



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

JESUS C. GARCIA,

Petitioner,

G.R. No. 179267

Present:

-versus-

THE HONORABLE RAY ALAN  
T. DRILON, Presiding Judge,  
Regional Trial Court-Branch 41,  
Bacolod City, and ROSALIE  
JAYPE-GARCIA, for herself and  
in behalf of minor children,  
namely: JO-ANN, JOSEPH  
EDUARD, JESSE ANTHONE, all  
surnamed GARCIA,

Respondents.

SERENO, C.J.  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,\*  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, JJ.

Promulgated:

JUNE 25, 2013

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DECISION

PERLAS-BERNABE, J.:

Hailed as the bastion of Christianity in Asia, the Philippines boasts of 86.8 million Filipinos – or 93 percent of a total population of 93.3 million – adhering to the teachings of Jesus Christ.<sup>1</sup> Yet, the admonition for *husbands to love their wives as their own bodies just as Christ loved the church and gave himself up for her*<sup>2</sup> failed to prevent, or even to curb, the pervasiveness of violence against Filipino women. The National Commission on the Role of Filipino Women (NCRFW) reported that, for the years 2000-2003, “female violence comprised more than 90% of all forms of abuse and

\* On official leave.

<sup>1</sup> “Philippines still top Christian country in Asia, 5th in world,” *Philippine Daily Inquirer*, December 21, 2011.

<sup>2</sup> Ephesians 5:25-28.

violence and more than 90% of these reported cases were committed by the women's intimate partners such as their husbands and live-in partners.”<sup>3</sup>

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

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

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

### **The Factual Antecedents**

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

#### ***Private respondent's claims***

Private respondent married petitioner in 2002 when she was 34 years old and the former was eleven years her senior. They have three (3) children, namely: *Jo-Ann J. Garcia*, 17 years old, who is the natural child of

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

<sup>4</sup> Id.

<sup>5</sup> Section 3(a), R.A. 9262.

<sup>6</sup> *Rollo*, pp. 63-83.

<sup>7</sup> Id. at 66-67.

petitioner but whom private respondent adopted; *Jessie Anthone J. Garcia*, 6 years old; and *Joseph Eduard J. Garcia*, 3 years old.<sup>8</sup>

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

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

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

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

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<sup>8</sup> Id. at 64.

<sup>9</sup> Id. at 67-68.

<sup>10</sup> Id. at 68-70.

<sup>11</sup> Id. at 70-71.

<sup>12</sup> Id. at 72.

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

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

Petitioner controls the family businesses involving mostly the construction of deep wells. He is the President of three corporations – 326 Realty Holdings, Inc., Negros Rotadrill Corporation, and J-Bros Trading Corporation – of which he and private respondent are both stockholders. In contrast to the absolute control of petitioner over said corporations, private respondent merely draws a monthly salary of ₱20,000.00 from *one* corporation only, the Negros Rotadrill Corporation. Household expenses amounting to not less than ₱200,000.00 a month are paid for by private respondent through the use of credit cards, which, in turn, are paid by the same corporation together with the bills for utilities.<sup>15</sup>

On the other hand, petitioner receives a monthly salary of ₱60,000.00 from Negros Rotadrill Corporation, and enjoys unlimited cash advances and other benefits in hundreds of thousands of pesos from the corporations.<sup>16</sup> After private respondent confronted him about the affair, petitioner forbade her to hold office at JBTC Building, Mandalagan, where all the businesses of the corporations are conducted, thereby depriving her of access to full information about said businesses. Until the filing of the petition *a quo*, petitioner has not given private respondent an accounting of the businesses the value of which she had helped raise to millions of pesos.<sup>17</sup>

### ***Action of the RTC of Bacolod City***

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

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

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<sup>13</sup> Id. at 73.

<sup>14</sup> Id. at 74.

<sup>15</sup> Id. at 65-66.

<sup>16</sup> Id. at 66.

<sup>17</sup> Id. at 70.

<sup>18</sup> Id. at 84-87.

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

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

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

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

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

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

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

f) Not to dissipate the conjugal business.

