POST-KNUTSON NAVIGATION: ANALYZING PHILIPPINE LAWS ON CHILD PROTECTION IN LIGHT OF THE APPLICATION CRISIS IN *KNUTSON V. SARMIENTO-FLORES*[*]

Alexandra Mojica Pascua[**]

ABSTRACT

The 1987 Constitution of the Philippines provides the time-honored principle and duty that the State shall defend the right of children and protect them from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. Aside from the Constitution, the Philippines enacted several laws that reflect this principle including Republic Act ("R.A.") No. 7610 or the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" which is at the forefront of penalizing various forms of abuse against children. According to the Supreme Court, R.A. No. 7610 is a piece of legislation that is enacted to supply the inadequacies of existing laws treating crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the "Child and Youth Welfare Code."

Aside from such laws, the Philippines is equipped with a handful of laws and rules that touch on various aspects of child protection and abuse such as R.A. No. 9208 on anti-trafficking of persons, R.A. No. 9321 on child labor, A.M. No. 03-04-04-SC or the "Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors," R.A. No. 9262 on violence against women and their children ("VAWC"), R.A. No. 9344 on juvenile justice and welfare, R.A. No. 9775 on anti-child pornography, R.A. No. 11642 on adoption, and R.A. No. 11648 on anti-rape, sexual exploitation, and abuse. However, in the landmark case of *Knutson v. Sarmiento-Flores*, the Supreme Court effectively removed the barrier that

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[**] J.D., University of the Philippines (2023). B.A. History, University of the Philippines (2017).

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distinguishes R.A. No. 7610 on child abuse from R.A. No. 9262 on violence against women and their children. Contrary to the legislative intent behind R.A. No. 9262 or the "Anti-VAWC Act," the Supreme Court held that a father may apply for a protection order under the Anti-VAWC Act on behalf of his child against the latter's mother. This pronouncement goes against the very nature of the Anti-VAWC Act as gender-based legislation. This paper presents a critique of the Court's holding and ratio in *Knutson v. Sarmiento-Flores*, and offers a detailed harmonization of the existing laws and jurisprudence on child protection that may become useful in reconsidering the doctrine espoused by the said case in order (1) to remove the confusion created with regard to the applicability of our laws on child protection and abuse; and (2) to preserve the character of R.A. No. 9262 as gender-based legislation.

I. INTRODUCTION

The year 2004 was a victorious time for the women and children of the Philippines. It was the year when a law was enacted to address the harsh reality that continues to prevail in spaces inside and outside our homes. According to a 2017 report from the Philippine Statistics Authority, "26% [among] ever-married women aged 15 to 49 in the Philippines experienced physical, sexual or emotional violence from their husband or partner."[1] Furthermore, citing the 2017 National Health Demographic Survey, a report from the United Nations Population Fund Philippines found that "[one] in 20 women and girls [(i.e., 5%)] aged 15 to 49 experienced sexual violence in their lifetime."[2] We have a long history of colonialism and patriarchy to blame. As a result of the cultural shift brought into our country by Western imperialists, patriarchy was weaved into our moral fabric and collective consciousness as Filipinos such that men are deemed the heads of families and leaders of the nation. Men occupy the highest ranks in various fields and professions, while women are made to stay at home. Of course, women have made incredible progress throughout the years as they continue to thrive in pursuit of equal rights and opportunities. However, what remains a societal illness that has yet to be cured is the reality that women more often become the victims of abuse and violence than men.

This progressive piece of legislation that aims to cure such illness is none other than Republic Act ("R.A.") No. 9262 otherwise known as the "Anti-Violence Against Women and Their Children Act" ("Anti-VAWC Act").[3] Not only was it crafted to address abuse and violence committed against women in intimate relationships, it was also made to extend protection to the children of abused women. This breathes life into the unmistakable truths that many children are likewise afflicted, either directly or indirectly, by the abuse and violence experienced by their mothers; and that the abuse and violence committed against children gravely affect the hearts and minds of their own mothers. To understand the nature of the said law, it is essential to examine two aspects of the law, namely, *violence against women* and *violence against children of women committed by the latter's past or present intimate partners.*

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[1] Lisa Grace Bersales, *One in four women have ever experience spousal violence (preliminary results from the 2017 National Demographic and Health Survey)* (2018), *available at* https://psa.gov.ph/content/one-four-women-have-ever-experienced-spousal-violence-preliminary-results-2017-national.

[2] *Gender-Based Violence Prevention and Response*, UNITED NATIONS POPULATION FUND PHIL. WEBSITE, *at* https://philippines.unfpa.org/en/node/15307.

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

The Anti-VAWC Act is celebrated for being a responsive tool in combating the most common type of domestic violence—that which is committed by men against women. As can be gleaned from the 2004 plenary deliberations cited in the case of *Garcia v. Drilon*[4] on the coverage of Senate Bill No. 2723, Senator Loren Legarda stated the following:

> [I] believe that there is a need to protect women's rights especially in the domestic environment. As I said earlier, there are nameless, countless, voiceless women who have not had the opportunity to file a case against their spouses, their live-in partners after years, if not decade[s], of battery and abuse. If we broaden the scope to include even the men, assuming they can at all be abused by the women or their spouses, then it would not equalize the already difficult situation for women. […] *Whether we like it or not, it is an unequal world. Whether we like it or not, no matter how empowered the women are, we are not given equal opportunities especially in the domestic environment where the macho Filipino man would always feel that he is stronger, more superior to the Filipino woman.*[5]

Moreover, as also held by the Supreme Court in *Garcia*:

> According to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), *violence against women (VAW) is deemed to be closely linked with the unequal power relationship between women and men otherwise known as "gender-based violence."* Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And *VAW is a form of men's expression of controlling women to retain power.*[6]

Thus, there is no room for doubt as to one of the main purposes of the law is to afford protection to Filipino women. However, a recent Supreme Court case caught the attention of the country during the earlier parts of

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[4] [Hereinafter "*Garcia*"], G.R. No. 179267, 712 Phil. 44, June 25, 2013.

[5] *Id.* at 86–87. (Emphasis supplied.)

[6] *Id.* at 91–92 *citing* Phil. Comm'n on Women, Nat'l Machinery for Gender Equality and Women's Empowerment, *Violence Against Women (VAW)*, *available at* http://www.pcw.gov.ph. (Emphasis supplied.)

2023.[7] The case of *Knutson v. Sarmiento-Flores*,[8] a decision penned by Associate Justice Mario Lopez last July 12, 2022, shook the status quo interpretation of the phrase "*their children*" as found in both the title and the body of the Anti-VAWC Act. In the said case, the Supreme Court held that mothers who abuse their own children may be held liable under the Anti-VAWC Act in suits filed by the fathers of their minor children.

This ruling is the first of its kind since the said law was enacted in 2004. It arose from a Petition for *Certiorari* filed by Randy Knutson arguing that the legislative intent behind the law is to provide all possible protection to children, and therefore the mother who abuses her own child may be considered an offender under the law.[9] This is in contradiction to the explicit intent of the law which is to protect women.

How can a woman become an offender under a law that was created for the protection of women? How can a woman who abuses her own child become liable under a law that considers women, like herself, as offended parties and victims?

Despite how it was surprisingly decided, the legal significance of *Knutson* is that it is one of the handful of cases which recognizes the two-fold purpose of the law: that the law not only protects women, but *also their children.* A dive into the *ponencia* in *Knutson* will aid our understanding of the Court's appreciation of this two-fold purpose, the propriety of the Court's decision, and the legal reasoning behind it.

II. AN ISSUE OF FIRST IMPRESSION: *KNUTSON V. SARMIENTO-FLORES*

A. The Decision

The main issue in *Knutson* is whether the Anti-VAWC Act may be resorted to by a husband against his wife on behalf of their common child. This issue is a novel and polarizing matter given that the Anti-VAWC Act has always been construed as legislation created solely for the benefit and protection of women and their children.

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[7] *See* Jairo Bolledo, *Mothers, too, can be sued under VAWC law – Supreme Court*, RAPPLER, Feb. 9, 2023, *at* https://www.rappler.com/nation/supreme-court-ruling-mothers-can-be-sued-violence-against-women-children-law/.

[8] [Hereinafter "*Knutson*"], G.R. No. 239215, July 12, 2022. The page numbers for this case are based on the copies of the full text and separate opinions in the Supreme Court Website.

[9] *Id.*, slip op. at 6.

The factual antecedents of the case revolve around a mother, Rosalina, who allegedly hurt and threatened to kill her daughter Rhuby. For purposes of assessing the *Knutson* decision, the following are the acts committed by Rosalina against Rhuby:

1. Rosalina spent weeks in gambling dens and left Rhuby under the care of strangers;
2. Rosalina maltreated her own mother in Rhuby's presence;
3. *Rosalina hurt Rhuby by pulling her hair, slapping her face and knocking her head;*
4. *Rosalina pointed a knife at Rhuby and threatened to kill her;*
5. Rosalina even texted her husband about her plan to kill their daughter and commit suicide; and
6. Marijuana plants were confiscated in the residence of Rosalina (therefore placing Rhuby in a toxic and unhealthy environment).[10]

In December 2017, the father of the abused child, Randy, filed on behalf of his daughter a Petition under the Anti-VAWC Act for the issuance of *Temporary and Permanent Protection Orders*, stating that Rosalina placed Rhuby in a harmful environment deleterious to the child's physical, emotional, moral, and psychological development. He prayed that he be given custody of their child.[11]

In his Petition, Randy argued that the Anti-VAWC Act uses the term "any person" which is not limited to male offenders and thus the mother of an abused child may be held liable. The Regional Trial Court of Taguig City (RTC) dismissed the Petition stating that Rosalina cannot be considered an offender under the Anti-VAWC Act. The offender, according to the RTC, in the context of such a case is a husband or former husband; or a person who has or had a sexual relationship with the woman-victim of violence. Thus, since a father is not a "woman victim of violence" according to the RTC, it was erroneous for Knutson to file a petition based on the Anti-VAWC Act.[12]

Upon the RTC's denial of his motion for reconsideration, Randy filed a Rule 65 petition directly with the Supreme Court. Overturning the pronouncements made by the RTC, the Supreme Court held that Randy may seek remedies under the Anti-VAWC Act because according to the law,

[10] *Id.,* slip op. at 2.
[11] *Id.*
[12] *Id.,* slip op. at 2–4.

> "parents or guardians of the offended party" may file for protection orders. As statutory construction basis, the Court used "*Absolute Sentencia Expositore Non Indiget*" or "the law speaks in clear language and no explanation is required." Moreover, the Supreme Court found that the statute did not qualify who between the parents of the victim may apply for protection orders. As basis, it used the principle of "*Ubi lex non distinguit, nee nos distinguere debemus*" or "when the law does not distinguish, the courts must not distinguish."[13]

In addition, since "the law does not single out the husband or the father as the culprit," and since the statute uses the gender-neutral word "person" as the offender, the Court held that the mother may thus be the offender and the father may sue on behalf of their common child.[14] To further support the position that the children being protected do not necessarily refer to those under the care of the woman-victim of violence, the Supreme Court observed that "the penal provisions under Section 5 of the Anti-VAWC Act do away with the conjunctive word 'and' and use[ ] the disjunctive term 'or,'" suggesting disassociation or independence of "mother" and "child."[15] Hence, a woman may be the offender under a law protecting women and their children.

Aside from these construction aids and textual analysis of the law, the Court also turned to the suppletory application of the Rules of Court, specifically Section 5 of Rule 3, stating that since "a minor or a person alleged to be incompetent may sue […] with the assistance of his father," then Knutson may assist his daughter in filing the petition as the parent of the minor offended party.[16] Based on the foregoing, the Petition for Certiorari was granted, and a Permanent Protection Order was issued.[17]

It appears that *Knutson* was decided with heavy reliance on statutory construction of the language of the law, without proper contemplation of the spirit of the law which is to address gender-based violence and to protect women and their children. Worse, in arriving at the conclusion that a woman may be an offender under this law, the Supreme Court defined the Anti-VAWC Act's concept of "children" in contradiction with the legislative intent behind the law, which is that children under the law's protection must be children of women who are abused by their past or present intimate partners. In other words, a child who is abused by his or her mother is not one of the

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[13] *Id.,* slip op. at 8–9.
[14] *Id.,* slip op. at 10.
[15] *Id.,* slip op. at 14.
[16] *Id.*, slip op. at 9.
[17] *Id.*, slip op. at 16.

"children" contemplated by the Anti-VAWC Act, and consequently, the child's mother cannot be the offender as defined in the Act.

B. Incorrect statutory interpretation and application of the Anti-VAWC Law in *Knutson*

In the earlier case of *Garcia* which discussed the constitutionality of the Anti-VAWC Act, the Supreme Court categorically stated that the Act is "a landmark legislation that defines and criminalizes acts of violence against women and their children (VAWC) *perpetrated by women's intimate partners*, *i.e.*, husband; former husband; or any person who has or had a sexual or dating relationship, or with whom the woman has a common child."[18]

The list is clear and exclusive. "[When] the provisions [of the law] are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation."[19] This is one of the basic principles of statutory construction in Philippine law.

In *Knutson*, the majority opinion created a statutory construction problem that led to a novel interpretation of the law. Such a problem was exhaustively discussed by all the dissenting Justices in the case.

1. The Dissenting Opinions

According to the dissent of Justice Caguioa, a detailed examination of the Anti-VAWC Act reveals "that the law is not intended to apply to all children victimized by violence or abuse, but only to the child or children of the woman subjected to violence or abuse."[20] Justice Caguioa observed that "all [throughout] the text of the law, the term 'child' is always associated with the term 'woman.'"[21] Hence, it was unexpected for the *ponencia* to rule that the penal provisions under Section 5 of the Act do away with the conjunctive word "and" and use the disjunctive term "or" which therefore, signals disassociation or independence.

Justice Singh adds that the *ponencia* seems to have nitpicked Section 5 and disregarded all the other provisions which indicate that "the conjunctive word 'and' as well as the pronoun 'her' or 'their' in between the words 'women'/'woman' and 'child'/'children' were used all throughout the law,

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[18] *Garcia*, 712 Phil. 44 at 66 *citing* The Anti-VAWC Act, §3(a).
[19] Dubongco v. Comm'n on Audit, 848 Phil. 366, 378 (2019).
[20] *Knutson*, slip op. at 3 (Caguioa, *J.*, *dissenting*).
[21] *Id.*

including its short title[.]"[22] A thorough scan of the entire law gives no other interpretation than that the child cannot be separated from the woman-victim.

