords protection against possible State oppression against its citizens, not against an unjust or repressive conduct by a private party towards another, as explained by Justice Dante Tinga in his Separate Opinion in *Agabon v. National Labor Relations Commission*. [179]

Justice Leonen also seems to take the view that existing laws, as they are written, do not suitably protect the reproductive interests of the intellectually-disabled, hence, the proposed interpretation. The Court, however, has no power to dictate unto the Congress the object or subject of bills that the latter should enact into law. The judicial power to review the constitutionality of laws does not include the power to prescribe what laws to enact.[180] In any case, the alleged "gap" in the law with respect to decision-making by parents and legal guardians on matters of reproductive rights of the intellectually-disabled can be interpreted to mean that Congress did not intend to criminalize, but only regulate, said act. To reiterate, it is not the province of the Judiciary to

speculate what the Legislature should have done:

Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of the interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.[181]

I am afraid that Justice Leonen's proposition, however well-intentioned, is fraught with still unseen implications, and I am reminded of the following observation of Easterbrook:

I am nervous when a case is so easy, x x x If "everyone" endorses a particular aspect of liberty, it is easy for the Court to say in the aberrant case (the one where the legislature has not acted) that the judges are the true guardians of the "spirit" of the people and may produce what an "enlightened" legislature would have done, x x x

xxx [E]asy cases, popular and obviously right cases, may produce dangerous doctrines because they establish the principle that the Constitution allows the judges to do whatever the legislature ought to have done, xxx

The easy cases allow judges to establish doctrines that collapse the judicial and legislative processes, x x x[182]

With these, I would reserve judgment on the issue of whether an intellectually-disabled person has a "fundamental" right to procreate until after Congress passes, if it so decides, a law on the subject. Barring congressional action, a proper petition may still conceivably raise the issue in relation to the implementation of the Mental Health Act, whose provisions I have cited may be tested in a constitutional challenge.[183]

Accordingly, I vote to DISMISS the petition.

[1] The United States Supreme Court first used the term "intellectual disability" in lieu of "mental retardation" in *Hall v. Florida*, 572 U.S. _____ (2014), concluding that both terms refer to the same identical phenomenon. Earlier, in *Atkins v. Virginia*, 536 U.S. 304 (2002), using the term "mental retardation," the Court held that the constitutional guarantee against cruel and unusual punishment renders unconstitutional the execution of a mentally retarded person. In *Hall*, the Court voided a Florida law that defines "intellectual disability" to require an intelligence quotient (IQ) test score of 70 or less, such that if a prisoner is deemed to have an IQ below 70, all further exploration of intellectual disability is foreclosed. The Court noted that the change in terminology is approved and used in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders, one of the basic texts used by psychiatrists and other experts, and that the manual is often referred to by its initials "DSM," followed by its edition number, e.g., "DSM-5." The Court also noted that a federal statute (Public Law 111-256), otherwise known as Rosa's Law, replaced the term "mental retardation" with "intellectual disability." See *People v. Quintos*, G.R. No. 199402, November 12, 2014, 740 SCRA 179, 201-202 where J. Leonen referred to, and defined, the term "intellectually disabled," citing the earlier case of *People v. Butiong*, G.R. No. 168932, October 19, 2011, 659 SCRA 557, 571-572.

[2] Vasectomy is the medical term to describe the reversible procedure involved in this case to prevent procreation in men, and salpingectomy (tubal ligation) for women. I use the generic term "sterilization" as the underlying medical and constitutional issues involved in the petition apply to both genders.

[3] Special Protection of Children Against Abuse, Exploitation and Discrimination Act. See also J. Leonen Separate Opinion, pp. 18, 22.

[4] Rollo, pp. 12-13. See also Aguirre v. Secretary, Department of Justice, G.R. No. 170723, March 3, 2008, 547 SCRA 431, a case which arose from the same set of facts, involving the same parties, albeit concerning only the criminal complaints for mutilation and falsification.

[5] Rollo, p. 12.

[6] Id. at 126.

[7] Id.

[8] Id.

[9] This finding was affirmed by the Department of Justice (DOJ) in its twin Resolutions dated February 11, 2004 and November 12, 2004. It was ultimately sustained by both the Court of Appeals (CA) and this Court. In holding that the CA correctly found no grave abuse of discretion on the part of the DOJ, this Court held, among others, that a vasectomy procedure does not deprive a man, whether totally or partially, of some essential organ of reproduction as to make its perpetrator liable for the crime of mutilation under the RPC. (See Rollo, pp. 25-26. See also Aguirre v. Secretary, Department of Justice, G.R. No. 170723, March 3, 2008, 547 SCRA 431.)

[10] Rollo, pp. 48-55.

[11] Id. at 24-39.

[12] Id. at 210.

[13] Id. at 215-216.

[14] I concede that I may have a different view on the matter had the sterilization procedure been conducted on Larry after RA 11036 had been passed and the procedure provided therein not strictly followed. This, however, is not the case here.

[15] J. Leonen Separate Opinion, pp. 11, 18.

[16] III RECORD, SENATE, 1189 (March 19, 1991).

[17] IV RECORD, SENATE, 192 (April 29, 1991).

[18] Rollo, p. 186.

[19] Id. at 188.

[20] J. Leonen Separate Opinion, p. 20.

[21] Republic Act No. 10354, Sec. 4(s) states:

Reproductive health rights refers to the rights of individuals and couples, to decide freely and responsibly whether or not to have children; the number, spacing and timing of their children; to make other decisions concerning reproduction, free of discrimination, coercion and violence; to have the information and means to do so; and to attain the highest standard of sexual health and reproductive health: Provided, however, That reproductive health rights do not include abortion, and access to abortifacients. (Emphasis supplied.)

[22] Republic Act No. 10354, Sec. 4(q)(12).

[23] Republic Act No. 10354, Sec. 4(p) states:

Reproductive Health (RH) refers to the state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. This implies that people are able to have a responsible, safe, consensual and satisfying sex life, that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. This further implies that women and men attain equal relationships in matters related to sexual relations and reproduction.

[24] Republic Act No. 10354, Sec. 4(e) states:

Family planning refers to a program which enables couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and to have access to a full range of safe, affordable, effective, non-abortifacient modern natural and artificial methods of planning pregnancy.

[25] 530 U.S. 57 (2000).

[26] *Id.* at 65. *Troxel* involved a petition challenging a Washington statute which allows "any person" (in this case, the children's paternal grandparents) to petition for visitation rights "at any time" and authorizes the state superior courts to allow such visitation whenever, in its view, the same may serve the child's best interests, even in disregard of a fit custodial parent's decision. There, the US Court found that there was an absence of "special factors that might justify the State's interference with [the parent's] fundamental right to make decisions concerning the rearing of her two daughters" and declared that fit parents are presumed to act in the best interests of their children. It held:

Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children, x x x (*Id.* at 68-69.)

[27] G.R. No. 204819, April 8, 2014, 721 SCRA 146.

[28] *Id.* at 352.

[29] In *Imbong*, the Court held;

Equally apparent, however, is that the Framers of the Constitution did not intend to ban all contraceptives for being unconstitutional. x x x From the discussions above, contraceptives that kill or destroy the fertilized ovum should be deemed an abortive and thus prohibited. Conversely, contraceptives that actually prevent the union of the male sperm and the female ovum, and those that similarly take action prior to fertilization should be deemed non-abortive, and thus, constitutionally permissible. (*Id.* at 299-300. Emphasis and citation omitted.)

[30] *Aguirre v. Secretary, Department of Justice*, G.R No 170723, March 3, 2008, 547 SCRA 431, 437.

[31] *J. Leonen Separate Opinion, Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017, 835 SCRA 350, 439-483.

[32] *Rollo*, p. 125.

[33] *Id.* at 143.

[34] *J. Leonen Separate Opinion*, p. 22.

[35] *J. Leonen Separate Opinion*, p. 22.

[36] Articles 1163 and 1173 of the Civil Code provide:

Art. 1163. Every person obliged to give something is also obliged to take care of it with the proper diligence of

a good father of a family, unless the law or the stipulation of the parties requires another standard of care.

x x x x

Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required. (Emphasis supplied.) See also *Troxel v. Granville*, supra note 25, which held that fit parents can be presumed to act in the best interests of their child.

[37] Articles 2 and 5 of the Family Code provide:

Art. 2. No marriage shall be valid, unless these essential requisites are present:

- (1) Legal capacity of the contracting parties who must be a male and a female; and
- (2) Consent freely given in the presence of the solemnizing officer.

x x x x

Art. 5. Any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage.

[38] FAMILY CODE, Art. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

- (1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;

x x x x

[39] FAMILY CODE, Art. 45. x x x

x x x x

- (2) That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband and wife;

x x x x

[40] See Title IX (Parental Authority) of the Family Code.

[41] See also Section 4(v) of RA 10354 which defines responsible parenthood.

[42] See Senate Committee on Health and Demography, Joint with the Committees on Local Government and Finance (Technical Working Group), Session of February 16, 2017, with the following in attendance as guests/resource persons: 1) Ms. Sally Bongalanta, Assistant Director, Institute of Family Life and Children Studies, Philippine Women's University, and Vice President, Alliance of Filipino Families for Mental Health, Inc.; 2) Ms. Maria Jerika Ejercito, Be Healed Foundation; 3) Ms. Alexandra Santos, Be Healed Foundation; 4) Ms. Janice S. Cambri, Psychological Disability Inclusive-Philippines; 5) Dr. Dinah Palmera Nadera, Community Mental Health Consultant, Kristoffel Blindenmission; 6) Dr. Leonor Cabral-Lim, Epilepsy Council, Philippine Neurological Association; 7) Dr. Manuel Panopio, President, Philippine College of Addiction Medicine, and Medical Specialist, Treatment and Rehabilitation Center, Department of Health (DOH); 8) Dr. Bernardino A. Vicente, Medical Center Chief III, National Center for Mental Health, DOH; 9) Ms. Frances Prescilla Cuevas,

Program Manager, Mental Health, DOH; 10) Dr. Ronald del Castillo, Associate Professor, College of Public Health, University of the Philippines- Manila; 11) Dr. Edgardo L. Tolentino, Philippine Psychiatric Association; 12) Mr. Jose Antonio Delos Reyes, Patient, Community Organizer Liason-Community Mental Health Program of Naga City, and Program Officer, HELP Learning Center, Inc.; 13) Mr. Patrick Angeles, No Box Transitions; 14) Mr. Lee Yarcia, No Box Transitions; 15) Atty. Daniel Dy Lising, Institute of Human Rights, University of the Philippines College of Law; and 16) Ms. Liza Martinez, Philippine Alliance for Persons with Chronic Illness, Psychosocial Disability Inclusive-Philippines.