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

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

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

- i) The petitioners (private respondents herein) are given the continued use of the Nissan Patrol and the Starex Van which they are using in Negros Occidental.
- j) The petitioners are given the continued use and occupation of the house in Parañaque, the continued use of the Starex van in Metro Manila, whenever they go to Manila.
- k) Respondent is ordered to immediately post a bond to keep the peace, in two sufficient sureties.
- l) To give monthly support to the petitioner provisionally fixed in the sum of One Hundred Fifty Thousand Pesos (Php 150,000.00) per month plus rental expenses of Fifty Thousand Pesos (Php 50,000.00) per month until the matter of support could be finally resolved.

Two days later, or on April 26, 2006, petitioner filed an Opposition to the Urgent Ex-Parte Motion for Renewal of the TPO<sup>21</sup> seeking the denial of the renewal of the TPO on the grounds that it did not (1) comply with the three-day notice rule, and (2) contain a notice of hearing. He further asked that the TPO be modified by (1) removing one vehicle used by private respondent and returning the same to its rightful owner, the J-Bros Trading Corporation, and (2) cancelling or reducing the amount of the bond from ₱5,000,000.00 to a more manageable level at ₱100,000.00.

Subsequently, on May 23, 2006, petitioner moved<sup>22</sup> for the modification of the TPO to allow him visitation rights to his children.

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

- a) That respondent (petitioner herein) return the clothes and other personal belongings of Rosalie and her children to Judge Jesus Ramos, co-counsel for Petitioner, within 24 hours from receipt of the Temporary Protection Order by his counsel, otherwise be declared in Indirect Contempt of Court;
- b) Respondent shall make an accounting or list of furniture and equipment in the conjugal house in Pitimini St., Capitolville Subdivision, Bacolod City within 24 hours from receipt of the Temporary Protection Order by his counsel;
- c) Ordering the Chief of the Women's Desk of the Bacolod City Police Headquarters to remove Respondent from the conjugal dwelling within

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<sup>19</sup> Urgent Ex-Parte Motion for Renewal of Temporary Protection Order (TPO) or Issuance of Modified TPO. Id. at 90-93.

<sup>20</sup> Id. at 94-97.

<sup>21</sup> Id. at 98-103.

<sup>22</sup> Id. at 138-140.

eight (8) hours from receipt of the Temporary Protection Order by his counsel, and that he cannot return until 48 hours after the petitioners have left, so that the petitioner Rosalie and her representatives can remove things from the conjugal home and make an inventory of the household furniture, equipment and other things in the conjugal home, which shall be submitted to the Court.

d) Deliver full financial support of Php200,000.00 and Php50,000.00 for rental and Php25,000.00 for clothes of the three petitioners (*sic*) children within 24 hours from receipt of the Temporary Protection Order by his counsel, otherwise be declared in indirect contempt of Court;

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

f) That respondent shall pay petitioner educational expenses of the children upon presentation of proof of payment of such expenses.<sup>23</sup>

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

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

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

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<sup>23</sup> Order dated May 24, 2006. Id. at 148-149.

<sup>24</sup> Id. at 154-166.

<sup>25</sup> Id. at 156.

<sup>26</sup> Id. at 157.

<sup>27</sup> Id. at 158-159.

On August 23, 2006, the RTC issued a TPO,<sup>28</sup> effective for thirty (30) days, which reads as follows:

