

**CHILD SUPPORT CONUNDRUM: ANALYZING THE SUPREME COURT’S
DECISION IN *ACHARON V. PEOPLE****

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ABSTRACT

In *Acharon v. People*, the Supreme Court *en banc* held that the mere failure or inability to provide financial support does not entail criminal liability under Sections 5(e) and 5(i) of Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004 (“R.A. No. 9262”). For criminal liability to arise, it must be proven that the accused had the intent to control or restrict the woman or her child’s actions or decisions under Section 5(e), or the intent to inflict mental or emotional damage upon the woman by willfully denying her financial support under Section 5(i). This paper shall argue that this interpretation of the requirement of intent makes it virtually impossible to convict any accused of a violation of Section 5(e) or 5(i) of R.A. No. 9262. This ignores and exacerbates the negative lasting impacts of economic abuse and runs contrary to the intent of R.A. No. 9262.

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I. INTRODUCTION

On November 9, 2021, the Supreme Court promulgated *Acharon v. People*,¹ a landmark case decided *en banc* on economic abuse and its legal consequences. Generally, economic abuse involves behaviors that control a woman's ability to acquire, use, and maintain economic resources, thus threatening their economic security and potential for self-sufficiency.² The law governing economic abuse in the Philippines is Republic Act No. 9262 ("R.A. No. 9262")³ or the Anti-Violence Against Women and Their Children Act of 2004. *Acharon* changes the previously established legal framework of economic abuse under R.A. No. 9262 and related jurisprudence.

The consequences of this decision are far-reaching, particularly for women who are or have been victims of economic abuse. While limited data is available on the prevalence of economic abuse in the Philippines, global statistics and those from other jurisdictions show its widespread nature and extensive impact. It has been found that up to 99% of domestic violence victims in the United States experience economic abuse during an abusive relationship, and victims of intimate partner violence ("IPV") lose a total of eight (8) million days of paid work each year.⁴ The cost of IPV in the United States, accounting for health costs and productivity losses, was estimated to be 9.3 billion US dollars in 2017.⁵ In Australia, it was found that one in 30 women experienced economic abuse in 2022.⁶ The average annual cost of economic abuse to each victim was AUD 9,110, while the total estimated cost to victims was 5.7 billion Australian dollars in 2020.⁷ A comprehensive study found that economic abuse is a global problem that is carried out using a wide array of behaviors and tactics, thus requiring a coordinated response

¹ [Hereinafter "*Acharon*"], G.R. No. 224946, Nov. 9, 2021.

² Adrienne Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 564 (2008).

³ Rep. Act No. 9262 [hereinafter "R.A. No. 9262"] (2004). Anti-Violence Against Women and Their Children Act of 2004.

⁴ *Quick Guide: Economic and Financial Abuse*, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE (NCADV) WEBSITE, Apr. 12, 2017, at <https://ncadv.org/blog/posts/quick-guide-economic-and-financial-abuse>.

⁵ Institute for Women's Policy Research (IWPR), *The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking* (2017), at https://iwpr.org/wp-content/uploads/2020/10/B367_Economic-Impacts-of-IPV-08.14.17.pdf.

⁶ COMMONWEALTH BANK OF AUSTRALIA & DELOITTE, COST OF FINANCIAL ABUSE IN AUSTRALIA, 6 (2022), at <https://www.commbank.com.au/content/dam/caas/newsroom/docs/Cost%20of%20financial%20abuse%20in%20Australia.pdf> (last accessed Apr. 23, 2023).

⁷ *Id.* at 42.

by various stakeholders to support victim-survivors.⁸ The effects of the *Acharon* decision must therefore be examined with the well-being of victim-survivors as the primary consideration.

This paper first gives a brief background on economic abuse in Part II. Part III provides the legal framework of economic abuse in the Philippines prior to and as a result of *Acharon*. Part IV analyzes the legal intricacies of the decision. Part V delves into its practical effects on those most affected, namely, Filipino women. Finally, Part VI provides recommendations for the way forward in addressing the problem of economic abuse.

II. DEFINING ECONOMIC ABUSE

Economic abuse has been attributed to men's desire to control women.⁹ One method of maintaining power in a relationship is through controlling financial resources.¹⁰ This can be done through various tactics and can take on many forms, which may be indirect or insidious. *First*, abusive partners may prevent women from obtaining and maintaining employment.¹¹ Reports show that this has been done through "sabotaging their cars, threatening and physically restraining them, failing to show up to care for their children, stealing their car keys and money, and refusing to give them a ride to work,"¹² among others. *Second*, abusive partners can prevent women from utilizing resources they already have, such as by controlling their distribution and monitoring their use.¹³ Women may be prevented from using household resources, denied access to money even for necessities, or given a limited allowance.¹⁴ Their partners may also hide money from them, prevent access to joint bank accounts, or lie about assets and finances.¹⁵ *Third*, abusive partners may deliberately deplete resources as a means of

⁸ SURVIVING ECONOMIC ABUSE, ECONOMIC ABUSE: A GLOBAL PERSPECTIVE 133 (2022), available at https://survivingeconomicabuse.org/wp-content/uploads/2022/11/SEA_Economic-Abuse-A-Global-Perspective.pdf (last checked Apr. 23, 2023).

⁹ Cynthia Sanders, *Economic Abuse in the Lives of Women Abused by an Intimate Partner*, 21 VIOLENCE AGAINST WOMEN 3, 4 (2015).

¹⁰ *Id.*

¹¹ Adams, *supra* note 2, at 565.

¹² *Id.*

¹³ *Id.* at 566.

¹⁴ *Id.*

¹⁵ *Id.*

limiting their partners' options.¹⁶ This may include stealing their partners' money, creating costs, and generating debt.¹⁷ In particular, men who generate debt in their partners' names may exploit the situation and use it to threaten their partners' economic stability.¹⁸

Economic abuse has been one of the least studied forms of IPV.¹⁹ Two critical dynamics of economic abuse differentiate it from other forms of abuse. First is the spatial component.²⁰ When the abusive partner and the victim are closer in proximity, more abusive tactics may be employed by the perpetrator.²¹ However, unlike other forms of abuse, economic abuse may be done "without having any contact, communication, or spatial proximity with the victim."²² Thus, economic abuse may continue even when victims are no longer subjected to other forms of abuse.²³

Second is the focus on engaging in behaviors that target the financial security of the victim with the aim of creating economic dependency.²⁴ It becomes incredibly difficult for women who become financially reliant on their abusers to leave their partners, especially low-income women²⁵ and those with children.²⁶ They face significant challenges to achieving financial self-sufficiency as a result of the abuse they have experienced.²⁷ They remain at risk of abuse even when they gain resources and move toward greater economic self-sufficiency, as their partners may resort to other abusive or coercive tactics to maintain control and prevent them from achieving independence.²⁸ When women do leave abusive partners, they are often saddled with substantial debt and limited material resources to establish a new household.²⁹ In cases wherein women remain dependent on support from their spouses after separation, economic abuse can continue. It has

¹⁶ *Id.* at 567.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Adrienne Adams et al., *Evidence of the Construct Validity of the Scale of Economic Abuse*, 30 VIOLENCE VICT. 363, 363 (2015).

²⁰ Amanda Stylianou, *Economic Abuse Within Intimate Partner Violence: A Review of the Literature*, 33 VIOLENCE VICT. 3, 9 (2018).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 9–10.

²⁵ Adams, *supra* note 2, at 568. See also Judy Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERS. VIOLENCE 411, 413 (2012).

²⁶ Sanders, *supra* note 9, at 23.

²⁷ Postmus et al., *supra* note 25, at 414.

²⁸ Sanders, *supra* note 9, at 4–5.

²⁹ *Id.* at 23.

been found that when support is not given in full and on time, their ability to manage their household budgets is hampered,³⁰ further eroding their economic security and autonomy.³¹

Women who experience economic abuse are also likely to experience mental, emotional, and psychological problems. It appears that economic abuse is more likely to cause psychological distress than physical or psychological abuse.³² There is a significant association between economic abuse experiences and depressive symptoms, more so than physical, psychological, or sexual abuse experiences.³³ It is theorized that this is due to the cascading impacts that prevent the victim from leaving their abuser, gaining economic opportunities and resources, impacting their ability to care for their children, and destroying their economic foundation.³⁴

III. THE LEGAL FRAMEWORK OF ECONOMIC ABUSE IN THE PHILIPPINES

A. The Anti-Violence Against Women and Their Children Act of 2004 (R.A. No. 9262)

Section 3(a)(D) of R.A. No. 9262 defines economic abuse as follows:

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;

³⁰ Kristin Natalier, *State Facilitated Economic Abuse: A Structural Analysis of Men Deliberately Withholding Child Support*, 26 FEMINIST L. STUD. 121, 130 (2018).