Chief Justice Gesmundo aptly emphasized in his dissenting opinion that "the policy of liberal construction, which the majority opinion used to strengthen its conclusion, does not mean that the Court in the guise of interpretation can enlarge the scope of the statute or include under its terms, situations that were not provided or intended."[23] He reproduced Section 3(a) of the Act which defines "*violence against women and their children"* in his dissenting opinion as follows:

> (a) "Violence against women and their children" refers to any act or a series of acts committed ***by any person*** *against a* ***woman*** who is ***his wife*****, former wife,** or against a woman with *whom the person has or had a sexual or dating relationship, or with whom he has a common child, or* against ***her child*** whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.[24]

According to Chief Justice Gesmundo, "the key factor is the relationship of the child with the woman who is not the offender as shown by her characterization as a victim."[25] Hence, he posits, "when the child is the offended party, the statute contemplates that there are at least three persons involved: (1) the offender; (2) the child who is the offended party; and (3) a woman who has a relationship with both the offender and the child-offended party."[26] The case of *Knutson*, however, involves only two participants according to the Chief Justice—the mother as the supposed offender and her child as the offended party. The Anti-VAWC Act is therefore inapplicable to the *Knutson* case.

To support this textual analysis, Chief Justice Gesmundo also stated in his dissenting opinion that the exchanges in the Bicameral Conference Committee emphasized the emotional connection or dependency between the child-offended party and the woman. As also observed by Justice Caguioa, the child which the consolidated bill therefore intends to protect is the child

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[22] *Id.*, slip op. at 5 (Singh, *J.*, *dissenting*).

[23] *Id.*, slip op. at 3 (Gesmundo, *C.J.*, *dissenting*), *citing In re* Letter of Ct. of Appeals Justice Vicente S.E. Veloso for Entitlement of Longevity Pay, 760 Phil. 62, 97 (2015).

[24] *Id.* (Emphasis supplied.)

[25] *Id.*, slip op. at 4 (Gesmundo, *C.J.*, *dissenting*), *citing In re* Letter of Ct. of Appeals Justice Vicente S.E. Veloso for Entitlement of Longevity Pay, 760 Phil. 62, 97 (2015).

[26] *Id.*

affected by the previous or current abusive relationship involving the woman-victim. This can be gleaned from the bicameral deliberations, cited by Justice Caguioa, which states that "this is not a law for all children everywhere under all circumstances, but rather children who are confronted with this abusive relationship within the family abode."[27]

Justice Zalameda also provided in his dissenting opinion that the language of the law, specifically Section 5(a), should be understood "within the context that what the law intends to address is gender-based violence, and children of women victims of such violence, usually caught in the crossfire, are incidental beneficiaries of the law."[28]

This is not to say that the objective of protecting children is subordinate to that of protecting women. Reading the text of the law and analyzing it with the intent of its framers show that in a situation where a woman is a victim of violence and has a child or children who are likewise considered victims in connection with the violence perpetrated against the woman, the law imposes liability on the person or persons inflicting both forms of violence.

To risk repetitiveness, the abuse or violence experienced by the child contemplated in the Anti-VAWC Act is necessarily connected to the abuse experienced by the child's mother. Congress made the progressive move of deciding that the Act does not solely speak of violence against women. It clarified that abuses in intimate relationships are not confined to only the intimate partners. More often than not, children within the periphery of these abusive relationships are likewise in need of rehabilitation and protection because they are also considered as victims. In contrast, if a child is abused by his or her own mother, such abuse or violence is not connected to the *abuse of a woman*. Instead, it is one *committed by a woman*. The legislative intent is clear that the child contemplated in R.A. No. 9262 is the child of an *abused woman*, the same being the primary consideration for the enactment of the said law.

2. The Legislative History of R.A. No. 9262

The intent of the legislators may be gleaned from the records of the various committee meetings and hearings of the Senate and the House of Representatives.

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[27] *Id.*, slip op. at 13 (Caguioa, *J.*, *dissenting*) *quoting* Bicameral Conference Committee on the Disagreeing Provisions of S. No. 2723 and H. Nos. 5516 and 6054, 12th Cong., 194–201 (2004).

[28] *Id.*, slip op. at 12 (Zalameda, *J.*, *dissenting*).

R.A. No 9262 was a result of the joint efforts of the Senate and the House of Representatives through Senate Bill No. 2723 titled, "An Act Defining Violence Against Women and their Children, Prescribing Penalties Therefor, Providing for Protective Measures for Victims, and for Other Purposes;" House Bill No. 5516 titled, "An Act Defining the Crime of Abuse of Women in Intimate Relationships, Prescribing Penalties therefor, Providing for Protective Measures for Victims and for Other Purposes;" and House Bill No. 6054 titled "An Act Defining Domestic Violence, Providing Protection Measures and Penalties Therefor, and for Other Purposes."[29] For simplicity, these bills were called the "Anti-VAWC Act" of the Senate, and the "Anti-AWIR Act" and "Anti-Domestic Violence Act" of the House of Representatives.

i. House of Representatives

On February 19, 2002, the Committee on Women of the House of Representatives began deliberating on the originating bills of House Bill No. 5516 on "Abuse of Women in Intimate Relationships" ("AWIR") and House Bill No. 6054 on "Domestic Violence." The Committee was tasked to determine whether the two kinds of bills should be consolidated into one bill given their similar nature (i.e., both were aimed at protecting victims of domestic or household abuse who are usually women). Resource speakers voiced out their support for either of the two kinds, with pro-AWIR supporters strongly advocating that a majority of the victims of violence within the households and within relationships are women.[30] Thus for them, the bill should be focused on women-victims. In support of the opinion that the law should protect women, one of the pro-AWIR advocates, Atty. Evalyn Ursua of the Women's Legal Bureau, stated that the Committee should be sensitive to the distinct character and nature of the Anti-AWIR Bill so that it can serve the interests of women without arming the abuser.[31] Atty. Ursua proposed this on the premise that consolidating the two types of bills is dangerous since the domestic violence-focused bills cover any person, including a man, who may be a victim of domestic violence.[32]

On the other hand, there were speakers, such as Ms. Grace W. Mallorca-Bernabe, the representative of the National Commission on the Role of Filipino Women, who expressed support for the consolidation of the two

[29] S. Journal, 12th Cong., 3rd Sess., 286–292 (Jan. 29, 2004).
[30] Comm. on Women, 12th Cong., 1st Sess., 7–8 (Feb. 19, 2002).
[31] *Id.* at 40.
[32] *Id.* at 39.

bills but with a similar position that it should "focus on women." According to Ms. Mallorca-Bernabe, "[i]t is the women who are always victims of violence in the family and intimate relationships, and this is primarily attributed to […] unequal power relations between them. Women, because of their powerlessness in relation to men, need special protection from the law."[33]

Such question of whether the two bills should be consolidated was resolved in the August 27, 2002 Meeting of the Committee on Women. They approved the Anti-AWIR Bill, and integrated the various components of the domestic violence bills with frameworks focusing on women, as seen in a drafted "Unity bill" proposed by "Task Force Maria," a coalition of women's organizations that participated in the deliberations. The said meeting was called for the purpose of deliberating on the said "Unity Bill," titled the "Violence Against Women and Other Persons in Intimate Relations Bill," which was drafted by Task Force Maria in August 16, 2002. This formed the basis for the Domestic Violence Bills which were, in turn, integrated into the Anti-AWIR Bill. According to Rep. Lagman Luistro, one of the members of the Committee, the Unity bill largely composed the template for the Anti-AWIR Bill, the only difference being that it included other persons, such as men, as victims of violence.[34]

In the same meeting, Chairperson Hon. Josefina M. Joson agreed with Rep. Bellaflor Angara-Castillo's sentiment that the bill to be crafted must be focused on women,[35] thereby limiting the coverage of the bill to women-victims. Rep. Angara-Castillo's statement reads:

> *[T]he legislation that we need right now is really a bill focused on women in intimate relationships because that is the gap in our present legislation.* It's not really about domestic violence where you include everybody within the household […] [T]he assumption that you can have violence against the women only within the home […] is not correct [b]ecause many acts of violence are committed against the women outside the home, in the workplace, or anywhere else […] We are not passing laws […] to cover exceptional groups, […] we are talking about passing a bill to remedy an existing problem.[36]

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[33] *Id.* at 17.
[34] Comm. on Women, 12th Cong., 34 (August 27, 2002).
[35] *Id.* at 10–11.
[36] *Id.* at 3–4. (Emphasis supplied.)

Resource speaker and Chairperson of the National Commission on the Role of Filipino Women, Ms. Aurora Javate-De Dios, similarly provided a statement that the bill should be focused on women, to wit:

> The reality is that in the Philippines and worldwide, it is women who are most predominantly and primarily battered. This is not to deny that there are men who are battered and the same is already being taken care of by other laws which is the same situation with children. The point of the law is to focus on women precisely because they are the predominant victims across classes whether they are poor, whether they are from urban areas or whether they are rich. But to include men on an equal level with women in this context is really denying the reality. *We are on the right track by identifying this as a gender-based issue that victimizes women primarily because they are women.*[37]

Thus, on October 8, 2002, the consolidated and substitute bill to House Bill Nos. 35, 584, 1011, and 1308, titled "An Act Defining the Crime of Abuse of Women in Intimate Relationships, Prescribing Penalties Therefor, Providing for Protective Measures for Victims and Other Purposes" was approved by the Committee on Women of the House of Representatives.[38] The domestic violence bills, seven in total, were referred to the Committee on Population and Family Relations on January 20, 2003.[39] It was clear on the face of the explanatory notes read by Rep. Darlene Antonino-Custodio, the author of two out of the seven domestic violence bills, that such bills similarly had in mind the primary purpose of protecting women. The explanatory note for House Bill Nos. 583 and 2753 reads:

> [D]omestic violence is belatedly being recognized as a serious threat to the safety and security of the vulnerable members of society. *Women victims, upon whom culture has imposed the burden of keeping the family intact, are sometimes left with no recourse but to suffer their ordeal in silence.* Children, innocent of ways of the world, has been puzzled and dazzled by violence being inflicted on them by the people they trust and look to for kindness and care.[40]

The sentiment was supported by other resource persons who raised that domestic violence generally means the abuse of women;[41] and that statistics show that domestic violence is a worldwide phenomenon involving

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[37] *Id.* at 19–20. (Emphasis supplied.)
[38] Comm. on Women, 12th Cong., 3 (Oct. 8, 2002).
[39] Comm. on Population and Family Relations, 12th Cong., 2 (Mar. 4, 2003).
[40] *Id.* at 3. (Emphasis supplied).
[41] *Id.* at 5.

women.[42] At this point, we can see that in both types of bills, the primary consideration is the welfare of abused women.

Both types of bills—the Anti-AWIR Bill and the Domestic Violence Bill—were eventually approved on second and third readings. The Anti-AWIR Bill was approved on second reading on December 18, 2002[43] and approved on third reading on February 5, 2003.[44] On the other hand, the Domestic Violence Bill was approved on second reading on June 3, 2003;[45] and approved on third reading on August 4, 2003.[46]

ii. Senate

In the Upper House during its 10th Congress, bills related to domestic violence were filed, namely: Senate Bill No. 356 ("An Act to Provide Comprehensive Program Against Wife Beating, Increasing Penalties for Habitual Offenders Thereof, and for Other Purposes") authored by Sen. Macapagal-Arroyo; and Senate Bill No. 1398 ("An Act Defining Domestic Violence Providing Penalties Therefor and Providing for Protection Orders") authored by Sen. Defensor-Santiago. Pursuant to the said filing of bills, meetings and hearings were held on March 12, 1996 and October 27, 1997, while Technical Working Group meetings were held on April 17, 1996 and July 5, 1996.[47]

During the 11th Congress, several bills related to domestic violence were also filed by Sen. Defensor-Santiago, Sen. Aquino-Oreta, and Sen. Roco. Joint meetings were subsequently held on January 27, 1999 and January 31, 1999 with the House of Representatives.[48]

On January 30, 2002, a joint session was held by the Committee on Youth, Women, and Family Relations with the Committee on Social Justice and Human Rights; the Committee on Constitutional Amendments, Revision

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[42] *Id.* at 13.

[43] Consideration of House Bill No. 5516 on 2nd Reading, 12th Cong., 181 (Dec. 18, 2002).

[44] Consideration of House Bill No. 5563 on 3rd Reading, 12th Cong., 124–126 (Feb. 5, 2003).

[45] Consideration of House Bill No. 6054 on 2nd Reading, 12th Cong., 113 (June 3, 2003).

[46] Consideration of House Bill No. 6054 on 3rd Reading, 12th Cong., 145 (Aug. 4, 2003).

[47] Comm. on Youth, Women and Family Relations joint with Comm. on Social Justice and Human Rights, Comm. on Constitutional Amendments, Revision of Laws and Codes, and Comm. on Finance, 12th Cong., 16–17 (Jan. 30, 2002).

[48] *Id.* at 17–18.

of Laws and Codes; and the Committee on Finance, to talk about eight Senate Bills composed of both the subject matters of Anti-AWIR and Anti-Domestic Violence.[49]

Alluding to the difference in coverage between the Anti-AWIR Bills and the Anti-Domestic Violence Bills, Atty. Ursua raised that the Senate Committees should "distinguish between abuse against women in intimate relationships, abuses against children, abuses against other persons in the household, and abuses against men in general."[50] She further expressed that the Senate Committees should not extend the same treatment given to abuses against women in intimate relationships to other forms of abuses owing to the former's particularity in character.[51] She mentioned that "the abuses against women in intimate relationships are products of the male-dominance and privilege which is characteristic of these relationships"[52] and that "the law to be made should specifically address gender-based violence which refers to violence that happens to women because they are women."[53]

In the Second Hearing held by the joint session of the Senate Committees on March 6, 2002, the consolidation of the bills into one comprehensive bill against violence against women was proposed by Ms. Arkoncel of the Soroptimists International of the Philippines. While this was supported by some advocates who deemed it more appropriate to have a wider coverage than one solely pertaining to women, particularly to avoid violating the equal protection clause of the Constitution, there were others who advocated solely for the Anti-AWIR Bill in order to create a law that would specifically address gender-based violence and discrimination against women. Atty. Ursua raised that the proposed law should be sensitive to the prevailing situation that women start from a more disadvantaged position. She added that the remedy to be created should be suitable for the protection of women and should not provide a weapon for those who are already advantaged, in terms of legal remedies, in the first place (i.e., men).[54]

Subsequent developments led to the creation of Senate Bill No. 2723 titled "An Act Defining Violence Against Women and Members of the Family Prescribing Penalties Therefor, Providing for Protective Measures for Victims

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[49] *Id.*

[50] *Id.* at 54.

[51] *Id.*

[52] *Id.* at 54.

[53] *Id.* at 56.