[43] Republic Act No. 11036, Sec. 2.

[44] Republic Act No. 11036, Sec. 3(c).

[45] Republic Act No. 11036, Sec. 4(k).

[46] Republic Act No. 11036, Sec. 5(h).

[47] Republic Act No. 11036, Sec. 5(m).

[48] Republic Act No. 11036, Sec. 10.

[49] Republic Act No. 11036, Sec. 12.

[50] Republic Act No. 11036, Sec. 7(g).

[51] Republic Act No. 11036, Sec. 13; Sec. 4(g) defines impairment or temporary loss of decision-making as follows:

Sec. 3. xxx

(g) Impairment or Temporaary Loss of Decision-Making Capacity refers to a medically-determined inability on the part of a service user or any other person affected by a mental health condition, to provide informed consent. A service user has impairment or temporary loss of decision-making capacity when the service user as assessed by a mental health professional is unable to do the following:

(1)

Understand information concerning the nature of a mental health condition;

(2)

Understand the consequences of one's decisions and actions on one's life or health, or the life or health of others;

(3)

Understand information about the nature of the treatment proposed, including methodology, direct effects, and possible side effects; and

(4)

Effectively communicate consent to treatment or hospitalization, or information regarding one's own condition[.]

[52] Republic Act No. 11036, Sec. 13. Exceptions to Informed Consent. — During psychiatric or neurologic emergencies, or when there is impairment or temporary loss of decision-making capacity on the part of a service user, treatment, restraint or confinement, whether physical or chemical, may be administered or implemented pursuant to the following safeguards and conditions:

(a)

In compliance with the service user's advance directives, if available, unless doing so would pose an immediate risk of serious harm to the patient or another person;

(b)

Only to the extent that such treatment or restraint is necessary, and only while a psychiatric or neurologic emergency, or impairment or temporary loss of capacity, exists or persists;

(c)

Upon the order of the service user's attending mental health professional, which order must be reviewed by the internal review board of the mental health facility where the patient is being treated within fifteen (15) days from the date such order was issued, and every fifteen (15) days thereafter while the treatment or restraint continues; and

(d)

That such involuntary treatment or restraint shall be in strict accordance with guidelines approved by the appropriate authorities, which must contain clear criteria regulating the application and termination of such medical intervention, and fully documented and subject to regular external independent monitoring, review, and audit by the internal review boards established by this Act.

[53] Republic Act No. 11036, Sec. 44. Penalty Clause. - Any person who commits any of the following acts shall, upon conviction by final judgment, be punished by imprisonment of not less than six (6) months, but not more than two (2) years, or a fine of not less than Ten thousand pesos (P10,000.00), but not more than Two hundred thousand pesos (P200,000.00), or both, at the discretion of the court:

(a)

Failure to secure informed consent of the service user, unless it falls under the exceptions provided under Section 13 of this Act;

(b)

Violation of the confidentiality of information, as defined under Section 4(c) of this Act;

(c)

Discrimination against a person with a mental health condition, as defined under Section 4(e) of this Act; and

(d)

Administering inhumane, cruel, degrading or harmful treatment not based on medical or scientific evidence as indicated in Section 5(h) of this Act.

[54] See footnote 1.

[55] In *Hall v. Florida* (572 U.S.____ (2014)), the US Supreme Court held:

That this Court, state courts, and state legislatures consult and are informed by the work of medical experts in determining intellectual disability is unsurprising. Those professionals use their learning and skills to study and consider the consequences of the classification schemes they devise in the diagnosis of persons with mental or

psychiatric disorders or disabilities. Society relies upon medical and professional expertise to define and explain how to diagnose the mental condition at issue. And the definition of intellectual disability by skilled professionals has implications far beyond the confines of the death penalty: for it is relevant to education, access to social programs, and medical treatment plans. In determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinions.

x x x x

In addition to the views of the States and the Court's precedent, this determination is informed by the views of medical experts. These views do not dictate the Court's decision, yet the Court does not disregard these informed assessments. See [*Kansas v. Crane*, 534 U. S. 407, 413 (2002)] ("[T]he science of psychiatry . . . informs but does not control ultimate legal determinations. . ."). It is the Court's duty to interpret the Constitution, but it need not do so in isolation. The legal determination of intellectual disability is distinct from a medical diagnosis, but it is informed by the medical community's diagnostic framework. *Atkins* itself points to the diagnostic criteria employed by psychiatric professionals. And the professional community's teachings are of particular help in this case, where no alternative definition of intellectual disability is presented and where this Court and the States have placed substantial reliance on the expertise of the medical profession.

Here, even as it voided Florida's fixed standard of IQ of 70, the US Supreme Court reiterated the need for evidence of both subaverage intellectual functioning and significant limitations in adaptive skills. Similarly, in *Atkins v. Virginia*, 536 U.S. 304, 318 (2002), it held that "clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18."

[56] *People v. Quintos*, G.R. No. 199402, November 12, 2014, 740 SCRA 179, 201-202.

[57] See *State ex rel. Zillmer v. Kreutzberg*, 114 Wis. 530, 538 (1902).

[58] Crump, "How Do the Courts Really Discover Unenumerated Fundamental Rights - Cataloguing the Methods of Judicial Alchemy," 19 Harv. J. L. & Pub. Pol'y 795 (1996), p. 910.

[59] *Michael H. v. Gerald D.*, 491 U.S. 110, 130 (1989).

[60] J. Leonen Main Resolution, p. 21.

[61] J. Leonen Separate Opinion, p. 12.

[62] J. Leonen Separate Opinion, p. 18.

[63] J. Leonen Separate Opinion, p. 18.

[64] J. Leonen Separate Opinion, p. 18.

[65] J. Leonen Separate Opinion, p. 18.

[66] Easterbrook, "Implicit and Explicit Rights of Association," Vol. 10 Harvard Journal of Law and Public Policy (1987), pp. 91-92.

[67] G.R. No. 148208, December 15, 2004, 446 SCRA 299.

[68] *Id.* at 371-374. Prior to the Warren Court era of the 1960's, there was an overall attitude of marginal judicial intervention with respect to equal protection cases. This "old" variety of equal protection scrutiny- was deferential; insisting merely that the classification in the contested statute reasonably relate to the avowed legislative purpose. This meant that the rational classification requirement was satisfied fairly readily. In the 1960s, the US Supreme Court, under the leadership of Chief Justice Earl Warren, embraced a "new" approach to

equal protection whereby it came to find more areas where strict rather than 'deferential scrutiny was to be applied. Under this "new" approach, strict scrutiny was to be applied when two characteristics were found to be present: the presence of "suspect" classifications or an impact on1 "fundamental" rights and interests. "Suspect" classifications typically involved those based on race, but eventually also included other areas as well (such as alienage, illegitimacy, gender, and wealth). Rights and interests considered fundamental by the Warren Court included those on voting, criminal appeals and interstate travel. Years later, the US Supreme Court under Chief Justice Warren E. Burger would retain the two-tier formulation of the Warren Court but slowed down any significant expansions with respect to defining new fundamental interests. In fact, scholars have noted a mounting discontent with the two-tier formulation such that Justice Marshall, in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) would propose a "sliding scale" approach which provides that rather than limiting itself to two neat categories (between strict scrutiny and mere rationality), the Court should consider a spectrum of standards in reviewing discrimination allegedly violative of the Equal Protection Clause. Under this "newer" equal protection model, the Court would be less willing to supply justifying rationales by exercising its imagination. Instead, it would have to gauge the reasonableness of the challenged means on the basis of materials offered it, rather than "resorting to rationalizations created by perfunctory judicial hypothesizing." This "newer" approach of modest interventionism essentially provides the middle ground and bridges the yawning gap between the extreme deference of the "old" approach and the excessive interventionism of the "new" approach. (Gunther, "Constitutional Law Cases and Materials," University Casebook Series, pp. 657-685.)

[69] Gunther, "Constitutional Law Cases and Materials," University Casebook Series, pp. 697-698.

[70] G.R. No. 221029, April 24, 2018.

[71] Crump, "How do the Courts Really Discover Unenumerated Fundamental Rights - Cataloguing the Methods of Judicial Alchemy," *supra* note 58 at 799-800.

[72] See *Central Bank Employees Association, Inc. v. Bangko Central ng Pilipinas*, *supra* note 67.

[73] See *Obergefell v. Hodges*, 576 U.S. __ (2015).

[74] *Id.*

[75] *Republic v. Manalo*, *supra* note 70. citing J. Brion Separate Opinion, *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 359-360.

[76] G.R. No. 95770, March 1, 1993, 219 SCRA 256.

[77] CONSTITUTION, Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

[78] G.R. No. L-72119, May 29, 1987, 150 SCRA 530.

[79] CONSTITUTION, Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

[80] G.R. No. 203335, February 18, 2014, 716 SCRA 237.

[81] Republic Act No. 10175, Cybercrime Prevention Act of 2012.

[82] These provisions of Article III of the 1987 Constitution read as follows:

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

x x x x

Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

[83] Supra note 31.

[84] G.R. No. 168338, February 15, 2008, 545 SCRA 441.

[85] Id. at 473.

[86] G.R. Nos. 170270 & 179411, April 2, 2009, 583 SCRA 333, 334.

[87] Id. at 355. Citation omitted.

[88] G.R. No. 221318, December 16, 2015, 777 SCRA 574.

[89] The Constitution devotes an entire Article on Suffrage. This Article reads:

ARTICLE V

Suffrage

Sec. 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

Sec. 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot.

[90] *Poe v. Ullman*, 361 U.S. 497, 543 (1961). J. Harlan Dissenting Opinion.

[91] 198 U.S. 45(1905).