³¹ *Id.* at 131.

³² Diddy Antai et al., *The Effect of Economic, Physical, and Psychological Abuse on Mental Health: A Population-Based Study of Women in the Philippines*, 2014 INT. J. FAMILY MED. 1, 8.

³³ Stylianou, *supra* note 21, at 389.

³⁴ *Id.*

4. controlling the victims' own money or properties or solely controlling the conjugal money or properties.³⁵

Economic abuse is criminalized under two provisions of R.A. No. 9262, namely, Section 5(e) and Section 5(i). Under Section 5(e), the following are defined as crimes:

- 1) 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;
- 2) attempting to compel or compelling the woman or her child to desist from conduct which the woman or her child has the right to engage in; or
- 3) 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.³⁶

Section 5(e) further provides that the foregoing includes, but is not limited to, the following acts, which must be 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 their family;
- 2) depriving or threatening to deprive the woman or her children of financial support legally due to her or her family;
- 3) deliberately providing the woman's children with insufficient financial support;
- 4) depriving or threatening to deprive the woman or her child of a legal right;
- 5) preventing the woman from engaging in any legitimate profession, occupation, business, or activity;
- 6) controlling the victim's own money or properties; or
- 7) solely controlling the conjugal or common money or properties.³⁷

³⁵ R.A. No. 9262, § 3(a)(D).

³⁶ § 5(e).

³⁷ § 5(e).

Under Section 5(i), causing mental or emotional anguish, public ridicule, or humiliation to the woman or her child is defined as a crime. This includes, but is not limited to, the following acts:

- 1) repeated verbal and emotional abuse;
- 2) the denial of financial support;
- 3) the denial of the custody of minor children; or
- 4) the denial of access to the woman's child or children.³⁸

B. The Law on Economic Abuse Before *Acharon*

Prior to the landmark *Acharon* Decision, the Supreme Court already discussed Sections 5(e) and 5(i) of R.A. No. 9262 in earlier cases. *Melgar v. People*³⁹ and *Reyes v. People*⁴⁰ are two of the most significant decisions on these provisions.

1. Melgar v. People

In *Melgar*, an Information was filed charging the accused, Celso M.F.L. Melgar, with a violation of Section 5 of R.A. No. 9262 for committing economic abuse against one AAA and her minor son, BBB, by depriving them of financial support. The Information alleged that this “caused mental or emotional anguish, public ridicule[,] or humiliation”⁴¹ to AAA and her son, but did not specify whether the charge was under Section 5(e) or Section 5(i) of R.A. No. 9262. As discussed in Part 0 above, however, it is Section 5(i) of R.A. No. 9262 that requires the element of causing mental or emotional anguish, public ridicule, or humiliation.

Nonetheless, the Regional Trial Court (RTC) found Melgar guilty of violating Section 5(e) of R.A. No. 9262. The Court of Appeals (CA) affirmed Melgar's conviction under Section 5(e).

The Supreme Court upheld the judgment of the CA. It stated that under Section 3(a)(D), economic abuse includes “the deprivation of support of a common child of the man-accused and the woman-victim, whether such common child is legitimate or not.”⁴² It further opined that this specific act is penalized by Section 5(e), under which the deprivation or denial of

³⁸ § 5(i).

³⁹ [Hereinafter “*Melgar*”], G.R. No. 223477, 855 SCRA 522, Feb. 14, 2018.

⁴⁰ [Hereinafter “*Reyes*”], G.R. No. 232678, July 3, 2019.

⁴¹ *Melgar*, 855 SCRA at 526.

⁴² *Id.* at 530.

financial support to the child is considered an act of violence against women and children.

Significantly, the accused argued that the Information charged him with a violation of Section 5(i) of R.A. No. 9262, not Section 5(e), because the acts complained of therein “caused mental or emotional anguish, public ridicule[,] or humiliation” to AAA and her son, BBB. As such, he contended that he cannot be convicted for a violation of Section 5(e).

The Supreme Court disagreed with Melgar. It held that Section 5(i) of R.A. No. 9262 punishes a form of psychological violence, namely, the act of causing mental or emotional anguish, public ridicule, or humiliation to the woman or her child. This includes the denial of financial support. It noted that Section 5(i) thus has two elements, which are, first, psychological violence, and second, the mental or emotional anguish caused to the victim.⁴³ Psychological violence is “the means employed by the perpetrator,”⁴⁴ while mental or emotional anguish is “the effect caused to or the damage sustained”⁴⁵ by the victim. To prove the first element of psychological violence, it is necessary to show proof of the commission of any of the acts enumerated in Section 5(i) or similar acts.⁴⁶ To prove the second element of mental or emotional anguish, it is necessary to present the testimony of the victim, as “such experiences are personal to this party.”⁴⁷

The Court found that the element of mental or emotional anguish was not borne out by the evidence. Without this, Melgar could not be convicted of Section 5(i) of R.A. No. 9262. However, the prosecution was able to prove that Melgar did indeed deprive AAA and BBB of support, which was held to be sufficient to convict him of Section 5(e) of R.A. No. 9262. The Court stated that Section 5(e) is a crime necessarily included in Section 5(i), pursuant to the variance doctrine.⁴⁸ This doctrine is embodied in Sections 4 and 5 of Rule 120 of the Rules of Court and allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged. Thus, because the crime under Section 5(e) is necessarily included in Section 5(i), Melgar could still be convicted of a violation of Section 5(e).

⁴³ *Id.* at 533.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 533–34.

2. *Reyes v. People*

In *Reyes*, an Information was filed against the accused, Esteban Donato Reyes, for a violation of Section 5(e)(2) of R.A. No. 9262. It was alleged that Reyes “abandon[ed] without financial support”⁴⁹ his wife, AAA. However, the RTC ruled that, on the basis of the allegations in the Information, Reyes was being charged with a violation of Section 5(i) of R.A. No. 9262, and not Section 5(e)(2) thereof. It directed the Office of the City Prosecutor to amend the Information by designating the proper crime. The RTC subsequently found Reyes guilty of a violation of Section 5(i) of R.A. No. 9262, and this was affirmed by the CA. Both the RTC and the CA concluded that Reyes committed psychological violence against AAA when he suddenly stopped giving her financial support, which thus caused her emotional and mental anguish.

Before the Supreme Court, Reyes contended that the Information failed to allege any of the acts punishable under either Section 5(e)(2) or Section 5(i) of R.A. No. 9262. The Court disagreed and found that he could be charged with a violation of either provision.

The Court first enumerated the elements of a violation of Section 5(i) of R.A. No. 9262 as follows:

- 1) The offended party is a woman and/or her child or children;
- 2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman’s child or children, they may be legitimate or illegitimate, or living within or without the family abode;
- 3) The offender causes the woman and/or child mental or emotional anguish; and
- 4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support, custody of minor children, or access to the children, or similar acts or omissions.⁵⁰

The Court reiterated that psychological violence is an indispensable element of Section 5(i), as it is the means employed by the perpetrator. To

⁴⁹ *Reyes*, G.R. No. 232678, at 2. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

⁵⁰ *Id.* at 7, *citing* *Dinamling v. People*, G.R. No. 199522, 760 SCRA 7, 45, June 22, 2015.

establish this element, it is necessary to adduce proof of the commission of any of the acts enumerated in Section 5(i) or similar acts.⁵¹ Equally important is the element of mental or emotional anguish to the complainant, which is the effect caused to or the damage sustained by the offended party. As applied to Reyes's case, the Court found that all the elements of Section 5(i) were satisfied.⁵²

Nonetheless, the Court went on to discuss that Reyes could also be convicted of a violation of Section 5(e)(2) for having committed economic abuse against AAA. It was stated that criminal liability under this provision "attaches when the accused deprives the woman of financial support which she is legally entitled to."⁵³ As such, the deprivation or denial of support by itself is already punishable under the law. Reyes could thus likewise be charged under Section 5(e)(2).

The Reyes Decision thus affirmed the ruling in *Melgar* that the crime punished under Section 5(e) of R.A. No. 9262 is necessarily included in Section 5(i), following the variance doctrine.⁵⁴

C. The *Acharon v. People* Decision

In *Acharon*, the Supreme Court expressly overturned *Melgar v. People* and *Reyes v. People*, making it a landmark case on R.A. No. 9262.