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

- 1) Prohibited from threatening to commit or committing, personally or through another, acts of violence against the offended party;
- 2) Prohibited from harassing, annoying, telephoning, contacting or otherwise communicating in any form with the offended party, either directly or indirectly;
- 3) Required to stay away, personally or through his friends, relatives, employees or agents, from all the Petitioners Rosalie J. Garcia and her children, Rosalie J. Garcia's three brothers, her mother Primitiva Jaype, cook Novelita Caranzo, driver Romeo Hontiveros, laundrywoman Mercedita Bornales, security guard Darwin Gayona and the petitioner's other household helpers from a distance of 1,000 meters, and shall not enter the gate of the subdivision where the Petitioners are temporarily residing, as well as from the schools of the three children; Furthermore, that respondent shall not contact the schools of the children directly or indirectly in any manner including, ostensibly to pay for their tuition or other fees directly, otherwise he will have access to the children through the schools and the TPO will be rendered nugatory;
- 4) Directed to surrender all his firearms including .9MM caliber firearm and a Walther PPK to the Court;
- 5) Directed to deliver in full financial support of Php200,000.00 a month and Php50,000.00 for rental for the period from August 6 to September 6, 2006; and support in arrears from March 2006 to August 2006 the total amount of Php1,312,000.00;
- 6) Directed to deliver educational expenses for 2006-2007 the amount of Php75,000.00 and Php25,000.00;
- 7) Directed to allow the continued use of a Nissan Patrol with Plate No. FEW 508 and a Starex van with Plate No. FFD 991 and should the respondent fail to deliver said vehicles, respondent is ordered to provide the petitioner another vehicle which is the one taken by J Bros Tading;
- 8) Ordered not to dissipate, encumber, alienate, sell, lease or otherwise dispose of the conjugal assets, or those real properties in the name of Jesus Chua Garcia only and those in which the conjugal partnership of gains of the Petitioner Rosalie J. Garcia and respondent have an interest in, especially the conjugal home located in No. 14, Pitimini St., Capitolville Subdivision, Bacolod City, and other properties which are conjugal assets or those in which the conjugal partnership of gains of Petitioner Rosalie J. Garcia and the respondent have an interest in and listed in Annexes "I," "I-1," and "I-2," including properties covered by TCT Nos. T-186325 and T-168814;
- 9) Ordered that the Register of Deeds of Bacolod City and E.B. Magalona shall be served a copy of this TEMPORARY PROTECTION ORDER and

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<sup>28</sup> Id. at 167-174.



are ordered not to allow the transfer, sale, encumbrance or disposition of these above-cited properties to any person, entity or corporation without the personal presence of petitioner Rosalie J. Garcia, who shall affix her signature in the presence of the Register of Deeds, due to the fear of petitioner Rosalie that her signature will be forged in order to effect the encumbrance or sale of these properties to defraud her or the conjugal partnership of gains.

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

X X X X

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

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

### ***Proceedings before the CA***

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

On May 26, 2006, the appellate court issued a 60-day Temporary

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<sup>29</sup> Id. at 182.

<sup>30</sup> Id. at 183-184.

<sup>31</sup> Id. at 185.

<sup>32</sup> Id. at 186-187.

<sup>33</sup> See Manifestation dated October 10, 2006. Id. at 188-189.

<sup>34</sup> Id. at 104-137.

Restraining Order<sup>35</sup> (TRO) against the enforcement of the TPO, the amended TPOs and other orders pursuant thereto.

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

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

### **The Issues**

#### **I.**

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

#### **II.**

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

#### **III.**

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

#### **IV.**

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

#### **V.**

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT

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<sup>35</sup> Id. at 151-152.

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

<sup>37</sup> Id. at 60-61.

DECLARING R.A. No. 9262 AS INVALID AND UNCONSTITUTIONAL BECAUSE IT ALLOWS AN UNDUE DELEGATION OF JUDICIAL POWER TO THE BARANGAY OFFICIALS.<sup>38</sup>

### **The Ruling of the Court**

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

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

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

*We disagree.*

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

At the outset, it must be stressed that Family Courts are special courts, of the same level as Regional Trial Courts. Under R.A. 8369, otherwise known as the “Family Courts Act of 1997,” family courts have exclusive original jurisdiction to hear and decide cases of domestic violence against women and children.<sup>42</sup> In accordance with said law, the Supreme Court designated from among the branches of the Regional Trial Courts at least

<sup>38</sup> Petition, id. at 22.

<sup>39</sup> *ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc.*, G.R. Nos. 175769-70, January 19, 2009, 576 SCRA 262, 289.

<sup>40</sup> *Philippine National Bank v. Palma*, 503 Phil. 917, 932 (2005).