[54] Comm. on Youth, Women and Family Relations joint with Comm. on Social Justice and Human Rights, Comm. on Constitutional Amendments, Revision of Laws and Codes, and Comm. on Finance, 12th Cong., 54 (Mar. 6, 2002).

and for Other Purposes." At this point, the bills on AWIR and Domestic Violence have been consolidated. In her sponsorship speech during the Senate's December 10, 2003 Hearing on the Consideration of Senate Bill No. 2723, Sen. Ejercito-Estrada stated that the Committee [on Youth, Women, and Family Relations] had encountered difficulties in reconciling two similar bills which are basically identical but differ significantly in terms of coverage, as the former covers only women while the latter covers women, men, and children.[55] According to Sen. Ejercito-Estrada, after careful deliberations and consultations with a number of experts and affected sectors and non-governmental organizations ("NGOs"), the Committee decided to come up with a Committee Report as a synthesized measure, which "protects all family members, leaving no one in isolation, pursuant to the 'equal protection clause' of the Constitution and at the same time gives special attention to women, whose pitiful experience necessitates timely legal intervention."[56]

On January 12, 2004, in response to the varying stances on whether the law being crafted should focus on women or include a wider coverage of victims, Senator Legarda's co-sponsorship speech is noteworthy in leading the efforts towards gender-based legislation. In her speech she stated:

> I rise today to express my support and to enjoin the Senate to expeditiously pass this vital piece of legislation that would affirm our nation's commitment to protect the rights of women by eliminating all forms of violence and abuses committed against them.
>
> Women from all over the world experience different forms of abuse and violence, the common forms of which are domestic violence and intimate partner abuse.[57]

As a result, in the next session on January 14, 2004 on the consideration of Senate Bill No. 2723 on Second Reading, Senator Legarda proposed an omnibus amendment to delete the phrase "and members of the family" in the title and the body of the bill. Senator Legarda "stressed the need to protect women's rights especially in the domestic environment and broadening the scope of the bill to include men would not equalize the already difficult situation of women."[58] After careful deliberation, Senator Sotto, as an amendment to the omnibus motion, proposed to include children, in the

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[55] S. Journal, 12th Cong., 3rd Sess., 914 (Dec. 10, 2003).
[56] *Id.* at 915.
[57] S. Journal 49, 12th Cong., 982 (Jan. 12, 2004).
[58] S. Journal, 12th Cong., 3rd Sess., 27 (Jan. 14, 2004).

general sense, in the coverage of the bill.[59] Such Legarda-Sotto Amendment was approved by the Body. Subsequently, on January 19, 2004, the Body approved on second and third reading Senate Bill No. 2723 titled "An Act Defining Violence Against Women and Children, Prescribing Penalties Therefor, Providing for Protective Measures for Victims, and for Other Purposes."[60]

iii. Bicameral Conference Committee

On January 26, 2004, a meeting was held by the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2723[61] and House Bill Nos. 5516[62] and 6054.[63] Chairperson Ejercito-Estrada stated that Senate Bill No. 2723 is an improved and substitute bill "embodying certain provisions of the domestic violence and AWIR bills."[64] He added that the Senate Panel of the Bicameral Conference Committee proposes that the coverage of the measures be the women and children.[65]

Still, there were disagreements among members of the House Panel as to the coverage of the proposed bill, with Rep. Antonino-Custodio advocating for a more domestic scope (i.e., to include all relationships of women, such as her parents, children, siblings, and other relatives within the fourth degree of consanguinity);[66] and Rep. Angara-Castillo opposing saying that including all relationships of women would lose sight of the fact that the bill being passed is *for women* and that the bill is a "recognition that the crime against women is gender-based."[67] Rep. Angara-Castillo added that the law should not pertain to all kinds of violence committed against women because "that can be very well covered by the Revised Penal Code and other existing laws [whereas,] [w]hat we are concerned about here is passing a bill recognizing the right of women to be free from abuse and violence because they are women."[68] Supporting Rep. Castillo-Angara's sentiment, Sen. Flavier

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[59] *Id.* at 28.

[60] S. Journal, 12th Cong., 3rd Sess., 93-94 (Jan. 19, 2004).

[61] S. No. 2723, 12th Cong., 3rd Sess. (2003). The Anti-Violence Against Women and Family Members Act of 2003.

[62] H. No. 5516, 12th Cong., 2nd Sess. (2004). The Anti-Abuse of Women in Intimate Relationships Act.

[63] H. No. 6054, 12th Cong., 2nd Sess. (2004). The Anti-Domestic Violence Act.

[64] Bicameral Conference Committee Meeting on the Disagreeing Provisions of S. No. 2723 and H. Nos. 5516 and 6054, 12th Cong., 10 (2004).

[65] *Id.* at 11.

[66] *Id.* at 17.

[67] *Id.* at 20.

[68] *Id.* at 21

raised that insofar as the Senate discussions went, the Senate's view is in the spirit of what Rep. Castillo-Angara stated.[69]

Relevant to the current title of R.A. No. 9262, Rep. Sarenas brought up for clarification of the panels that they were not talking about just any child, but rather a child of a woman victim of violence. She added that the children whom Congress should cover under the proposed law are "the children of the woman from a previous marriage or relationship, her common children with the perpetrator, her adopted children and those children who live with her and are dependent on her emotionally."[70] Such discussion led to Rep. Marcos proposing that the senate version of the law be read as "An Act Defining Violence Against Women *and their* Children" to take into consideration the concern of Rep. Sarenas that the law prioritizes and pertains to children in abusive families.[71] The pertinent discussion during the meeting reads:

> REP. ANTONINO-CUSTODIO. Ma'am, question. Actually, may incident kasi, tunay na incident na nangyari sa amin na yung anak is, actually hindi n'ya anak, […] anak nung asawa n'ya, pero, parang she was still binded [sic] by that relationship kasi kahit hindi n'ya anak yung bata, kahit papa'no lumaki na sa kanya[.]So, dependent sa kanya—so, may hold pa rin 'yung asawa n'ya dahil dun sa anak nung asawa. That's an actual case, eh, in our area.
>
> REP. MARCOS. I think such a situation would be covered in fact by women and their children, inasmuch as that child is dependent upon that mother, either as a ward or as an adopted child. So, okay, lang 'yun.
>
> REP. ANTONINO-CUSTODIO. Kasi baka—I mean, usually and even in some cases they are not adopted child—they are not adopted children[.]
>
> REP. MARCOS. No, even if they have not been officially adopted, it's tantamount to a ward relationship or dependency relationship. So, palagay ko covered na 'yon kasi they are children. Kasi nga, *I think there should be a distinction that this is not a law for all children everywhere under all circumstances, but rather children who are confronted with this abusive relationship within the family abode.*
>
> REP. ANTONINO-CUSTODIO. As long as, ma'am, I guess the intention in the Bicameral Conference Committee is really on record, think we will have no problem because when the court will

[69] *Id.* at 22.
[70] *Id.* at 194.
[71] *Id.* at 200.

> refer definitely to the minutes of the Bicameral Conference Meeting, then they will see that our intention is so. Just for the record.[72]

The body approved this amendment which led to the current title of R.A. No. 9262.

On January 29, 2004, the Conference Committee Report on the disagreeing provisions of Senate Bill No. 2710 and House Bill Nos. 5516 and 6054 was approved by the body with no objections. The said report provides that the Conference Committee agrees to adopt the Senate version (i.e., Anti-VAWC Act) as the working draft with the omnibus amendment that the phrase "Women and Children" be changed to "Women and Their Children;" and thus the title of the reconciled versions shall be read as "An Act Defining Violence Against Women and Their Children, providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes."[73] Having seen the true legislative intent behind R.A. No. 9262, the offenders and offended parties covered by the law are thus clear and explicit.

While the result of the Decision in *Knutson* is ideal because it gives life to Section 4 of the Act which mandates that the law "shall be liberally construed to promote the protection and safety of victims of violence against women and their children,"[74] *Knutson is a confusing precedent because its failure to look at legislative intent in interpreting an exceptionally important law not only alters the spirit of the law as intended by the Legislature, but also blurs the lines between existing laws and remedies on child protection.*

The Anti-VAWC Act's purpose of protecting a specific type of children is rendered meaningless as the law is now open to all types of child-victims as long as the act of abuse is among those enumerated under the law. *Knutson* effectively expanded the law's scope to the point of penalizing women who abuse their own children, even if the same can be properly penalized in other existing Philippine laws and rules.

The Philippines has long been equipped with a handful of national laws on child protection. No less than the 1987 Constitution provides for the principle of upholding the rights and welfare of Filipino children in that "[t]he State shall defend: […] (2) [t]he right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect,

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[72] *Id.* at 200–201. (Emphasis supplied.)

[73] S. Journal, Approval of the Conference Committee Report on S. No. 2723 and H. Nos. 5516 and 6054, 12th Cong., 3rd Sess., 286–292 (Jan. 29, 2004).

[74] Anti-VAWC Act, § 4.

abuse, cruelty, exploitation, and other conditions prejudicial to their development[.]"[75] This State duty is concretized through the various laws on child abuse and protection.

The misapplication of the relief under R.A. No. 9262 in *Knutson* calls for a comprehensive examination of these child abuse and protection laws in order to fully grasp the different types of remedies available for each form of child abuse. Repeating the general sentiment from the different dissenting opinions in *Knutson*, Randy was not without any legal remedy in this case for there is another law which he could have properly resorted to in order to save his daughter.

With the existence of laws, rules, and sufficient jurisprudence on child protection, an analysis of related laws and jurisprudence will determine if the expansion of the scope of the Anti-VAWC Act committed in the *Knutson* case is tantamount to judicial legislation.

III. THE PHILIPPINE LEGAL LANDSCAPE ON CHILD ABUSE AND PROTECTION PRIOR TO *KNUTSON V. SARMIENTO-FLORES*

The Philippines is not remiss in its duty to adhere to well-established principles of international law that promote and protect children and their rights, particularly the principle of "best interests of the child" which is the paramount rule when it comes to the welfare of children.[76]

The adoption of the principle of "best interests of the child" in our laws and jurisprudence is in compliance with the Convention on the Rights of the Child of 1989 ("CRC"),[77] as well as the Declaration of the Rights of the Child of 1959 ("DRC").[78] Under the DRC, Principle 2 states that:

> The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and

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[75] CONST. art. XV, § 3.

[76] Convention on the Rights of the Child [hereinafter "CRC"], art. 3, ¶ 1, Nov. 20, 1989, 27531 U.N.T.S. 1577, *available at* https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (last accessed April 26, 2024).

[77] *Id.*

[78] UN General Assembly, Declaration of the Rights of the Child [hereinafter "DRC"] princ. 2, Nov. 20, 1959, A/RES/1386(XIV), *available at* https://www.refworld.org/docid/3ae6b38e3.html (last accessed May 10, 2023).

> dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Likewise, the CRC provides that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."[79]

This principle not only imposes a duty on the parents, guardians, or persons having legal custody over children, but it also encourages the State to ensure that it takes all appropriate legislative, administrative, social, and educational measures to protect the child[80] and that in so doing, the best interests of the child shall always be paramount.

Not only is the duty to uphold the child's best interests found under principles of international law and the 1987 Constitution, but the same duty is likewise watermarked on different special laws and Supreme Court decisions on child welfare and protection.

A. National Laws on Child Protection

Presidential Decree ("P.D.") No. 603, otherwise known as "The Child and Youth Welfare Code," was enacted on December 10, 1974. It is the first legislation on child welfare and protection in the Philippines. Under the Code, the State recognizes that "[t]he Child is one of the most important assets of the nation [and that] [e]very effort should be exerted to promote [a child's] welfare and enhance [a child's] opportunities for a useful and happy life."[81] The Code provides for the rights of a child,[82] the responsibilities of a child,[83] the duties and liabilities of their parents as well as provisions on parental authority,[84] the State's duty to provide various forms of assistance to parents for the benefit of their children,[85] access to educational opportunities,[86] and child and youth welfare services,[87] among other provisions. In addition,

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[79] CRC, art. 3, ¶ 1, Nov. 20, 1989, 27531 U.N.T.S. 1577, *available at* https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (last accessed April 26, 2024).

[80] CRC, art. 19, ¶ 1, Nov. 20, 1989, 27531 U.N.T.S. 1577, *available at* https://www.refworld.org/docid/3ae6b38f0.html (last accessed May 10, 2023).

[81] CHILD & YOUTH WELFARE CODE, art. 1.

[82] Art. 3.

[83] Art. 4.

[84] Art. 46–60.

[85] Art. 61–66.

[86] Art. 71–78.

[87] Art. 117–140.

children's rights against abuse or neglect are concretized in the Code through penal provisions[88] punishing parents, guardians, and heads of institutions or foster homes with custody over a child for acts involving abandonment, neglect, and cruelty, among others.

Eighteen years later, Congress legislated R.A. No. 7610,[89] or the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act," which was enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions that are prejudicial to their development.[90] This law provides the State's commitment to protect and to rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development.[91] According to the Supreme Court in the case of *Briñas v. People*,[92] this piece of legislation addresses the inadequacies of existing laws on crimes committed against children, namely, the Revised Penal Code ("RPC") and Presidential Decree No. 603. According to the Court in *Briñas*, R.A. No. 7610 has stiffer penalties for crimes committed against children, it provides a means by which child traffickers could easily be prosecuted and penalized, and expands the definition of child abuse to include "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development."[93] Prohibited acts under R.A. No. 7610 are categorized into four, namely, child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse.[94]

R.A. No. 7610 is a notable law because it recognizes and specifies what "child abuse" means and how it may come in many other forms[95] in contrast to the general types of punishable acts under Article 59 of P.D. No. 603 and the RPC. One of the many important provisions under the law is Section 3(b)(2) which punishes "any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being."[96] This provision is significant because it controverts the traditional idea that child abuse is usually physical. It is also an excellent example of how

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[88] Art. 59–60.

[89] Rep. Act No. 7610 (1992). The Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

[90] § 2(1).

[91] § 2(2).

[92] [Hereinafter "*Briñas*"], 905 Phil. 488 (2021).

[93] Rep. Act No. 7610 (1992), § 3.

[94] § 3(a).

[95] § 3(b).

[96] § 3(b)(2).

the law places incredible value on a child's worth and dignity. R.A. No. 7610 is, in terms of criminal liability, comprehensive and assertive in its goal to protect children from all forms of abuse.