Here, the accused, Christian Pantonial Acharon ("Christian"), was charged with a violation of Section 5(i) of R.A. No. 9262 for causing "mental or emotional anguish, public ridicule or humiliation to his wife, AAA, by denying financial support."⁵⁵ Christian married AAA in 2011, and after only six days of marriage, he left to work in Brunei as a delivery rider. To cover his placement fee, he and AAA jointly borrowed PHP 85,000 with 3% monthly interest from their godmother. They agreed that Christian would send PHP 9,633 per month in payment of their loan. While he did so initially and was able to send back a total amount of PHP 71,500, he stopped after a few months, leaving a balance of PHP 13,500. AAA could not pay the

⁵¹ *Id.* at 8.

⁵² *Id.*

⁵³ *Id.* at 9.

⁵⁴ *Id.* at 9; see *Melgar*, 855 SCRA 522, 533–34.

⁵⁵ *Acharon*, G.R. No. 224946, at 2. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

amount because she was jobless when Christian left.⁵⁶ Their godmother had to contact Christian's employer in Brunei regarding his debt.

Meanwhile, Christian allegedly had an extramarital affair while in Brunei with a woman named Melete Domalaon. Christian supposedly told AAA that he no longer cared for her, as they did not have children together.⁵⁷ They lost contact in January 2012, and Christian supposedly continued living with Domalaon.⁵⁸ AAA eventually became gainfully employed.⁵⁹

In his defense, Christian alleged that, while he was in Brunei, his rented place was razed by a fire and he met a vehicular accident. Both of these caused him to spend a significant amount of money.⁶⁰ Further, he alleged that, upon his arrival in Brunei, he was made to sign a different contract with a lower basic salary and larger deductions.⁶¹ While he conceded that he was only able to send back PHP 71,000 as payment for their debt, he stated that it was AAA who told him to stop sending money.⁶²

The RTC convicted Christian of a violation of Section 5(i) of R.A. No. 9262, for failing to maintain communication with AAA, having an extramarital affair in Brunei, and neglecting his legal obligation to provide financial support to AAA. The CA affirmed the decision of the RTC, finding that the refusal to give financial support constitutes economic abuse.

The Supreme Court overturned the decision of the CA, finding that Christian could not be found guilty under either Section 5(i) or Section 5(e) of R.A. No. 9262.

1. *Section 5(i)*

The Court first addressed Section 5(i), stating that this provision uses the phrase "denial of financial support" in defining the criminal act.⁶³ Drawing from dictionary definitions, the Court stated that "denial" is defined

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 3.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 6.

as the “refusal to satisfy a request or desire”⁶⁴ or “the act of not allowing someone to do or have something.”⁶⁵ Thus, denial connotes willfulness or an “*active* exertion of effort so that one would not be able to have or do something.”⁶⁶ The Court proceeded to contrast this with “failure,” which it defined as “the fact of not doing something [one] should have done.”⁶⁷ Failure thus connotes passivity. To the Court, the plain meanings of the words “denial” and “failure” mean that the act punished by Section 5(i) is *dolo* in nature.⁶⁸ Under criminal law, this means that there should be a “concurrency between intent, freedom, and intelligence”⁶⁹ in order to commit the crime.

The Court further explained that the crimes under Section 5(i) are crimes *mala in se*, not crimes *mala prohibita*, thus requiring the concurrence of both the *actus reus* and the *mens rea*.⁷⁰ The *actus reus* refers to the external or overt acts or omissions included in a crime’s definition.⁷¹ The *mens rea* is the accused’s “guilty state of mind” or criminal intent.⁷²

Applying this to Section 5(i) of R.A. No. 9262, the Court held that there must be “evidence on record that the accused willfully or consciously withheld financial support legally due the woman *for the purpose of inflicting mental or emotional anguish upon her*.”⁷³ The *actus reus* under this provision is the willful denial of financial support. The *mens rea* is the intention to inflict mental or emotional anguish upon the woman. Thus, the mere failure or inability to provide financial support is not sufficient to be punished under Section 5(i), even if mental or emotional anguish is experienced by the woman. To be punishable under Section 5(i), the act must be done with the *specific intent* of inflicting mental or emotional anguish upon the woman, through the means of willfully denying financial support.⁷⁴

⁶⁴ *Id.*, citing *Denial*, MERRIAM-WEBSTER DICTIONARY, available at <https://www.merriam-webster.com/dictionary/denial>.

⁶⁵ *Id.*, citing *Denial*, CAMBRIDGE DICTIONARY, available at <https://dictionary.cambridge.org/dictionary/english/denial>.

⁶⁶ *Id.* (Emphasis in the original.)

⁶⁷ *Id.*, citing *Failure*, CAMBRIDGE DICTIONARY, available at <https://dictionary.cambridge.org/us/dictionary/english/failure>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 7. (Emphasis supplied.)

⁷⁴ *Id.*

The Court thus restated the elements of a violation of Section 5(i) as follows:

- 1) The offended party is a woman and/or her child or children;
- 2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
- 3) The offender willfully refuses to give or consciously denies the woman and/or her child or children financial support that is legally due her and/or her child or children; and
- 4) The offender denied the woman and/or her child or children financial support for *the purpose of causing the woman and/or her child or children mental or emotional anguish*.⁷⁵

Significantly, the Court emphasized that the obligation to support is imposed mutually upon the spouses under Article 68 of the Family Code, meaning both the husband and the wife have the obligation to support each other.⁷⁶ The Court stated that it could not have been the intent of the law that criminal liability should arise only upon the failure of the husband to support the wife, while only civil liability arises upon the failure of the wife to support the husband. It was held that “the law recognizes no substantial distinction between the husband and the wife as regards their responsibility to provide financial support to each other and the family.”⁷⁷

Applying the foregoing to Christian Acharon's case, the Court found that he could not be held guilty under Section 5(i), as he was able to provide financial support for a time, and only failed to do so after the fire and his vehicular accident.⁷⁸ Further, no evidence established beyond reasonable doubt that he intended to cause AAA mental or emotional anguish, public ridicule, or humiliation through the denial of financial support.⁷⁹

2. Section 5(e)

Discussing Section 5(e), the Court held that under *Melgar* and *Reyes*, Section 5(e) and Section 5(i) essentially punish the same act, which is the

⁷⁵ *Id.* at 8, *citing* R.A. No. 9262, § 5(i). (Emphasis supplied.)

⁷⁶ *Id.* at 7.

⁷⁷ *Id.* at 7–8.

⁷⁸ *Id.* at 8.

⁷⁹ *Id.* at 9.

denial or deprivation of financial support by the husband or father.⁸⁰ Under the earlier cases, the denial of financial support, by itself, is already sufficient to convict an individual for a violation of Section 5(e).⁸¹

The Court stated that its previous pronouncements must be overturned. Section 5(e) provides that the denial of financial support must have the “purpose or effect of controlling or restricting the woman’s [...] movement or conduct.”⁸² The word “deprive” in Section 5(e), like the word “denial” in Section 5(i), connotes willfulness and intention. As Section 5(e) likewise punishes crimes that are *mala in se* in nature, they require the concurrence of an *actus reus* and *mens rea*. The *actus reus* here is the willful deprivation of financial support, while the *mens rea* is the intention to control or restrict the woman’s conduct. The mere failure to provide financial support will not give rise to criminal liability under Section 5(e). There must be an allegation and proof that the act was done with the intent to control or restrict the woman’s actions or decisions.⁸³

The elements of a violation of Section 5(e) were thus laid down as follows:

- 1) The offended party is a woman and/or her child or children;
- 2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman’s child or children, they may be legitimate or illegitimate, or living within or without the family abode;
- 3) The offender either (a) deprived or (b) threatened to deprive the woman or her children of financial support legally due her or her family, or (c) deliberately provided the woman’s children insufficient financial support;
- 4) The offender committed any or all of the acts under the third element for the purpose of controlling or restricting the woman’s or her child’s movement or conduct.⁸⁴

It was recognized in the Decision that Section 5(e) punishes acts that may constitute economic abuse, which is an act of violence against women and their children under Section 3(a)(D) of R.A. No. 9262. These refer to

⁸⁰ *Id.* at 11.

⁸¹ *Id.*

⁸² *Id.* at 12, *citing* R.A. No. 9262, § 5(e).