<sup>41</sup> Petition, rollo, p. 24.

<sup>42</sup> SEC. 5. *Jurisdiction of Family Courts.* - The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

x x x x

k) Cases of domestic violence against:

- 1) Women - which are acts of gender based violence that results, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom movement; and
- 2) Children - which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

one Family Court in each of several key cities identified.<sup>43</sup> To achieve harmony with the first mentioned law, Section 7 of R.A. 9262 now provides that Regional Trial Courts designated as Family Courts shall have original and exclusive jurisdiction over cases of VAWC defined under the latter law, viz:

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

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

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

x x x

2. Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
  - a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

x x x x

<sup>43</sup> Sec. 17, R.A. 8369.

<sup>44</sup> *Manalo v. Mariano*, 161 Phil. 108, 120 (1976).

<sup>45</sup> *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, 548 SCRA 485, 504.

<sup>46</sup> *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140.

<sup>47</sup> *Planters Products, Inc. v. Fertiphil Corporation*, supra note 45, at 505, citing *Mirasol v. CA*, 403 Phil. 760 (2001).

<sup>48</sup> G.R. Nos. L-18128 & L-18672, December 26, 1961, 3 SCRA 696, 703-704.

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

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

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

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

We cannot subscribe to the theory espoused by petitioner that, since a counterclaim, cross-claim and third-party complaint are to be excluded from the opposition, the issue of constitutionality cannot likewise be raised therein. A **counterclaim** is defined as any claim for money or other relief which a defending party may have against an opposing party.<sup>50</sup> A **cross-claim**, on the other hand, is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein.<sup>51</sup> Finally, a **third-party complaint** is a claim that a defending party may, with leave of court, file against a person not a party to the action for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.<sup>52</sup> As pointed out by Justice Teresita J. Leonardo-De Castro, the unconstitutionality of a statute is not a cause of action that could be the subject of a counterclaim, cross-claim or a third-party complaint. Therefore, it is not prohibited from being raised in the opposition in view of the familiar maxim *expressio unius est exclusio alterius*.

Moreover, it cannot be denied that this issue affects the resolution of the case *a quo* because the right of private respondent to a protection order is founded solely on the very statute the validity of which is being attacked<sup>53</sup>

<sup>49</sup> RATIONALE OF THE PROPOSED RULES ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN.

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

<sup>51</sup> Sec. 8, Rule 6, 1997 Rules of Civil Procedure.

<sup>52</sup> Sec. 11, Rule 6, 1997 Rules of Civil Procedure.

<sup>53</sup> See *People of the Philippine Islands and Hongkong & Shanghai Banking Corporation v. Vera*, 65 Phil 199 (1937); *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*, G.R. Nos. 177857-58, January 24, 2012, 663 SCRA 514, 594.

by petitioner who has sustained, or will sustain, direct injury as a result of its enforcement. The alleged unconstitutionality of R.A. 9262 is, for all intents and purposes, a valid cause for the non-issuance of a protection order.

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

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

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

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

In view of all the foregoing, the appellate court correctly dismissed the petition for prohibition with prayer for injunction and temporary restraining order (CA-G.R. CEB - SP. No. 01698). Petitioner may have proceeded upon an honest belief that if he finds succor in a superior court, he could be granted an injunctive relief. However, Section 22(j) of A.M. No. 04-10-11-SC expressly disallows the filing of a petition for certiorari, mandamus or prohibition **against any interlocutory order** issued by the

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<sup>54</sup> *Recreation and Amusement Association of the Philippines v. City of Manila*, 100 Phil 950, 956 (1957).

trial court. Hence, the 60-day TRO issued by the appellate court in this case against the enforcement of the TPO, the amended TPOs and other orders pursuant thereto was improper, and it effectively hindered the case from taking its normal course in an expeditious and summary manner.

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

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

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

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

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

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<sup>55</sup> Secs. 22 and 31, A.M. No. 04-10-11-SC.

<sup>56</sup> Sec. 26 (b), A.M. No. 04-10-11-SC.

