Fighting Domestic Violence - The Philippines

1. Legal provisions

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# 1.1 What are the relevant statutes and codes?

The primary statute addressing domestic violence in the Philippines is Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004 ("**VAWC Act**") and its Implementing Rules and Regulations (IRR). The VAWC Act was enacted to address violence committed against women and their children in keeping with the fundamental freedoms granted under the Philippine Constitution, the Provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child and other international human rights instruments to which the Philippines is a party.[1]

"Violence against women and their children" is defined under the VAWC Act as any act or a series of acts committed by any person against a woman who is his wife, former wife, or a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, whether or not the act is committed within or outside the family abode.[2] The VAWC Act is groundbreaking legislation in the Philippines, particularly because of how it recognizes different forms of violence, namely, those that result in or are likely to result in physical, sexual or psychological harm or suffering, or economic abuse.[3]

Perpetrators of domestic violence may likewise be held accountable under the Revised Penal Code of the Philippines (RPC). The RPC is the general criminal law of the Philippines and it penalizes crimes that are usually gender-based, such as rape,[4] acts of lasciviousness,[5] seduction,[6] abduction,[7] intentional and unintentional abortion,[8] physical injuries,[9] and threats and coercion.[10]

The Philippines also addresses the issue of trafficking persons, where women and children are often the victims, through Republic Act No. 10364 or the Expanded Anti-Trafficking in Persons Act of 2012 ("**Anti-Trafficking Act**"). Among others, this law makes it criminal to: (i) match Filipino women to foreign nationals for marriage for the purpose of exploiting Filipino women to engage in forced labor, slavery, sexual exploitation or debt bondage;[11] (ii) offer or contract marriage for the purpose of offering prostitution, pornography and sexual exploitation;[12] and (iii) maintain or hire a person to engage in prostitution or pornography.[13]

The Philippines has legislation addressing sexual harassment. Republic Act No. 7877 or the Anti-Sexual Harassment Act of 1995 ("**Anti-Sexual Harassment Act**") is the main law defining and punishing acts of sexual harassment. Republic Act No. 11313 or the Safe Spaces Act ("**Safe Spaces Act**") penalizes gender-based sexual harassment in streets, public spaces, online workplaces, and educational and training institutions.

Several bills are pending before the Philippine Senate and House of Representatives, which if passed into law would also seek to address domestic violence issues. Some of these bills are as follows.

Senate Bill No. 978 — An Act Granting Additional Leaves For Victims of Domestic Violence Act

The bill seeks to amend the VAWC Act by increasing the present paid leave of absence from 10 days (as found in Section 43 of the current law) to an aggregate of 20 days.

It has been pending in the Committee on Women, Children, Family Relations and Gender Equality since 28 August 2019.

Senate Bill No. 268 — Absolute Divorce Act of 2018

The bill cites physical violence and marital abuse as grounds for a judicial decree of divorce. Further, having a spouse sentenced to imprisonment for six years, even if pardoned, is a ground for absolute divorce by summary judicial proceedings.

It has been pending in the Committee on Women, Children, Family Relations and Gender Equality since 30 July 2019.

Senate Bill No. 356 — Divorce Act of 2019

The bill states that physical violence and gross abusive conduct are grounds for a judicial decree of absolute divorce. It also states that all acts categorized as domestic violence under the VAWC Act are grounds for absolute divorce.

It has been pending in the Committee on Women, Children, Family Relations and Gender Equality since 31 July 2019.

House Bill No. 534 — An Act Granting An Additional 15 Day Paid Leave for Victims of Domestic Violence Act

The bill seeks to amend the VAWC Act by increasing the present paid leave of absence from 10 days (as found in Section 43 of the current law) to an aggregate of 15 days.

It has been referred to the Committee on Women, Children, Family Relations and Gender Equality.

House Bill No. 1629 — Older Filipino's Protection From Violence Act

The bill seeks to protect older or disabled persons from institutional, community, and domestic violence and sexual assault. It defines "domestic violence" as any act or threat of violence, committed by the following:

current or former spouse of the victim

person related by blood or marriage to the victim

person who is cohabiting or has cohabited with the victim

person with whom the victim shares a child in common

person who is or has been in a social relationship of a romantic or intimate nature with the victim

person similarly situated to a spouse of the victim

It has been pending with the Committee on Senior Citizens since 21 January 2020.

Other house bills are pending in the committee with substantially the same provisions. These are House Bill Nos. 4973, 6594, 6869 and 1017.

House Bill No. 5273 — An Act Requiring Employers to Provide Employment Leave for Victims of Domestic Violence

The bill seeks to grant a 10-day leave to victims of domestic violence.

The bill has been pending with the Committee on Labor and Employment since 13 September 2011.