⁸³ *Id.* at 19.

⁸⁴ *Id.* at 19–20, *citing* R.A. No. 9262, § 5(e).

situations wherein the woman is made financially dependent upon her partner. The Court, however, contrasted specific acts of economic abuse with the mere failure to pay financial support.⁸⁵

Applying the foregoing pronouncements to the facts of *Acharon*, it was found that he was likewise not guilty, as the third and fourth elements were not present. There was no proof that he deliberately refused to give support in order to control the behavior or actions of AAA. It was likewise not shown that he prevented her from seeking gainful employment or pursuing economic opportunities.⁸⁶

3. *Doctrinal Shift on Economic Abuse*

The Court in *Acharon* thus modified the substantive law governing economic abuse in laying down a more stringent set of elements for the crimes in Sections 5(e) and 5(i). It also overturned *Melgar* and *Reyes* insofar as they hold that a person charged with a violation of Section 5(i) may be convicted of a violation of Section 5(e) pursuant to the variance doctrine, as these punish distinct acts. Section 5(e) now requires the specific intent of controlling or restricting the woman's or her child's movement or conduct. Section 5(i) now requires the specific intent of willfully inflicting mental or emotional anguish, public ridicule, or humiliation upon the woman and/or her child. In either case, the mere failure to provide financial support is insufficient for a conviction. As will be demonstrated, however, these changes in substantive law further affect the procedural law on economic abuse, as they impose a heavier evidentiary burden on victims and the prosecution.

The Decision was concluded with the clarification that R.A. No. 9262 was “not meant to make the partners of women criminals just because they fail or are unable to financially provide for them.”⁸⁷ A contrary interpretation would supposedly lead to the incarceration of “countless people, mostly fathers,” in a country “where poverty and unemployment are especially rampant.”⁸⁸ It went on to cite the Concurring Opinion of Senior Associate Justice Marvic M.V.F. Leonen, which provides that “it is improper to think that women are always victims,” as this will “only reinforce their already disadvantaged position.”⁸⁹ A contrary interpretation of Sections 5(e)

⁸⁵ *Id.* at 16–19.

⁸⁶ *Id.* at 20.

⁸⁷ *Id.* at 21.

⁸⁸ *Id.*

⁸⁹ *Id.*

and 5(i) would allegedly “perpetuate the very prejudices and biases that encourage discrimination of the members of the class.”⁹⁰ To the mind of the Court, therefore, it appears that the feminist interpretation of Sections 5(e) and 5(i) would be to impose a higher burden of proof upon women who have experienced economic abuse at the hands of their partners.

4. *Inconsistency in the Application of Acharon*

The holding in *Acharon* was applied to the case of *Calingasan v. People*,⁹¹ decided by the Court’s First Division, wherein Cesar M. Calingasan (“Calingasan”) was charged with a violation of Section 5(i) after failing to provide financial support to his wife and their son. The RTC convicted Calingasan, and the CA affirmed the conviction. Predictably, the Supreme Court reversed the CA, finding that the elements of Section 5(i) as laid down in *Acharon* had not been proven.⁹² The Court likewise found that the elements of Section 5(e) as modified were not borne out by the evidence.⁹³ Thus, despite the Court’s acknowledgment that Calingasan did indeed fail to provide financial support to his family, he was not guilty of economic abuse because his failure was “due to circumstances beyond his control.”⁹⁴ The Court did not provide further guidance on how the new elements of Sections 5(e) and 5(i) can be satisfactorily proven by the prosecution.

Interestingly, the much later case of *XXX v. People*,⁹⁵ likewise decided by the First Division, did not cite or apply *Acharon*. XXX was charged with a violation of Section 5(i), after committing marital infidelity on his wife, AAA, with his paramour, CCC, and depriving his minor child of financial support. XXX filed a demurrer to evidence, claiming that the prosecution failed to establish the allegation of deprivation of financial support, which the RTC denied.⁹⁶ The RTC convicted XXX, and the CA affirmed the conviction. In affirming the CA, the Supreme Court cited the elements of Section 5(i) as laid down in *Reyes v. People* as well as in the 2015 case *Dinamling v. People*.⁹⁷ The Court did not apply the standard of specific intent laid down

⁹⁰ *Id.*

⁹¹ [Hereinafter “*Calingasan*”], G.R. No. 239313, Feb. 15, 2022.

⁹² *Id.* at 9. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

⁹³ *Id.* at 10.

⁹⁴ *Id.* at 9.

⁹⁵ [Hereinafter “*XXX*”], G.R. No. 250219, Mar. 1, 2023.

⁹⁶ *Id.* at 4.

⁹⁷ *Id.*, citing *Reyes*, G.R. No. 232678; *Dinamling v. People*, G.R. No. 199522, 760 SCRA 27, 45, June 22, 2015. See *supra* Part III.B.

in *Acharon*, which requires that the accused act with the specific intent of causing the woman and/or her child or children mental or emotional anguish. It was thus held that marital infidelity is a form of psychological violence, which was committed by XXX through his cohabitation with CCC, CCC's eventual pregnancy, and the psychological trauma he inflicted on BBB as demonstrated in open court.⁹⁸ It was not examined whether XXX committed marital infidelity specifically to inflict mental or emotional anguish on AAA. It is not clear why the previous standard was applied by the Court, despite the allegation that economic abuse had been committed through the deprivation of financial support.

IV. THE LEGAL INTRICACIES OF *ACHARON*

In line with the Supreme Court's Decision in *Acharon*, the legal analysis of the pronouncement will likewise begin with an examination of the text of Sections 5(e) and 5(i) of R.A. No. 9262. The difficulty of proving intent under criminal law will then be discussed, followed by the juxtaposition of the *Acharon* Decision against the Court's ruling in the landmark case of *Garcia v. Drilon*, which decided on the constitutionality of R.A. No. 9262.

A. The Statutory Construction of Sections 5(e) and 5(i) of R.A. No. 9262

To recall, Section 5(e) punishes acts "committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct," which includes "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."⁹⁹

The *Acharon* Decision, in strictly requiring that the perpetrator act with the purpose of controlling or restricting the woman's or her child's movement or conduct, appears to have conflated the words "purpose or effect" in Section 5(e). The provision is clear that the deprivation or threat of deprivation of financial support should likewise be punishable if it merely has the *effect* of controlling or restricting movement or conduct. The plain meaning of effect is "a change which is a result or consequence of an action

⁹⁸ *Id.* at 10.

⁹⁹ R.A. No. 9262, § 5(e).

or other cause”¹⁰⁰ or “something that inevitably follows an antecedent.”¹⁰¹ This is markedly different from purpose, which is defined as “the reason for which something is done”¹⁰² or “something set up as an object or end to be attained.”¹⁰³

The objective of Section 5(e) based on its ordinary meaning would be to punish the deprivation or threat of deprivation of financial support when such is done either (a) with the *purpose* of controlling or restricting the woman’s or her child’s movement or conduct, or (b) with the *effect* of controlling or restricting the woman’s or her child’s movement or conduct. The Court’s interpretation in *Acharon* now punishes such deprivation or threat of deprivation only when done with a specific intent or purpose.

The Court emphasized that the word “deprive” connotes an intentional act, as it is “an act or instance of withholding or taking something away from someone or something.”¹⁰⁴ Certainly, it must be conceded that such deprivation or threat of deprivation should be intentional for it to be punished as a crime under Section 5(e). However, it appears contrary to the text of Section 5(e) to require that such deprivation or threat of deprivation be accompanied by the specific intent of controlling or restricting movement or conduct to constitute a crime when effect appears to be sufficient.

While the Court restated the rule of statutory construction that every part of a statute must be interpreted with reference to its context,¹⁰⁵ it was not made clear how the omission of “effect” in the phrase “purpose or effect” in the elements of Section 5(e) follows this rule. Given the objective of R.A. No. 9262 of “protect[ing] women [...] from violence and threats to their personal safety and security,”¹⁰⁶ this interpretation of Section 5(e) seems acutely contrary to the context of the law. This strict interpretation also goes against the rule of construction embedded in R.A. No. 9262, which provides

¹⁰⁰ *Effect*, NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010).

¹⁰¹ *Effect*, MERRIAM-WEBSTER DICTIONARY, available at <https://www.merriam-webster.com/dictionary/effect> (last visited Feb. 2, 2023).

¹⁰² *Purpose*, NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010).