<sup>57</sup> *Sto. Domingo v. De Los Angeles*, 185 Phil. 94, 102 (1980).

<sup>58</sup> 27 L.Ed.2d 669 (1971), cited in *The Executive Secretary v. Court of Appeals*, 473 Phil. 27, 56-57 (2004).

<sup>59</sup> *Rollo*, pp. 214-240, 237.

***Intent of Congress in  
enacting R.A. 9262.***

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

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

Wednesday, December 10, 2003

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

Senator Estrada. Yes, Mr. President, there is this group of women who call themselves “WIIR” Women in Intimate Relationship. They do not want to include men in this domestic violence. But plenty of men are also being abused by women. I am playing safe so I placed here members of the family, prescribing penalties therefor and providing protective measures for victims. This includes the men, children, live-in, common-law wives, and those related with the family.<sup>65</sup>

x x x x

Wednesday, January 14, 2004

x x x x

The President Pro Tempore. x x x

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<sup>60</sup> Petition, id. at 26-27.

<sup>61</sup> An Act Defining Violence Against Women and Members of the Family, Prescribing Penalties Therefor, Providing for Protective Measures for Victims and for Other Purposes.

<sup>62</sup> Congressional Records, Vol. III, No. 45, December 10, 2003, p. 27.

<sup>63</sup> Id. at 25.

<sup>64</sup> Id. at 27.

<sup>65</sup> Id. at 43-44.



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

Senator Estrada. Yes, Mr. President.

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

I think Senator Sotto has something to say to that.

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

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

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

x x x x

The President Pro Tempore. What does the sponsor say?

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

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

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

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

Senator Sotto. Mr. President.

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

Senator Sotto. Yes, with the permission of the two ladies on the Floor.

The President Pro Tempore. Yes, Sen. Vicente C. Sotto III is recognized.

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

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

x x x x

Senator Estrada. The amendment is accepted, Mr. President.

The President Pro Tempore. Is there any objection?

x x x x

Senator Sotto. x x x May I propose an amendment to the amendment.

The President Pro Tempore. Before we act on the amendment?

Senator Sotto. Yes, Mr. President.

The President Pro Tempore. Yes, please proceed.

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

So, if I may propose an amendment –

The President Pro Tempore. To the amendment.

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

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

#### SOTTO-LEGARDA AMENDMENTS

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

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

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

Senator Sotto. Yes, Mr. President.

Senator Estrada. It is accepted, Mr. President.

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

It is settled that courts are not concerned with the wisdom, justice, policy, or expediency of a statute.<sup>67</sup> Hence, we dare not venture into the real motivations and wisdom of the members of Congress in limiting the protection against violence and abuse under R.A. 9262 to women and children only. No proper challenge on said grounds may be entertained in this proceeding. Congress has made its choice and it is not our prerogative to supplant this judgment. The choice may be perceived as erroneous but even then, the remedy against it is to seek its amendment or repeal by the legislative. By the principle of separation of powers, it is the legislative that determines the necessity, adequacy, wisdom and expediency of any law.<sup>68</sup> We only step in when there is a violation of the Constitution. However, none was sufficiently shown in this case.

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

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<sup>66</sup> Congressional Records, Vol. III, No. 51, January 14, 2004, pp. 141-147.

<sup>67</sup> *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 391.

<sup>68</sup> *Garcia v. Commission on Elections*, G.R. No. 111511, October 5, 1993, 227 SCRA 100, 113-114.

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

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be **germane to the purpose of the law**; that it must **not be limited to existing conditions only**; and that it must **apply equally to each member of the class**. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary. (Emphasis supplied)

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

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

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

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<sup>69</sup> 158 Phil. 60, 86-87 (1974).

<sup>70</sup> *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, p. 169.

***A. Unequal power relationship  
between men and women***

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

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

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

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

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

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

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<sup>71</sup> Philippine Commission on Women, National Machinery for Gender Equality and Women's Empowerment, “Violence Against Women (VAW),” <<http://www.pcw.gov.ph>> (visited November 16, 2012).