Three years later, on May 26, 2003, R.A. No. 9208,[97] or the "Anti-Trafficking in Persons Act," was enacted, which aims to eliminate trafficking in persons especially of women and children. Although this law does not in any way amend or repeal the provisions of R.A. No. 7610,[98] it provides that the "recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation" shall be considered as trafficking in persons regardless of the existence of certain elements provided in the general definition of "trafficking of persons" such as threat or use of force, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits.[99] Also relevant to child protection, the law provides that trafficking is qualified when the trafficked person is a child[100] and when "the offender is an ascendant, parent, […] guardian or a person who exercises authority over the trafficked person."[101]

During the same year on July 28, R.A. No. 9231,[102] otherwise known as "An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child," was enacted. This law amends existing provisions on working children found in R.A. No. 7610. The general rule under R.A. No. 9231, as lifted from R.A. No. 7610, is that children below 15 years of age shall not be employed. Two exceptions to this rule are provided, to wit: (1) when the child directly works under the sole responsibility of his or her parents or legal guardian and where only members of his or her family are employed;[103] and (2) where a child's employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential.[104]

With regard to the second exception, R.A. No. 9231 now provides that as to the requirement of the creation of an employment contract concluded between the employer and the child's parents or legal guardian, the contract must be with the "express agreement of the child concerned, if

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[97] Rep. Act No. 9208 (2003). The Anti-Trafficking in Persons Act of 2003.
[98] § 32.
[99] § 3-A.
[100] § 6-A.
[101] § 6-D.
[102] Rep. Act No. 9231 (2003), *amending* Rep. Act No. 7610.
[103] § 2, *amending* Rep. Act No. 7610, § 12, ¶ 1.
[104] § 2, *amending* Rep. Act No. 7610, § 12, ¶ 2.

possible[.]"[105] This would certainly mean that should a child be capable of understanding the nature and effects of the employment being entered into, though not on the same level of comprehension as that of his or her parents or guardians nor that of the employer, then the child must necessarily consent to the agreement before the employment can take effect. On this point, there may be a need for judicial interpretation of the phrase "if possible" given that persons below the age of 18 are not capable of giving consent.[106]

Other pertinent provisions introduced by R.A. No. 9231 pertain to working hours,[107] income of the child,[108] a prohibition on the "worst forms of child labor,"[109] and a prohibition on child models being included in commercials or advertisements that are both directly and indirectly promoting alcoholic beverages, tobacco, gambling, violence, and pornography.[110]

In the same year, A.M. No. 03-04-04-SC or the "Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors" was issued. It provides for who may file a petition for custody of minors,[111] where to file such a petition,[112] what the rules on temporary visitation rights[113] and protection orders are,[114] and what factors to consider in determining who shall have custody over a child. Such factors shall revolve around the "best interests of the minor child" which refer to "the totality of circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the minor encouraging to his or her physical, psychological, and emotional development."[115]

The law applied in the *Knutson* case, the Anti-VAWC Act,[116] was enacted a year later on March 8, 2004. The principle behind the law is that the State values the dignity of women and children, guarantees "full respect for human rights," and "recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security."[117] As can be gleaned from these principles, both

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[105] § 2, *amending* Rep. Act No. 7610, § 12, ¶ 1.
[106] CIVIL CODE, art. 38, 1327.
[107] Rep. Act No. 9231 (2003), § 3, *amending* Rep. Act No. 7610 (1992), § 12-A.
[108] § 3, *amending* Rep. Act No. 7610 (1992), § 12-B.
[109] § 3, *amending* Rep. Act No. 7610 (1992), § 12-D.
[110] § 5, *amending* Rep. Act No. 7610 (1992), § 14.
[111] CUSTODY OF MINORS RULE, § 2.
[112] § 3.
[113] § 15.
[114] § 17.
[115] § 14.
[116] Rep. Act No. 9262 (2004). Anti-VAWC Act.
[117] § 2.

women and children are being protected by the law. The types of violence contemplated are enumerated under Section 3 on *Definition of Terms*, to wit: physical violence, sexual violence, psychological violence, economic abuse, among others.[118] These categories also provide examples which must be read in connection with Section 5, which enumerates the specific and exclusive prohibited acts of violence against women and their children. R.A. No. 9262 also provides for protection orders from the barangay and the courts to prevent the commission of further acts of VAWC. These protection orders have three types: barangay protection orders ("BPO"), temporary protection orders ("TPO") and permanent protection orders ("PPO").[119] Moreover, R.A. No. 9262 outlines the duties and responsibilities of barangay officials, law enforcers, prosecutors and court personnel, social workers, healthcare providers, and other local government officials in responding to complaints of VAWC or requests for assistance.[120]

A year later on April 28, 2006, R.A. No. 9344[121] or the "Juvenile Justice and Welfare Act of 2006" was passed which covers different stages involving "children at risk" and "children in conflict with the law" from prevention to rehabilitation and reintegration.[122] R.A. No. 9344 was amended in 2013 by R.A. No. 10630.[123] Under the law, a "child at risk" refers to one who is vulnerable to and at the risk of committing criminal offenses because of personal, family, and social circumstances, while a "child in conflict with the law" refers to one who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.[124] One of the State policies behind the law is that the State recognizes the right of every child alleged as, accused of, adjudged, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth.[125] Such rights also include the right not to be subjected to cruel punishment, the right to not be imposed a sentence of death or life imprisonment, the right not to be unlawfully and arbitrarily deprived of liberty with detention as a disposition of last resort, the right to be treated with humanity and respect, among others.[126]

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[118] § 3(a)(A)–(D).
[119] § 8.
[120] §§ 29–32.
[121] Rep. Act No. 9344 (2006). The Juvenile Justice and Welfare Act of 2006.
[122] § 1.
[123] Rep. Act No. 10360 (2013). The Charter of the Province of Davao Occidental.
[124] Rep. Act No. 9344 (2006) § 4(d)–(e).
[125] § 2(d).
[126] § 5.

The law also provides that the minimum age of criminal responsibility is 15 years of age at the time of the commission of the offense. As for a child above the age of 15 but below 18, they are likewise exempt unless the child has acted with discernment.[127] Other salient features of R.A. No. 9344 as amended, are its chapters on intervention programs on prevention of juvenile delinquency;[128] and diversion programs that children in conflict with the law shall undergo, instead of court proceedings, pursuant to the objectives of restorative justice.[129] While the law sees the child as an offender rather than an offended party, this law remains relevant because its whole spirit is geared towards child protection, prioritizing a child's rehabilitation over their punishment.

On November 17, 2009, R.A. No. 9775[130] or the "Anti-Child Pornography Act" was enacted. The State's policy behind creating this law is to protect every child from all forms of exploitation and abuse, specifically from "the use of a child in pornographic performances and materials and from the inducement or coercion of a child to engage or be involved in pornography through whatever means."[131] "Child pornography" is defined in the said law as "any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of [a] child engaged or involved in real or simulated explicit sexual activities."[132] The acts punishable under the law include hiring or using a child to perform in pornography materials; creating and producing any form of child pornography; possessing, accessing, publishing, distributing, selling, and promoting any form of child pornography; providing a venue for the commission of the prohibited acts; for parents or legal guardians to knowingly permit their child to engage in pornography; luring or grooming a child; and committing pandering.[133] The law also provides for mandatory duties of internet service providers,[134] mall owners or operators and owners or lessors of other business establishments,[135] and internet content hosts[136] to assist the State in attaining the goal and purpose of the law. The gravity of child pornography is evident especially since the law states child pornography to be a transnational crime.[137]

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[127] § 6.
[128] §§ 18–19.
[129] §§ 23–31.
[130] Rep. Act No. 9775 (2009). The Anti-Child Pornography Act of 2009.
[131] § 2.
[132] § 3(b).
[133] § 4.
[134] § 9.
[135] § 10.
[136] § 11.
[137] § 22.

On January 6, 2022, R.A. No. 11642[138] or the "Domestic Administrative Adoption and Alternative Child Care Act" (i.e., the new adoption law) was enacted. The policy of the State behind this law is to ensure that every child remains under the care and custody of his or her parents and that every child is provided with love, care, understanding, and security towards the full and harmonious development of his or her personality.[139] "Only when such efforts prove insufficient and no appropriate placement or adoption within the child's extended family is available shall adoption by an unrelated person be considered."[140]

One of the significant developments presented by this law is the reorganization of the Inter-Country Adoption Board (ICAB) into a one-stop quasi-judicial agency on alternative child care called the "National Authority for Child Care (NACC)."[141] The law covers all matters pertaining to alternative child care,[142] including declaring a child legally available for adoption; domestic administrative adoption; adult adoption; foster care under the "Foster Care Act of 2012;"[143] adoptions under the "Simulated Birth Rectification Act;"[144] and inter-country adoption under the "Inter-Country Adoption Act of 1995."[145] Since adoption shall now be administratively handled by the NACC, the law removed the judicial process for adoption which "would address a major hurdle that has dragged legal adoption for years and entailed costs."[146] By reforming our law on adoption, R.A. No. 11642 in effect provides more protection to prospective adoptive children by ensuring that they are not only placed in the care of fit and well-meaning people, but that they are also rid of the strenuous, lengthy, and redundant parts of the process of adoption under the old law.

Finally, on March 4, 2022, R.A. No. 11648[147] or "An Act Promoting for Stronger Protection Against Rape and Sexual Exploitation and Abuse, Increasing the Age for Determining the Commission of Statutory Rape […]"

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[138] Rep. Act No. 11642 (2022). The Domestic Administrative Adoption and Alternative Child Care Act.

[139] Art. 1, § 2.

[140] Art. 1, § 2.

[141] Art. 2, § 5.

[142] Art. 2, § 6.

[143] Rep. Act No. 10165 (2012). The Foster Care Act of 2012.

[144] Rep. Act No. 11222 (2018). The Simulated Birth Rectification Act.

[145] Rep. Act No. 8043 (1995). The Inter-Country Adoption Act of 1995.

[146] Leila Salaverria, *New adoption law welcomed: 'For families created by destiny,'* PHIL. DAILY INQUIRER, Jan. 16, 2022, *at* https://newsinfo.inquirer.net/1540936/new-adoption-law-welcomed-for-families-created-by-destiny.

[147] Rep. Act No. 11648 (2021), *amending* the REV PEN. CODE.

was enacted wherein the RPC, Anti-Rape Law of 1997, and the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act were amended. In this new and forward-looking law, the age for determining the commission of statutory rape is now raised from 12 to 16 years old. In other words, statutory rape is committed against children below 16 years old and consent is immaterial in such cases. The law amended the RPC and Anti-Rape Law provisions on rape;[148] and the RPC provisions on qualified and simple seduction.[149] As for the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, the provisions amended were on child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development.[150]

B. Jurisprudence on Child Abuse and Protection

The "best interests of the child" principle is likewise reflected in numerous decisions by the Supreme Court. Jurisprudence on child abuse and protection under R.A. No. 7610 ("Special Protection of Children Against Abuse, Exploitation and Discrimination Act"), R.A. No. 9262 ("Anti-VAWC Act"), R.A. No. 9208 ("Anti-Trafficking in Persons Act"), and R.A. No. 9775 ("Anti-Child Pornography Act") are instructive.

1. Child Abuse under R.A. No. 7610

According to the Supreme Court in the case of *People v. Tulagan*,[151] R.A. No. 7610 does not only protect a special class of children, i.e., those who are "exploited in prostitution or subjected to other sexual abuse" for it covers all crimes against them that are already punished by existing laws. This is because the policy behind the law is to "provide stronger deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination and other conditions prejudicial to their development."[152] Most of the existing cases on child abuse under R.A. No.

[148] § 1.
[149] § 2.
[150] § 3.
[151] [Hereinafter "*Tulagan*"] G.R. No. 227363, 896 SCRA 308, 403, Mar. 12, 2019.
[152] *Id.* at 37.

7610 concern criminal cases arising out of Sections 5(a), 5(b),[153] and 10(a)[154] in relation to provisions found in the RPC and special penal laws. These cases commonly pertain to sexual abuse, physical abuse, and verbal abuse.

i. Sexual Abuse (Section 5 of R.A. No. 7610)

Section 5 of R.A. No. 7610 has a two-part nature. Section 5(a) refers to promoting, inducing, or facilitating child prostitution; while Section 5(b) pertains to committing sexual intercourse or lascivious conduct towards a child "exploited in prostitution," in which reference is made to paragraph (a), and a child "subjected to other sexual abuse." Section 5 provides in its very first paragraph the following statement: "Children, whether male or female, who *for money, profit, or any other consideration* or *due to the coercion or influence of any adult*, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse."[155] Paragraphs (a) and (b) should be read in connection with this first paragraph.

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[153] Rep. Act No. 7610 (1992), § 5. **"**Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]" *Id.*

[154] § 10(a). "Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period." *Id.*

[155] § 5. (Emphasis supplied.)

As held in the case of *Amployo v. People* citing *People v. Larin,* "Section 5 of Rep. Act No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation."[156] Thus, as held in *Caballo v. People*, a child is deemed "subjected to other sexual abuse" when the child indulges in lascivious conduct under the coercion or influence of any adult.[157]

As early as 1998, the Supreme Court decided *People v. Calma*[158] which involves Section 5(b) of R.A. No. 7610. Particularly, the crime charged was one count of acts of lasciviousness penalized under Art. 336[159] of the RPC, in relation to Section 5(b)[160] of R.A. No. 7610. In this case, petitioner Calma not only forced himself on his two daughters aged 14 and 10 by raping them, but he also committed acts of lasciviousness against his four-year-old and youngest daughter by inserting his finger into the child's vagina. The Supreme Court upheld his conviction for two counts of rape and one count of act of lasciviousness.

The Supreme Court did not make an explanation in *Calma* as to the charge of acts of lasciviousness being related to R.A. No. 7610, but this is one of the first few cases that applied said law. This case is a recognition of the interpretation that the phrase "subjected to other sexual abuse" in Section 5(b) applies even in cases where there are no prior acts of sexual abuse. In other words, the phrase "subjected to other sexual abuse" does not necessarily mean that there should be prior acts of sexual abuse before a case may fall under Section 5(b).

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[156] G.R. No. 157718, 457 SCRA 282, 295, Apr. 26, 2005 *citing* People v. Larin, G.R. No. 128777, 297 SCRA 309, 325–26, Oct. 7, 1998.

[157] [Hereinafter "*Caballo*"], G.R. No. 198732, 698 SCRA 227, 240, June 10, 2013.

[158] [Hereinafter "*Calma*"], G.R. No. 127126, 295 SCRA 629, Sept. 17, 1998.

[159] REV. PEN. CODE, art. 336. "Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prisión correccional*." *Id.*

[160] Rep. Act No. 7610 (1992). § 5(b). The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

* * *

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or *subject to other sexual abuse*; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.] (Emphasis supplied.)