[92] Id. at 56. The Court in *Lochner v. New York* held:

The mandate of the statute that "no employee shall be required or permitted to work," is the substantial equivalent of an enactment that "no employee shall contract or agree to work," more than ten hours per day, and, as there is no provision for special emergencies, the statute is mandatory in all cases. It is not an act merely fixing the number of hours which shall constitute a legal day's work, but an absolute prohibition upon the employer's permitting, under any circumstances, more than ten hours work to be done in his establishment.

The employee may desire to earn the extra money which would arise from his working more than the prescribed time, but this statute forbids the employer from permitting the employee to earn it.

The statute necessarily interferes with the right of contract between the employer and employees concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. (Emphasis supplied.) Id. at 52-53.

[93] Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, 26 St. Louis U. Pub. L. Rev. 203 (2007), pp. 204-205. Farrell also writes that "[w]hen the Court, in a *Lochner*-type case determined that a statute infringed on a protected 'liberty' interest, the statute was typically invalidated as a matter of course, usually without measuring the significance of the government's interest in regulating that activity."

[94] See *Lochner v. New York*, supra note 91.

[95] See *Adkins v. Childrens Hospital*, 261 U.S. 525 (1923), wherein the US Supreme Court invalidated a District of Columbia statute requiring minimum wages for women. There, the Court held:

It is simply and exclusively a price-fixing law, confined to adult women (for we are not now considering the provisions relating to minors), who are legally as capable of contracting for themselves as men. It forbids two parties having lawful capacity — under penalties as to the employer — to freely contract with one another in respect of the price for which one shall render service to the other in a purely private employment where both are willing, perhaps anxious, to agree, even though the consequence may be to oblige one to surrender a desirable engagement and the other to dispense with the services of a desirable employee.

x x x x

A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things and solely with relation to circumstances apart from the contract of employment, the business affected by it and the work done under it, is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand under the Constitution of the United States. (Emphasis supplied.) Id. at 554-555, 559.

[96] *Coppage v. Kansas*, 236 U.S. 1 (1915), wherein the US Supreme Court invalidated a Kansas law prohibiting employees from requiring employees not to join a union. The Court in *Coppage* held:

Included in the right of personal liberty and the right of private property — partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily 'interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich, for the vast majority of persons have no other honest way to begin to acquire property save by working for money.

An interference with this liberty so serious as that now under consideration, and so disturbing of equality of right, must be deemed to be arbitrary unless it be supportable as a reasonable exercise of the police power of the state. But, notwithstanding the strong general presumption in favor of the validity of state laws, we do not think the statute in question, as construed and applied in this case, can be sustained as a legitimate exercise of that power.

x x x x

xxx [S]ince the relation of employer and employee is a voluntary relation, as clearly as is that between the

members of a labor organization, the employer has the same inherent right to prescribe the terms upon which he will consent to the relationship, and to have them fairly understood and expressed in advance.

When a man is called upon to agree not to become or remain a member of the union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employee.

To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other, for "it takes two to make a bargain." Having accepted employment on those terms, the man is still free to join the union when the period of employment expires, or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised, and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct, (Emphasis supplied.) Id. at 14, 20-21.

See also Samberg, The Fundamentals of Fundamental Rights, <https://medium.com/@mattsamberg/the-fundamentals-of-fundamental-rights-1138ced2ad4>, last accessed November 13, 2018.

[97] 262 U.S. 390(1923).

[98] Id. at 399-402. The Court held:

While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. x x x

x x x x

It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals, and "that the English language should be and become the mother tongue of all children reared in this State." It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type, and the public safety is imperiled.

That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution — a desirable end cannot be promoted by prohibited means.

x x x x

The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough, and no adequate reason therefor in time of peace and domestic tranquility has been shown.

[99] 268 U.S. 510 (1925).

[100] Id. at 534.

[101] Id. at 535.

[102] Under President Roosevelt's plan, also known as the Judicial Procedures Reform Bill of 1937, the membership of the Supreme Court would be increased every time a Justice reaches the age of 70 and fails to retire, with the end purpose of ensuring that the Lochner majority would eventually be outvoted. This plan was eventually rejected by the Senate. (Sujit Choudh, The Lochner Era and Comparative Constitutionalism, 2 Int'l J. Const. L. 1 [2004], taken from

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com.ph/&httpsredir=1&article=3282&context=facpubs>, last accessed November 23, 2018.)

[103] Gunther, "Constitutional Law Cases and Materials," University Casebook Series, p. 583.

[104] 300 U.S. 379 (1937).

[105] Gunther, "Constitutional Law Cases and Materials," University Casebook Series, p. 617.

[106] 316 U.S. 535 (1942).

[107] Id. at 541. The US Supreme Court held the Oklahoma statute unconstitutional on the ground that equal protection requires that the state must either (1) sterilize embezzlers along with larceners or (2) sterilize neither class of "habitual criminals." (See also James E. Fleming and Linda C. McClain, "Liberty." Oxford Handbook of the United States Constitution, www.bu.edu/law/faculty/scholarship/workingpapers/2014.html, last accessed November 13, 2018.)

[108] Gunther, "Constitutional Law Cases and Materials," University Casebook Series, p. 619.

[109] 388 U.S. 1 (1967).

[110] 539 U.S. 558 (2003).

[111] 478 U.S. 186 (1986).

[112] 497 U.S. 261 (1990).

[113] Obergefell v. Hodges, supra note 73, citing Eisenstadt v. Baird, 405 U.S. 438 (1972) and Griswold v. Connecticut, 381 U.S. 479 (1965). See discussion in Roe v. Wade, 410 U.S. 113 (1973). See also liberty and privacy discussion in J. Jardeleza's Concurring Opinion in Capin-Cadiz v. Brent Hospital and Colleges, Inc., G.R. No. 187417, February 24, 2016, 785 SCRA 18, 41).

[114] 381 U.S. 479 (1965).

[115] Id. at 485-486. In striking down a Connecticut statute forbidding the use of contraceptives, the Griswold Court held:

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." x x x Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

[116] 405 U.S. 438(1972).

[117] Id. at 453-454. The Court, applying equal protection, held:

xxx [W]hatever the rights of the individual to access to contraceptives may be, the rights must be the same for the unmarried and the married alike.

If, under Griswold, the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible. It is true that, in Griswold, the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity, with a mind and heart of its own, but an association of two individuals, each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child, x x x

On the other hand, if Griswold is no bar to a prohibition on the distribution of contraceptives, the State could not, consistently with the Equal Protection Clause, outlaw distribution to unmarried, but not to married, persons. In each case, the evil, as perceived by the State, would be identical, and the underinclusion would be invidious, x x x

[118] 410 U.S. 113(1973).

[119] Id. at 153, 155, 163-164. The Court, applying due process analysis, held:

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy, x x x [T]hat the right, nonetheless, is not absolute, and is subject to some limitations; and that, at some point, the state interests as to protection of health, medical standards, and prenatal life, become dominant, x x x

x x x x

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now-established medical fact, x x x, that, until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth, x x x

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's

womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when, it is necessary to preserve the life or health of the mother.

[120] 505 U.S. 833 (1992). The Court held:

It must be stated at the outset and with clarity that Roe's essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger the woman's life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. These principles do not contradict one another; and we adhere to each. *Id.* at 846.

[121] *Supra* note 73.

[122] 411 U.S. 1 (1973)

[123] *Id.* at 35-37.

[124] 521 U.S. 702(1997).

[125] *Id.* at 727-728.

[126] *Id.* at 725-726.

[127] 46 Phil. 440 (1924).

[128] *Id.* at 454.

[129] See also *Calalang v. Williams*, 70 Phil. 726 (1940); *Antamok Goldfields Mining Company v. Court of Industrial Relations*, 70 Phil. 341 (1940). See also J. Fernando's Opinion in *Alfanta v. Noe*, G.R. No. L-32362, September 19, 1973, 53 SCRA 76.

[130] G.R. No. L-32096, October 24, 1970, 35 SCRA 481.

[131] *Id.* at 493. Citations omitted. Justice Fernando further writes:

xxx [T]o erase any doubts, the Constitutional Convention saw to it that the concept of laissez-faire was rejected. It entrusted to our government the responsibility of coping with social and economic problems with the commensurate power of control over economic affairs. Thereby it could live up to its commitment to promote the general welfare through state action. No constitutional objection to regulatory measures adversely affecting property rights, especially so when public safety is the aim, is likely to be heeded, unless of course on the clearest and most satisfactory proof of invasion of rights guaranteed by the Constitution. xxx

x x x x

It is in the light of such rejection of the laissez-faire principle that during the Commonwealth era, no constitutional infirmity was found to have attached to legislation covering such subjects as collective bargaining, security of tenure, minimum wages, compulsory arbitration, the regulation of tenancy as well as the issuance of securities, and control of public services. So it is likewise under the Republic this Court having given the seal of approval to more favorable tenancy laws, nationalization of the retail trade, limitation of the hours of labor, imposition of price control, requirement of separation pay for one month, and social security

scheme. (Emphasis supplied; citations omitted.) Id. at 491-493.

[132] G.R. No. L-20387, January 31, 1968, 22 SCRA 424.

[133] Id. at 444.

[134] Id. at 445-446.

[135] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

[136] Id. at 799. The Court, through Justice Davide, declared:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation—aptly and fittingly stressed by the petitioners—the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come—generations which stand to inherit nothing but parched earth incapable of sustaining life. Id. at 804-805.

[137] Id. at 805.

[138] Supra note 27.

[139] Id. at 352-353.

[140] CONSTITUTION, Art. II, Sec. 15:

The State shall protect and promote the right to health of the people and instill health consciousness among them.

[141] See *Imbong v. Ochoa Jr.*, supra note 27, the Opinion of J. Del Castillo where he posited that the right to health is a fundamental right; Opinion of J. Perlas-Bernabe where she posited that the right to health is an inextricable adjunct of one's right to life; Opinion of J. Leonardo-De Castro where she stated that the right to health is itself a fundamental human right.