¹⁰³ *Purpose*, MERRIAM-WEBSTER DICTIONARY, available at <https://www.merriam-webster.com/dictionary/purpose> (last visited Feb. 2, 2023).

¹⁰⁴ *Acharon*, G.R. No. 224946, at 12, citing “Deprivation,” MERRIAM-WEBSTER DICTIONARY, available at <https://www.merriam-webster.com/dictionary/deprivation>.

¹⁰⁵ *Acharon*, citing *Civil Service Comm’n v. Joson*, G.R. No. 154674, 429 SCRA 773, 786, May 27, 2004. This means that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.

¹⁰⁶ R.A. No. 9262, § 2.

that the law “shall be liberally construed to promote the protection and safety of victims of violence against women and their children.”¹⁰⁷ Further, the Court has held that “or” is a “disjunctive article indicating an alternative,” “connect[ing] a series of words or propositions indicating a choice of either,” and thus “giv[ing] different, distinct, and disparate meanings.”¹⁰⁸ It thus signifies “dissociation and independence of one thing from other things enumerated.”¹⁰⁹ Following this well-settled rule, the words “purpose” and “effect” should be interpreted as separate, alternative components of Section 5(e).

Similarly, Section 5(i) provides that “[c]ausing 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 or access to the woman’s child/children”¹¹⁰ is the punishable act. The ordinary meaning of the verb “cause” is “to make something happen”¹¹¹ or “to serve as a cause or occasion of.”¹¹² The wording of Section 5(i) does not appear to require the accused to knowingly act with the purpose of inflicting mental or emotional anguish, public ridicule, or humiliation on the woman or child. It is sufficient that the accused is the reason for such mental or emotional anguish, public ridicule, or humiliation, whether or not the accused purposefully and deliberately provoked the same.

By including among the elements of both provisions that the perpetrator act with a particular purpose, the Court has thus committed an act of judicial legislation in imposing the requirement of specific intent under Sections 5(e) and 5(i), which cannot be found in R.A. No. 9262 and did not exist in *Melgar* and *Reyes*.

¹⁰⁷ § 4.

¹⁰⁸ *Centeno v. Villalon-Pomillos*, G.R. No. 113092, 236 SCRA 197, 206, Sept. 1, 1994.

¹⁰⁹ *Herrera v. Nat’l Power Corp.*, G.R. No. 166570, 608 SCRA 476, 500, Dec. 18, 2009, *citing* *Pimentel v. Comm’n on Elections*, G.R. No. 126394, 289 SCRA 586, 597, Apr. 24, 1998.

¹¹⁰ R.A. No. 9262, § 5(i).

¹¹¹ *Cause*, NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010).

¹¹² *Cause*, MERRIAM-WEBSTER DICTIONARY, *available at* <https://www.merriam-webster.com/dictionary/cause> (last visited Feb. 2, 2023).

B. The Difficulty of Proving Specific Intent

Under Philippine criminal law, general intent is distinguished from specific intent.¹¹³ The Supreme Court has provided guidelines for proving specific intent in relation to certain crimes. They have not done so for economic abuse.

1. *Distinguishing Specific Intent from General Intent*

General intent is an element of all crimes and is presumed from the criminal act.¹¹⁴ Its absence must therefore be proven by the accused.¹¹⁵ In contrast, specific intent is a “definite and actual purpose to accomplish some particular thing” and is “applied only to deliberate acts done on purpose and with design.”¹¹⁶ As such, specific intent is generally not presumed.¹¹⁷

Specific intent is thus only an essential element of specific intent crimes.¹¹⁸ It has been defined by the Supreme Court as “a state of mind which exists where circumstances indicate that an offender actively desired certain criminal consequences or objectively desired a specific result to follow his act or failure to act.”¹¹⁹ It is the “particular purpose or specific intention in doing the prohibited act.”¹²⁰ As such, the accused’s “specific intent must be alleged in the Information and proved by the state in a prosecution for a crime requiring specific intent.”¹²¹ It may be proven by direct evidence or by circumstantial evidence.¹²² The Court added, “It may be inferred from the circumstances of the actions of the accused as established by the evidence on record.”¹²³

2. *Other Specific Intent Crimes*

¹¹³ *Novicio v. People*, G.R. No. 163331, 563 SCRA 680, 691, Aug. 29, 2008; *Rivera v. People*, G.R. No. 166326, 480 SCRA 188, 196–97, Jan. 25, 2006.

¹¹⁴ *Recuerdo v. People*, G.R. No. 168217, 493 SCRA 517, June 27, 2006.

¹¹⁵ *Id.* at 533.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *People v. Delim* [hereinafter “*Delim*”], G.R. No. 142773, 396 SCRA 386, 398, Jan. 28, 2003.

¹¹⁹ *Id.* at 398.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

Below is a summary of other crimes that the Supreme Court has held to be specific intent crimes, their corresponding provisions, and the specific intent required under jurisprudence:

Table 1: Summary of Other Specific Intent Crimes

Crime	Provision	Specific Intent Required
Murder	Revised Penal Code (RPC), Article 248 ¹²⁴	To kill the victim ¹²⁵
Kidnapping	RPC, Articles 267 ¹²⁶ and 268 ¹²⁷	To deprive the offended party of their liberty ¹²⁸
Physical Injuries	RPC, Articles 263, ¹²⁹ 265, ¹³⁰ and 266 ¹³¹	To do wrong against the physical integrity or well-being of a person, so as to incapacitate and deprive the victim of certain bodily functions ¹³²
<i>Estafa</i>	RPC, Article 315 ¹³³	To defraud the victim ¹³⁴
Illegal Possession of Firearms	Republic Act No. 10591, Section 28 ¹³⁵	To possess the weapon ¹³⁶
Child Abuse	Republic Act No. 7610, Sections 10(a) ¹³⁷ and 3(b)(2) ¹³⁸	To debase, degrade, or demean the intrinsic

¹²⁴ REV. PEN. CODE, art. 248.

¹²⁵ *Delim*, 396 SCRA 386, 399.

¹²⁶ REV. PEN. CODE, art. 267.

¹²⁷ Art. 268.

¹²⁸ *People v. Puno*, G.R. No. 97471, 219 SCRA 85, 93, Feb. 17, 1993.

¹²⁹ REV. PEN. CODE, art. 263.

¹³⁰ Art. 265.

¹³¹ Art. 266.

¹³² *Villareal v. People*, G.R. No. 151258, 664 SCRA 581, Feb. 1, 2012.

¹³³ REV. PEN. CODE, art. 315.

¹³⁴ *Recuerdo v. People*, G.R. No. 168217, 493 SCRA 517, 533, June 27, 2006.

¹³⁵ Rep. Act No. 10591 (2013), § 28. Comprehensive Firearms and Ammunition Regulation Act.

¹³⁶ *People v. Barros*, G.R. No. 101107, 245 SCRA 312, 326, June 27, 1995.

¹³⁷ Rep. Act No. 7610 (1992), § 10. Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

¹³⁸ § 3(b).

		worth and dignity of a child as a human being ¹³⁹
Lascivious Conduct	Implementing Rules and Regulations of Republic Act No. 7610, Section 2(h) ¹⁴⁰	To abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person ¹⁴¹

For certain crimes, the Court has provided guidance in relation to proving or disproving the existence of specific intent. For the crime of murder under Article 248 of the RPC, it was held that evidence to prove specific intent may consist of “the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused.”¹⁴² Moreover, if the victim dies as a result of the deliberate act, intent to kill is presumed.¹⁴³

For the crime of child abuse under Section 10(a) of R.A. No. 7610, it was held that the existence of specific intent may be disproved “by proof that the acts were merely offshoots of emotional outrage in the spur of the moment and/or that the accused merely intended to discipline the child.”¹⁴⁴ Further, the court may consider “if the disciplining acts are commensurate to, and may reasonably address, the misbehavior of the child being dealt with.”¹⁴⁵ If they are excessive, then the accused may be held liable for child abuse.¹⁴⁶

¹³⁹ *Bongalon v. People*, G.R. No. 169533, 694 SCRA 12, 22, Mar. 20, 2013.

¹⁴⁰ Rep. Act No. 7610 Rules & Regs. (1993), § 2(h).

¹⁴¹ *Malcampo-Repollo v. People*, G.R. No. 246017, Nov. 25, 2020, *citing* Rep. Act No. 7610 Rules & Regs. (1993), § 2(h).

¹⁴² *Rivera v. People*, G.R. No. 166326, 480 SCRA 188, 197, Jan. 25, 2006, *citing Delim*, 396 SCRA 386.