House Bill No. 5584 — 2017 Anti-Domestic Violence Act Against Individuals Including Members of the LGBT Community Other Than Women and Children

The bill seeks to punish crimes of domestic violence when committed against those who are not women and children.

The bill has been under deliberation in the Committee on Women, Children, Family Relations and Gender Equality since 9 August 2019.

House Bill No. 0100 — Absolute Divorce Act of 2019

The bill cites physical violence as one of the grounds for an absolute divorce.

The Committee on Population and Family Relations approved the bill on 4 February 2020. It is expected to be referred to the full house for analysis and debate.

# 1.2 What is the controlling case law?

Since its enactment in 2004, the VAWC Act has been the subject of several Philippine Supreme Court ("**Supreme Court**") cases. Some of the notable decisions by the Supreme Court on the VAWC Act for the past two years are discussed below.

In *Reyes v. People*,[14] the Supreme Court held the following:

... [t]he express language of R.A. No. 9262 reflects the intent of the legislature for liberal construction as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit — to promote the protection and safety of victims of violence against women and children.

In *AAA v. People*,[15] the Supreme Court enumerated the elements that must be present for a conviction under the VAWC Act, as follows:

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

In *Pension and Gratuity Management Center v. AAA*,[16] the Supreme Court held that retirement benefits may be automatically deducted for direct remittance to its recipient's legal spouse, as support, in compliance with a protection order issued by a trial court under the VAWC Act. The VAWC Act is an exception to the law that renders retirement benefits exempt from execution.

In *Provincial Bus Operators Association of the Philippines v. DOLE*,[17] the Supreme Court held that the VAWC Act does not violate the equal protection guarantee under the Philippine Constitution because of the following:

… 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 justify the enactment of a law that specifically punishes violence against women.

In *Melgar v. People*,[18] the Supreme Court held that "the deprivation or denial of financial support to the child is considered an act of violence against women and children" and "the act of denying support to a child is a continuing offense." In cases of support, "it must be first shown that the accused's denial thereof — which is, by itself, already a form of economic abuse — further caused mental or emotional anguish to the woman-victim and/or to their common child."

In *AAA vs. BBB*,[19] the Supreme Court held that the Philippine courts may exercise jurisdiction over an offense constituting psychological violence under the VAWC Act, even if the act causing the psychological violence was done outside the country. In this case, the husband committed marital infidelity abroad, which allegedly caused mental anguish to the wife based in the Philippines. The Supreme Court discussed that the law contemplates that acts of violence against women and their children may manifest as transitory or continuing crimes, such that some acts material and essential to it occur in one territory while some occur in another. Thus, a person may be validly tried in any territory where the offense was in part committed. As the "anguish suffered by the victim" was in this particular instance a material element of the crime charged, the fact that the victim resided in the Philippines gave the Philippine courts jurisdiction to try the case.

In *Araza y Jarupay v. People*,[20] the Supreme Court held the following regarding a conviction based on Section 5(i) of the VAWC Act:[21]

… [it] does not require proof that the victim became psychologically ill due to the psychological violence done by her abuser. Rather, the law only requires emotional anguish and mental suffering to be proven. To establish emotional anguish or mental suffering, jurisprudence only requires that the testimony of the victim be presented in court, as such experiences are personal to this party.

In this case, the court held that "marital infidelity, which is a form of psychological violence" was the proximate cause of the wife's emotional anguish and mental suffering.

# 1.3 What are the specific parts of the court system that address domestic violence?

Cases of domestic violence are heard in the regional trial courts that are specifically designated as family courts pursuant to Republic Act 8369 or the Family Courts Act of 1997 ("**Family Courts Act**"). Family courts have exclusive original jurisdiction to hear and decide cases of domestic violence against the following:

Women: This includes acts of gender-based violence that result or are likely to result in physical, sexual or psychological harm or suffering to women, as well as other forms of physical abuse such as battering or threats and coercion that violate a woman's personhood, integrity and freedom of movement.

Children: This includes committing all forms of abuse, neglect, cruelty, exploitation, violence and discrimination, and all other conditions prejudicial to their development.[22]

Family courts are empowered to provide special provisional remedies, including issuing a restraining order against the accused or defendant in cases of violence among immediate family members living in the same domicile or household; ordering the temporary custody of children in all civil actions for their custody; and ordering the giving of support *pendente lite* (pending the litigation).

# 1.4 What are potential causes of action?

Victims of domestic violence have grounds to file criminal actions against the perpetrator, actions that have for its purpose the provision of support, as well as actions to prevent further violence such as a *barangay* protection order, temporary protection order and permanent protection order. Damages may also be awarded to a victim of domestic violence, as the VAWC Act provides that any victim of violence under this law is entitled to actual, compensatory, moral and exemplary damages.[23]

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