[142] The Court in this regard held:

xxx [T]he effectivity of the RH Law will not lead to the unmitigated proliferation of contraceptives since the sale, distribution and dispensation of contraceptive drugs and devices will still require the prescription of a licensed physician. With R.A. No. 4729 in place, there exists adequate safeguards to ensure the public that only contraceptives that are safe are made available to the public, xxx

x x x x

Thus, in the distribution by the DOH of contraceptive drugs and devices, it must consider the provisions of R.A. No. 4729, which is still in effect, and ensure that the contraceptives that it will procure shall be from a duly licensed drug store or pharmaceutical company and that the actual dispensation of these contraceptive drugs and devices will [be] done following a prescription of a qualified medical practitioner, xxx (Emphasis omitted). Id. at 315-318.

[143] The Court said:

At any rate, it bears pointing out that not a single contraceptive has yet been submitted to the FDA pursuant to the RH Law. It behooves the Court to await its determination which drugs or devices are declared by the FDA as safe, it being the agency tasked to ensure that food and medicines available to the public are safe for public consumption. Consequently, the Court finds that, at this point, the attack on the RH Law on this ground is premature. Indeed, the various kinds of contraceptives must first be measured up to the constitutional yardstick as expounded herein, to be determined as the case presents itself. (Emphasis omitted.) Id. at 318.

[144] Id.

[145] G.R. No. 187417, February 24, 2016, 785 SCRA 18.

[146] Id. at 37-38. Citation omitted.

[147] See J. Jardeleza Concurring Opinion, id. at 49-50.

[148] Supra note 10.

[149] J. Harlan Dissenting Opinion in *Poe v. Ullman*, supra note 90 at 542.

[150] Crump, "How Do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy" supra note 58 at 839. In his article, Crump surveyed more than 10 methodologies used by the court for recognizing unenumerated fundamental rights. These include the "history and tradition" test under *Washington v. Glucksberg*, supra note 124, the "essential requisite for ordered liberty" test under *Palko v. Connecticut*, 302 U.S. 319 (1937), to the "importance to the individual test" under *Goldberg v. Kelly*, 397 U.S. 254 (1970).

[151] Supra note 93 at 209.

[152] Id. at 217-221. The US Supreme Court used the "importance" test in *Skinner v. Oklahoma*, supra note 106, in striking down a state statute providing for the sterilization of habitual criminals, which by law was limited to perpetrators of felonies involving moral turpitude. The US Supreme Court did not uphold the fundamental right to procreate on the basis of any language in the Bill of Rights; rather, it simply asserted, based on an incontrovertible fact of human existence, that marriage and procreation are fundamental to the very existence and survival of the race. This appears to be the test/approach considered and used by the Court in *Oposa v. Factoran, Jr.*, supra note 135.

[153] Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 221-224. In *Palko v. Connecticut*, 302 U.S. 319 (1937), the US Supreme Court confined fundamental liberties to those that are "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." *Palko* concerned a state statute which allowed for the re-trial of an accused if made upon the instance of the State. There, the accused, who was initially convicted for the crime of murder in the second degree and sentenced to life in prison, was, upon re-trial, convicted for the crime of murder in the first degree and sentenced to death. An action to challenge said state statute was brought before the US Supreme Court which thereafter upheld it, saying "[t]he right to trial by jury and the immunity from prosecution except as the result of an indictment may have value and importance. Even so, they are not of the very essence of a scheme of ordered liberty. To abolish them is not to violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" See also Crump, "How Do the Courts Really Discover Unenumerated Fundamental Rights - Cataloguing the Methods of Judicial Alchemy," supra note 58 at 871.

[154] Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 224-225. The US Supreme Court also used the "implicit" test in *San Antonio Independent School District v.*

Rodriguez, *supra* note 122 at 135, where it rejected an asserted "implied right to education." In seeming rejection of the importance test, the US Supreme Court declared:

xxx [T]he importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause, xxx

x x x x

It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education, as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.

Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not, alone, cause this Court to depart from the usual standard for reviewing a State's social and economic legislation. (Emphasis supplied.) *Id.* at 30-35.

[155] Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, *supra* note 93 at 225-235. Under this approach, the test of whether or not a right is fundamental is to be determined by whether or not it is rooted in our Nation's history and traditions that is, whether the asserted liberty has been the subject of traditional or historical protection (See also Crump, "How Do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy" *supra* note 58 at 860). In *Bowers v. Hardwick*, *supra* note 111, the US Supreme Court upheld a Georgia sodomy statute. It claimed that the right asserted, which it described as "the claimed constitutional right of homosexuals to engage in acts of sodomy" was not considered fundamental within the nation's history and traditions, as is evidenced by a slew of anti-sodomy acts from the time of the enactment of the Bill of Rights to about the time the case was decided. See also the 1934 case of *Snyder v. Massachusetts*, 291 U.S. 97 (1934), where an accused sought to challenge his conviction for the crime of murder on the ground that he was denied permission to attend a view, which was ordered by the court on motion of the prosecution, at the opening of the trial. The jurors, under a sworn bailiff, visited the scene of the crime, accompanied by the judge, the counsel for both parties, and the court stenographer. The Court affirmed the conviction as there was no showing that there was a history or tradition in the State of Massachusetts affording the accused such right. It held that "[t]he constitution and statutes and judicial decisions of the Commonwealth of Massachusetts are the authentic forms through which the sense of justice of the People of that Commonwealth expresses itself in law. We are not to supersede them on the ground that they deny the essentials of a trial because opinions may differ as to their policy or fairness." For more recent applications, see *Michael H. v. Gerald D.*, *supra* note 59 and *Washington v. Glucksberg*, *supra* note 124. See, however, J. Kennedy's Opinion in *Obergefell v. Hodges*, *supra* note 73, where the Court held that "[h]istory and tradition guide and discipline this inquiry but do not set its outer boundaries, xxx That method respects our history and learns from it without allowing the past alone to rule the present."

[156] Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, *supra* note 93 at 235-237. In the case of *Rochin v. California*, 342 U.S. 165 (1952), the US Supreme Court held that the act of the police in arranging to have a suspect's stomach pumped to produce evidence of illegal drugs constituted a kind of conduct that "shocks the conscience" and therefore violated the Due Process Clause of the Constitution. This test was again seen appropriate to evaluate "abusive executive action," which in said case was a police car chase which resulted in the death of one of those being chased. The Court eventually found in favor of government as what was determinant of whether the challenged action "shocks the conscience" was not negligence or deliberate

indifference but whether there was "an intent to harm suspects physically or worsen their legal plight." Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 236.

[157] Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 237-239. In *Shapiro v. Thompson*, 394 U.S. 618 (1969), the US Court considered the constitutional "right to travel interstate" which was alleged to have been infringed by a Connecticut statute which provided that residents cannot receive welfare benefits until they had lived in the state for at least one year. According to the Court, while unwritten in the Constitution, the right to travel is "fundamental to the concept of our Federal Union," which was, by and large, made up of several sovereign states coming together.

The New Union would not have been possible, and would have made no sense, unless citizens of that Union were free to travel from one end of it to another. Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 237-239.

[158] Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 240-241. In *Griswold v. Connecticut*, supra note 114 at 484, which dealt with the right of married couples to use contraceptives, the US Supreme Court, speaking through J. Douglas, "spoke of the 'penumbras formed by emanations' from the guarantees of specific kinds of privacy in the Bill of Rights and used these x x x as a basis for finding a more generalized, more encompassing right of privacy." Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 240.)

[159] Farrell writes that the US Court has found implied constitutional rights to vote (See *Reynolds v. Sims*, 377 U.S. 533 [1964]) and to some level of access to court processes (See *Griffin v. Illinois*, 351 U.S. 12 [1956] and *Boddie v. Connecticut*, 401 U.S. 371 [1971]) on the ground that "legislation and adjudication in the courts are essential elements of a democracy and that a limitation on access to these two institutions is a threat to the institution of government itself." Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 241-245.

[160] In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, supra note 120, the Supreme Court used *stare decisis*, in particular its decision in the case of *Roe v. Wade*, supra note 118, to explain the nature of the fundamental right to privacy as it related to abortion. *Roe*, in turn, also enumerated several cases from which it understood to have recognized a broad and generalized right to privacy (which includes a woman's decision whether or not to terminate her pregnancy) that is part of the Fourteenth Amendment "liberty." (Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra note 93 at 245-246.) This approach appears to have been used by this Court in *People v. Pomar*, supra note 127, and J. Jardeleza in his Concurring Opinion in *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*, supra note 145.

[161] For in depth discussions of the different methods and approaches, see Crump, "How do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy," supra note 58; and Farrell, "An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court," supra note 93.

[162] CONSTITUTION, Art. III, Sec. 1.

[163] Supra note 132.

[164] Supra note 114.

[165] *Id.* at 444-445.

[166] Supra note 116.

[167] *Id.* at 453.

[168] Irvine, "Balancing the Right of the Mentally Retarded to Obtain a Therapeutic Sterilization Against the Potential for Abuse," 12 Law & Psychology Review 95 (1988), p. 96. In the case of *In Re Grady*, 85 N.J. 235, 426 A.2d 467 (1981), it was held that "[a] right to sterilization has yet to receive constitutional protection from the United States Supreme Court."

[169] Fourteen states have statutes authorizing sterilization of persons with mental impairments who are deemed incapable of consent. For the most part, these statutes provide procedural and substantive safeguards designed to protect the class from arbitrary enforcement. (Cepko, "Involuntary Sterilization of Mentally Disabled Women" 8 Berkeley Women's L.J. 122 [1993]). In states where no specific statutes authorize sterilization, courts faced with a petition for sterilization have had varied responses. A majority of the courts will not accept jurisdiction absent legislative authority, but a minority accepts jurisdiction even without said authority and lay down guidelines to be followed to determine if sterilization is warranted. (Irvine, "Balancing the Right of the Mentally Retarded to Obtain a Therapeutic Sterilization Against the Potential for Abuse" 12 Law & Psychology Review 95 [1988], p. 96.) Typical of the majority view is that the inherent equity power of the courts did not include the ability to order a sterilization without statutory authority. (*Hudson v. Hudson*, 373 So. 2d 310 [1979], as cited by Irvine, "Balancing the Right of the Mentally Retarded to Obtain a Therapeutic Sterilization Against the Potential for Abuse," 12 Law & Psychology Review 95 [1988], p. 107.) The minority view, on the other hand, while conceding that a right to sterilization has yet to receive express constitutional protection from the US Supreme Court, and most states have found that they lack the power to grant a petition for sterilization absent legislative authorization, relies on the inherent *parens patriae* power of the courts and maintains that it still holds the final determination whether consent to sterilization should be given on behalf of an incompetent individual. *In Re Grady*, 85 N.J. 235, 426 A.2d 467 (1981).