Such interpretation was consistently affirmed by the Supreme Court in subsequent decisions. In the more recent case of *Quimvel v. People*, the Supreme Court held that "the very definition of 'child abuse' under Section 3(b) of R.A. No. 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of."[161] Thus, the Court concluded that "a violation of Section 5(b) of R.A. No. 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront."[162]

While the above-mentioned doctrine on non-habituality under Section 5 (b) is clear, there was still some confusion with regard to Section 5 as a whole which the Supreme Court eventually clarified in recent cases.

One of these is the question on the *consent* of minors in cases falling under Section 5(b) of R.A. No. 7610.

On one hand, the 2007 case of *Malto v. People*[163] and the 2013 case of *Caballo v. People*[164] both ruled that consent is immaterial in criminal cases involving violation of Section 5 of R.A. No. 7610. According to the Court in *Malto*, "[a] child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person."[165] As a related issue, the Court in that case held that the "sweetheart theory" may not be invoked as a defense in cases prosecuted under Section 5 of R.A. No. 7610. As for *Caballo*, the Court held that "[t]he language of the law is clear: it seeks to punish 'those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse.'"[166] The Court added that unlike the crime of rape, consent is immaterial in cases involving a violation of Section 5. Instead, what is punished is the mere act of having sexual intercourse or committing lascivious conduct with a child.

On the other hand, the 2020 case of *Bangayan v. People*[167] clarified such rulings in *Malto* and *Caballo* and provided a new position on the application of Section 5 of R.A. No. 7610 in relation to pertinent provisions under the RPC as amended. In *Bangayan*, the 27-year-old petitioner was charged with violation

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[161] [Hereinafter "*Quimvel*"], 808 Phil. 889, 926 (2017).

[162] *Id.*

[163] [Hereinafter "*Malto*"], G.R. No. 164733, 533 SCRA 643, Sept. 21, 2007.

[164] *Caballo*, 698 SCRA at 227.

[165] *Malto,* 533 SCRA 643, 661.

[166] *Caballo*, 698 SCRA at 230.

[167] [Hereinafter "*Bangayan*"], G.R. No. 235610, 954 SCRA 392, 413–418, 437–438, Sept. 16, 2020.

of Section 5(b) of R.A. No. 7610 for having sexual intercourse with a 12-year-old minor who is the younger sister of the wife of the petitioner's brother. The minor was pregnant when the incident was reported, and she eventually gave birth to a baby. The petitioner and the minor subsequently had a second child. The petitioner in this case argues, among others, that he should not be convicted because they are in fact lovers and that they already have their own family.

The Supreme Court acquitted Bangayan on the theory that the sexual intercourse between him and his minor "lover" was consensual. It explained that Section 5(b) qualifies that when the victim is under 12 years old, the perpetrator shall be prosecuted as statutory rape under the RPC as amended by R.A. No. 8353[168] or the Anti-Rape Law. Under the Anti-Rape Law, rape is committed when the offended party is under 12 years old even if none of the circumstances of force, threat, intimidation, being deprived of reason, being unconscious, use of fraudulent machination, or grave abuse of authority are present.[169] The 2020 case of *People v. ZZZ* provides that where the victim is below 12 years old, "the only subject of inquiry is whether carnal knowledge took place because the victim's consent to the vile act holds no relevance in statutory rape."[170]

However, according to the Court in *Bangayan*, the law is noticeably silent with respect to situations where a child is between 12 years old and below 18 years of age and engages in sexual intercourse not "for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group."[171] Taking into consideration the principle that penal laws should be strictly construed against the State and liberally in favor of the accused, the Supreme Court reconciled the gap in the law by providing that the qualifying circumstance cited in Section 5(b) of R.A. No. 7610 leaves room for a child between 12 and 17 years of age to give consent to the sexual act. Hence, consent is now considered material in violations of Section 5(b) of R.A. No. 7610 except when the same falls under the proviso on statutory rape. To support this conclusion, the Supreme Court added that it cannot completely rule out the capacity of a child between 12 years old and 18 years old to give sexual consent, taking into account "teenage psychology and predisposition in this day and age."[172]

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[168] Rep. Act No. 8353 (1997). The Anti-Rape Law of 1997.
[169] § 2.
[170] G.R. No. 226144, 959 SCRA 1, 13, Oct. 14, 2020.
[171] *Bangayan,* 954 SCRA at 411.
[172] *Bangayan*, 954 SCRA at 417.

The Supreme Court's analysis and decision in *Bangayan* is surprising given the factual circumstances of the case. It seems that the Supreme Court prioritized filling the gap in the law but neglected to give paramount consideration towards the "best interests of the child" in the case. The Supreme Court cannot be faulted for considering as controlling the fact that the accused and the minor already have two children and hence may be deemed a family, as well as the fact that there was an Affidavit of Desistance filed by the minor. However, it failed to factor in the following: the huge age gap between the minor and the accused, the fact that the minor's age was exactly 12 years old (i.e., the very first year in the 12 to 17 age range), the social case study report that stated, among other things, that the minor suffered "multiple emotional crisis [sic] that hampered her growth and development," and the possibility that the minor's contemporaneous and subsequent acts are products of a continuing influence that has possibly brainwashed the child into thinking that her situation is normal and that she truly consented to the relationship. Echoing a line from Justice Leonen's dissent to the majority opinion in the *Bangayan* case, "[i]t is difficult to accept how the victim, who just turned 12 years old at that time, could have entered into a relationship with an adult 15 years her senior." In a way, the Supreme Court put primacy on the family as an important institution as well as on the best interests of the "couple's" two children, forgetting that the mother is a child as well.

Unfortunately, at the time the case was decided, the age for statutory rape was still below 12 years old. The Supreme Court's ruling on materiality of consent in *Bangayan* is reasonable if it was decided after the enactment of R.A. No. 11648 which increased the age of statutory rape from 12 years old to 16 years old. That a 12-year-old minor could consent to sexual intercourse with a person very much her senior is unimaginable.

Hypothetically altering the age of the minor in *Bangayan* to 16, it may then be argued that a 16-year-old has the ability to know the nature and effects of the relationship and acts she is participating in considering "teenage psychology and predisposition in this day and age." However, the same should not be presumed and the best interests of the minor, i.e., the "totality of circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the minor encouraging to his or her physical, psychological and emotional development"[173] should still be of primary and utmost importance.

ii. Physical, Verbal, and Other Forms of Abuse (Section 10 of R.A. No. 7610)

[173] CUSTODY OF MINORS RULE, § 14.

Section 10 pertaining to "other acts of abuse" is most relevant to the subject matter of the *Knutson* case. Section 10(a)[174] is read in connection with Section 3(b)[175] on the enumerated types of child abuse, as well as Article 59 of P.D. No. 603, which likewise provides for instances of child abuse where criminal liability shall attach.

The Court in *Sanchez v. People* explained that Section 10(a) "punishes not only those enumerated under Article 59 of P.D. No. 603, but also four distinct acts, i.e., (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development."[176] Thus, an accused can be convicted of violation of Section 10(a) if he commits any of the four different acts therein. "The prosecution need not prove that the acts of child abuse, child cruelty, and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts."[177]

Existing jurisprudence on acts committed under Section 10(a) commonly involve violations of the same in relation to Section 3(b)(2), which provides that child abuse includes "[a]ny act by *deeds or words* which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being." Hence, Section 3(b)(2) in relation to Section (10)(a) concerns *physical* and *verbal* abuse coupled with effects on the dignity and worth of a child.

2. Physical Abuse

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[174] § 10(a). "Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period." *Id.*

[175] § 3(b). "'Child abuse' refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

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

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

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

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death." *Id.*

[176] G.R. No. 179090, 588 SCRA, 747, 761, June 5, 2009, *citing* Araneta v. People, G.R. No. 174205, June 27, 2008, 556 SCRA 323.

[177] *Id.*

In the 2014 case of *Rosaldes v. People*, which involved a public school teacher maltreating her student for accidentally bumping the former's knee while she was asleep, the Supreme Court held that although she can discipline her student, "her infliction of the physical injuries on him was unnecessary, violent and excessive" given that "[t]he boy even fainted from the violence suffered at her hands."[178] The Supreme Court considered the teacher's acts as those which debase, degrade or demean the intrinsic worth and dignity of a child as a human being as found under Section 3(b)(2) especially since "the physical pain experienced by the victim had been aggravated by an emotional trauma that caused him to stop going to school altogether out of fear of the petitioner, compelling his parents to transfer him to another school[.]"[179]

In contrast, the public school teacher accused of child abuse in the 2020 case of *Javarez v. People* was not held accountable under Section 10(a) in relation to Section 3(b)(2). The Supreme Court observed that while hitting one of his students with a broomstick is reprehensible, the teacher did so only to stop such student and another classmate from fighting.[180] This inquiry on the existence of intent was influenced by the case of *Bongalon v. People*. *Bongalon* provided the doctrine that "not every instance of the laying of hands on a child constitutes the crime of child abuse" and that it is "[o]nly when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse." Otherwise, the RPC shall apply.[181]

In *Bongalon*, the accused struck the child with his palm hitting the latter at his back and his left cheek and uttered derogatory remarks to the latter's family. The Supreme Court held that the laying of hands was "done at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters." Hence, the teacher in *Javarez* and the father in *Bongalon* were not found guilty of violating R.A. No. 7610 because in essence there was no intent to maltreat nor debase the students. They were instead found guilty of slight physical injuries under Article 266 of the RPC.

3. Verbal Abuse

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[178] G.R. No. 173988, 737 SCRA 592, 601, Oct. 8, 2014.
[179] *Id.* at 604.
[180] [Hereinafter "*Javarez*"], G.R. No. 248729, 949 SCRA 426, Sept. 3, 2020.
[181] [Hereinafter "*Bongalon*"], G.R. No. 169533, 694 SCRA 12, 14–15, Mar. 20, 2013.

As regards the verbal form of committing child abuse under Section 10(a) in relation to Section 3(b)(2),[182] the 2020 case of *Talocod v. People*[183] and the 2021 case of *Briñas*[184] are instructive.

In *Talocod*, petitioner was coming to the rescue of her own child, when the latter informed petitioner that the child-victim was reprimanding him, by pointing a finger at the child-victim and furiously shouting, "*Huwag mong pansinin yan. At putang ina yan. Mga walang kwenta yan. Mana-mana lang yan!*"[185] While in the case of *Briñas*, the directress of the school who is also a mother of one the students uttered the following defamatory words against the minor complainants, to wit: "*pinakamalalandi, pinakamalilibog, pinakamahader[a] at hindot*," "*[m]ga putang ina kayo[,"]* and other similar words.[186] The two minor complainants were students who used the directress' daughter's identity in a controversial text conversation. The directress uttered the said remarks in front of other people; and even raised her middle finger at the minor complainants and threatened to sue them.

In both cases, the Supreme Court held that there was no intent to debase, degrade, nor demean the intrinsic worth and dignity of the children because their utterances are mere "offhand remarks out of parental concern for her child"[187] and were "carelessly done out of anger, frustration, or annoyance."[188]

While the Supreme Court must apply the law on a case-to-case basis, the rule provided for by all these cases on physical and verbal abuse is that intent, as well as the totality of circumstances of the case, shall decide the existence of child abuse under Section 3(b)(2). Moreover, ascertaining the reason of the accused for committing the act complained of determines whether there is maltreatment or not as provided under the law.

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[182] Rep. Act No. 7610, § 3(b)(2). "Special Protection of Children Against Abuse, Exploitation, and Discrimination Act. "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

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(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being[.]"

[183] [Hereinafter "*Talocod*"], 887 Phil. 793 (2020)..

[184] *Briñas*, 905 Phil. 488 (2021).

[185] *Talocod,* 887 Phil. at 796–797.

[186] *Briñas,* 905 Phil. at 489.

[187] *Id.* at 499, *citing* Escolano v. People, G.R. No. 226991, Dec. 10, 2018, 889 SCRA 98, 112.

[188] *Id.*

Unfortunately, the cases of *Bongalon*, *Talocod*, and *Briñas* have also provided the rather problematic doctrine that anger, frustration, and impulse can become tickets straight out of a finding that there was an intent to "debase, degrade, or demean the intrinsic worth and dignity of children."

In the case of *Bongalon* for example, there were many acts committed allegedly in defense of the accused's own children. As opposed to the intention of the public school teacher in *Javarez* to stop the children from fighting, the accused in *Bongalon*, in the name of defending his children, went beyond acceptable norms of conduct by committing multiple acts of both physical and verbal abuse. That the accused was overcome by anger and frustration should not be a defense in a case wherein the acts themselves, as well as the derogatory remarks made, strike at a child's body, mind, and spirit. The same can be said regarding the cases of *Talocod* and *Briñas*. The Court must assertively go beyond examination of the reason for the act; and place more weight on the impact of such acts on the child if it desires to stay true to the "best interests of the child" principle.

i. Child Trafficking and Pornography under R.A. No. 9208 and R.A. No. 9775

With regard to anti-trafficking of children, an important jurisprudential doctrine is provided in the 2020 case of *People v. Estonilo*.[189] In this case, the crime charged was two counts of qualified trafficking in persons under Section 4(a)[190] in relation to Section 6(a)[191] of R.A. No. 9208. The accused coerced a minor (AAA) to have sex with another minor (BBB) at a nearby vacant lot in exchange for PHP 300 so that the latter will learn how to perform sexual acts. The crime was modified by the Court of Appeals into two counts of violation of Section 5(a)(5)[192] of R.A. No. 7610. The appellate

[189] [Hereinafter "*Estonilo*"], 888 Phil. 332 (2020).

[190] "It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage[.]" Rep. Act No. 9208 (2003), § 4(a).

[191] § 6(a). **"**The following are considered as qualified trafficking:

(a) When the trafficked person is a child[.]" *Id.*

[192] Rep. Act No. 7610 (1992), § 5(a)(5). **"**The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

* * *

court found that no trafficking existed as "there was no person to whom [Estonilo] endorsed or recruited his victims," and the sexual acts transpired not between AAA or BBB and any of Estonilo's clients, but between AAA and BBB themselves.[193]

Correcting the Court of Appeals, the Supreme Court held that "neither the presence of the trafficker's clients, nor their intercourse with the victim/s, is required to support a finding of trafficking."[194] Citing the case of *People v. Aguirre*, the Court in *Estonilo* held it sufficient that "the accused has lured, enticed[,] or engaged its victims or transported them for the established purpose of exploitation. To be sure, the gravamen of the crime of trafficking is 'the act of recruiting or using, with or without consent, a fellow human being for [inter alia,] sexual exploitation.'"[195] Hence, the accused was found guilty of Qualified Trafficking in Persons (R.A. No. 9208), and not of Child Prostitution (R.A. No. 7610).

