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G.R. No. 179267 – JESUS C. GARCIA, Petitioner, v. 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, JESSIE ANTHONE, all surnamed “GARCIA,” Respondents.

Promulgated:

JUNE 25, 2013

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CONCURRING OPINION

LEONEN, J.:

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

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

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

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

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

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

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

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

For us to proceed to rule on Constitutional issues, we have required that: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.<sup>1</sup>

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

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

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

<sup>2</sup> *David v. Macapagal-Arroyo*, 522 Phil. 705, 755 (2006) citing Black’s LAW DICTIONARY 941 (Sixth Edition, 1991).

<sup>3</sup> *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 170.

<sup>4</sup> *Baltazar v. Ombudsman*, 539 Phil. 131, 139 (2006).

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

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

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

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

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

That necessity is wanting in this case.

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<sup>6</sup> *Galicto v. Aquino III*, supra.

<sup>7</sup> CONSTITUTION, Art. VIII, Sec. 1, par. (2).

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

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

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

Nevertheless, in a future case more deserving of our attention, we should be open to realities which may challenge the dominant conception that violence in intimate relationships only happens to women and children. This may be predominantly true, but even those in marginal cases deserve fundamental constitutional and statutory protection. We should be careful that in correcting historical and cultural injustices, we may typecast all women as victims, stereotype all men as tormentors or make invisible the possibility that in some intimate relationships, men may also want to seek succor against acts defined in Section 5 of Republic Act No. 9262<sup>10</sup> in an

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

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
  - (1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
  - (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
  - (3) Depriving or threatening to deprive the woman or her child of a legal right;
  - (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties
- (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
  - (1) Stalking or following the woman or her child in public or private places;
  - (2) Peering in the window or lingering outside the residence of the woman or her child;
  - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
  - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
  - (5) Engaging in any form of harassment or violence

expeditious manner.

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

Another recent study found the same underreporting but explored the experiences of abuse in intimate relationships of six Filipino husbands.<sup>13</sup> Their experiences were described as follows:

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

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

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

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

<sup>11</sup> T. Lewin, *Battered Men Sounding Equal-Rights Battle Cry*, THE NEW YORK TIMES NATIONAL (April 20, 1992) <<http://www.nytimes.com/1992/04/20/us/battered-men-sounding-equal-rights-battle-cry.html?pagewanted=all&src=pm>> (visited May 27, 2013). See also C. M. RENZETTI AND D. J. CURRAN, *WOMEN, MEN AND SOCIETY* 164 (Second Edition, 1992) citing Steinmetz, 1978.

<sup>12</sup> C. Delfin, *Ever Heard of Battered Husbands?* GMA NEWS ONLINE (February 13, 2008) <<http://www.gmanetwork.com/news/story/80412/lifestyle/ever-heard-of-battered-husbands>> (visited May 27, 2013). See also ATTY. A. ORDOÑEZ SISON, *ABUSED AND THE BATTERED MAN* (2009).

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

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

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

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

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

<sup>14</sup> Id. at 41-42.

<sup>15</sup> K. F. Hogan, J. R. Hegarty, T. Ward, and L. J. Dodd, *Counsellors' Experiences of Working with Male Victims of Female-Perpetrated Domestic Abuse*, COUNSELLING AND PSYCHOTHERAPY RESEARCH (2011).

<sup>16</sup> See S. V. Cochran and F. E. Rabinowitz, *Men and Depression: Clinical and Empirical Perspectives* (2000). <[http://books.google.com.ph/books?id=bOVTz8HgDoC&pg=PR12&lpg=PR12&dq=Early+workers+in+the+field+including+Pleck+and+Sawyer&source=bl&ots=G8bTheyAtB&sig=86\\_y6WVG\\_36VuTj3Lh6w585N2qM&hl=en&sa=X&ei=yizKUYzZEMeZiAe6y4CwCw&redir\\_esc=y#v=onepage&q=Early%20workers%20in%20the%20field%20including%20Pleck%20and%20Sawyer&f=false](http://books.google.com.ph/books?id=bOVTz8HgDoC&pg=PR12&lpg=PR12&dq=Early+workers+in+the+field+including+Pleck+and+Sawyer&source=bl&ots=G8bTheyAtB&sig=86_y6WVG_36VuTj3Lh6w585N2qM&hl=en&sa=X&ei=yizKUYzZEMeZiAe6y4CwCw&redir_esc=y#v=onepage&q=Early%20workers%20in%20the%20field%20including%20Pleck%20and%20Sawyer&f=false)> (visited March 7, 2013).

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

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

<sup>17</sup> *Domestic Violence Against Women and Girls*, No. 6, UNICEF Innocenti Digest (2000).

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

century with marital violence considered a husband's privilege and men, as of right, exercised physical domination over women.<sup>19</sup>

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

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

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

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

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

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

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

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

<sup>22</sup> Id. at 44.

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

<sup>24</sup> See <<http://www.musawah.org/>> (visited February 26, 2013). MUSAWAH is considered a movement rather than an organization.

<sup>25</sup> Id. Musawa is represented in the Philippines by Nisa Ul Haqq Fi Bangsamoro or "Women for Justice in the Bangsamoro."

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

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

For instance, one of the first cases that laid down the requisites for determining whether there was a violation of the equal protection of the law clause of the Constitution was the 1939 case of *People v. Cayat*.<sup>31</sup> It laid down the requirements of reasonable classification which requires that it (a) must rest on substantial distinctions, (b) must be germane to the purposes of the law, (c) must not be limited to existing conditions only, and (d) must apply equally to all members of the same class.<sup>32</sup> Even as early as 1919, the

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

<sup>27</sup> Id.

<sup>28</sup> “[H]eteronormativity is defined as the predominance and privileging of a definitively heterosexual-based ideology and social structure that acts as the exclusive interpreter of itself and of all other sexualities in relation to it.” *Definition found in* A. Ponce, *Shoring up Judicial Awareness: LGBT Refugees and the Recognition of Social Categories*, 18 NEW ENG. J. INT'L & COMP. L. 185 (2012) citing M. Warner, *FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY* (1993).

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

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

<sup>31</sup> 68 Phil. 12 (1939).

<sup>32</sup> Id. at 18.



Court in *Rubi v. Provincial Board of Mindoro*<sup>33</sup> recognized the concept of reasonable classification holding that “[t]he pledge that no person shall be denied the equal protection of the laws is not infringed by a statute which is applicable to all of a class. The classification must have a reasonable basis and cannot be purely arbitrary in nature.”<sup>34</sup>

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

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

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

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

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

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

<sup>33</sup> 39 Phil. 660 (1919).

<sup>34</sup> Id. at 707.

<sup>35</sup> Id. at 686.

<sup>36</sup> Indigenous Cultural Communities, *See* CONSTITUTION, Art. II, Sec. 22; Art. XII, Sec. 5; Art. XIII, Sec 1.

<sup>37</sup> Republic Act No. 8371; *see also* the Manahan amendments in Com. Act No. 141 sec. 48 (c).

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

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

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

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

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

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

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

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

<sup>41</sup> CONSTITUTION, Art. II, Sec.14.

<sup>42</sup> The Philippines signed the CEDAW on July 15, 1980 and ratified the same on August 5, 1981. Available at <[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV8&chapter=4&lang=en)>

<sup>43</sup> Convention on the Elimination of all Forms of Discrimination against Women, Article 5(a).

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

<sup>45</sup> *Id.*

law.<sup>46</sup>

The possibility that the constitutionality of Republic Act No. 9262 may be challenged by male victims of abuse in intimate relationships ventures to carve another exception if this court is to ensure the guarantee of fundamental equality before the law of women and men<sup>47</sup> as well as value the dignity of every human person.<sup>48</sup> Applying the general rule or the existing doctrine of operative facts would mean removing the protection afforded to women. It will thus contradict the very reason it is being assailed and result to an even worse state of laws where none is protected from intimate violence.

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

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

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

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



MARVIC MARIO VICTOR FAMORCA LEONEN  
Associate Justice

<sup>46</sup> *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 608 citing *Planter's Products Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, 548 SCRA 485, 516-517.

<sup>47</sup> CONSTITUTION, Art. II, Sec. 14.

<sup>48</sup> CONSTITUTION, Art. II, Sec. 11.