[170] Irvine, "Balancing the Right of the Mentally Retarded to Obtain a Therapeutic Sterilization Against the Potential for Abuse," 12 Law & Psychology Review 95 (1988).

[171] *In Re Grady*, 85 N.J. 235, 426 A.2d 467 (1981).

[172] J. Leonen Separate Opinion, p. 19.

[173] See *Kabataan Party-List v. Commission on Elections*, *supra* note 88.

[174] See *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, *supra* note 31.

[175] See *Ebralinag v. Superintendent of Schools of Cebu*, *supra* note 76.

[176] See *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010, 618 SCRA 32.

[177] G.R. No. 81561, January 18, 1991, 193 SCRA 57.

[178] *Id.* at 67.

[179] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[180] *Montesclaros v. Commission on Elections*, G.R. No. 152295, July 9, 2002, 384 SCRA 269, 281.

[181] *Romualdez v. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89, 102-103, citing *Canet v. Decena*, G.R. No. 155344, January 20, 2004, 420 SCRA 388.

[182] Easterbrook, "Implicit and Explicit Rights of Association," 10 Harvard Journal of Law and Public Policy 91 (1987), pp. 94-95.

[183] See J. Panganiban Separate Opinion in *Ople v. Torres*, G.R. No. 127685, July 23, 1998, 293 SCRA 141

174.

SEPARATE OPINION

CAGUIOA, J.:

I concur with the Resolution.

The supervening death of petitioner Pilar Verzosa (Verzosa), coupled with the absence of any action on the part of the Office of the Solicitor General (OSG) to pursue an appeal, rids the Petition of any justiciable controversy over which the Court may exercise its power of review. Verily, the resolution of the substantive issues submitted herein would not serve any practical purpose. The Petition should thus be dismissed for being moot and academic.

Nevertheless, I submit this Opinion in response to Associate Justice Marvic M.V.F. Leonen's position that the vasectomy performed on Laureano "Larry" Aguirre (Larry) constitutes a form of cruelty which, in turn, qualifies as an act of child abuse punished under Section 10(a) of Republic Act No. (RA) 7610.

Based on my assessment of the applicable law and attendant circumstances, I take a contrary position.

The facts are not in dispute.

On June 19, 1980, the Regional Trial Court (RTC) of Balanga, Bataan appointed spouses Pedro and Lourdes Aguirre (Spouses) as co-guardians of Larry, then a two-year-old baby under the care and custody of the Heart of Mary Villa (HMV) foster home.[1] Verzosa was the Nursery Supervisor of HMV at the time.[2]

Pedro and Lourdes assumed custody over Larry, and raised him as their own, together with their four daughters, among whom were Gloria S. Aguirre (Gloria) and respondent Michelina S. Aguirre-Olondriz (Michelina).[3]

Larry exhibited signs of slow mental development throughout his childhood. Hence, he was made to undergo several neuropsychological examinations, and was later diagnosed to be suffering from Mild Mental Deficiency.[4]

Sometime in November 2001, Pedro instructed Michelina to bring Larry to Dr. Juvido Agatep (Dr. Agatep), a urologist, for the purpose of subjecting Larry to a vasectomy. Recognizing that Larry may not be able to intelligently consent to the procedure, Dr. Agatep urged that Larry be examined by a psychiatrist for proper clearance.[5] Thus, Larry was examined by Dr. Marissa B. Pascual (Dr. Pascual) who confirmed Dr. Agatep's initial impressions.[6]

Thereafter, Dr. Agatep performed a bilateral vasectomy on 24-year-old Larry on January 31, 2002 upon Pedro's instruction.[7]

The procedure prompted Gloria and Verzosa to file two separate complaint-affidavits before the Office of the City Prosecutor of Quezon City (OCP) charging Pedro, Michelina, Dr. Pascual and Dr. Agatep (collectively, respondents) of the following offenses:

- (i) Falsification under Article 172 of the Revised Penal Code (RPC);
- (ii) Mutilation under Article 262 of the RPC; and
- (iii) Child Abuse under Sections 3 and 10 of RA 7610.[8]

The OCP dismissed all three charges against respondents for lack of probable cause through its Resolutions dated January 8, 2003 and August 26, 2003 (collectively, 2003 OCP Resolutions).[9]

However, the OCP later revived the third charge through a subsequent Resolution dated May 13, 2005 which found probable cause to charge respondents with violation of Sections 3 and 10 of RA 7610.[10]

On the basis of the allegations set forth in the Information, the RTC of Quezon City initially found probable cause to hold respondents for trial and thus issued the corresponding warrants for their arrest.[11] Hence, respondents posted their respective bail bonds and filed several motions[12] essentially praying for the dismissal of the case.

On November 8, 2005, Judge Ma. Lourdes A. Giron (Judge Giron), Presiding Judge of the RTC of Quezon City, issued an Order[13] dismissing the case for lack of probable cause. Judge Giron stressed that she was only made aware of the previous dismissal of the charges against respondents after she was furnished copies of the 2003 OCP Resolutions, as such copies were not appended to the Information. In this connection, Judge Giron held that the undue revival of the dismissed charges against respondents constitutes a violation of their right to due process, warranting the dismissal of the criminal case.[14] Judge Giron further held that in any case, Verzosa lacks standing to charge respondents with violation of RA 7610.[15] Verzosa filed a Motion for Reconsideration, which was subsequently denied.[16]

The Court of Appeals (CA) affirmed Judge Giron's orders on appeal through its Decision[17] dated May 16, 2008 and subsequent Resolution[18] dated September 17, 2008, which in turn, are assailed in this Petition.

The Petition alleges, among others, that a vasectomy performed on an adult male suffering from Mild Mental Deficiency qualifies as an act of child abuse under Section 10(a) of RA 7610.

Justice Leonen finds that the vasectomy performed on Larry violates "his fundamental right to life and liberty." [19] Proceeding therefrom, Justice Leonen holds that the "unconsented vasectomy of [Larry] is clearly a case of cruelty, not so much for the manner it was done, but because of the circumstance surrounding its commission and the resulting limitations to the way Larry will be able to live for the rest of life." [20] Further, Justice Leonen concludes that such "unconsented" vasectomy constitutes an act of child abuse, punishable under Section 10(a) of RA 7610, which provides:

SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. -

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of [Presidential Decree] No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

As stated at the outset, I disagree.

In holding that the bilateral vasectomy performed on Larry cannot be considered a form of cruelty, the CA correctly held that the test to be applied is whether the accused deliberately and sadistically augmented the victim's suffering by causing another wrong not necessary for its commission or. inhumanely increased the victim's suffering or outrage.[21] Inasmuch as the best interests of a child must, at all times, be upheld, such commitment must be situated and read in light of the applicable law.

The United Nations Convention on the Rights of the Child (UNCRC), which the Philippines became a signatory to on January 26, 1990 and ratified on August 21, 1990,[22] provides that States-parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.[23]

In interpreting the specific provision on "cruel, inhuman or degrading treatment or punishment" of children, the UNCRC Committee on the Rights of the Child (Committee) in General Comment No. 8,[24] first and foremost defines "corporal" or "physical" punishment as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light." [25] The Committee further observes that most forms of cruel, inhuman, or degrading treatment or punishment of children involve hitting ("smacking", "slapping", "spanking") with the hand or with an implement — a whip, stick, belt, shoe, wooden spoon, etc., but it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices).[26] Notably, a common element in all these circumstances is that in the act of inflicting "punishment" on the child, the punishment is invariably degrading.[27]

Further, as to other non-physical forms of punishment, cruel and degrading punishment contemplate acts that are "incompatible with the [UNCRC, specifically,] x x x punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child." [28]

Consistent with the foregoing principles, the Court, in *Bongalon v. People*, [29] unequivocally espoused that not every instance of laying of hands on a child qualifies as an act of child abuse under Section 10(a). [30]

To sustain a conviction under Section 10(a) of RA 7610, proof of the accused's intent to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should be established beyond reasonable doubt. [31]

In this regard, the records show that while general allegations anent the purported degrading and demeaning effects of the vasectomy performed on Larry had been repeatedly made by Verzosa during the course of the proceedings, not a single shred of evidence was offered to show that respondents were impelled by any ill motive in facilitating the questioned procedure. To my mind, no specific intent to debase, degrade or demean Larry's intrinsic worth as a human being had been convincingly shown, thereby negating respondents' criminal liability under Section 10(a) of RA 7610.

Quite the contrary, assessed in light of their intent as Larry's parents, the act of respondents cannot, by any stretch of the imagination, be characterized as debasing, degrading or demeaning. Indeed, my own appreciation of that intent is that it was borne out of care and love for Larry, and by extension, for any offspring Larry may bear, as indicated by the following circumstances:

Foremost, a professional evaluation of Larry's personal circumstances revealed that he "grew up with a very supportive adoptive family." [32] This is consistent with the declarations of Pedro and Michelina to the effect that the vasectomy procedure was done merely as a preventive measure against unwanted pregnancies in light of Larry's "emerging sexuality and inability to take care of himself[,] much less a child [of his own]." [33] More so, the Spouses' age at the time precluded their ability to fully monitor and take care of Larry as much as they used to. [34] Quite clearly, the intent behind the decision of Pedro and Michelina to have Larry undergo the operation is to be understood within the context of ensuring Larry's best interest. ,

Next, Larry was treated as one of the Spouses' own children; no expenses were spared by the Spouses when it came to Larry's welfare and educational needs. At the early age of 6, he was enrolled at the Colegio de San Agustin in Dasmariñas Village. [35] At age 11, Larry was subjected to a psychological evaluation after showing signs of delayed development. [36] Based on the recommendation of a medical professional, Larry was then transferred to St. John Marie Vianney, where he could receive special education and training. [37] Larry was later enrolled in a vocational course at Don Bosco after completing his secondary education. [38]

In all these years, Larry could not prepare his own meals, do his errands, or even bathe himself without supervision from his parents or his older siblings.[39] Yet, despite this, Larry confessed to having been in a relationship at least once and that he had learned to drink and smoke.[40]

Taking the circumstances in their totality, it is crystal clear to me that Pedro and Michelina were driven by no other motive than that of love and compassion for Larry. If Larry were to reproduce, by deliberate choice or otherwise, the task of raising a child would be too difficult a task to undertake, given Larry's proven inability to take care of his own affairs. Inevitably, the responsibility to take care of the child would redound to the Spouses, who, as previously mentioned, are already encountering difficulty taking care of Larry alone. Thus, by no stretch of the imagination can it be said that there is any evidence of malevolent intent to debase or degrade Larry's intrinsic worth as a human being. To declare otherwise, would be, to my mind, cruel and degrading to the adoptive parents who, by all indications, only sought the best for Larry.

