

RETHINKING THE STATE POLICY ON DOMESTIC VIOLENCE

Mary Catherine A. Damian*
Laarni N. Valerio*

I. INTRODUCTION

Violence against women exists in all regions, classes and cultures worldwide.¹ Systematic and grave acts of violence against women are often committed by private individuals and frequently occur in the context of familial and intimate relationships.² In the Philippines, recent estimates of violence inflicted upon women within the confines of homes and families range from a ratio of 1 in 10 women to a high of 6 in 10.³

The various forms of violence against women are recognized by the United Nations as grave violations of human dignity and gender equality. Although a late bloomer by Western standards, the Philippines expressed its commitment to the upliftment of women as early as the mid-seventies. At that time, it established the National Commission on the Role of Filipino Women in response to the International Women's Year (1975) and the Decade for Women (1975-1985).⁴

* Fourth Year LL.B.

¹ The World's Women 1970-1990: Trends and Statistics, United Nations (New York:1991), p.19.

² Donna J. Sullivan, Violence Against Women, a paper presented in the Conference "Combatting Violence Against Women," 17 January 1992, sponsored by the International Women's Rights Action Watch.

³ UP Center for Women's Studies Foundation, Inc., BREAKING THE SILENCE: THE REALITIES OF FAMILY VIOLENCE IN THE PHILIPPINES AND RECOMMENDATIONS FOR CHANGE," p.3.

⁴ Dr. Amaryllis Torres, et al., *"Gender and Development: Making the Bureaucracy Responsive"* (United Nations Fund for Women, 1994), p.4.

A decade later, like most countries of the world, it has not yet fully come to terms with the growing menace of domestic violence. A part of this failure may be attributed to the peculiar nature of this concern. Since domestic violence occurs in the confines of homes, it remains largely hidden and unrecognized as a problem. Only in 1985 did the United Nations make its first resolution on the issue, calling on member-states to undertake research and formulate strategies to combat violence in the home. In December 1995, the UN General Assembly passed the Declaration on the Elimination of Violence Against Women.⁵

Governmental steps taken to curb domestic violence stress largely on the criminal and tortious nature of domestic abuse. The criminal and civil laws are generally deemed adequate recourses for victims of domestic violence.

In the Philippines, an additional dimension attends the issue of domestic violence. The 1987 Philippine Constitution and the Family Code regard the FAMILY as a basic social institution that must be cherished, preserved and protected. Under the Family Code, no custom, practice or agreement destructive of the family shall be given effect. But the principle that the family is all important has been misused and distorted to justify an endemic Filipino culture or tradition of keeping the family intact at all costs, purportedly for the sake of the children. Legislation and court decisions have contributed largely to an oversimplification of this principle. Thus, it is generally maintained that whatever occurs in a marriage – even if takes on a violent, criminal nature – is a private matter between husband and wife. Violence in the home is shrouded by an overriding regard for an oft-misused value – HONOR. The shame of the family outweighs the abuse and violence being committed against its member – most of the time a woman or a child.

The “culture of silence” and the “stay-away-from-private-quarrels” mentality bred by this attitude taken together with the absence of a concrete state policy on the matter perpetuate, in no small degree, domestic violence.

⁵ UP Center for Women's Studies Foundation, Inc., *op.cit.*, p.3.

A. Statement of the Problem

Domestic violence has reached alarming proportions in the country today. Yet, police, lawyers, judges and the community still regard violence in the home a private matter to be settled between family members within the confines of their abode.

Despite serious threats to the safety and integrity of family members, domestic violence has yet to be criminalized.

B. The Study

More than an analysis of existing state policy on the matter, this study was undertaken with a view to achieving the following objectives:

1. Identify and expound on the nature and dimension of domestic violence in the Philippines;
2. Identify the pitfalls and inadequacies of the existing state policy regarding domestic violence;
3. Assess the strengths and weakness of existing proposals/legislations intended to address domestic violence; and
4. Propose steps to be undertaken for a greater understanding of the issue of domestic violence and formulate measures to combat the same.