<sup>72</sup> <[http://www.lawphil.net/international/treaties/dec\\_dec\\_1993.html](http://www.lawphil.net/international/treaties/dec_dec_1993.html)> (visited November 16, 2012).

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

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

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

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

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

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

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

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

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

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

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

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

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

***B. Women are the “usual” and “most likely” victims of violence.***

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

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

<sup>73</sup> As reported by Senator Loi Estrada in her Sponsorship Speech, Congressional Records, Vol. III, No. 45, December 10, 2003, p. 22.

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

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

Reported Cases	2004	2005	2006	2007	2008	2009	2010	2011
Rape	997	927	659	837	811	770	1,042	832
Incestuous Rape	38	46	26	22	28	27	19	23
Attempted Rape	194	148	185	147	204	167	268	201
Acts of Lasciviousness	580	536	382	358	445	485	745	625
Physical Injuries	3,553	2,335	1,892	1,505	1,307	1,498	2,018	1,588
Sexual Harassment	53	37	38	46	18	54	83	63
<b>RA 9262</b>	<b>218</b>	<b>924</b>	<b>1,269</b>	<b>2,387</b>	<b>3,599</b>	<b>5,285</b>	<b>9,974</b>	<b>9,021</b>
Threats	319	223	199	182	220	208	374	213
Seduction	62	19	29	30	19	19	25	15
Concubinage	121	102	93	109	109	99	158	128
RA 9208	17	11	16	24	34	152	190	62
Abduction / Kidnapping	29	16	34	23	28	18	25	22
Unjust Vexation	90	50	59	59	83	703	183	155
<b>Total</b>	<b>6,271</b>	<b>5,374</b>	<b>4,881</b>	<b>5,729</b>	<b>6,905</b>	<b>9,485</b>	<b>15,104</b>	<b>12,948</b>

\*2011 report covers only from January to August  
Source: Philippine National Police – Women and Children Protection Center (WCPC)

On the other hand, no reliable estimates may be obtained on domestic abuse and violence against men in the Philippines because incidents thereof are relatively low and, perhaps, because many men will not even attempt to report the situation. In the United Kingdom, 32% of women who had ever experienced domestic violence did so four or five (or more) times, compared with 11% of the smaller number of men who had ever experienced domestic violence; and women constituted 89% of all those who had experienced 4 or

<sup>74</sup> Philippine Commission on Women, “Statistics on Violence Against Filipino Women,” <<http://pcw.gov.ph/statistics/201210/statistics-violence-against-filipino-women>> (visited October 12, 2012).



more incidents of domestic violence.<sup>75</sup> Statistics in Canada show that spousal violence by a woman against a man is less likely to cause injury than the other way around (18 percent versus 44 percent). Men, who experience violence from their spouses are much less likely to live in fear of violence at the hands of their spouses, and much less likely to experience sexual assault. In fact, many cases of physical violence by a woman against a spouse are in self-defense or the result of many years of physical or emotional abuse.<sup>76</sup>

While there are, indeed, relatively few cases of violence and abuse perpetrated against men in the Philippines, the same cannot render R.A. 9262 invalid.

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

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

### *C. Gender bias and prejudices*

From the initial report to the police through prosecution, trial, and sentencing, crimes against women are often treated differently and less seriously than other crimes. This was argued by then United States Senator Joseph R. Biden, Jr., now Vice President, chief sponsor of the Violence Against Women Act (VAWA), in defending the civil rights remedy as a valid exercise of the U.S. Congress' authority under the Commerce and Equal Protection Clauses. He stressed that the **widespread gender bias** in the U.S.

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<sup>75</sup> Women's Aid, “*Who are the victims of domestic violence?*,” citing Walby and Allen, 2004, <[www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200410001&itemid=1273](http://www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200410001&itemid=1273)> (visited November 16, 2012).

<sup>76</sup> Toronto District School Board, *Facts and Statistics* <[www.tdsb.on.ca/site/viewitem.asp?siteid=15&menuid=23082&pageid=20007](http://www.tdsb.on.ca/site/viewitem.asp?siteid=15&menuid=23082&pageid=20007)> (visited November 16, 2012).