On child pornography, there is one Supreme Court decision that sheds light on the application of the Anti-Child Pornography law. The 2021 case of *Cadajas v. People* is about an online chat conversation through Facebook Messenger between two lovers, the 24-year-old petitioner and a 14-year-old minor[196]. The latter's mother discovered that the petitioner was coaxing her daughter to send him photos of the latter's breasts and vagina. The 14-year-old relented and sent to the petitioner the photos he was asking.[197] The two criminal cases filed against petitioner were for violation of Section 10(a) of R.A. No. 7610 and for child pornography as defined and penalized under Section 4(c)(2)[198] of R.A. No. 10175 or the Cybercrime Prevention Act of

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(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution." *Id.*

[193] *Estonilo,* 888 Phil. at 342.

[194] *Id.*

[195] *Estonilo,* 888 Phil. at 343.

[196] [Hereinafter "*Cadajas*"], 915 Phil. 220 (2021).

[197] *Id.* at 221–222.

[198] Rep. Act No. 10175 (2011), § 4(c)(2). "The Cybercrime Prevention Act of 2012. The following acts constitute the offense of cybercrime punishable under this Act:

* * *

(c) Content-related Offenses:

* * *

(2) Child Pornography. — The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a

2012 in relation to Sections 4(a)[199], 3(b)[200] and 3(c)(5)[201] of R.A. No. 9775. Only the latter was sustained.

According to the Court, "one can be convicted for committing child pornography upon proof of the following: (1) victim is a child; (2) victim was induced or coerced to perform in the creation or production of any form of child pornography; and (3) child pornography was performed through visual, audio or written combination thereof by electronic, mechanical, digital, optical, magnetic or any other means."[202] In this case, all elements of child pornography are present. The Supreme Court also took the time to clarify that based on the Pre-Bicameral Conference Committee meeting that led to the enactment of R.A. No. 9775, in order for there to be conviction under R.A. No. 9775 for possession, intent to sell is not a prerequisite since the act of merely possessing child pornography materials, for personal use or enjoyment, is in itself punishable under the law.

The significance of convicting a person of child pornography under the Anti-Child Pornography Act in relation to the Cybercrime Prevention Act of 2012 is that the penalty for the offense is raised to one degree higher than that provided in the former law, whenever the offense is committed through a computer system as in the case of *Cadajas*. Another significant doctrine provided by the *Cadajas* case is that the sweetheart defense is not allowed in cases involving child pornography.[203]

ii. Child Abuse in Relation to Intimate Relationships under R.A. No. 9262

To show the consistency of the Supreme Court's interpretation and application of R.A. No. 9262, the Court in a long line of cases encountered

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computer system: Provided, That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775." *Id.*

[199] Rep. Act No. 9775 (2009), § 4. "It shall be unlawful for any person: (a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography[.]" *Id.*

[200] § 3(b). **"**'Child pornography' refers to any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of child engaged or involved in real or simulated explicit sexual activities." *Id.*

[201] § 3(c)(5). **"**'Explicit Sexual Activity' includes actual or simulated –

* * *

(5) lascivious exhibition of the genitals, buttocks, breasts, pubic area and/or anus[.]" *Id.*

[202] *Cadajas,* 915 Phil. at 235.

[203] *Id.* at 246–49.

VAWC cases wherein, true to the provisions of the law, the victim is a woman, her child or a child under her care, or both. While most of the cases pertain to women being abused, there are a few cases, commonly those of psychological or economic abuse, that show how children are "incidental beneficiaries" of the law.

a. Psychological Abuse

As early as 2014, the Supreme Court was faced with the case of *Tua v. Mangrobang* wherein the accused committed abusive conduct not only against his wife, but also against their common children. According to the wife, "petitioner had threatened to cause her and the children physical harm for the purpose of controlling her actions or decisions; that she was actually deprived of custody and access to her minor children; and, that she was threatened to be deprived of her and her children's financial support."[204] Unfortunately, the case was a petition solely for the issuance of a protection order like the *Knutson* case, but without a discussion on child victims under R.A. No. 9262. While the Court affirmed the existence of abusive acts committed against the children, i.e., feeding his other children with the food which another child spat out and repeatedly threatening the crying child with a belt to stop him from crying, the Supreme Court was not able to take the opportunity to expound on the violation committed against the child victims themselves.[205] What is clear, however, is that the law indeed covers children of abused women.

People v. BBB[206] is a 2020 case involving a woman who filed a complaint against her common-law husband, the petitioner who was a Philippine Army soldier, for violation of Article 266-A[207] of the RPC as

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[204] [Hereinafter "*Mangrobang*"], 725 Phil. 208, 211 (2014).

[205] *See id.* at 223.

[206] People v. BBB, 886 Phil. 298 (2020)..

[207] REV. PEN. CODE, art. 266-A, *amended by* Rep. Act No. 8353 (1997). "Rape is committed:

(1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

(a) Through force, threat, or intimidation;

(b) When the offended party is deprived of reason or otherwise unconscious;

(c) By means of fraudulent machination or grave abuse of authority; and

(d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

(2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." *Id.*

amended, in relation to R.A. No. 7610, and violation of Section 5(i)[208] of R.A. No. 9262. This case is a noteworthy example of the contrast between R.A. No. 7610 and R.A. No. 9262 and how, remotely like in *Knutson*, a case that cannot fall under R.A. No. 9262 can fall under other laws especially R.A. No. 7610.

Petitioner in this case had sexual intercourse (i.e., qualified rape) with his stepdaughters who are biological daughters of his common-law wife. Such acts caused the petitioner's common-law wife mental and emotional anguish, public ridicule, and humiliation.[209] The crimes charged were two separate types of offenses, one being qualified rape under the RPC in relation to R.A. No. 7610 pertaining to the two stepdaughters as victims; while the other being violence against women and children under R.A. No. 9262 pertaining to the mother as the victim. The elements for conviction under Section 5(i) of R.A. No. 9262 are the following:

> (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 the financial support for the purpose of causing the woman and/or her child or children mental or emotional anguish.[210]

The Supreme Court found that all elements were present in this case. In redressing the damage experienced by the minor victims, however, the Court was confined to only applying the provisions of the RPC in relation to R.A. No. 7610. As can be seen from the facts of the case, it was only the

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[208] Anti-VAWC Act, § 5(i). "The crime of violence against women and their children is committed through any of the following acts:

* * *

(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." *Id.*

[209] People v. BBB, 886 Phil. at 303–304.

[210] Calingasan v. People [hereinafter "*Calingasan*"], G.R. No. 239313, Feb. 15, 2022, at 8 *citing* Acharon v. People, G.R. No. 224946, Nov. 9, 2021.

mother who had "suffered mentally and psychologically" under R.A. No. 9262 due to the crime committed by the accused against her two daughters.[211] While the accused also committed deplorable acts against the children of his common-law wife, Section 5(g) provides that "[c]ausing or attempting to cause the woman or her child to engage in any sexual activity xxx" is punishable under R.A. No. 9262 if the same "[…] does not constitute rape[.]"

Hence, the acts of qualified rape committed against the children cannot fall under R.A. No. 9262, by express provision of the law, but may necessarily find remedy under other ways such as through R.A. No. 7610 in relation to the RPC.

b. Economic abuse

The 2022 case of *Calingasan v. People* is an example of the many cases of economic abuse under the Anti-VAWC Act.[212] In *Calingasan*, the parties involved are spouses whose marriage was marred with frequent quarrels. The repeated fights between the spouses were sometimes witnessed by their minor son (BBB), and these fights negatively affected him. Sometime in 1998, petitioner left the conjugal home with the promise that he would support his son financially, as he was then earning as a seaman abroad. Despite this promise, however, he failed to give a single centavo in support of his son and his wife.[213]

Petitioner was charged with violation of Section 5(i)[214] of R.A. No. 9262. The Supreme Court observed that petitioner provided private complainant and their son financial support and that his subsequent failure to do so was due to circumstances beyond his control. Citing the case of *Acharon v. People,* the Supreme Court explained that "the failure or inability to provide financial support *per se* is not a criminal act punishable under Section 5(i) of R.A. [No.] 9262. What Section 5(i) penalizes is the act of inflicting *psychological*

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[211] People v. BBB, 886 Phil. at 313.

[212] *Calingasan,* slip op. at 1–2.

[213] *Id.,* slip op. at 2–4.

[214] Anti-VAWC Act, § 5(i). **"**The crime of violence against women and their children is committed through any of the following acts:

* * *

(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." *Id.* (Emphasis supplied.)

violence against women and children by willfully or consciously denying them the financial support legally due to them."[215]

The Court also took the opportunity to clarify that while both Section 5(e)[216] and Section 5(i) of R.A. No. 9262 involve the denial of financial support legally due to the woman and her child, these paragraphs penalize two distinct crimes. Section 5(i) punishes the willful infliction of psychological violence upon the woman and her child by denying them the financial support that is legally due them. Section 5(e), on the other hand, penalizes the deprivation of financial support "for the purpose of controlling or restricting the woman's or her child's movement or conduct."[217] Thus, according to the Court, while both provisions indeed involve the denial or deprivation of financial support, each of these provisions punishes entirely different acts.

As can be seen from the discussed cases, the child as an offended party in R.A. No. 9262 is the child of the woman who is subjected to abuse by the woman's past or present intimate partner. The cases discussed, particularly *People v. BBB,* also show that the abuse on the woman may be an effect of the abuse committed against her children, and not necessarily that the child's experience is an offshoot of his or her mother's experience. Having discussed all existing and significant national laws and rules on child abuse and protection, as well as salient doctrines from Supreme Court decisions, it can be now seen that the Philippine legal system can certainly provide other appropriate remedies given the factual circumstances of the *Knutson* case.

IV. HARMONIZATION OF THE PROVISIONS AND PROPER REMEDIES UNDER CHILD PROTECTION LAWS

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[215] *Calingasan,* slip op. at 7, *citing* Acharon v. People, G.R. No. 224946, Nov. 9, 2021.

[216] Anti-VAWC Act, § 5(e). "The crime of violence against women and their children is committed through any of the following acts:

* * *

(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 […] acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct[.]" *Id.*

[217] *Calingasan,* slip op. at 9–10.

To rectify the apparent application crisis presented by *Knutson*, and to achieve a holistic understanding of our national laws and rules on child protection, all previously discussed child protection laws must be juxtaposed against each other and harmonized, as suggested by Justice Caguioa in his Dissenting Opinion,[218] and that the offended parties, offending parties, and the remedies under each law and rule are ascertained.

For purposes of harmonization, the benchmark must necessarily be R.A. No. 7610—which is the special penal law at the forefront of affording child protection from abuse or neglect—as opposed to the law subject of *Knutson* which is the Anti-VAWC Act. Despite the comprehensive coverage of R.A. No. 7610, there may be instances, such as in *Knutson*, where any of the other laws on child protection are resorted to instead of the applicable law. Hence, establishing clear distinctions between the laws is proper.

A. R.A. No. 7610 v. R.A. No. 9262

The child victims under R.A. No. 7610 and R.A. No. 9262 are similar, for the latter refers to the former. Under R.A. No. 7610, the offended party is a child who is defined as a person "below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]"[219] On the other hand, one of the possible offended parties under R.A. No. 9262 are children "below eighteen (18) years of age or older but are incapable of taking care of themselves as defined under [R.A.] No. 7610. As used in this Act, it *includes* the biological children of the victim and other children under her care."[220] The last sentence in the definition of a child under R.A. No. 9262 sets the law apart from other laws on child abuse and protection for there exists the element of a dependency relationship between the child victim and the woman victim. The word "includes" does not connote that the law applies to the general pool of children as defined in the first sentence of R.A. No. 9262's definition of children. Rather, the word strengthens the legislative intent behind the law and clarifies the two kinds of children related to the woman victim, i.e., her biological children and children under her care.

As for the offending parties under these laws, it is the intimate relationship that sets R.A. No. 9262 apart from the other law. Similar to the earlier discussions, there are three kinds of offenders in R.A. No. 9262, to wit:

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[218] *Knutson*, slip op. at 18–19 (Caguioa, *J.*, *dissenting*).
[219] Rep. Act No. 7610 (1992), § 3(a).
[220] Anti-VAWC Act, § 3(h). (Emphasis supplied.)

(1) the husband or former husband of the "woman" victim, who commits violence or abuse against such "woman" and/or "her child," (2) any person who has or had a sexual or dating relationship with the "woman" victim, who commits violence or abuse against the "woman" and/or "her child," (3) any person who has a common child with the "woman" victim, who commits violence/abuse against the "woman" and/or "her child."[221] Such types of offenders are especially specific and their relation to the victim is controlling. On the other hand, R.A. No. 7610, and other child abuse and protection laws for that matter, do not include the same intimate relationship.

There is also a clear difference between who the offenders are under both laws. Under R.A. No. 7610, the offenders are persons who commit any of the prohibited acts of child prostitution and other sexual abuse,[222] child trafficking,[223] obscene publications and indecent shows,[224] and other acts of abuse.[225] On the other hand, R.A. No. 9262 lists down four categories of violence against women and their children, namely, physical violence,[226] sexual violence,[227] psychological violence,[228] and economic abuse.[229] The definitions and examples of these categories are read in connection with Section 5 of R.A. No. 9262[230] which provides for the punishable acts of violence against women

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[221] § 3(a).
[222] Rep. Act No. 7610 (1992), §§ 5–6.
[223] §§ 7–8.
[224] § 9.
[225] § 10.
[226] Anti-VAWC Act, § 3(a)(A).
[227] § 3(a)(B).
[228] § 3(a)(C).
[229] § 3(a)(D).
[230] 1. Causing physical harm, threatening to cause physical harm, attempting to cause physical harm, placing the woman or her child in fear of imminent physical harm; § 5(a)–(d);

2. 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; § 5(e);

3. Controlling or restricting the woman's or her child's 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; § 5(e);

4. Inflicting or threatening to inflict physical harm on oneself in order to control her actions or decisions; § 5(f);

5. Causing or attempting to cause the woman or her child to engage in 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; § 5(g);

6. Engaging in conduct that causes substantial emotional or psychological distress to the woman or her child (such as stalking or following, peering in window or lingering outside the residence, entering or remaining in the dwelling or on the property of the woman or child against their will, destroying property and personal belongings or inflicting harm to animals or pets of woman or her child, and engaging in any form of harassment or violence); § 5(h);

and their children. There are a few overlaps between the two laws with respect to their punishable acts.

For example, R.A. No. 9262 includes in its enumeration of prohibited acts the act of "[c]ausing or attempting to cause the woman or her child to engage in 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[.]"[231] A provision in R.A. No. 7610 likewise prohibits "sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse" with the condition that statutory rape (i.e., carnal knowledge of a woman below 16 years of age) shall be prosecuted under the RPC.[232] The difference lies in the applicability of the law to different sexual abuse cases. R.A. No. 9262 explicitly removes from its coverage all types of rape cases (i.e., carnal knowledge and sexual assault)[233] and effectively limits its application to acts of lasciviousness or lascivious conduct made under force, threat, or intimidation. On the other hand, R.A. No. 7610 is wider in application for it includes both sexual intercourse, which is carnal knowledge of a woman but excludes statutory rape, and lascivious conduct which necessarily includes sexual assault.[234]

Applying the clear differences between who the offending and offended parties are in both laws, a case where lascivious conduct through force was committed against a minor by his or her mother's live-in partner and thereby causing such mother mental or emotional anguish, falls under R.A. No. 9262. Meanwhile, a case of lascivious conduct of the same kind committed by any other person, e.g., a male stranger or neighbor who is/was not in an intimate relationship with the child victim's mother, shall as a matter of course fall under R.A. No. 7610.

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7. 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 or children; § 5(i).

[231] § 5(g).

[232] Rep. Act No. 7610 (1992), § 5(b).

[233] REV. PEN. CODE, art. 266-A, *amended by* Rep. Act No. 8353 (1997).

[234] *See* Dep't. of Justice (DOJ), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, § 2(h). **"**Lascivious conduct means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent 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[.]" *Id.*

As regards the categories of physical violence, psychological violence, and economic abuse under R.A. No. 9262, the apparent overlap is in connection with Section 10(a) of R.A. No. 7610. The latter provides that "[a]ny person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603" shall be penalized. There are four different categories under this provision of R.A. No. 7610, namely, child abuse, child cruelty, child exploitation, and conditions prejudicial to the child's development.[235] This apparent overlap will not result in any controversy for it may still be determined which law shall apply to any given scenario. To reiterate, the decisive factor for the application of R.A. No. 9262 is the determination of who are the offenders and offended parties. Thus, in a case wherein the abusive act itself, whether physical, psychological, or economic, against a minor may in effect fall under the prohibited acts of both R.A. No. 7610 and R.A. No. 9262, the existence of a dependency (woman and child) and intimate (woman and abuser) relationship shall settle the controversy.

B. R.A. No. 7610 v. P.D. No. 603

As mentioned previously, Section 10(a) of R.A. No. 7610 provides for other acts of abuse which explicitly includes all the acts found under Article 59[236] of P.D. No. 603. Article 60 of P.D. No. 603 provides for the penalty of "imprisonment from two or six months or a fine not exceeding five hundred pesos, or both […] unless a higher penalty is provided for in the Revised Penal Code or special laws[.]" As an effect of the subsequent enactment of R.A. No. 7610, the higher penalty now for all the acts enumerated under Article 59 of P.D. No. 603 is *prision mayor* in its minimum period or six years and one day to eight years.[237]

C. R.A. No. 7610, R.A. No. 9231, R.A. No. 9208,[238] R.A. No. 9775[239]

R.A. No. 9231 is a law expressly amending some provisions of R.A. No. 7610, particularly Section 12 on employment of children. While the

[235] Rep. Act No. 7610 (1992). § 10(a).

[236] Examples of crimes under Art. 59 are abandonment, neglect, cruel and unusual punishment, exploitation, among others.

[237] § 10(a).

[238] Rep. Act No. 9208 (2003).

[239] Rep. Act No. 9775 (2009).

definition of children[240] is not amended by R.A. No. 9231, it is worth noting that Section 12 of R.A. No. 7610 as amended by R.A. No. 9231 only pertains to two types of children under the category of "persons below 18 years of age." These children are those below 15 years of age and those who are 15 to below 18 years of age.[241] A possible interpretation of the scope of allowable child labor is that Section 12 of R.A. No. 7610 and the provisions of R.A. No. 9231 do not include those above 18 years of age who are unable to fully take care of themselves or to protect themselves as provided under Section 3(a) of R.A. No. 7610. This is because the new Section 12-A of R.A. No. 7610 as amended by R.A. No. 9231, only mentions the two said kinds of children below 18 years of age. R.A. No. 7610 on employment of children and its amending law are both silent on persons above 18 years old who are considered as children under the law.

R.A. No. 9231 should also be read in relation to R.A. No. 9208 or the Anti-Trafficking in Persons Act and R.A. No. 9775 or the Anti-Child Pornography Act because the nature of the latter two laws are considered the "worst forms of child labor" under R.A. No. 9231. As stated in the first two paragraphs of Section 12-D of R.A. No. 7610 as amended by R.A. No. 9231:

> Section 12-D. *Prohibition Against Worst Forms of Child Labor.* - No child shall be engaged in the worst forms of child labor. The phrase "worst forms of child labor" shall refer to any of the following:
>
> (1) All forms of slavery, as defined under the '*Anti-trafficking in Persons Act of 2003'*, or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict; or
>
> (2) The use, procuring, offering or exposing of a child for prostitution, for the *production of pornography or for pornographic performances*[.][242]

Under Section 16(c) of R.A. No. 7610 as amended by R.A. No. 9231, "[a]ny person who violates Sections 12-D(1) and 12-D(2) shall be prosecuted and penalized in accordance with the penalty provided for by R.A. No. 9208 […] in its maximum period." However, both R.A. No. 9208 and R.A. No.

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[240] Rep. Act No. 7610 (1992), § 3(a). "'Children' refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]" *Id.*

[241] § 12-A, *amended by* Rep. Act No. 9231 (2003).

[242] § 12-D, *amended by* Rep. Act No. 9231 (2003). (Emphasis supplied.)

9231 were enacted in May and December of 2003 respectively, well before the enactment of R.A. No. 9775 in 2009. Thus, the application of the law shall be as follows:

1. For cases involving child labor in general, R.A. No. 7610 as amended by R.A. No. 9231 applies.
2. For cases involving "worst forms of child labor" except Section 12-D(1) and (2), R.A. No. 9231 applies.
3. For cases involving Section 12-D(1), i.e., all forms of slavery and practices similar to slavery, such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict, R.A. No. 9208 applies.
4. For cases involving the use, procurement, offer, or exposure of a child for prostitution, for the production of pornography, or for pornographic performances as a "worst form of child labor," R.A. No. 9775 applies.

D. R.A. No. 7610, Revised Penal Code, Anti-Rape Law, R.A. No. 11648

In harmonizing the RPC's provisions on rape, as amended by R.A. No. 8353 ("Anti-Rape Law") and R.A. No. 11648, with the provisions on sexual abuse under R.A. No. 7610, the case of *People v. Tulagan*[243] is instructive. In *Tulagan*, the accused committed two crimes against the nine-year-old victim, to wit: statutory rape under Article 266-A, paragraph 1(d)[244], in relation to R.A. No. 7610; and rape through sexual assault under Article 266-A, paragraph 2[245] in relation to R.A. No. 7610.

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[243] *Tulagan*, 896 SCRA 307.

[244] REV. PEN. CODE, art. 266-A(1)(d), *amended by* Rep. Act No. 8353 (1997). "Rape is committed:

* * *

(1) By a person who shall have carnal knowledge of another person under any of the following circumstances:

* * *

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present." *Id.*

[245] Art. 266-A(2). "Rape is committed: By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." *Id.*

In the Decision, the *ponencia* took the opportunity to reconcile the provisions on Acts of Lasciviousness, Rape and Sexual Assault under the RPC, as amended by R.A. No. 8353, vis-à-vis Sexual Intercourse and Lascivious Conduct under Section 5(b)[246] of R.A. No. 7610.[247] The table created by the Decision is reproduced below:

Age of victim → Crime committed ↓	**Under 12 years old or demented**	**12 years old or below 18, or 18 under special circumstances**	**18 years old and above**
Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Sexual assault committed against children exploited in prostitution	Sexual assault under Article 266-A (2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in	Lascivious conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable

[246] Rep. Act No. 7610 (1992), § 5(b). **"**The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

* * *

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.]" *Id.*

[247] *Tulagan*, 896 SCRA 307, 357, 391–392.

or other sexual abuse	its medium period		
Sexual intercourse committed against children exploited in prostitution or other sexual abuse	Rape under Article 266-A (1) of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed	Sexual Abuse under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Rape by carnal knowledge	Rape under Article 266-A(1) in relation to Article 266-B of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) in relation to Article 266-B of the RPC: *reclusion perpetua*	Rape under Article 266-A(1) of the RPC: *reclusion perpetua*
Rape by Sexual Assault	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Sexual Assault under Article 266-A(2) of the RPC: *prision mayor*

According to the Court, the case of *People v. Caoili*[248] is the basis for the nomenclature and the penalty for the crime of acts of lasciviousness or lascivious conduct, while the discussions in the cases of *Dimakuta v. People,*[249] *Quimvel v. People,*[250] and *Caoili* are the bases for the crimes of rape by carnal

[248] G.R. No. 196342, 835 SCRA 107, Aug. 8, 2017.
[249] G.R. No. 206513, 773 SCRA 228, Oct. 20, 2015.
[250] *Quimvel*, 808 Phil. 889 (2017).

knowledge and sexual assault as well as sexual intercourse committed against children under R.A. No. 7610.[251]

Thus, as held by the Supreme Court in *Tulagan,* the table and its bases in jurisprudence shall serve as guidance for the bench and the Bar.

V. CONCLUSION

Having harmonized the existing laws on child abuse and protection, and based on the foregoing discussions, the acts committed by Rosalina in the *Knutson* case are punishable under *R.A. No. 7610*, and not R.A. No. 9262. Furthermore, the appropriate remedy to protect and regain custody of the abused minor Rhuby, as suggested by Chief Justice Gesmundo and Justices Caguioa, Singh, and Zalameda in their Dissenting Opinions, is found under *A.M. No. 03-04-04-SC* or the "Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors."

The factual circumstances of *Knutson* provide the following punishable acts committed by Rosalina against her own daughter Rhuby: committing *physical violence* by hurting Rhuby through pulling her hair, slapping her face, and knocking her head; and exposing Rhuby to *psychological abuse* by pointing a knife at Rhuby and threatening to kill her.

These acts fall under Section 10(a)[252] in relation to Section 3(b) paragraphs (1) and (2)[253] of R.A. No. 7610. Section 10(a) provides that persons who commit acts of cruelty against a child shall be punished with the penalty of *prision mayor* in its minimum period. Section 3(b) paragraph 1 refers to the definition of child abuse which includes "*psychological* and *physical abuse*, neglect, *cruelty*, sexual abuse and *emotional maltreatment*," while paragraph 2, as heavily discussed under R.A. No. 7610's jurisprudence on child abuse, pertains to

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[251] *Tulagan,* 896 SCRA 307, 393–394.

[252] Rep. Act No. 7610 (1992), § 10. "Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period." *Id.*

[253] § 3(b)(1)–(2). "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

> (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
>
> (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being[.]" *Id.*

"any act by deeds or words which debases, degrades or *demeans the intrinsic worth* and dignity of a child as a human being."

In this case, it is unmistakable that the act of pulling Rhuby's hair, slapping her face, and knocking her head are acts of physical abuse. On the other hand, the act of pointing a knife at Rhuby and threatening to kill her is not only an attempt at physical abuse, but also an act of psychological and emotional maltreatment and an offense against the worth and dignity of the child as a human being. Hence, this act is a confluence of paragraphs 1 and 2 of Section 3(b) of R.A. No. 7610. Threatening to kill one's own daughter creates a mental and psychological impact that makes the child question her worthiness of a mother's love and therefore demeans the child's view of herself. A mother is supposed to be every child's safe haven. Being pointed a knife at by your own mother will leave scars that will take a long time to heal, if at all.

Unfortunately, the Decision was not able to tackle the applicability of the abovementioned provisions of R.A. No. 7610, nor of the provisions on punishable acts under R.A. No. 9262, because the Supreme Court was faced only with the issues of whether or not the father of the offended party may apply for protection and custody orders against the mother under R.A. No. 9262, and whether or not R.A. No. 9262 covers a situation where the mother committed violent and abusive acts against her own child.

As aptly stated by the Justices in their Dissenting Opinions, Randy should have filed a criminal complaint under R.A. No. 7610 in relation to A.M. No. 03-04-04-SC or the "Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors" for a protection order in behalf of his daughter.[254] Although admittedly, R.A. No. 9262 is more comprehensive in terms of the kinds of protection orders that may be granted, the courts are not so handicapped that they would be forced to apply R.A. No. 9262 instead of the appropriate law which is R.A. No. 7610.

Under Section 17 of A.M. No. 03-04-04-SC, courts may issue a Protection Order requiring any person:

> (a) To stay away from the home, school, business, or place of employment of the minor, other parent or any other party, or from any other specific place designated by the court;

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[254] *Knutson*, slip op. at 1 (Caguioa, *J.*, *dissenting*); *Knutson,* slip op. at 1 (Gesmundo, *J.*, *dissenting*); *Knutson,* slip op. at 2 (Singh, *J.*, *dissenting*); *Knutson,* slip op. at 14 (Zalameda, *J.*, *dissenting*).

> (b) To cease and desist from harassing, intimidating, or threatening such minor or the other parent or any person to whom custody of the minor is awarded;
>
> (c) To refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the minor;
>
> (d) To permit a parent, or a party entitled to visitation by a court order or a separation agreement, to visit the minor at stated periods;
>
> (e) To permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court; and
>
> *(f) To comply with such other orders as are necessary for the protection of the minor.*[255]

As briefly mentioned by Chief Justice Gesmundo in his Dissenting Opinion, Section 17(f) "authorize[s] the issuance of a protection order to require any person to comply with orders of the Court to ensure the protection of the minor." Thus, Section 17(f) is an opportunity for the Court to provide any "other order" which it may deem necessary for the protection of the minor. Unfortunately, this section and paragraph have yet to be specifically utilized by the courts in contexts similar to *Knutson*. Our jurisprudence on A.M. No. 03-04-04-SC includes only custody battles with issues pertaining to the jurisdiction of courts;[256] *res judicata*;[257] standing to file

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[255] CUSTODY OF MINORS RULE, § 17. (Emphasis supplied.)

[256] Thornton v. Thornton, G.R. No. 154598, 436 SCRA 550, Aug. 16, 2004. The Court of Appeals and the Supreme Court have concurrent jurisdiction with Family Courts to issue writs of habeas corpus involving the custody of minors. *See, e.g.,* Madriñan v. Madriñan, G.R. No. 159374, 527 SCRA 487, July 12, 2007 *and* Tujan-Militante v. Cada-Deapera, G.R. No. 210636, 731 SCRA 194, July 28, 2014.

