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G.R. No. 179267

JESUS C. GARCIA, *Petitioner*, *versus*
THE HON. RAY ALLAN T. DRILON,
ET AL., *Respondents*.

Promulgated:

JUNE 25, 2013

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SEPARATE CONCURRING OPINION

ABAD, J.:

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

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

This separate concurring opinion will address the issue of equal protection since it presents the more serious challenge to the constitutionality of the law. Men and women are supposed to be equal yet this particular law provides immediate relief to complaining women and harsh consequences to their men even before the matter reaches the courtroom, a relief not available to the latter. The law, Garcia says, violates

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

his right to equal protection because it is gender-specific, favoring only women when men could also be victims of domestic violence.

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

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

Chief Justice Puno's thesis is that the right to equal protection casts another shadow when the issue raised under it involves persons protected by the social justice provision of the Constitution, specifically, Section 1, Article XIII. The equal protection clause can no longer be interpreted as only a guarantee of formal equality⁴ but of substantive equality. "It ought to be construed," said the Chief Justice, "in consonance with social justice as 'the heart' particularly of the 1987 Constitution—a transformative covenant in which the Filipino people agreed to enshrine asymmetrical equality to uplift disadvantaged groups and build a genuinely egalitarian democracy."⁵

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

Chief Justice Puno goes on: "The Expanded Equal Protection Clause, anchored on the human rights rationale, is designed as a weapon against the indignity of discrimination so that in the patently unequal Philippine society, each person may be restored to his or her rightful position as a person with equal moral status."⁶ Specifically, the expanded equal protection clause should be understood as meant to "reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth

² 65 Phil. 56 (1937).

³ Id. at 126.

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

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

⁶ Id. at 523.

and political power for the common good.”⁷ Borrowing the language of *Law v. Canada*⁸ case and adding his own thoughts, the Chief Justice said:

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

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

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

Here, petitioner Garcia argues that R.A. 9262 violates the guarantee of equal protection because the remedies against personal violence that it provides may be invoked only by the wives or women partners but not by the husbands or male partners even if the latter could possibly be victims of violence by their women partners. Women, he claims, are also capable of committing physical, psychological, emotional, and even sexual abuse against their husbands and children.

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

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

⁸ 1 S.C.R. 497 (1999).

⁹ Supra note 5, at 512-513.

¹⁰ Id. at 543-544.

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

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

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

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

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

Article II, Section 14 of the 1987 Constitution states:

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

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

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

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The above provisions of the Constitution abundantly authorize Congress or the government to actively undertake ameliorative action that would remedy existing inequalities and inequities experienced by women and children brought about by years of discrimination. The equal protection clause when juxtaposed to this provision provides a stronger mandate for the government to combat such discrimination. Indeed, these provisions order Congress to “*give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities and remove cultural inequities.*”

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

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

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

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

In the context of women’s rights, substantive equality has been defined by the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) as equality which requires that women be given

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

¹² *Supra* note 5 at 527.

¹³ *Id.* at 497.

an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.

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

1. Formal equality – women and men are to be regarded and treated as the same. But this model does not take into account biological and socially constructed differences between women and men.¹⁴ It uses male standards and assumes that women have equal access to such standards.¹⁵ By failing to take into account these differences, a formal equality approach may in fact perpetuate discrimination and disadvantage.¹⁶

2. Protectionist model – this recognizes differences between women and men but considers women's weakness as the rationale for different treatment.¹⁷ This approach reinforces the inferior status of women and does not address the issue of discrimination of women on account of their gender.¹⁸

3. Substantive equality model – this assumes that women are “not vulnerable by nature, but suffer from imposed disadvantage” and that “if these imposed disadvantages were eliminated, there was no further need for protection.”¹⁹ Thus, the substantive equality model gives prime importance to women's contexts, realities, and experiences, and the outcomes or results of acts and measures directed, at or affecting them, with a view to eliminating the disadvantages they experience as women.²⁰

Clearly, the substantive equality model inspired R.A. 9262. For one thing, Congress enacted it because of compelling interest in preventing and addressing the serious problem of violence against women in the context of intimate relationships—recognized all over the world as one of the most insidious forms of gender discrimination.²¹ For another, R.A. 9262 is based on the experiences of women who have been victims of domestic violence.

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

¹⁵ *Id.*

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

¹⁷ *Supra* note 14.

¹⁸ *Supra* note 11, at 43.

¹⁹ *Id.* at 43-44, citing Goonesekere.

²⁰ *Id.* at 44.

²¹ *Id.* at 45.

The list of acts regarded as forms of violence²² come from true-to-life stories of women who have suffered abuses from their male partners. Finally, R.A. 9262 seeks women's full participation in society. Hence, the law grants them needed relief to ensure equality, protection, and personal safety, enabling them to enjoy their civil, political, social, and economic rights. The provision on protection orders, for instance, precisely aims to safeguard "the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."²³

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



Roberto A. Abad
Associate Justice

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

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

²³ REPUBLIC ACT 9262, Sec. 8.