<sup>77</sup> *People v. Solon*, 110 Phil. 39, 41 (1960).

<sup>78</sup> *Victoriano v. Elizalde Rope Workers' Union*, *supra* note 69, 90.

has institutionalized historic prejudices against victims of rape or domestic violence, subjecting them to “**double victimization**” – first at the hands of the offender and then of the legal system.<sup>79</sup>

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

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

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

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

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<sup>79</sup> Biden, Jr., Joseph R., “*The Civil Rights Remedy of the Violence Against Women Act: A Defense*,” 37 Harvard Journal on Legislation 1 (Winter, 2000).

<sup>80</sup> Congressional Records, Vol. III, No. 45, December 10, 2003, pp. 22-23.

<sup>81</sup> *Benancio v. Amila*, A.M. No. RTJ-08-2149, March 9, 2011, 645 SCRA 1, 8.

<sup>82</sup> “General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures” <[www.un.org/womenwatch/.../recommendation](http://www.un.org/womenwatch/.../recommendation)> (visited January 4, 2013).

<sup>83</sup> Petition, *rollo*, p. 27.

<sup>84</sup> Article 5(a), CEDAW.

a private affair to a public offense will require the development of a distinct mindset on the part of the police, the prosecution and the judges.”<sup>85</sup>

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

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

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

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

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

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

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

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<sup>85</sup> “*The Rule on Violence Against Women and Their Children*,” Remarks delivered during the Joint Launching of R.A. 9262 and its Implementing Rules last October 27, 2004 at the Session Hall of the Supreme Court.

<sup>86</sup> Supra note 49.

<sup>87</sup> Article 15.

<sup>88</sup> Article 16.

<sup>89</sup> Supra note 49.

violence and abuse.

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

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

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

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

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

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

c) Prostituting the woman or child.

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

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

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;

2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;

3. destroying household property;

4. controlling the victims' own money or properties or solely controlling the conjugal money or properties.

It should be stressed that the acts enumerated in the aforequoted provision are attributable to research that has exposed the dimensions and dynamics of battery. The acts described here are also found in the U.N. Declaration on the Elimination of Violence Against Women.<sup>90</sup> Hence, the argument advanced by petitioner that the definition of what constitutes abuse removes the difference between violent action and simple marital tiffs is tenuous.

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

There is likewise no merit to the contention that R.A. 9262 singles out the husband or father as the culprit. As defined above, VAWC may likewise be committed “against a woman with whom the person has or had a sexual or dating relationship.” Clearly, the use of the gender-neutral word “person” who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the **principle of conspiracy** under the Revised Penal Code (RPC). Thus, in the case of *Go-Tan v. Spouses Tan*,<sup>94</sup> the parents-in-law of Sharica Mari L. Go-Tan, the victim, were held to be proper respondents in the case filed by the latter upon the allegation that they and their son (Go-Tan's husband) had community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically.

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<sup>90</sup> Supra note 49.

<sup>91</sup> *Estrada v. Sandiganbayan*, 421 Phil 290, 351-352 (2001).

<sup>92</sup> Petition, *rollo*, p. 35.

<sup>93</sup> *Estrada v. Sandiganbayan*, supra note 91, at 352-353.

<sup>94</sup> G.R. No. 168852, September 30, 2008, 567 SCRA 231.

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

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

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

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

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

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

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<sup>95</sup> Petition, *rollo*, p. 31.

<sup>96</sup> Sec. 4 (o), A.M. No. 04-10-11-SC.

<sup>97</sup> *Supra* note 49.

<sup>98</sup> Sec. 7, A.M. No. 04-10-11-SC.

<sup>99</sup> *Supra* note 49.

<sup>100</sup> *Id.*

<sup>101</sup> *Supra* note 85.