ACCORDINGLY, I vote to DISMISS the Petition, solely on the ground of mootness.

[*]Also stated as "Versoza" in some parts of the rollo.

[1] Rollo, p. 12.

[2] Id.

[3] Id.

[4] Id.

[5] Id. at 13.

[6] Id.

[7] Id.

[8] Id. at 25.

[9] Id.

[10] Id. at 26.

[11] Id. at 27.

[12] Id. at 48. The motions filed by the respondents for the RTC's resolution, as enumerated in the Order dated November 8, 2005, were: (i) Motion to Dismiss filed by Atty. Jose A. Bernas (counsel for Michelina and Pedro); (ii) Urgent Motion to Quash Information and Warrant of Arrest filed by Alampay Gatchalian Mawis and Alampay (counsel for Dr. Pascual); (iii) Motion for Re-Determination of Probable Cause filed by Atty. Jose A. Bernas; (iv) Consolidated Motions to Deny Entry of Appearance of [Versoza's] Counsel and to Strike From Records her Comment/Opposition filed by Atty. Jose A. Bernas; (v) Reiterative Motion to Disqualify Private Prosecutor filed by Atty. Veronica Jude E. Abarquez (counsel for Dr. Pascual); and (vi) Motion for Trial Prosecutor to Stipulate Whether She Intends to Prosecute Accused under RA 7610 Despite Having Been Informed that this Matter was Previously Ruled upon by the DOJ and Currently under Review by the Court of Appeals filed by Atty. Jose A. Bernas.

[13] Id. at 48-55.

[14] Id. at 49-50.

[15] Id. at 55.

[16] Id. at 27.

[17] Id. at 24-39. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Isaias P. Dicdican and Ramon R. Garcia concurring.

[18] Id. at 46-47.

[19] Separate Opinion, p. 12.

[20] Id. at 18.

[21] CA Decision, p. 10; rollo p. 33.

[22] United Nations Treaty Collection, available at <
<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf> >.

[23] Art. 37, Convention on the Rights of the Child, available at <
https://treaties.un.org/doc/source/docs/A_RES_44_25-Eng.pdf >.

[24] General Comment No. 8, UNCRC Committee on the Rights of the Child, CRC/C/GC/8, 2 March 2007.

[25] Id., par. 11.

[26] Id.

[27] See id.

[28] Id.

[29] 707 Phil. 11 (2013).

[30] Id. at 14.

[31] Id.

[32] Psychiatry Report dated January 21, 2002 of Dr. Marissa B. Pascual, see *Aguirre v. Secretary of the Dept. of Justice*, 571 Phil. 138, 145 (2008).

[33] Comment of respondents Pedro and Michelina, rollo, p. 143.

[34] See Psychiatry Report dated January 21, 2002 of Dr. Marissa B. Pascual, see *Aguirre v. Secretary of the Dept. of Justice*, supra note 32, at 145.

[35] Id.

[36] Id.

[37] Id.

[38] Id.

[39] Id.

[40] Id. at 145-146.

SEPARATE OPINION

REYES, A., JR., J.:

I concur with the Resolution of the Court en banc insofar as it denied the present petition for having been rendered moot by the death of petitioner Sr. Pilar Versoza on September 9, 2012. I write this separate opinion to express my views on the proposed balancing of individual reproductive rights as against parental authority. Particularly implicated here is the individual's right to procreate as against the right and duty of parents to decide on behalf of their children who lack the capacity to consent to medical procedures which impinge on the right to procreate. As Larry's guardians and de facto parents, the spouses Aguirre's primary and natural right to bring up and care for Larry vests in them the right to decide what is best for the child they took in and raised as their own; and such decision is clothed with the presumption of good faith and legality until proven otherwise. Under our current legal regime, the right of parents or guardians to provide consent for medical procedures on behalf of intellectually disabled persons who are unable to provide such consent is part and parcel of their parental authority over their children or wards.

Mootness of the petition

It must be noted that the present petition stems from the Quezon City Regional Trial Court's (RTC) Order dated November 8, 2005 dismissing the case for violation of Republic Act (R.A.) No. 7610. Stated differently, an information has already been filed in court, arrest warrants have been issued, and bail bonds have been posted by the herein respondents. At that point in time, therefore, the People of the Philippines had become a party to the case, since the action had passed from the investigation phase to the trial phase with the filing of the information before the trial court.[1] However, it also bears emphasizing that no appeal from the aforesaid order was filed on behalf of the People of the Philippines. Sr. Versoza filed the appeal on her own without impleading or involving the People. The crux of the present petition, therefore, is the propriety of Sr. Versoza's filing of an appeal from the dismissal of the criminal case for violation of R.A. No. 7610 without impleading the People of the Philippines. Stated differently, does Sr. Versoza, acting alone and in her personal capacity, have standing to appeal the dismissal of the criminal case for violation of R.A. No. 7610?

As discussed in the Resolution, Sr. Versoza's right to appeal the dismissal of the case is personal to her. It is distinct and separate from the People's right to appeal as the designated plaintiff in criminal prosecutions — a right it chose not to exercise in the case at bar. Therefore, upon Sr. Versoza's demise, the issue of whether or not she can appeal the dismissal in her personal capacity has been rendered moot and academic.

Parental authority as a "primary and natural right"

The 1987 Constitution "recognizes the Filipino family as the foundation of the nation." [2] As such it commits the State to the "strengthen[ing of] the« family as a basic autonomous social institution". [3] To further this State policy, the Constitution vests upon parents the "natural and primary right" [4] to rear their children. This right is reiterated in the Child and Youth Welfare Code, which expressly provides that parents have, "in relation to all other persons or institutions dealing with the child's development, the primary right and obligation to provide for their upbringing." [5]

The primary and natural right of parents to rear their children is fleshed out in the Family Code, in the form of the juridical institution known as parental authority, or patria potestas, whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs. [6]

Parental authority has been defined as the mass of rights and obligations which parents have in relation to the

person and property of their children. This authority lasts until the children's majority age or emancipation, and even after this under certain circumstances. Parental authority is granted for the purpose of the children's physical preservation and development, the cultivation of their intellect, and the education of their heart and senses.[7]

As originally conceived in Roman law, parental authority was vested primarily in the father and amounted to a "near absolute right to his children, whom he viewed as chattel, a right with which courts were powerless to interfere." [8] Such right included the "power of life and death" (*Jus vitae ac necis*) over children. [9] Over time, as recognition of children's rights expanded, *patria potestas* rights have been gradually reduced, first yielding some authority to the state as *parens patriae*; and later becoming subject to the best interest of the child standard. This modern conception of *patria potestas* animates the provisions of the Family Code. Nevertheless, the Family Code still reiterates the primary and natural right to parental child-rearing, viz.:

Article 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.

The constitutional and statutory affirmation of the primacy of parental authority reiterates a self-evident fact: that parents are the primary caregivers and stewards of their children. Thus, courts have declared that, as a general rule, parental authority is superior to the power of the state over its minor citizens as *parens patriae*. [10] In *Sps. Imbong, et al. v. Hon. Ochoa, Jr., et al.*, [11] this Court struck down a provision of the Reproductive Health Law which dispensed with parental consent for access to modern methods of family planning if the minor is already a parent or has suffered a miscarriage for "disregarding] and disobey[ing] the constitutional mandate that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government." The Court cited 1986 Constitutional Commission member Fr. Joaquin Bernas:

The 1987 provision has added the adjective "primary" to modify the right of parents. It imports the assertion that the right of parents is superior to that of the State, x x x The State cannot, without a compelling state interest, take over the role of parents in the care and custody of a minor child, whether or not the latter is already a parent or has had a miscarriage. Only a compelling state interest can justify a state substitution of their parental authority. [12]

This pronouncement was repeated in *Samahan ng mga Progresibong, Kabataan, et al. v. Quezon City, et al.*, involving the constitutionality of curfew ordinances passed by three Metro Manila local governments, thus:

By history and tradition, "the parental role implies a substantial measure of authority over one's children." In *Ginsberg v. New York*, the Supreme Court of the United States (US) remarked that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." As in our Constitution, the right and duty of parents to rear their children is not only described as "natural," but also as "primary." The qualifier "primary" connotes the parents' superior right over the State in the upbringing of their children, x x x As our Constitution itself provides, the State is mandated to support parents in the exercise of these rights and duties. State authority is therefore, not exclusive of, but rather, complementary to parental supervision. [13]

Justice Leonen, in his Separate Opinion, concurred with these propositions and went on to state that:

The addition of the qualifier "primary" unequivocally attests to the constitutional intent to afford primacy and preeminence to parental responsibility. More plainly stated, the Constitution now recognizes the superiority of parental prerogative. It follows, then, that state interventions, which are tantamount to deviations from the preeminent and superior rights of parents, are permitted only in instances where the parents themselves have

failed or have become incapable of performing their duties.

x x x x

As it stands, the doctrine of *parens patriae* is a mere substitute or supplement to parents' authority over their children. It operates only when parental authority is established to be absent or grossly deficient. The wisdom underlying this doctrine considers the existence of harm and the subsequent inability of the person to protect himself or herself. This premise entails the incapacity of parents and/or legal guardians to protect a child.

To hold otherwise is to afford an overarching and almost absolute power to the State; to allow the Government to arbitrarily exercise its *parens patriae* power might as well render the superior Constitutional right of parents inutile.

More refined applications of this doctrine reflect this position. In these instances where the State exercised its powers over minors on account of *parens patriae*, it was only because the children were prejudiced and it was without subverting the authority of the parents themselves when they have not acted in manifest offense against the rights of their children.[14]

Parental authority vis-a-vis standing under Republic Act No. 7610

The plenary and natural right of parental authority is vested primarily in the parent or guardian,¹⁵ subject only to substitution in case of default of the parent or guardian^[16] or to the creation of special parental authority under certain circumstances.^[17] Parental authority is therefore vested first and foremost in the parent or guardian, and is only lost, transferred or supplemented in accordance with law.^[18] Article 189(2) of the Family Code and Rule 96, Section 1 of the Rules of Court^[19] provides:

Article 189. Adoption shall have the following effects:

x x x x

(2) The parental authority of the parents by nature over the adopted shall terminate and be vested in the adopters, except that if the adopter is the spouse of the parent by nature of the adopted, parental authority over the adopted shall be exercised jointly by both spouses; x x x

x x x x

RULE 96

General Powers and Duties of Guardians

SECTION 1. To what guardianship shall extend. — A guardian appointed shall have the care and custody of the person of his ward, and the management of his estate, or the management of the estate only, as the case may be. The guardian of the estate of a nonresident shall have the management of all the estate of the ward within the Philippines, and no court other than that in which such guardian was appointed shall have jurisdiction over the guardianship.

x x x x

The law is clear: adoption or guardianship transfers the full panoply of parental rights and duties to the adoptive parent or guardian, subject only to specific exceptions as provided for by law. Thus, once a licensed child-caring institution has transferred the custody of a child to a judicially constituted guardian, the right of the institution's representative to sue on behalf of the child ceases, except as provided for by law. In the case at bar, it has been established that the spouses Pedro and Lourdes Aguirre have been granted parental authority over Larry by virtue of the June 19, 1986 decision of the RTC of Balanga, Bataan. The judicial declaration of the spouses Aguirre's

guardianship over Larry therefore had the effect of divesting Sr. Versoza and the Heart of Mary Villa of parental authority over Larry. Therefore, Sr. Versoza's standing to file a complaint for child abuse on Larry's behalf can only be based on the provision on standing under R.A. No. 7610[20] and not on the parental authority provisions of the Family Code.

I therefore take exception to the assertion in the Resolution that "the argument that all ties have been severed between Larry and the child-caring agency to which [Sr. Versoza] belonged on account of the transfer of parental authority does not hold water",[21] for it confuses the parental right to represent a child with standing to file a complaint under R.A. No. 7610. R.A. No. 7610's provision on standing was created precisely to address circumstances where child abuse is committed under the guise of parental authority. This grant of standing to sue on behalf of abused children is purely statutory in nature and is distinct and separate from the parents' or guardians' right to represent their children.

Scope and limitations of parental authority

American courts, in interpreting the term "custody,"[22] have conceded that the "complex of rights" embraced thereby have "no precise contours." [23] It has been held that parents with custody and control of their children have "the right to make all reasonable decisions for control and proper functioning of the family as a harmonious social unit,"[24] including the right to "make decisions regarding care and control, education, health, and religion." [25]

Under contemporary law, parental authority remains a plenary authority whose scope is almost all-encompassing, subject only to the limitations expressly provided for by statute and by the best interests standard. Parents and guardians are vested with this plenary power in view of their legal responsibility to support, educate, direct, and protect their children or wards.[26] The expansive scope of this authority is illustrated by the provisions of the Family Code, viz.:

Article 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

Chapter 3. Effect of Parental Authority Upon the Persons of the Children

Article 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children or 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.

x x x x (Emphases and underscoring supplied)

I submit that intellectually disabled persons, who are, for all intents and purposes, embraced under the definition of a child, are covered by the same concept of parental authority. Thus, under the aforecited provision, included in these "other duties as are imposed by law" is the duty and authority of parents or guardians to decide for their intellectually disabled children or wards on matters regarding the use of health services.

Section 10 of the Mental Health Law[27] lays down concrete guidelines regarding the consent of "persons with lived experience of any mental health condition including persons who require, or are undergoing psychiatric, neurologic or psychosocial care"[28] to medical treatment, viz.:

SECTION 10. Legal Representative. — A service user may designate a person of legal age to act as his or her legal representative through a notarized document executed for that purpose.

(a) Functions. A service user's legal representative shall:

- (1) Provide the service user with support and help; represent his or her interests; and receive medical information about the service user in accordance with this Act;
- (2) Act as substitute decision maker when the service user has been assessed by a mental health professional to have temporary impairment of decision-making capacity;
- (3) Assist the service user vis-a-vis the exercise of any right provided under this Act; and
- (4) Be consulted with respect to any treatment or therapy received by the service user. The appointment of a legal representative may be revoked by the appointment of a new legal representative or by a notarized revocation.

(b) Declining an Appointment. A person thus appointed may decline to act as a service user's legal representative.

However, a person who declines to continue being a service user's legal representative must take reasonable steps to inform the service user, as well as the service user's attending mental health professional or worker, of such decision.

(c) Failure to Appoint. If the service user fails to appoint a legal representative, the following persons shall act as the service user's legal representative, in the order provided below:

- (1) The spouse, if any, unless permanently separated from the service user by a decree issued by a court of competent jurisdiction, or unless such spouse has abandoned or been abandoned by the service user for any period which has not yet come to an end;
- (2) Non-minor children;
- (3) Either parent by mutual consent, if the service user is a minor;
- (4) Chief, administrator, or medical director of a mental health care facility; or
- (5) A person appointed by the court. (Emphasis and underscoring supplied.)

In so recognizing, I understand nonetheless that despite the primacy and plenary scope of parental authority, it remains subject to the power of the state as *parens patriae*,[29] but only where the exercise of parental authority is

made in a manner that is harmful or abusive to the child. Nevertheless, as the natural and primary caregiver and custodian of their children, with the inherent right and duty "to develop their moral, mental and physical character and well-being" and "to represent them in all matters affecting their interests," parents are entitled to a presumption of good faith in the discharge of their patria potestas duties. However, the best interests of the child remain the paramount consideration, which the State, as parens patriae must promote; and to which, parental authority must yield in case of conflict. The sterilization of an intellectually disabled person, who is considered a child in the eyes of the law, presents one such instance, where the interests of the parents in ensuring the health and well-being of their child could conflict with the interests of the state in upholding the child's right to reproductive choice and corporal self-control. Thus, in the absence of allegations or proof that the parents acted in bad faith or against the best interests of their child, their right and duty to decide on their child's behalf must prevail.

The right to consent to sterilization of an intellectually disabled person

The sterilization of intellectually disabled individuals has been the subject of a long line of decisions in the United States and Canada,[30] almost all of which involved the parent or guardian of an intellectually disabled individual applying for judicial authorization to perform some medical procedure which will render said individual unable to procreate; and in most instances since 1978, the appellate courts have either denied such applications[31] or remanded them to the lower court for the reception of evidence.[32] In this regard, the Canadian Supreme Court has held that:

The court undoubtedly has the right and duty to protect those who are unable to take care of themselves, and in doing so it has a wide discretion to do what it considers to be in their best interests. But this function must not, in my view, be transformed so as to create a duty obliging the court, at the behest of a third party, to make a choice between the two alleged constitutional rights—the right to procreate or not to procreate—simply because the individual is unable to make that choice. All the more so since, in the case of non-therapeutic sterilization as we saw, the choice is one the courts cannot safely exercise.[33]

It must be noted that the North American courts unanimously recognize reproductive rights, including the right to choose to (or not to) undergo sterilization, as a fundamental human right, held by all individuals regardless of intellectual or mental ability. The doctrinal divergence lies not in the exercise of this right by intellectually disabled individuals, who, by reason of such disability, are unable to do so. Rather, the issues primarily revolve around whether the State should defer to the parents' wishes or substitute its own judgment as parens patriae on the individual's behalf; not the capacity of the individual to decide for himself or herself. The difficulties faced by the courts in resolving such matters have been summarized thusly:

The case before us presents a situation that is difficult to characterize as either "compulsory" or "voluntary." "Compulsory" would refer to a sterilization that the state imposes despite objections by the person to be sterilized or one who represents his interests. Here, however, Lee Ann's parents and her guardian ad litem all agree that sterilization is in her best interests, and while the state may be acting in the constitutional sense, it would not be compelling sterilization. Lee Ann herself can comprehend neither the problem nor the proposed solution; without any such understanding it is difficult to say that sterilization would be against her will. Yet for this same reason, the label "voluntary" is equally inappropriate. Since Lee Ann is without the capacity for giving informed consent, any explanation of the proposed sterilization could only mislead her. Thus, what is proposed for Lee Ann is best described as neither "compulsory" nor "voluntary," but as lacking personal consent because of a legal disability.[34]

As such, in the absence of comprehensive evidence regarding the individual's physical and mental capacities,

sexual proclivity, and psycho-social capabilities to discharge the duties of a parent,[35] courts in the United States have refrained from making such a choice in place of the intellectually disabled person. Ultimately, the determination of the most proper course of action would be an evidentiary matter that requires the reception of evidence and presentation of proof. In making such a determination, courts have considered evidence regarding the following factors: the intellectually disabled person's capacity to consent to the procedure;[36] their capability to reproduce;[37] their religious beliefs;[38] their present and future inability to understand the concepts of reproduction or contraception, and the likely permanence of such inability;[39] their ability to care for a child, either alone, or with the assistance of a prospective spouse;[40] possible trauma or psychological damage that may be brought on by childbirth or parenthood;[41] likelihood of voluntary engagement in sexual activity or exposure to situations where sexual intercourse is imposed;[42] advisability of sterilization at the time of the application rather than in the future;[43] evidence of scientific advances which may occur within the foreseeable future which will make possible either improvement of the individual's condition or alternative and less drastic sterilization procedures;[44] and a demonstration that the proponents of sterilization are seeking it in good faith, with the best interests of the individual in mind, rather than their own or the public's convenience.[45]

The case at bar

It is undisputed that Larry Aguirre is considered a child under the law, since his mental age is that of an 8-year old;[46] and he is incapable of making important life decisions on his own.[47] Likewise, the parties do not dispute that respondent Pedro Aguirre acquired parental authority over Larry's person by virtue of the June 19, 1986 decision of the RTC of Balanga, Bataan, which granted the spouses Pedro and Lourdes Aguirre joint guardianship over Larry's person and property.[48] The record likewise establishes that Larry has been in the care and custody of the Aguirre family since he was two years old.[49] It is therefore clear that the Aguirre spouses had parental authority over Larry. Consequently, they have the primary right and duty, under current laws, to decide what is best for Larry.

Turning now to the particular circumstances of Larry's situation, viewed in the light of the relevant factors mentioned in the preceding section, the undisputed findings made by Dr. Pascual in her Psychiatric Report, as cited in the case of *Aguirre v. Secretary of Justice*, must be accorded great weight. According to the report, Larry's mental development has been significantly delayed[50] because of mild to moderate mental deficiency.[51] Thus, his human figure is comparable to a seven or eight year old child.[52] He can perform most daily activities without assistance but still needs supervision to bathe.[53] He cannot prepare meals on his own and is not allowed to go out or run errands alone.[54] He has no friends and only has significant relationships with his adoptive family.[55] He has learned to smoke and drink but has no history of substance abuse.[56] As such, he is very much dependent on his family for his needs, adaptive functioning, direction, and in making major life decisions.[57] Finally, the report concluded that, at his capacity, Larry may never understand the nature, foreseeable risks, benefits, and consequences of the vasectomy sought by his parents for his protection.[58]

In contrast, there is no evidence on record to show that Larry understands the nature and consequences of his sexuality, his present and future inability to understand the concepts of reproduction or contraception; or of his ability to care for a child, either alone, or with the assistance of a prospective spouse. No evidence was likewise presented as to the possibility of trauma or psychological damage that may be brought on Larry by the fact of childbirth or parenthood; or of the likelihood of his voluntary engagement in sexual activity or exposure to situations where sexual intercourse is imposed; much more of the ponencia's claim that Larry's mental age will grow to be 18 years of age or beyond at some point in the future, or its theory of "supported parenting."

Given the dearth of evidence to guide the courts in deciding on Larry's behalf, they must defer to the parties with the constitutional primary right to decide for Larry: his parents. The parental authority vested in the spouses

Aguirre includes the right to decide upon and consent to a vasectomy, on Larry's behalf, as a precautionary measure to ensure that Larry is able to live his best life, free from the possible complications and repercussions which may arise if he bears a child under the attendant circumstances in the case at bar. Such decisions should be presumed to have been made in Larry's best interest, unless proven otherwise.

All told, a binding resolution of the novel issue raised by the ponencia must await another case where an authorized trier of fact will be able to receive evidence from all parties concerned, hopefully with the guidance of medical, sociological, and psychological experts, and guided by international precedents.

IN VIEW OF THE FOREGOING, I vote to DISMISS the petition solely on the ground of mootness.

[1] On this point, the trial court indicated its recognition of the fact that the action had passed into the trial phase when held in its November 8, 2005 Order that: "As to the first issue of whether or not the case should be dismissed, the Court finds merit to grant the motion." Order dated November 8, 2005, as cited in Resolution, p. 7.

[2] CONSTITUTION, Article XV, Section 1.

[3] CONSTITUTION, Article II, Section 12.

[4] Id.

[5] PRESIDENTIAL DECREE NO. 603, Article 43.

[6] Santos v. CA, 312 Phil. 482 (1995).

[7] Santos v. CA, supra note 6; 1 Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 603 (1990), citing 2 Manresa 8.

[8] Whallon v. Lynn, 230 F.3d 450 (2000), footnote 7.

[9] Alicia V. Sempio-Diy, Handbook on the Family Code of the Philippines 333 (1995).

[10] See Troxel v. Granville, 530 U.S. 57 (2000) and Parham v. J.R., 442 U.S. 584 (1979). Parental prerogatives are entitled to considerable legal deference, subject only to the best interests of the child or important interests of the State. 67A C.J.S. 188-189, citing State v. Koome, 530 P.2d 260, 84 Wash.2d 901 (1975). See also In re Roger S., 19 Cal.3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977), holding that: "Parents x x x have powers greater than that of the state to curtail a child's exercise of the constitutional rights he may otherwise enjoy, for a parent's own constitutionally protected 'liberty' includes the right to 'bring up children', and to 'direct the upbringing and education of children.' As against the state, this parental duty and right is subject to limitation only 'if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.'"

[11] 732 Phil. 1 (2014).

[12] Id. at 192-193.

[13] 815 Phil. 1067, 1099-1100 (2017). Citations omitted.

[14] Id. at 1170, 1172-1173, separate opinion of Justice Leonen. Emphasis supplied.

[15] FAMILY CODE, Art. 211; A.M. No. 03-02-05-SC (Rule on Guardianship of Minors), Sec. 1.

[16] FAMILY CODE, Art. 216, paragraph 1.

[17] FAMILY CODE, Arts. 217 and 218.

[18] FAMILY CODE, Art. 210.

[19] Article 225 of the Family Code provides for the applicability of the Rules of Court provisions on guardianship "when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried x x x".

[20] REPUBLIC ACT NO. 7610, Section 27.

[21] Resolution, p. 18.

[22] Custody, in American family law, has been defined as "the care, control, and maintenance of a child awarded by a court to a responsible adult." It "involves legal custody (decision-making authority) and physical custody (caregiving authority), and an award of custody usually grants both rights. In a divorce or separation proceeding between the parents, the court usually awards custody to one of them, unless both are found to be unfit, in which case the court may award custody to a third party, typically a relative. In a case involving parental dereliction, such as abuse or neglect, the court may award custody to the state for placing the child in foster care if no responsible relative or family friend is willing and able to care for the child." Black's Law Dictionary (9[th] ed.) 441. Under the foregoing definition, the concept is essentially analogous to parental authority in Philippine law.

[23] Delgado v. Fawcett, 515 P.2d 710 (1973).

[24] 67A C.J.S 188, citing Commonwealth v. Brasher, 270 N.E. 2d, 359 Mass. 550 (1971).

[25] Id., citing Burge v. City and County of San Francisco, 262 P.2d 6, 41 C.2d 608 (1953) and Trompeter v. Trompeter, 545 P.2d 297, 218 Kan. 535 (1976).

[26] I Tolentino, supra note 7. See also Salvaña and Saliendra v. Judge Gaela, 55 Phil. 680 (1931).

[27] REPUBLIC ACT NO. 11036, 114 O.G. (No. 27) 4664.

[28] REPUBLIC ACT NO. 11036, Sec. 4(t).

[29] State v. Koome, 530 P.2d 260, 84 Wash.2d 901 (1975).

[30] See Buck v. Bell, 274 U.S. 200 (1927), which upheld the sterilization of a "mildly retarded woman"; E (Mrs) v. Eve, 2 S.C.R. 388 (1986) (Supreme Court of Canada), denying the application for judicial authorization to sterilize a 24-year old woman with acute expressive aphasia who was found to be mentally incapable of discharging the duties of a mother; and cases cited therein.

[31] Conservatorship of Valerie N., 707 P. 2d 760 (1985); In Matter of Guardianship of Eber hardy, 307 N.W. 2d 881 (1981); E (Mrs) v. Eve, supra, grant of authorization to hysterectomy reversed on appeal.

[32] In re Hayes, 608 P. 2d 635(1980); In the Matter of Moe, 432 N.E. 2d 712 (1982).

[33] E (Mrs) v. Eve, 2 S.C.R. 388, 420 (1986) (Supreme Court of Canada).

[34] In the matter of Grady, 426 A.2d 467, 85 N.J. 235, at 247 (1981).

[35] See Estate of CW, 640 A. 2d 427 (1994), application for authorization to consent to tubal ligation of a 24-year old woman with Down syndrome and a mental age of 3-5 years old; and In re Conservatorship of Angela D., 83 Cal. Rptr. 2d 411 (1999), involving the sterilization of a 20-year-old severely developmentally disabled woman who suffers from epileptic seizures and diabetes.

[36] 53 Am. Jur. 2d. Mentally Impaired Persons §127, p. 576, citing *In re M*, 627 P.2d 607; *In re Romero*, 790 P.2d 819; *In the Matter of Moe*, supra note 32; *In the matter of Grady*, supra; *In re Hayes*, supra note 32.

[37] 53 Am. Jur. 2d. Mentally Impaired Persons §127, p. 577, citing *In re M.*, supra; *In the matter of Grady*, supra; *In re Truesdell*, 63 NC. App. 258, 304 S.E.2d. 793, modified on other grounds 313 N.C. 421, 329 S.E.2d. 630.

[38] *Id.*, citing *In the Matter of Moe*, supra note 32.

[39] *Id.*, citing *In the matter of Grady*, supra.

[40] *Id.*, citing *In the matter of Grady*, *id.*; *In re M.*, supra.

[41] *Id.*, citing *In the matter of Grady*, *id.*

[42] *Id.*, citing *In the matter of Grady*, *id.*; *In re Truesdell*, supra.

[43] *Id.*, citing *In the matter of Grady*, *id.*

[44] *Id.*, citing *In the matter of Grady*, *id.*; *In the Matter of Moe*, supra note 32.

[45] *Id.*, citing *In the matter of Grady*, supra note 27; *In re M.*, supra.

[46] Psychiatry Report dated 21 January 2002 signed by Dr. Marissa Pascual M.D., as cited in *Aguirre v. Secretary of the Dept. of Justice, et al*, 571 Phil. 138, 146 (2008). Consolidated Reply, pp. 3-5, rollo, pp. 202-204.

[47] Psychiatry Report dated 21 January 2002 signed by Dr. Marissa Pascual M.D., as cited in *Aguirre v. Secretary of the Dept. of Justice, et al*, *id* at 147; Petition, p. 4, *id.* at 12.

[48] *Aguirre v. Secretary of the Dept. of Justice, et al.*, *id.* at 143.

[49] *Id.*

[50] *Id.* at 145.

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.* at 146.

[57] *Id.* at 147.

[58] *Id.*

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