[257] Yu v. Yu, G.R. No. 164915, 484 SCRA 485, Mar. 10, 2006. Judgment on the issue of custody in the nullity of marriage case before one RTC, regardless of which party would prevail, would constitute res judicata on the habeas corpus case before another RTC since the former has jurisdiction over the parties and the subject matter. *Id.*

a petition for habeas corpus[258] and petition for custody;[259] forum shopping;[260] the difference between writs of *habeas corpus* and writs of *amparo*;[261] the court's power to issue protection orders *ex parte*;[262] the rule that temporary custody may only be granted after trial;[263] and the doctrine that protection orders under R.A. No. 9262 do not deprive an adverse party of his or her remedies under A.M. No. 03-04-04-SC.[264]

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[258] Salientes v. Abanilla, G.R. No. 162734, 500 SCRA 128, Aug. 29, 2006. In the absence of a judicial grant of custody to one parent, both parents are still entitled to the custody of their child, and either party whose cause of action is deprivation of the right to see his child may file a petition for habeas corpus. *Id.*

[259] Reyes v. Elquiero, G.R. No. 210487, 948 SCRA 528, Sept. 2, 2020. "The Rule on Custody of Minors simply provides that a petition for custody 'may be filed by any person claiming such right.' However, standing to sue for custody differs from the actual right to custody." In this case, the biological aunt of the minor has standing, but the mother of the adoptive father of the minor does not. *Id.*

[260] Brown-Araneta v. Araneta, G.R. No. 190814, 707 SCRA 222, Oct. 9, 2013. The case involves forum shopping wherein the party initially filed an application for protection order in a custody case before Makati RTC, and when the Makati RTC denied such application, the said party filed a Petition for Protection Order before the Muntinlupa RTC. *Id.*

[261] Caram v. Segui, G.R. No. 193652, 732 SCRA 86, Aug. 5, 2014. A Writ of Amparo does not apply in cases where a parent is directly accusing DSWD officers of forcibly separating her from her child and placing the latter up for adoption, supposedly without complying with the necessary legal requisites to qualify the child for adoption because such clearly indicates that she is not searching for a lost child but asserting her parental authority over the child and contesting custody over him. *Id.*

[262] Recto v. Trocino, A.M. No. RTJ-17-2508, 844 SCRA 157, Nov. 7, 2017, *citing Garcia*, 712 Phil. 44, 104. "A protection order may be issued *ex parte* if the court finds that there is danger of domestic violence to the offended party. This provisionary protection order, however, may be issued only if the court finds that the life, limb or property of the offended party is in jeopardy and there is reasonable ground to believe that the order is necessary to protect the victim from the immediate and imminent danger of violence or to prevent such violence, which is about to recur." *Id.*

[263] Masbate v. Relucio, G.R. No. 235498, 875 SCRA 25, July 30, 2018. The appellate court erred in granting temporary custody for a limited period of 24 consecutive hours once every month in addition to visitation rights. Section 15 of A.M. No. 03-04-04-SC provides for temporary visitation rights, not temporary custody. As for temporary custody, it is only after trial, when the court renders its judgment awarding the custody of the minor to the proper party, that the court may likewise issue "any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody," pursuant to Section 18 of A.M. No. 03-04-04-SC. A court cannot grant temporary custody ahead of trial because this overturns the tender-age presumption based on nothing but a party's bare allegations. The issue surrounding a mother's fitness as a mother must be properly threshed out in the trial court before she can be denied custody, even for the briefest of periods. *Id.*

[264] XXX v. AAA, G.R. No. 187175, July 6, 2022. The Court saw no merit in petitioner's argument that the immediate award of custody of minors to the aggrieved party upon the filing of a protection order [under R.A. No. 9262] deprives the alleged perpetrator of the remedies provided under A.M. No. 03-04-04-SC. *Id.*

Such "other order" under Section 17(f) may be taken from provisions on child protection orders under other relevant laws such as those enumerated under Section 8 of R.A No. 9262. Protection orders under Section 8 of R.A. No. 9262 are specifically geared towards the protection of both a woman and her child as can be seen from its definition, to wit:

> SECTION 8. Protection Orders. - *A protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child* specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO).[265]

Hence, Randy was not without adequate remedies to protect his daughter from his abusive wife; nor were the protection orders found under R.A. No. 9262 beyond his reach had he filed a case under R.A. No. 7610 instead. Moreover, Randy could have argued that Rosalina should be deemed unfit or disqualified from having visitation rights as provided under Section 15 of A.M. No. 03-04-04-SC.

It is also noteworthy to assess the *ponencia*'s conclusion that a mother can be held liable under R.A. No. 9262 based on the reason that "the fact that a social legislation affords special protection to a particular sector does not automatically suggest that its members are excluded from violating such law."[266] Respectfully, this conclusion is clearly misplaced because the laws that the *ponencia* enumerated to support the same are not of the same nature and character as that of R.A. No. 9262.

The *ponencia* stated that other social legislation such as R.A. No. 7610 (Child Abuse Law), R.A. No. 7277 as amended by R.A. No. 9442 (Magna Carta for Disabled Persons), R.A. No. 8042 as amended by R.A. No. 10022 (Migrant Workers and Overseas Filipinos Act of 1995), R.A. No. 4670 (Magna Carta for Public School Teachers), R.A. No. 9433 (Magna Carta for Public Social Workers), and R.A. No. 7305 (Magna Carta for Public Health Workers) with penal character use the phrase "any person" to describe who may be

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[265] Anti-VAWC Act, §8. (Emphasis supplied.)

[266] *Knutson,* slip op. at 8.

offenders.[267] The *ponencia* held that "identification or association with such groups will not exempt their members from criminal liability."[268] For comprehensiveness, the *ponencia's* reasoning states:

> A child 16 years old and above who acted with discernment may still be charged with violation of [Republic Act] No. 7610 if he induces or coerces another child to perform in obscene exhibitions. A person with disability is likewise criminally liable under ..No. 7277, as amended, if he discriminates or publicly ridicules another person suffering from restriction, impairment, or a different ability. The same is true with a migrant worker who engages in the act of illegal recruitment punished under R.A. No. 8042, as amended. Lastly, a public school teacher, a public social worker, or a public health worker who interferes or prevents similar professionals in the exercise of their rights and performance of their duties are criminally liable.[269]

The problem with this reasoning is that the Supreme Court failed to take into account the distinctiveness of R.A. No. 9262 as *gender-based legislation*. While it is generally true, for the enumerated laws provided by the Supreme Court, that identification or association with such groups will not exempt their members from criminal liability, the same cannot be held true for R.A. No. 9262 which specifically addresses gender-based violence by providing a specific list of offended parties (i.e., women and their children) and a specific list of offenders. A migrant worker may be penalized under the Migrant Workers and Overseas Filipinos Act of 1995 if he or she commits any of the punishable acts therein because the law makes no distinction between migrant workers and non-migrant workers as offenders.[270] On the other hand, the distinct characteristic of an offender being an intimate partner of a woman-victim is embedded in the framework and provisions of R.A. No. 9262.

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[267] *Id.*, slip op. at 10–11.

[268] *Id.*, slip op. at 12.

[269] *Id.*

[270] *See* Rep. Act. No. 8042 (1994), §6. "For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contact services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines. Provided, that such non-license or non-holder, who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any persons, whether a non-licensee, non-holder, licensee or holder of authority." *Id.*

Among the offenders under R.A. No. 9262, the only time that a woman may be considered an offender is in the context of same-sex relationships whereby a woman commits violence against her female partner or the latter's child. This was sufficiently explained in the case of *Garcia v. Drilon*[271] which the *Knutson* Decision erroneously cited to support its conclusion that mothers may be held liable under R.A. No. 9262.[272] As compared to the enumerated laws discussed by the *ponencia*, R.A. No. 9262 does not pertain to "any person" in general because the offender must be an intimate partner, past or present, of a woman-victim of violence to be liable. In *Garcia*, the Supreme Court clarified that "any person" pertains to a same-sex partner in a lesbian relationship who inflicts violence against her partner or the latter's child or a child under her care, or in situations where conspiracy is present. The pertinent portion of *Garcia* reads: "Clearly, the use of the gender-neutral word 'person' who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships."[273] Given that the Supreme Court pertained to lesbian relationships and situations where conspiracy is present as examples of how R.A. No. 9262 does not, in fact, single out husbands or fathers as the culprit, it can be surmised that the Supreme Court in *Garcia* never intended to mean that the phrase "any person" pertains to absolutely *any* person in general.

With these observations, *Knutson* may give rise to future issues and complications that must be rectified by the Supreme Court. As a result of the Decision, R.A. No. 9262 may now be utilized as a weapon for retaliatory action against women whom the law intends to protect. In cases where an abused woman files a VAWC case against her male spouse for abuse against her and their common child, such male spouse can now easily use the same law as basis to charge the abused woman for likewise committing abusive acts against their common child. The male spouse is now allowed to use the provisions under R.A. No. 9262 to prosecute one who, in reality, is an abused wife. Looking at the legislative records, the framers of R.A. No. 9262 took great pains to come up with a consensus that the law must be narrowed down to cover only women as victims, except for their children, as opposed to legislating a broader law on "domestic violence" which covers anyone being abused in a household setting. The Decision rendered meaningless the gender-based essence and goal of R.A. No. 9262.

Moreover, muddling the various laws on child abuse and protection and allowing R.A. No. 9262 to prosecute a woman who is abusive towards her own child has two specific and related implications, namely: (1) it is now

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[271] *Garcia,* 712 Phil. 44.

[272] *See Knutson,* slip op. at 8.

[273] *Garcia,* 712 Phil. at 104; *see* Jacinto v. Fouts, G.R. No. 250627, Dec. 7, 2022.

easier to convict women for child abuse because less elements are required under R.A. No. 9262, and (2) using R.A. No. 9262 will, in fact, result in a lower penalty than what is provided for under R.A. No. 7610, and hence it is more ideal to prosecute under the latter.

On the first point, it is easier to convict a woman under R.A. No. 9262 because mere physical harm constitutes a crime under the Act. Under Section 5 (a) of R.A. No. 9262, the crime of violence against women and children is committed through "causing physical harm to the woman or her child." The other implied elements of the offense pertain to who the parties are, their relationship with each other, and the injuries sustained by the abused woman or child. In contrast, available jurisprudence on R.A. No. 7610 provides that for there to be a conviction of child abuse under Section 10(a) in relation to Section 3(b) of R.A. No. 7610, "only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade, or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse."[274] Hence, intent to debase, degrade, or demean is included as an element of the crime. Under R.A. No. 9262, the crime is committed by mere acts of physical harm because an additional implied element therein is the *relationship between the offender and the offended parties*, with the legislative intent being that the child harmed under R.A. No. 9262 is the child of a woman-victim. Because of *Knutson*, which essentially removed that implied element of relationship altogether, the crime becomes punishable by any person's mere act of physical harm against any child.

On the second point, using R.A. No. 9262 instead of the available and applicable remedies under R.A. No. 7610 will result in a different penalty than what is provided for in the latter, which is the comprehensive law on child abuse. In this case, the specific acts of maltreatment experienced by Rhuby falls under both Section 6(a) of R.A. No. 9262 and Section 10(a), qualified by Section 31,[275] of R.A. No. 7610.

Under Section 10(a) of R.A. No. 7610, acts of child abuse, cruelty or exploitation, and acts resulting in other conditions prejudicial to the child's development are punishable by *prision mayor* in its minimum period provided that the act is not covered by the RPC. Additionally, Section 31 provides that

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[274] *Bongalon*, 694 SCRA at 15.

[275] Rep. Act No. 7610 (1992), § 31(c). "The penalty provided herein shall be imposed in its maximum period when the perpetrator is an **ascendant, parent guardian, stepparent** or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked[.]" *Id.*

the penalty when the abuse is committed by an ascendant, among others, is raised to *prision mayor* in its maximum period.

Whereas under Section 6(a) of R.A. No. 9262, on acts pertaining to Section 5(a), abuse constituting serious physical injuries is punishable by *prision mayor,* abuse constituting less serious physical injuries is punishable by *prision correccional*, and abuse resulting in slight physical injuries is punishable by *arresto mayor*. Thus, there is a need to classify the act in relation to the applicable type of physical injury under the Revised Penal Code.

For comparison, for an offender to be punished under R.A. No. 9262 with the penalty of *prision mayor*, which is the highest prescribed penalty under Section 6(a), the act committed must result in the injured person becoming insane, imbecile, impotent, or blind as provided by Article 263 (1) of the Revised Penal Code. On the other hand, R.A. No. 7610 provides a blanket penalty of *prision mayor* in its minimum period for "other acts of abuse" under Section 10(a), including physical harm. The penalty may even be raised to the maximum period if the abuse was committed by the child's ascendant as provided by Section 31 of R.A. No. 7610. Such qualifying provision on abuses committed by ascendants is non-existent under R.A. No. 9262.

To provide greater protection for children and more effective deterrence against child abuse, R.A. No. 7610 should be primarily resorted to instead of R.A. No. 9262. The rule should be that if and only if the relationship element is present, as provided by the definition of "VAWC" under Section 3 (a) of R.A. No. 9262, can R.A. No. 9262 be used in convicting a person of child abuse.

In fine, the Supreme Court committed an error in granting the petition of Randy Knutson and thereby allowing the case to prosper under the wrong law and remedy. The Court was not faced with the issue of choosing between upholding the spirit of the law, which is to address gender-based violence, and the State's constitutional duty to protect children. There was no conflict between the two principles and there was no need to lean towards one instead of the other. Essentially, the issue in *Knutson* concerns which law is the proper remedy. Without contradicting the legislative intent and spirit behind the law, the Supreme Court could have issued a temporary protection order and remanded the case to the lower court, as suggested by all the Justices who dissented, so that the said lower court may resolve the petition on its merits based on the appropriate law. Such action would still be in the best interests of the child victim because R.A. No. 7610 is potent enough to penalize the acts committed by the mother, Rosalina, against her and Randy's daughter, Rhuby.

The *Knutson* case is a confusing precedent and if the Supreme Court continues to allow child protection cases which fall under the coverage of specific laws to prosper under laws which find no applicability, then the purpose and spirit of all these child protection laws will be defeated. Moreover, it is also important to realize that in the course of properly applying the suitable law, which may result in remanding the case for further trial and after disregarding the prayer for reliefs under the incorrectly used law, the Supreme Court in effect aids in the goal of making laws more progressive and efficient by prompting amendments to those laws which are incomplete, ineffective, or no longer in keeping with the current times. The Supreme Court has the power to interpret the laws in its decisions and in so doing, without dictating, it may nudge Congress to make the proper changes and amendments that the latter deems wise in light of the novel and unforeseen cases which continue to arise. Thus, remanding the case and instructing that the same be tried under the proper law is not unfair nor unjust. In cases such as *Knutson*, it becomes the right course of action.

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