C. Definition of Terms

In the course of the study, the following terms were employed:

violence – generally defined as an act committed with the deliberate or perceived intention of hurting another person;

violence against women – encompasses, but is not limited to the following:

Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse, marital rape, female genital mutilation and other traditional practices harmful to

women, non-spousal violence and violence related to exploitation;

- Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, and forced prostitution; and
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

domestic violence – means the occurrence of any of the following acts, attempts, threats against a spouse, former spouse, a parent, a child, or any other person related by blood or marriage, a present or former household member, a person with whom the offender has a child in common, or a person who is, or has been, in an intimate relationship with the offender; Family violence consists of several forms of abuses –physical, verbal, economic, emotional and sexual.⁶

battery – causing physical harm to another with or without a deadly weapon;

assault – purposely or knowingly placing or attempting to place another in fear of physical harm;

coercion – compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;

sexual assault – causing or attempting to cause another to engage voluntarily in any sexual act by force, threat or force or duress; and

other conduct – any other conduct that could be punished as a criminal act under law.⁷

⁶ *Ibid.* p.5.

⁷ Domestic Violence, Legal Aid Handbook 1, by Kali for Women (New Delhi: 1992), p.56.

III. THE STATE POLICY ON DOMESTIC VIOLENCE IN THE PHILIPPINES THE LEGAL FRAMEWORK

In the Philippines, like in many other jurisdictions world-wide, violence against women receives no special treatment except insofar as sexual abuses are concerned. The legal system does not offer comprehensive legal protection for all forms of violence to which women are subject. Victims of violence inflicted in the context of familial relationships must rely on the general law and in discrete legal texts.

Insofar as *domestic violence* is concerned, the 1987 Philippine Constitution treats of the subject, albeit tangentially, in this wise:

“Art. II (Declaration of Principles and State Policies). Sec. 2. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government.

Sec. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”

Enacted in 1987, purportedly to give life to the Constitutional policy on the Family, the Family Code of the Philippines deals with the family in general and domestic violence in particular in two ways:

Firstly, it treats of domestic violence under the aegis of *Legal Separation*. Title II (Legal Separation), Art. 55 of the Code provides:

Art. 55, A petition for Legal Separation may be filed on any of the following grounds:

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

(2) *Physical violence* or moral pressure to compel the petitioner to change religious or political affiliation;

(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner to engage in prostitution, or connivance in such corruption or inducement;

x x x x

Secondly, the Family Code merely echoes the Constitutional declaration. In *Title V (The Family)*, *Art. 145* of the Code:

Art. 149. The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.

In the numerous decisions of the Philippine Supreme Court, which forms part of the law of the land, on the State's policy respecting the family, the High Court consistently points to the imperative for maintaining and keeping the family together. Accordingly, from the judicial standpoint, laws should be integrated and applied in favor of keeping the family intact. This treatment leaves the impression that moral and social concerns prevail over individual interest.

On the other hand, the New Civil Code of the Philippines, touching mainly on Human Relations, also accords resort to victims relying on civil actions for compensation. Pertinent provisions of the Philippine Civil Code are as follows:

"Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person, who contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

x x x x x

Art 33. In case of defamation, fraud and *physical injuries*, a civil action for damages, entirely separate and distinct for the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.”

As in other jurisdictions, violence against women committed within the confines of homes is also a criminal issue in the Philippines. However, the Revised Penal Code of the Philippines does not specifically consider the act or act(s) constituting domestic violence as a separate or special criminal act(s).

Husbands inflicting violence upon their partners may be prosecuted under Title 8 (Crimes Against Persons), Chapter 2 (Physical Injuries) of the Revised Penal Code of the Philippines. Depending on the outcome of the violence, conviction may be obtained for the following crimes:

1. Mutilation;⁸
2. Serious Physical Injuries;⁹
3. Administering Injurious Substances or Beverages;¹⁰
4. Less Serious Physical Injuries;¹¹ and
5. Slight Physical Injuries.¹²

Sexual assaults in the home would fall into the category of crimes against chastity under the same Code. Rape and acts of lasciviousness are not regarded by the RPC as offenses or crimes against persons.

⁸ Art 262, RPC.

⁹ Art. 263, RPC.

¹⁰ Art. 264, RPC.

¹¹ Art. 265, RPC.

¹² Art. 266, RPC.

The Philippine Constitution declares that it “adopts the generally-accepted principles of international law as part of the law of the land”. In this respect, the Philippines shares the United Nations’ recognition of violence against women as a grave violation of human dignity.

Although not explicitly mentioned in international or regional human rights instruments, violence against women is inextricably linked to gender discrimination which violates well-established principles of international law. The fundamental right to gender equality is enshrined in the UN Charter and reiterated in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

The principle of gender equality receives its fullest expression in the Convention on the Elimination of Discrimination Against Women (CEDAW). The Convention bars gender discrimination in a wide range of practices in the fields of political participation, education, employment, health care and family life.

The Women’s Convention obligates states parties to eliminate discrimination by private individuals as well as by public authorities. Article 2(e) and Article 5(a) of the Convention calls on states parties to eliminate prejudices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” The duties established in Article 2(f) and Article 5(b), both of which require states parties to take affirmative measures to eliminate customs and practices that discriminate against women, also encompass violent conduct by private individuals that is inflicted predominantly against women or that assumes forms that are specific to women.

Although the Philippines is a signatory to this Convention, it has yet to comply with the duties established by the same. Article 18 of the Convention requires the submission to the UN Secretary General – for consideration by the committee which oversees the Convention – of a report on the legislative, judicial, administrative,

and other measures a signatory seeks to pass to give effect to the Convention's provisions.¹³

Attempts to address domestic violence, however, appear well on its ways in the Philippines. House Bills Nos. 628 and 5121, purport to be pieces of legislation criminalizing domestic violence. These pending bills, although a breakthrough for the Philippine legal system are similarly saddled with misconceptions and other inadequacies insofar as the issue is concerned.

In sum, the Philippine legal system does not yet view the various forms of violence against women which result from a uniform structural cause or as sharing common features. The manifestations of such violence are still being addressed separately. The system does not yet provide comprehensive legal protection for all forms of violence to which women might be subject.

IV. ANALYSIS OF THE STATE POLICY ON DOMESTIC VIOLENCE

All countries have legal measures – such as criminal and tortious sanction – which are generally applicable to cases of assault and are, therefore, theoretically available in cases of domestic assault and provide matrimonial relief, such as divorce or judicial separations, for those who are treated with violence by their spouses. However, these remedies have proven, in general terms, to be inadequate in the context of domestic violence.¹⁴

Although common and widespread, domestic violence has traditionally been perceived as a private, family problem, beyond the scope of State responsibility. Sharing this perception is the Philippine society. As mentioned earlier, the 1987 Philippine Constitution simply recognizes under Article II, Section 2 the sanctity of family life and seeks to protect and strengthen the family as a basic autonomous social institution. Insofar as the woman is concerned, only her life as a mother during conception is sought to be given protection.

¹³ Criminal Injustice: Violence Against Women in Brazil, a Women's Rights Project for Americas Watch (USA:1991), p. 69.

¹⁴ *Ibid.*

While Section 14 of Article II provides that the State shall protect the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men, it does not specify any protection to women from violence in her home. Hence, without any particular provision strictly enjoining domestic violence, the passage of legislations to implement such provisions cannot be expected.

But the serious issue of domestic violence should not be left alone by the government. The following are some arguments in favor of State intervention to protect individual family members: wife-beating, child abuse, incest and marital rape, concerns which should open the family to outside scrutiny and destroy the myth that all families are havens of love and support.

The need to put into writing a provision forbidding violence in the home was recognized by the Brazilian government. In the 1988 Constitution of Brazil, it is specifically stated that:

“the state should assist the family, in the person of each of its members, and should create mechanisms so as to impede violence in the sphere of its relationships.” Similar provisions have been adopted in state constitutions throughout Brazil.¹⁵

While several bills on domestic violence are now pending before Congress, a similar (to the above) provision in the Philippine Constitution has yet to be thought of.

The Family Code, on the other hand, while expected to fill the gaps left by the Constitution in relation to the family, only briefly touches on domestic violence as one of the causes for Legal Separation. Article 55 of Title II of the Family Code provides:

Art. 55. A petition for Legal Separation may be filed on any of the following grounds:

(1) *Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;*

¹⁵ Criminal Injustice: Violence Against Women in Brazil, *op.cit.*, p.13.

(2) *Physical violence* or moral pressure to compel the petitioner to change religious or political affiliation;

(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner to engage in prostitution, or connivance in such corruption or inducement;

It will be noticed that for physical violence to be a ground for legal separation, the same must be repeated. Only if the same were to be inflicted for purposes of compelling the wife to engage in prostitution is physical violence not qualified.

Meanwhile, Article 149 of the same code is a mere reiteration of the Constitutional provision regarding the family as a basic social institution whose sanctity should be maintained and protected.

As earlier mentioned, the numerous decisions of the Philippine Supreme Court, on the State's policy respecting the family, uphold the primacy of maintaining and keeping the family together. In compliance with such rulings, laws should be integrated and applied in favor of keeping the family intact. This practice led moral and social concerns to prevail over individual interest, more specifically, the safety and general welfare of women.

While the New Civil Code of the Philippines, touching mainly on Human Relations¹⁶ also accords resort to victims relying on civil actions for compensation, a review of Philippine jurisprudence on the subject reveals no case where a woman sued her husband for damages on the ground of physical injuries inflicted upon her person.

On the other hand, the Revised Penal Code of the Philippines does not specifically consider the act or act(s) constituting domestic violence as a separate or special criminal act(s).

As previously mentioned, husbands inflicting violence upon their partners may be held liable under Title 8 (Crimes Against Persons), Chapter 2 (Physical Injuries) of the Revised Penal Code of

¹⁶ Arts. 19-21, 33, RPC.

the Philippines. Depending on the outcome of the violence, conviction may be obtained for the following crimes:

1. Mutilation (Art.262)
2. Serious Physical Injuries (Art. 263)
3. Administering Injurious Substances or Beverages (Art. 264)
4. Less Serious Physical Injuries (Art. 265)
5. Slight Physical Injuries (Art. 266)

Meanwhile, sexual assaults e.g. marital rape in the home – except for incest – will fall into the category of crimes against chastity under the same Code.

But despite the existence of such criminal laws (although inadequate) society's easy acceptance of the husband's proprietary attitude towards the wife negates any criminal intent in the battery or rape committed upon the person of the latter.

While wife-beating may fall under the aforesaid provisions of the RPC – depending on the consequences of the beating – studies show that most wife-beating/sexual assault cases go unreported. Aside from the fears of economic loss and embarrassment – brought about by insensitive and untrained police – a good number of women are ignorant of the fact that they could prosecute their husbands under the law on physical injuries. It is in this context that the formal criminalization of wife-battery and other forms of domestic violence must be brought about.

Matrimonial relief, on the other hand, although providing a remedy for some, is clearly available only to those who are married and even in such cases may not be desired by the victim, who, in general terms, wishes the violence, rather than the relationship, to be brought to an end.¹⁷

¹⁷ *Ibid.* p.12.

In the US, domestic violence is now a household word. It has more than 1,500 programs providing services for battered women. In many areas, the legal system no longer treats domestic violence as a “family matter”, but prosecutes wife assault as it would assault by a stranger. Through the symbolic force of law, society has declared wife abuse unacceptable and is holding violent men accountable.¹⁸

In fact, the US has taken a decidedly “law and order” approach to intimate violence. Activists have worked hard to frame wife assault as a crime, rather than as a social/mental health problem. They have looked to the justice system when fashioning remedies for abuse rather than to the “helping professions”, or to more informal community-based sanctions.¹⁹

The overriding principle is that men should be held strictly accountable for their violence; the strategy is to get the sanctioning arm of society – the justice system – to take violence against women seriously.

The pending Bills on Domestic Violence, while laudable in principle, still contain some qualifications which betray the lawmakers’ lack of knowledge on the issue. Considering the long wait of battered women for such a law, the bills must only rightfully be effective – once implemented – in combating their abuse in the domestic sphere.

It should be pointed out, however, that the pending legislations are commendable in the following senses:

- a) it recognizes the growing incidence of domestic violence, specifically wife-beating;
- b) it enjoins relevant government agencies to protect the battered woman and assist her in her recovery;
- c) it makes available to battered wives government resources (*e.g.*, round-the-clock-shelter-programs);

¹⁸ Lori Heise and Jane R. Chapman, *Reflections on a Movement: The US Battle Against Women Abuse*. p.3.

¹⁹ *Ibid.*

d) it recognizes the fact that the woman has the right to be safe in her own home (*e.g.* the bill gives the woman the option to avail of legal remedies for the man to vacate the family home;

e) it recognizes that the woman is entitled to support *pendente lite* (although the grant of the same is discretionary on the part of the judge);

f) it places importance in information campaigns regarding wife-beating; and

g) it recognizes the significance of non-governmental organization, particularly women's organizations in formulating and implementing information campaigns.

For instance, the proposed legislation sponsored by Rep. Manuel A. Roxas merely punishes *habitual* wife beating and not wife beating *per se*. Wife-beating is called habitual if the same occurs at least twice a year. The same means that a husband who beats his wife *only* once a year – but afterwards leave her limbs broken, her face and body black and blue – can never be held liable for wife-beating under the law. Wife beating *per se* should be criminalized regardless of its frequency. Women who are beaten, severely or otherwise, are even rendered incapacitated to work due to the physical and/or psychological battering she has undergone.

Curiously, the Revised Penal Code punishes the offender for physical injuries inflicted which results in requiring varying lengths of hospitalization or which renders the offended party unable to work. It appears then that the bill will not penalize husbands who inflict on their wives serious, less serious, slight physical injuries if they do so only once a year.

While it may be claimed that the woman has the option of filing a criminal complaint for physical injuries, wife-beating is still widely-considered by the police, fiscals and judges as a private matter.

The law is also defective in that it fails to define what constitutes WIFE-BEATING. Failure to define wife-beating will make the punishment of the offender depend on the police investigating the complaint. Placing the determination of whether a beating has

occurred in the hands of an investigating officer will give the latter the authority to say what instance of wife-battery should be resolved by the wife and her husband.

The recourse of the woman under the bill is also not clear. It does not specify the instances when a woman will be entitled to the round-the-clock shelter program.

While recognizing the need for immediate and short term measures such as shelter for battered women, it should be pointed out that shelters are at best just that, a short term alternative for women in crisis.²⁰

While vital for women's safety, shelters by their very nature make the victim of violence – not its perpetrator – suffer the emotional and physical upheaval of being displaced from home.”

Many shelters do not even offer a workable short-term alternative for women with special needs, such as women with alcohol/drug problems or women who are mentally ill or have physical disabilities.

Few can offer women the job training or transitional housing they may need to set forth on their own.

The emphasis on sheltering reflects the primacy of women's safety as does the focus on justice reform. Recognizing that shelter alone could not protect women, activists in the late 1970s agitated to make their police and courts responsive to women's needs.

Under Sec. 2 of House Bill No. 628, the habitually battered woman is given the option of whether to avail or a round-the-clock shelter program or to stay in the family home under the supervision of the DSWD or the local government unit attending to the case. While the mere availability of these options is sufficiently praiseworthy, the law fails to provide when these options may be taken. For instance, it does not state whether the victim may avail of it:

²⁰ Heise and Chapman, *op.cit.*p.4.

- a) right after a beating;
- b) right after a case is filed;
- c) when a case is already ongoing; or
- d) when the case is terminated and the man is acquitted.

In addition, the bill does not provide how long such a program is available, the “requirements” before one may qualify for the program and what is done during said program?

With regard to the second option, the bill does not specify who will be tasked to protect and supervise and to what extent the protection and supervision will go. Moreover, the bill does not provide for a penalty in case those who are tasked to protect the woman fails in their job.

While providing for support *pendente lite*, Section 4 of the bill makes the same discretionary upon the court. Since a good number of judges and members of the legal profession perceive wife-beating as a domestic issue, many shirk away from such cases. Hence, in the attempt to remove such cases in their *sala*, judges may opt not to grant support *pendente lite* to wives asking for the same.

Meanwhile, the penalty stated under Section 5 may be imposed only for habitual batterers. As mentioned earlier, the bill does not consider wife-beating per se a worse crime than any of the types of physical injuries inflicted under the Revised Penal Code. To be meted the higher penalty, wife-beating must first be habitual regardless of the fact that it was caused by the husband in the first place and hence, deserving of a higher penalty – habitual or not.

As regards the “reaching out “ program being proposed in Section 6 of the same bill, the government agency will be acting as a pacifier with the end of “restraining and curbing, if not altogether doing away with their violent tendencies”. Such proposed program betrays the (male) lawmaker’s perception that wife-beating arises from some psychological imbalance or the need to release uncontrollable anger. It completely misses the point that wife-beating is simply a

violent manifestation of the man's misconception of his power over a woman. Instead of disabusing him of such misguided notion by imposing upon him the penalty for wife-beating, and letting him know in the process that what he did is a crime – a gross violation of an individual's person/dignity – the government agency aims to pacify him.

It must be emphasized that woman battering is not just an aberration in the behaviour of a number of disturbed men; it is a violent manifestation of male domination over women and the patriarchal attitude that sees women, especially wives, as the property of men.²¹

For ordinary criminals/offenders, the aim of the law is to punish by way of rehabilitation. For wife-beaters, why should the bill make an exception? Wife-beaters, in fact, commit a greater crime. Under the bill, wife-beaters will be pacified with the end in view of curbing his "violent tendencies". Following the intent of the basic laws of the land, the reason for curbing these tendencies would be to maintain the wholeness of the family.

In Section 9, the penalty for an accomplice is too low – a FINE of P5,000 and IMPRISONMENT of ONE year. It does not seem to consider the aggravating and/or ignominious circumstance of his participation in the crime. Instead of being meted such penalty, why should she/he not be meted the penalty for an accomplice who commits the crime his principal has committed?

Moreover, there is no provision on the penalty of policemen who do not perform their duties under this law. If he were to be considered to fall under Section 9, *i.e.*, as an accomplice, the punishment of a P5,000 in fines and a 1 year imprisonment would be too light.

In the United States, as low arrest rates continued under discretionary standards, activists have moved to "legislate" police behaviour (instead of trying to change police attitudes through training). After Washington State enacted its mandatory arrest law,

²¹ Legal Aid Handbook 1, op.cit.p.5.

arrests increased fourfold, the number of cases doubled and the number of cases prosecuted tripled. In 1984, a study released by researchers in Minneapolis suggested that arrest actually deterred batterers from future violence. Even the US Attorney-General issued a report endorsing a strong criminal justice approach to Domestic Violence.

All but one state (West Virginia) now authorize police to arrest batterers when they have "probable cause" to believe that an assault has occurred.

It should be noted, however, that such mandatory arrest law reveals some areas of concern. Police antagonism towards the policy has resulted in many dual arrests, where both the man and the woman are arrested. The existence of such a law also made women less willing to call the police as they do not want their partners arrested. Furthermore, the police can easily circumvent the law by not pursuing the offenders when they leave the scene.

It is therefore imperative that remedies are made available to women whose requests for assistance are ignored or carelessly heeded. For instance, U.S. laws permit the filing of lawsuits against the police for their failure to arrest an offender. In this connection, the legislature must be encouraged to broaden the arrest authority of the police in misdemeanor/assault cases. To make such a remedy effective, the police should also be educated in the dynamic of abuse.

Thurman v. Torrington, a US case decided in 1984, provided that individual officers as well as police departments could be held liable for failure to protect battered women. Tracy Truman, a battered woman, was awarded \$2.3 million in damages for wounds her husband inflicted on her after the *Torrington*, Connecticut police failed to intervene despite her repeated calls for help.²²

Furthermore, the proposed bill seeks to protect only the legal spouse from habitual battery. What then will happen to the common-

²² Heise and Chapman. op.cit.p.14.

law spouse who, in all aspects is in the same situation as the wife only without benefit of marriage?

While the initiative in drafting the bills is commendable, the aforesaid criticisms should be considered in their revision in time for their passage.

V. CONCLUSION

Perhaps knowing the growing incidence of domestic violence in the country, the Ramos Administration last month urged Congress to hurry the passage of the bill on domestic violence. Truly, domestic violence can no longer be dismissed as a "private matter" in the Philippines. It is a public and widespread problem which calls for an urgent government response. Domestic battery – at present – appears to be punished only when it leads to death of the wife. And when the woman dies, domestic violence becomes primarily a criminal issue.

It is in this context that the current state policy and the legal measures aimed at curbing violence against women in the homes exemplify a failure to grasp the nature and extent of domestic violence.

A stronger and more comprehensive resolve to curb wife-beating and other forms of domestic violence should be manifest in the general laws. The general policies on the FAMILY and WOMEN in the 1987 Constitution demonstrate an adequate, indecisive stance with respect to violence in the home. Neither such a policy can be seen in the Family Code. Purportedly enacted to reflect the changes in the Philippine social make-up, the Family Code delved much on property relations and the primacy of the family as basic social unit. This apparent overestimation of the institution of the family over other social institutions and concerns does not provide confidence to victims of domestic violence in the general laws.

A reform in the Criminal law system is also imperative. The title on Physical Injuries should contain a separate provision specifically dealing with injuries inflicted by the husband upon his wife or by other members of the family upon each other. Moreover, the

coverage of the law should extend to common-law relationships, extended family units and other intimate relationships.

Legislation on the matter should not only be aimed at the perpetrator. The need to ensure the safety, security and privacy of the victim is also imperative. In this connection, *Civil Protection Orders* employed by other countries to protect the *women* from further beating may be employed. The special civil action of Injunction should be utilized by Philippine courts for the immediate prevention of further violence in the home.

Measures to assist the victim should likewise be taken to stem the extensive physical and psychological repercussions of domestic violence. This would include shelter programs which would not make the stay of women therein dependent on the shelter's resources. While providing temporary refuge, these shelters could simultaneously offer rehabilitation-cum-empowerment programs for the women.

But shelters and protection orders are merely palliative. To eradicate domestic violence, the pending bills on the issue must be passed and implemented effectively. The police, acknowledged to be the arm of the State best positioned to protect women's immediate safety, judges and lawyers, must be trained and re-educated to take Domestic Violence seriously.

Together with the state policy aimed at preserving the unity and sanctity of the family, a stronger resolve to protect its members should also be effected. Violence against family household members is a greater threat to social survival. When personal dignity is violated, the capacity to survive, participate and develop within the context of society is likewise destroyed.

The important thing is to make it clear that the violence commonly practiced against women is not merely a question of purely domestic disputes, as the prevailing morality insists. Quite to the contrary, it is a question of public safety.

Battery is a crime and should be treated like any other crime. Batterers should be arrested, not pacified. To do any less denies a woman her basic rights as a citizen and increases her likelihood of serious injury.²³

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²³ Lori Heise and Jane R. Chapman, *op. cit.* p. 5.

ANNEX

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

TENTH CONGRESS

FIRST REGULAR SESSION

HOUSE BILL NO. 5818

Introduction by the Honorable Carmencita O. Reyes

AN ACT
PROVIDING FOR THE PROTECTION OF WOMEN AGAINST
HABITUAL WIFE BEATING, AND PROVIDING PENALTIES FOR
VIOLATIONS THEREOF.

*Be it enacted by the Senate and the House of Representatives of the
Philippines in Congress assembled:*

SECTION 1. This Act shall be known as the Protection
Against Wife Beating Act of 1996.

SEC. 2. It is hereby declared the policy of the State to
promote and protect the welfare of women, and preserve their dignity
as human person. Towards this end, the government shall protect
women against habitual wife beating from their spouse.

SEC. 3. Habitual wife beating shall be prohibited
whether or not there is provocation on the part of the victim. For the
purpose of this Act, habitual wife beating shall mean the infliction of
physical injuries by the husband upon his wife for at least two (2)
times within a period of one (1) year, regardless of whether or not the
spouses are living together.

SEC. 4. A victim of habitual wife beating shall have the following rights:

a) Demand that the accused husband vacate the conjugal home;

b) Avail of the round-the-clock shelter and protection to be provided by the Department of Social Welfare and Development.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

TENTH CONGRESS
FIRST REGULAR SESSION

HOUSE BILL NO. 5818

Introduction by the Honorable Carmencita O. Reyes

EXPLANATORY NOTE

This bill seeks to provide protection against habitual wife beating.

The wife has always been considered as a guiding light that brightens a home, and usually has the respect of every member of the family. This is one Filipino value that should always be maintained.

But the growing number of incidence of wife beating is quite alarming. And to consider that cruelty and maltreatment is happening in her own home and worse it is being inflicted by her own husband who is supposed to be her protector. Such cruelty has serious effect on the wife's basic dignity as a human person. This also destroys the image of the Filipino wife and may even affect the children which may eventually result to the breakdown not only of the family but the Philippine society as a whole. Such uncivilized act of husbands must be stopped, and the dignity of the wives must be upheld. Hence, this bill. Its approval is strongly recommended.

(Sgd.) CARMENCITA O. REYES

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

TENTH CONGRESS

First Regular Session
House Bill No. 628

Introduction by Congressman MANUEL A. ROXAS

AN ACT
TO PROVIDE A COMPREHENSIVE PROGRAM AGAINST WIFE
BEATING, INCREASING PENALTIES FOR HABITUAL
OFFENDERS THEREOF, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the
Philippines in Congress assembled:*

SECTION 1. Habitual wife beating, as referred to in this Act, shall mean the infliction of physical injuries by the husband upon the wife for at least two (2) times within a period of one (1) year, regardless of whether or not the spouses are living together.

SEC. 2. A wife who becomes a victim of habitual wife beating shall have the option of either: (a) availing of the round-the-clock shelter and protection to be provided by the Department of Social Welfare and Development or (b) continuing to stay in the conjugal abode under the protection and supervision of the DSWD or local government official attending to the case. The DSWD facility mentioned in (a) shall be in the form of temporary refuge centers which shall provide information, resources and support services to the victims to enable them to come up with rational decisions on their situations.

SEC. 3. A wife who becomes a victim of habitual wife beating shall have the right to demand that the husband vacate the conjugal abode to prevent the repetition of the latter's violent acts, and avail of all legal remedies to enforce the same.

SEC. 4. At the discretion of the court during the pendency of the case, a wife who becomes, a victim of habitual wife beating shall be entitled to immediately receive a portion of her husband's salary, according to the following rates: 50% thereof if she is unemployed, and has no dependent minor children, or even if employed but has one or more dependent minor children: 75% thereof if she is unemployed and has one or more dependent minor children: *Provided*, That the husband's employer through the latter's cashier or disbursing officer shall be obliged to authorize regular salary deductions based on the given rates and to remit the same to the wife within 24 hours upon her demand.

SEC. 5. A husband found guilty of habitual wife beating shall be liable to suffer a penalty of one degree higher than that provided under Title Eight, Chapter Two Book II of the Revised Penal .

SEC. 6. The Department of Social Welfare and Development shall develop a plan for reaching out to husbands who have been found guilty of habitual wife beating, to include but not limited to counseling sessions, with the end in view of enabling them to restrain and curb, if not altogether do away with their violent tendencies.

SEC. 7. The Department of Social Welfare and Development and the Department of Justice shall formulate and implement regular training programs designed to equip public officers, including barangay officials designed to curb, minimize and effectively handle wife beating cases.

SEC. 8. A multi-agency task force shall be organized under the direction of the DSWD involving the relevant agencies and non-governmental organizations, and shall be charged with planning and implementing an information and education campaign aimed at reforming public attitudes and opinion on wife beating. The

communication campaign shall provide information on the facilities and resources being made available to victims as well as the penalties to offenders and the means to avail of the same.

SEC. 9. Any person other than the guilty husband who in concert with or assists him in violating any of provisions of this Act shall be sentenced to pay a fine of Five thousand pesos (P5,000.00) and a prison term of one (1) YEAR.

SEC. 10. All decrees, executive orders, laws or any part thereof which are inconsistent with this Act, are hereby repealed or modified accordingly.

SEC. 11. This Act shall take effect upon its approval.

Approved.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

TENTH CONGRESS
First Regular Session

House Bill No. 628

Introduction by Congressman MANUEL A. ROXAS

EXPLANATORY NOTE

Article II, Section II of the Constitution of the Philippines provide "The State values the dignity of every human person and guarantees full responsibility for human sanctity." Section 12 also provides "The State recognizes the sanctity of family lives and shall protect the family as a basic autonomous social institution. x x x."

The wife is the cornerstone when one reads of incidence of wife beating which seem to be getting more rampant especially in the lower classes of our society today. This pernicious act not only violates the human rights of the wife but degrades her dignity and person as well, and disturbs the tranquility, peace and well-being of the family especially that of the children.

Civilized society demands that this abhorrent offense be repressed and penalized to such extent as will discourage and deter misguided husbands from beating their wives.

This measure seeks to impose a penalty one degree higher than that provided for by the Revised Penal Code for such offense especially such as will result in the infliction of physical injuries on the wife, further taking into consideration the aggravating circumstances of the use of superior strength. This bill also provides for the right of the wife to take refuge in government social centers and to eject the habitual wife beater from the conjugal home, and to receive from 50%

to 75% of his salary which the husband's employer is required to remit to the aggrieved wife, upon her demand.

Likewise, provision is made for the Department of Social Welfare to devise such plans and counseling services designed to rehabilitate aberrant husbands from giving vent to their violent tendencies.

Wife-beating does not have a place in civilized society and all means should be adopted by Government to stamp out this uncivilized act.

In view of the foregoing approval of this bill is strongly recommended.

(Sgd.) MANUEL A. ROXAS
Representative