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

It should be pointed out that when the TPO is issued *ex parte*, the court shall likewise order that notice be immediately given to the respondent directing him to file an opposition within five (5) days from service. Moreover, the court shall order that notice, copies of the petition and TPO be served immediately on the respondent by the court sheriffs. The TPOs are initially effective for thirty (30) days from service on the respondent.<sup>104</sup>

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

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

It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. Thus, the fear of petitioner of being “stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened” is a mere product of an overactive imagination. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through

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<sup>102</sup> *Cuartero v. CA*, G.R. No. 102448, August 5, 1992, 212 SCRA 260, 265.

<sup>103</sup> *Laguna Lake Development Authority v. Court of Appeals*, G.R. No. 110120, March 16, 1994, 231 SCRA 292, 307, citing *Pollution Adjudication Board v. Court of Appeals*, G.R. No. 93891, March 11, 1991, 195 SCRA 112.

<sup>104</sup> Sec. 15, A.M. No. 04-10-11-SC.

<sup>105</sup> Sec. 16, A.M. No. 04-10-11-SC.

<sup>106</sup> Sec. 20, A.M. No. 04-10-11-SC.

oral arguments or pleadings, is accorded, there is no denial of procedural due process.<sup>107</sup>

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

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

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

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

x x x x

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

x x x x

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

<sup>107</sup> *Esperida v. Jurado, Jr.*, G.R. No. 172538, April 25, 2012, 671 SCRA 66, 74.

<sup>108</sup> Petition, *rollo*, pp. 30-31.



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

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

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

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

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

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

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

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<sup>109</sup> Id. at 36.

<sup>110</sup> Supra note 49.

<sup>111</sup> Petition, *rollo*, pp. 130-131.

or *Barangay Kagawad* shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service.

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

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

As clearly delimited by the aforequoted provision, the BPO issued by the *Punong Barangay* or, in his unavailability, by any available *Barangay Kagawad*, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (2) threatening to cause the woman or her child physical harm. Such function of the *Punong Barangay* is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the barangay."<sup>114</sup>

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

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

We need not even belabor the issue raised by petitioner that since barangay officials and other law enforcement agencies are required to extend assistance to victims of violence and abuse, it would be very unlikely that

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<sup>112</sup> Sec. 1, Article VIII, 1987 Constitution.

<sup>113</sup> *Laurel v. Desierto*, 430 Phil. 658 (2002).

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

<sup>115</sup> *Lovina and Montilla v. Moreno and Yonzon*, 118 Phil 1401, 1406 (1963).

they would remain objective and impartial, and that the chances of acquittal are nil. As already stated, assistance by barangay officials and other law enforcement agencies is consistent with their duty to enforce the law and to maintain peace and order.


### Conclusion

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

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

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

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

<sup>116</sup> *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, G.R. No. 171101, July 5, 2011, 653 SCRA 154, 258.

<sup>117</sup> Supra note 91.

<sup>118</sup> Supra note 85.

**WE CONCUR:**

*Maria Lourdes P. A. Sereno*  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

*Antonio T. Carpio*  
**ANTONIO T. CARPIO**  
 Associate Justice

*See separate concurring opinion :  
 Perita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

*Presbitero J. Velasco, Jr.*  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice

*See: Concurring Opinion*  
*Arturo D. Brion*  
**ARTURO D. BRION**  
 Associate Justice

**On official leave**  
**DIOSDADO M. PERALTA**  
 Associate Justice

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
 Associate Justice

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

*See Separate Concurring Opinion*  
*Roberto A. Abad*  
**ROBERTO A. ABAD**  
 Associate Justice

*Martin S. Villarama, Jr.*  
**MARTIN S. VILLARAMA, JR.**  
 Associate Justice

*Jose Portugal Perez*  
**JOSE PORTUGAL PEREZ**  
 Associate Justice


*Jose Catral Mendoza*  
**JOSE CATRAL MENDOZA**  
 Associate Justice

*Bienvenido L. Reyes*  
**BIENVENIDO L. REYES**  
 Associate Justice

*See separate concurring opinion*  
*Maryvic Mario Victor F. Leonen*  
**MARYVIC MARIO VICTOR F. LEONEN**  
 Associate Justice

**CERTIFICATION**

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice