

The Protection orders of Violence against Women and their Children: is it Violative of Men's Due Process?

by Atty. Barbette Joanne Magalona Badocdoc-Reposar

The Philippines, being a signatory of the United Nations, has actively taken part to the UN Declaration on the Elimination of Violence Against Women (1993). Among this is the signing into law Republic Act No. 9262, otherwise known as the Anti-violence against Women and Children Act of 2004.

The passing of said law was memorable because R.A. 9262 was signed into law on March 8, 2004, during the celebration of "International Women's Day" – a very symbolic statement that the government is taking action against abuses on women and children. It is also worthy to note that on January 15 of the same year, the Supreme Court has resolved that most controversial VAW case, the Marivic Genosa case.

Every time I would be a resource speaker of Gender and Development Forums and Seminars, the first question raised by men participants would be, "How about us men? Are we not protected?" or "Panu naman kaming mga lalaki? Wala bang VAMC or Violence against Men and Children?"

Hence, I think is it but appropriate and timely to discuss two (2) jurisprudences in relation to

VAWC and the questions on the validity of protections order and how the law is violative of equal protection and men's right to due process, among which is worthy to be discussed herein:

a) XXX, PETITIONER, VS. AAA, BBB, AND MINOR CCC, RESPONDENTS. (G.R. No. 187175, July 6, 2022);

In this case penned by Justice Leonen, the court has resolved a Petition for Review on Certiorari filed by XXX assailing the constitutionality of Republic Act No. 9262, or the Anti-Violence Against Women and their Children Act of 2004, in relation to the Regional Trial Court's grant of a Permanent Protection Order³ in favor of AAA; BBB; and minor CCC.

In this case, the constitutionality of R.A. 9262 was raised again. The Petitioner moreover questions the issuance of the TPO and the non-referral of VAWC case to a mediator as violative of the due process clause of the constitution.

Hence, Supreme Court referred in the case of *Garcia v. Drilon*. The court explained that in view of the principle of separation of powers and for lack of

any constitutional violation, this Court would refrain from tackling the true motivation of Congress in limiting the protection afforded under Republic Act No. 9262 to women and children only and has explained jurisprudential gauges where the constitutionality of R.A. 9262 was upheld, to wit:

“I. R.A. 9262 rests on substantial distinctions. The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. As Justice McIntyre succinctly states, “the accommodation of differences ...is the essence of true equality.”

II. The classification is germane to the purpose of the law. The distinction between men and women is germane to the purpose of R.A. 9262, which is to address violence committed against women and children, spelled out in its Declaration of Policy.

III. The classification is not limited to existing conditions only, and apply equally to all members

Moreover, the application of R.A. 9262 is not limited to the existing conditions when it was promulgated, but to future conditions as well, for as long as the safety and security of women and their children are threatened by violence and abuse.

As to the issue that the issuance of TPO is violative of men's right to due process:

In this case, the Petitioner alleges and says that: ***On the basis of unsubstantiated allegations, and practically no opportunity to respond, the husband is stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened.***

The court explained that a *protection order* is an order issued to prevent further acts of violence against women and their children, their family or household members, and to grant other necessary reliefs. Its purpose is to safeguard the offended parties from further harm, minimize any disruption in their daily life and facilitate the opportunity and ability to regain control of their life.

The rules require that petitions for protection order be in writing, signed and verified by the petitioner thereby undertaking full responsibility, criminal or civil, for every allegation therein. Since “time is of the essence in cases of VAWC if further violence is to be prevented.

The court in its decision said:

“The grant of a TPO ex parte cannot, therefore, be challenged as violative of the right to due process. Just like a writ of preliminary attachment which is issued without notice and hearing because the time in which the hearing will take could be enough to enable the defendant to abscond or dispose of his property, in the same way, the victim of VAWC may already have suffered harrowing experiences in the hands of her tormentor, and possibly even death, if notice and hearing were required before such acts could be prevented. It is a constitutional commonplace that the ordinary requirements of procedural due process must yield to the necessities of protecting vital public interests, among which is protection of women and children from violence and threats to their personal safety and security.

The court even laid down the procedural requirements that when the TPO is issued ex parte, the court shall likewise order that notice be immediately given to the respondent directing him to file an opposition within five (5) days from service. The date of the preliminary conference and hearing on the merits shall likewise

be indicated on the notice. The opposition to the petition which the respondent himself shall verify, must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.

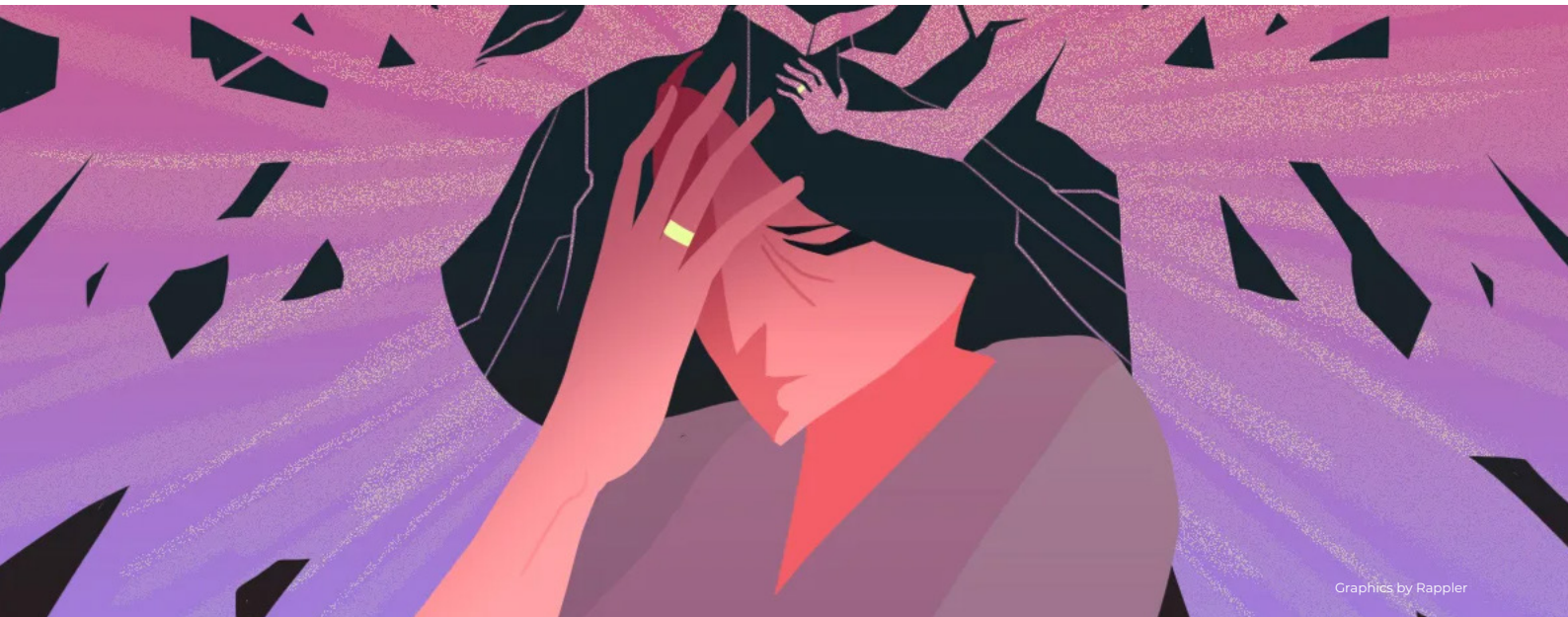
Thus, it is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. In several jurisprudence, it has been upheld that the essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. “To be heard” does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

As to the issue that the non-referral of the VAWC Cases is violative of men's right to due process:

The Petitioner in this case further argues that “by criminalizing run-of-the-mill arguments, instead of encouraging mediation and counseling, the law has done violence to the avowed policy of the State to “protect and strengthen the family as a basic autonomous social institution.”

The court then cited Section 23 (c) of A.M. No. 04-10-11-SC,151 which provides that the court shall not refer the case or any issue thereof to a mediator. The reason behind this provision is well-explained by the Commentary on Section 311 of the Model Code on Domestic and Family Violence as follows:

This section prohibits a court from ordering or referring parties to mediation in a proceeding for an order for protection. Mediation is a process by which parties in equivalent bargaining positions



voluntarily reach consensual agreement about the issue at hand. Violence, however, is not a subject for compromise. A process which involves parties mediating the issue of violence implies that the victim is somehow at fault. In addition, mediation of issues in a proceeding for an order of protection is problematic because the petitioner is frequently unable to participate equally with the person against whom the protection order has been sought.

The court in its conclusion emphasized that it is unnecessary to belabor petitioner's erroneous conclusion that Republic Act No. 9262 is an improper exercise of police power because it violates the constitutional guarantees of equal protection and due process.

To emphasize, before a duly assailed law or any of its provisions are to be declared void, "the grounds for nullity must be beyond reasonable doubt." - to which the petitioner miserably failed to raise convincing points of arguments that would merit a declaration of unconstitutionality.

Simply putted, the statement that R.A. 9262 is always pro-woman is not correct at all. In fact, in a case, the court has even allowed a father to apply for protection orders and custody against a

mother who is alleged to have committed violence against their children.

b) RANDY MICHAEL KNUTSON, ACTING ON BEHALF OF MINOR RHUBY SIBAL KNUTSON, PETITIONER, VS. HON. ELISA R. SARMIENTO-FLORES, IN HER CAPACITY AS ACTING PRESIDING JUDGE OF BRANCH 69, REGIONAL TRIAL COURT, TAGUIG CITY, AND ROSALINA SIBAL KNUTSON, RESPONDENTS. (G.R. No. 239215, July 12, 2022)

In this case, the court has allowed the issuance of Protection and Custody order in favor the father against a mother who has allegedly been committing violence against their own child.

The Respondent raised that the R.A. 9262's Protection Order should not be issued against her because the law should be protecting her, a woman. The court in its decision says otherwise. The court has explained the following points:

Section 9 (b) explicitly allows "parents or guardians of the offended party" to file for a protection orders. The statute categorically used the word "parents" which pertains to the father and the mother of the woman or the child victim. When the law speaks in clear language, no explanation is required. Similar-

ly, the statute did not qualify on who between the parents of the victim may apply for protection orders. Thus, when the law does not distinguish, the courts must not distinguish. The protection order cannot be issued in favor of the husband against the wife but justified with respect to the minor daughter.

The court has also cited section 3(a) of the law which used a gender-neutral word "person" as the offender of which embraces any person of either sex. The offender may also include other persons who conspired to commit the violence.

Lastly and differently stated, the court has emphasized 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.

With these recent jurisprudences, it only goes to show that this law is not anti-men nor that is pro-women. Just like any other law, R.A. 9262 is there to punish the offenders who have committed the punishable acts laid down under the law.

Oh well, the law could be harsh, but it is the law.