¹⁴³ *Id.*

¹⁴⁴ *Briñas v. People*, G.R. No. 254005, June 23, 2021.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

For the crime of *estafa* under Article 315 of the RPC, the Court has held that specific intent may be disproved by good faith, which “encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage”¹⁴⁷ and “implies honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry.”¹⁴⁸ As such, good faith may be “manifested by the accused’s offering to make arrangements with his creditor as to the manner of payment”¹⁴⁹ or even by an allegation that the signature on the check was “purely a result of [...] gullibility and inadvertence.”¹⁵⁰

3. *New Specific Intent Requirements under Acharon*

Following *Acharon*, the specific intent required in Section 5(e) is the purpose of controlling or restricting the woman’s or her child’s movement or conduct. The specific intent required in Section 5(i) is the purpose of causing the woman or her child mental or emotional anguish, public ridicule, or humiliation. It must now be established by the evidence on record that the accused’s state of mind indicated an active desire to achieve these specific purposes or results. This makes the prosecution of economic abuse and coercive behavior much more difficult, if not altogether impossible. It is now incumbent on the victim to adduce evidence of the accused’s state of mind to demonstrate that the accused’s actions were done with these specific intents. Following the Court’s reasoning, even if the victim were to be controlled or restricted in their movement or conduct, or were to experience anguish, ridicule, or humiliation due to the acts of the accused, this would still not be punishable unless the accused deliberately brought about these effects.

In contrast to other specific intent crimes, the specific intents now required under Sections 5(e) and 5(i) are not straightforward or easily deducible from the actions of the accused. For instance, in murder, kidnapping, and physical injuries, the specific intent of the accused can generally be deduced from their overt actions in relation to the victim and within a particular timeframe. In economic abuse, the accused may easily allege that the denial, deprivation, or refusal was pursuant to or accompanied by a different intent, which may be shown by other actions or factors

¹⁴⁷ *Recuerdo v. People*, G.R. No. 168217, 493 SCRA 517, 534, June 27, 2006.

¹⁴⁸ *Id.*

¹⁴⁹ *People v. Gulion*, G.R. No. 141183, 349 SCRA 610, 624, Jan. 18, 2001.

¹⁵⁰ *Id.*

extraneous to the crime, not related to the victim, and without a fixed timeframe. As in *Acharon*, the accused may simply argue that they had other financial obligations, unrelated to the woman or her child, which prevented them from fulfilling the continuing obligation to provide support.

The Court also failed to give guidance as to what evidence should be adduced to prove or disprove the existence of these specific intents, unlike in murder, child abuse, and *estafa*. It is thus not clear what the standard is for the fulfillment of the requirement of specific intent. It should also be emphasized that, unlike other specific intent crimes, it may be difficult to gather evidence on the accused's state of mind for acts of economic abuse, especially when the accused and the victim are no longer residing together, when they are no longer in regular contact, and/or when the victim is not in a position to communicate with the accused due to safety concerns. In these scenarios, it appears that victims would be left without recourse under the only law meant to protect them from economic abuse.

Even the deliberate and repeated denial of financial support would not be punishable under Sections 5(e) or 5(i) unless the victim is able to demonstrate that such denial was done by the accused to control or restrict her movement or conduct, or to inflict anguish, ridicule, or humiliation.

This is not to say that Sections 5(e) and 5(i) should be considered *mala prohibita* crimes where intent is irrelevant. However, it is submitted that under Section 5(e), the specific intent to be proven should only be that of depriving the woman or her children of financial support legally due to her or her family or deliberately providing the woman's children with insufficient financial support. The purpose of the accused in doing so or the effect of their act or omission should be to control or restrict the woman or her child's movement or conduct. Under Section 5(i), the specific intent to be proven should only be that of refusing to give or denying the woman and/or her child financial support legally due to her or her family. This act should cause the woman and/or her child mental or emotional anguish, whether intentionally or unintentionally. Instead, under *Acharon*, it is as though the victim and the State have a double evidentiary burden under each provision, as the deliberateness of the denial, deprivation, or refusal, and the intent behind such denial, deprivation, or refusal, must both be proven.

C. Contrasting *Acharon* with *Garcia v. Drilon*

In the landmark case of *Garcia v. Drilon*,¹⁵¹ the Court upheld R.A. No. 9262 and recognized that it was enacted in recognition of “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.”¹⁵² It was held that R.A. No. 9262 is consistent with the equal protection clause, in view of widespread gender-based violence and discrimination against women in Philippine society.

Acharon contradicts the Court’s own interpretation of R.A. No. 9262. Whereas *Garcia* emphasizes that women are much more likely to be victims of gender-based violence and are thus in a significantly more vulnerable position than their male partners,¹⁵³ *Acharon* revokes the very protections that R.A. No. 9262 sought to give women. The Court has recognized that this law is a piece of social legislation enacted to address domestic violence,¹⁵⁴ including economic abuse. Women are structurally economically disadvantaged in contrast to their male counterparts, and R.A. No. 9262 sought to level this playing field. *Acharon* has effectively rendered the means of redress against economic abuse meaningless, given the high thresholds that must now be met to obtain them. It defeats the very objective of R.A. No. 9262 of protecting women and their children from violence and abuse and even opens the door for impunity.

In *Garcia*, the Court warned against subjecting women to double victimization, first at the hands of the offender and then of the legal system.¹⁵⁵ However, this is the foreseeable effect of *Acharon*. Women who are victims of economic abuse will face the risk of reliving their trauma as they attempt to prove that their perpetrators knowingly and deliberately acted with the narrow purposes now required under Sections 5(e) and 5(i). Gathering evidence on a person’s state of mind is already a challenge in itself, but it may be especially difficult for women who no longer reside with their perpetrators or are no longer in contact with them. This is precisely the double victimization *Garcia* sought to prevent.

¹⁵¹ [Hereinafter “*Garcia*”], G.R. No. 179267, 699 SCRA 352, June 25, 2013.

¹⁵² *Id.* at 411.

¹⁵³ *Id.* at 411–16.

¹⁵⁴ *Estacio v. Estacio*, G.R. No. 211851, 954 SCRA 124, 140, Sept. 16, 2020.

¹⁵⁵ *Garcia*, 699 SCRA at 419.

V. THE PRACTICAL EFFECTS OF *ACHARON*

To realize the impact of *Acharon*, we must examine those most likely to be affected by it. According to the World Health Organization, 95% of the roughly 15 million single parents in the Philippines are women.¹⁵⁶ The 2015 Census of Population shows that out of 221,813 solo parents with children living in their households, 78.97% were female.¹⁵⁷ The likelihood of women being the custodial parent is thus incredibly high. While the obligation to support the family falls on both spouses,¹⁵⁸ the burden is evidently much heavier on the parent living with dependent children, who must provide for the needs of the family by default. The safeguards of R.A. No. 9262 against economic abuse were meant to ensure that the parent who does not live with the children will continue to fulfill their obligation of support.

To date, there are not many studies on the impacts of economic abuse in the Philippines. However, one study found that Filipino women who earn less than their spouses are more likely to be subjected to economic abuse,¹⁵⁹ consistent with data from other studies.¹⁶⁰ This perpetuates a cycle wherein women who become economically dependent on their spouses are at greater risk of being abused, and less likely to leave an abusive relationship.¹⁶¹ In contrast, those who are more educated than their spouses were less likely to report that they had ever lost jobs or income due to their partners.¹⁶²

¹⁵⁶ Lynzy Billing, *For Single Mothers in the Philippines, Unemployment Is COVID-19's Biggest Threat*, VICE, Apr. 2, 2020, available at <https://www.vice.com/en/article/jge3e4/single-mothers-philippines-unemployment-coronavirus-lockdown>. See also *Filipino single mothers bear the brunt of COVID-19*, WORLD VISION WEBSITE, available at <https://www.worldvision.org.ph/stories/filipino-single-mothers-bear-the-brunt-of-covid-19/> (last accessed Oct. 20, 2022).

¹⁵⁷ *Population of solo parent/single parent per region*, PHILIPPINE STATISTICS AUTHORITY WEBSITE, Mar. 6, 2019, available at <https://www.foi.gov.ph/requests/aglzfmVmb2kctGhyHQsSB0NvbnRlbnQIEFBTQS0wNjM1NDMyNDU1NjEM>.

¹⁵⁸ FAMILY CODE, art. 70.

¹⁵⁹ Diddy Antai et al., *The relationship between socio-economic inequalities, intimate partner violence and economic abuse: A national study of women in the Philippines*, 9 GLOB. PUBLIC HEALTH 808, 821 (2014).

¹⁶⁰ See *supra* Part II.

¹⁶¹ Antai, *supra* note 159, at 821.

¹⁶² *Id.*

Women who are eventually able to leave the relationship are often compelled to face economic hardship.¹⁶³ They are much more likely to face substantial financial challenges after separation than men, due to several factors, such as their disadvantaged position in the labor market and their care responsibilities.¹⁶⁴ In other jurisdictions, it has been shown that the income of women with dependent children declines by approximately 21% after divorce, whereas that of men with dependent children rises by approximately 32%.¹⁶⁵ Thus, when economic abuse happens after separation, as in cases where partners withhold support, this can undermine women's capabilities "to purchase food, housing, heating, child care, transport, education for themselves and their children, travel to maintain connections with family, holidays, clothes, medical care, and extra-curricular activities for their children."¹⁶⁶ The protections in R.A. No. 9262 against economic abuse are therefore not meant to "discount women's ability to provide for themselves,"¹⁶⁷ but rather, serve as recognition that this form of violence has lasting financial, psychological, and emotional impacts on survivors.

It is even more concerning that this decision was promulgated in the middle of the COVID-19 pandemic, which has greatly exacerbated domestic violence around the world. This phenomenon has been dubbed the "shadow pandemic," as lockdowns have forced women to stay home with their abusers, thereby endangering their safety.¹⁶⁸ It has been shown that 45% of women in various countries have been exposed to at least one form of violence against women since the onset of the pandemic,¹⁶⁹ and 23% reported that the pandemic has made them feel less safe at home.¹⁷⁰ The Philippines is no exception. The United Nations Population Fund found that Filipino women reported increasing tensions in households because of

¹⁶³ *Id.* at 810.

¹⁶⁴ Kylie Valentine & Jan Breckenridge, *Responses to Family and Domestic Violence: Supporting Women*, 25 GRIFFITH L. REV. 30, 36 (2016).

¹⁶⁵ Lisa Tucker, *The [E]X Factor: Addressing Trauma from Post-Separation Domestic Violence as Judicial Terrorism*, 99 WASH. U. L. REV. 339, 351–52 (2021).

¹⁶⁶ Natalier, *supra* note 30, at 131.

¹⁶⁷ *Acharon*, G.R. No. 224946, at 21.

¹⁶⁸ UN WOMEN, *Measuring the Shadow Pandemic: Violence Against Women During COVID-19*, at 3 (2021), available at <https://data.unwomen.org/sites/default/files/documents/Publications/Measuring-shadow-pandemic.pdf> (last visited Mar. 25, 2023).

¹⁶⁹ *Id.* at 6.

¹⁷⁰ *Id.* at 10.

economic insecurity and being “locked down” with their abusers.¹⁷¹ The women further reported that they were unlikely to report incidents of abuse due to low trust in authorities.¹⁷² Thus, although the reported number of domestic violence cases has dropped, it is likely that the pandemic brought about an under-reporting of cases.¹⁷³ This may also be a result of the fact that women living with their abusers were highly compromised due to fear or lack of privacy at home.¹⁷⁴

The pandemic has specifically aggravated the propensity for economic abuse. In the United Kingdom, some documented economic abuse tactics that resulted from the pandemic were explicitly telling the victim not to work, preventing them from accessing resources needed to work, disrupting them while working, demanding they spend their time looking after the perpetrator instead of working, refusing to share childcare and household tasks, claiming a reduced income to reduce or stop child maintenance payments, and forcing physical contact as a mechanism to access child maintenance payments, among others.¹⁷⁵ Abusers can easily claim that these actions were done not with the specific intent to commit economic abuse, but as a result of the conditions brought about by the pandemic. On top of these, several institutional failings have facilitated economic abuse. For instance, as a result of the disruptions in general services, women have limited access to social and health services, legal and protection services, and information on and awareness of available services.¹⁷⁶

¹⁷¹ AIMAE MOLINA ET AL., UNITED NATIONS POPULATION FUND (UNFPA), GENDER & INCLUSION ASSESSMENT (GIA) OF THE IMPACTS OF THE COVID-19 PANDEMIC ON VULNERABLE WOMEN AND GIRLS, 7–8 (2021), available at https://philippines.unfpa.org/sites/default/files/pub-pdf/silayan_gia_report.pdf.

¹⁷² *Id.* at 52.

¹⁷³ James Paul Gomez & Alain Kyle Robredillo, *Fewer violence vs. women cases, but more unreported*, MANILA STANDARD, June 17, 2021, at <https://manilastandard.net/news/national/357417/fewer-violence-vs-women-cases-but-more-unreported.html>.

¹⁷⁴ UN WOMEN, *Impact of COVID-19 on violence against women and girls and service provision: UN Women rapid assessment and findings*, 2 (2020), at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Impact-of-COVID-19-on-violence-against-women-and-girls-and-service-provision-en.pdf> (last visited Mar. 3, 2023).

¹⁷⁵ SURVIVING ECONOMIC ABUSE, *The Cost of Covid-19: Economic abuse throughout the pandemic*, 78–79 (2021).

¹⁷⁶ UN WOMEN, *supra* note 177, at 5.

VI. RECOMMENDATIONS

One of the motivating factors behind the Court's reasoning appears to be the concern that prior to *Acharon*, the interpretation of the law on economic abuse would result in "[making] the partners of women criminals just because they fail or are unable to financially provide for them,"¹⁷⁷ leading to "incarcerating countless people, mostly fathers[.]"¹⁷⁸ It is emphasized that mass incarceration is certainly not the panacea for economic abuse. As the Philippines strengthens its restorative justice framework,¹⁷⁹ solutions to problems on criminality, including those relating to economic abuse, should reflect this progressive trend by finding a balance between the rights, protections, and remedies of victims on one hand, and the rights, obligations, and reformation of offenders on the other. For this reason, it does not appear that a simple reversion to the rulings in *Melgar* and *Reyes* would be an adequate solution, given the propensity for conviction under those rulings. Moreover, as recognized in *Acharon*, Sections 5(e) and 5(i) do appear to punish different criminal acts and should thus not be subject to the variance doctrine.

However, with the high bar set by *Acharon* for convictions for economic abuse, women are left only with civil remedies,¹⁸⁰ which are often ineffective and costlier than criminal cases. As a result, male partners are no longer disincentivized from engaging in coercive behavior or employing economically abusive tactics, as the likelihood of a criminal penalty is significantly lower. Thus, the following recommendations attempt to find the middle ground that will recognize the profound impacts of economic abuse on survivors by maintaining the criminal penalties attached to its commission while respecting the rights of the accused and the principles of restorative justice to the fullest extent possible.

¹⁷⁷ *Acharon*, G.R. No. 224946, at 21.

¹⁷⁸ *Id.*

¹⁷⁹ See Pres. Dec. No. 968 (1976), as amended by Rep. Act No. 10707 (2015); LOCAL GOV'T CODE, bk. III, tit. 1, ch. 7; and Rep. Act No. 9344 (2006), for examples of Philippine laws that reflect the principles of restorative justice.

¹⁸⁰ *Acharon*, G.R. No. 224946, at 12, 20–21. See Supreme Court (SC) Adm. Matter No. 21-03-02-SC (2021). Rules on Action for Support and Petition for Recognition and Enforcement of Foreign Decisions or Judgments on Support.

A. Balancing of Interests¹⁸¹

Before the change in the substantive law on economic abuse, there were no specific intent requirements for conviction under Sections 5(e) and 5(i), and only a general intent to commit a crime was required. As earlier discussed, general intent is presumed from the criminal act. Removing the new specific intent requirements would limit the evidentiary burden of the victim to the effects of the denial or deprivation of financial support. As it would be presumed that the accused had the general intent to commit such denial or deprivation, the victim and the prosecution would not have the impossible task of proving the state of mind of the accused.

Proceeding from this premise, it is respectfully submitted that the elements of Section 5(e) should be as follows:

- 1) The offended party is a woman and/or her child or children;
- 2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
- 3) The offender (a) deprived or (b) threatened to deprive the woman or her children of financial support legally due *to* her or her family, or (c) deliberately provided the woman's children insufficient financial support;
- 4) *The act of the offender had the purpose or effect of controlling or restricting the woman's or her child's movement or conduct.*

Meanwhile, the elements of Section 5(i) should be as follows:

- 1) The offended party is a woman and/or her child or children;
- 2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;

¹⁸¹ Parts of the following recommendation were based on the round table discussion conducted by the University of the Philippines Gender Law and Policy Program on April 26, 2023, regarding the recent Supreme Court decisions on R.A. NO. 9262. In particular, the author wishes to thank Prof. E. (Leo) Battad, Prof. Glenda Litong, Atty. Twyla Rubin, Atty. Hendrix Bongalon, and Ms. Jelen Paclarin for their insights on this matter.

- 3) The offender denies the woman and/or her child or children financial support that is legally due to her and/or her child or children; and
- 4) *The act of the offender causes the woman and/or her child or children mental or emotional anguish.*

It is further suggested that the trial court be tasked with inquiring into the totality of circumstances in order to allow the accused an opportunity to disprove the presence of general intent and provide a justification for the denial or deprivation of financial support. In this manner, the burden is not shifted to the victim and the prosecution to demonstrate the accused's specific intent or motive, but at the same time, the accused is able to rebut the imputation that they acted with malice.

To demonstrate, under Section 5(e), it will be presumed that the accused intended to deprive the woman or her child of financial support that is due to them pursuant to the third element. However, the prosecution will still have to prove the fourth element of control or restriction of her or her child's movement or conduct. In turn, the accused can provide evidence to disprove the third element, which can be done by establishing a lack of income, emergency reasons, circumstances outside of their control, and the like.

Under Section 5(i), it will be presumed that the accused intended to deny the woman or her child financial support that is due to them pursuant to the third element. However, the prosecution will still have to prove the fourth element of mental or emotional anguish caused to the woman or her child. Similarly, the accused can provide evidence to disprove the third element.

B. Alternative Penalties

Criminal penalties provide the necessary deterrent against the commission of violence against women. However, imprisonment is not the only way by which criminal penalties are meted out, nor is it necessarily the most effective type of penalty in reducing crime.¹⁸² Finding alternatives to imprisonment where appropriate is especially urgent in the Philippines,

¹⁸² See Robert Gillespie, *Fines as an Alternative to Incarceration: The German Experience*, 44 FED. PROBATION 20 (1980).

whose 370% jail congestion rate is one of the worst in the world.¹⁸³ Moreover, in relation to the crime of economic abuse, it may be counterproductive to imprison the perpetrator, where they would be deprived of the opportunity to earn an income.

As Congress deliberates on the necessary amendments to R.A. No. 9262,¹⁸⁴ it may be useful to consider the following alternative penalties for economic abuse to be included:

- 1) *Fines or economic penalties.* At present, R.A. No. 9262 imposes the penalties of imprisonment and a fine concurrently,¹⁸⁵ but granting courts the discretion to impose them concurrently or alternatively may be more effective. For instance, courts are given the discretion to impose fines in lieu of imprisonment for violations of Batas Pambansa Blg. 22 or the Bouncing Checks Law.¹⁸⁶ Fines for economic abuse can be made commensurate to the income of the offender¹⁸⁷ in order to serve as an effective deterrent without being unduly harsh on those with limited incomes. The payment of such fines may also be a more direct and effective response to the problem of insufficient financial support from the accused, to the extent that such will be paid out to the victim.
- 2) *Status penalties.* These penalties deny the offender specified rights in the community, such as holding certain positions or practicing particular professions.¹⁸⁸ These should relate the loss of status to the offense of economic abuse, and should not prevent the offender from earning a livelihood.¹⁸⁹ Status penalties are already incorporated into Philippine statutes, such as the RPC.¹⁹⁰

¹⁸³ CNN Philippines Staff, *Jail congestion rate drops to 370% - BJMP*, CNN PHILIPPINES, Mar. 17, 2023, at <https://www.cnnphilippines.com/news/2023/3/17/jail-congestion-rate-drops.html>.

¹⁸⁴ Press and Public Affairs Bureau, *Panel Conducts Initial Deliberation on E-VAWC Bills*, REPUBLIC OF THE PHILIPPINES HOUSE OF REPRESENTATIVES WEBSITE, (Jan. 25, 2023), <https://www.congress.gov.ph/photojournal/zoom.php?photoid=4380>.

¹⁸⁵ R.A. No. 9262, § 6.

¹⁸⁶ SC Adm. Circ. No. 12-2000 (2001). Re: Penalty for Violation of B.P. Blg. 22.

¹⁸⁷ UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), *HANDBOOK OF BASIC PRINCIPLES AND PROMISING PRACTICES ON ALTERNATIVES TO IMPRISONMENT* 29–30 (2007).

¹⁸⁸ *Id.* at 29.

¹⁸⁹ *Id.*

¹⁹⁰ REV. PEN. CODE, art. 30–34.

- 3) *Suspended sentences*. In these cases, “a sentence of imprisonment is pronounced, but its implementation is suspended for a period on a condition or conditions by the court.”¹⁹¹ The court can thus require the offender to fulfill their obligations of financial support, failing which the sentence of imprisonment will commence. This would likewise allow the offender an opportunity to make good on the obligation of support. At present, the Philippines allows suspended sentences only for minors.¹⁹²

It is not contended that these recommendations should replace imprisonment altogether. However, depending on the circumstances of the perpetrator, the foregoing may be more effective solutions. This way, the criminality of economic abuse is maintained and the parties intended to be protected by R.A. No. 9262 do not lose one of the few countermeasures they have against economic abuse. At the same time, they may abate the Supreme Court’s fear that too many husbands and fathers will face incarceration.

VII. CONCLUSION

Many survivors do not report incidents of abuse, often out of fear of further violence from their partners, fear for the safety of their children and loved ones, fear that they will not be believed or supported, and fear that they will not be able to provide for themselves and their families if they leave.¹⁹³ In the Philippines, many cases of violence and abuse likely go unreported, while several of those that are documented at the barangay level never even reach the courts because victims are reluctant to press charges against their partners.¹⁹⁴ They fear being “scandalized” and losing their families’ breadwinners.¹⁹⁵ They choose to endure, and the cycle of violence never ends.

Our policies and institutions should provide effective and safe avenues for women to come forward. Our government agencies and duty-

¹⁹¹ UNODC, *supra* note 187, at 33.

¹⁹² Rep. Act No. 9344 (2006), § 38. Juvenile Justice and Welfare Act of 2006.

¹⁹³ See Balbir Gurm & Jennifer Marchbank, *Why Survivors Don’t Report*, in MAKING SENSE OF A GLOBAL PANDEMIC: RELATIONSHIP VIOLENCE AND WORKING TOGETHER TOWARDS A VIOLENCE FREE SOCIETY (2020).

¹⁹⁴ Bobby Lagsa, *Many battered women still keep abuses to themselves – DSWD*, RAPPLER, Nov. 29, 2022, at <https://www.rappler.com/nation/mindanao/dswd-report-battered-women-still-keep-abuses-themselves/>.

¹⁹⁵ *Id.*

bearers should be able to recognize and respond to incidents of domestic violence, with the awareness that it can be committed in insidious ways. Our courts should be instruments of justice that hold perpetrators accountable and give survivors what they are due.

Instead, *Acharon* leads to the very consequence *Garcia v. Drilon* intended to prevent: the retraumatization of victims. Retraumatization occurs when individual actors who are part of the justice system cause survivors to relive their trauma through negative statements, behaviors, and attitudes that can lead to them feeling blamed, doubted, and ignored.¹⁹⁶ Retraumatization can cause long-lasting mental health issues, a distorted sense of self-worth, and added suffering to what survivors are already coping with.¹⁹⁷ Considering the onerous evidentiary standards set by *Acharon*, survivors may feel that their lived experiences of economic abuse have been invalidated and are not recognized under the law as domestic violence. They may also feel that the risks and disadvantages of contacting their abusers or their abusers' relatives and friends to gather sufficient evidence outweigh the potential gain of winning in court. In the long run, women who are subjected to economic abuse may be discouraged from pursuing their legal remedies, knowing that adducing satisfactory evidence has become practically impossible.

It is often said that domestic violence thrives in silence. The *Acharon* ruling makes that silence deafening. Our justice system should empower and protect survivors of abuse, not aggravate their suffering or negate their stories. R.A. No. 9262 was a victory hard-fought by survivors for survivors. When they speak, it is our duty to listen.

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¹⁹⁶ Tucker, *supra* note 165, at 362–63.

¹⁹⁷ *Id.* at 365.