

# Case Study on GENDER

## Breakout Sessions 2 and 3

*Presenter:*

**Judge Maria Josefina G. San Juan-Torres**

KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (*Seminar-Workshop*)

June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City



Antonio is an adult with an expunged criminal record for the crime of injuries. On the night of 15 September 2020 at their home, Antonio, after an argument with his wife, Jennifer, grabbed her by her neck and pushed her against the refrigerator, pinned her down and forced her to swallow the contents of an insecticide. When Jennifer fell to the floor bewildered, Antonio kicked her in the thigh. As a result of the aggression, Jennifer suffered injuries consisting of a contusion on her left leg and moderate intoxication, which required medical treatment in addition to initial medical care, and which took seven days to heal, one of which she was admitted to a hospital.



On the night of 27 October 2020, Antonio, after an argument in the street with Jennifer, pushed and threw her against a car, causing injuries consisting of erosion and contusion on her left shoulder, which required initial medical care, without the need for medical treatment, and took five days to heal.

In the early hours of 1 January 2021, after having been out all night drinking and consuming cocaine, Antonio returned home at around 6:30 a.m., got into the bed where Jennifer was sleeping and, when she told him that she did not want to have sex, Antonio showed her a large knife that he had taken from the kitchen and told her to stay still, to which Jennifer agreed. Antonio left the knife on the bedside table, but within his reach at all times, and had sexual intercourse with Jennifer, but without ejaculating. It has been proven that Antonio's volitional capacity was significantly affected by the consumption of substances.



**It is proven that, as Jennifer claims, Antonio has on other numerous occasions belittled and mistreated her in their home without causing her any injury.**



# 1. How are the facts classified according to the Spanish and Philippine criminal legislations? What crimes have been committed, if any?

	Philippine Penal Laws	Spanish Penal Code
September 15, 2020 incident	<ul style="list-style-type: none"> <li>• Sec. 5(A) in relation to Sec. 6(A) of RA 9262 (VAWC) on causing physical harm to the woman.</li> <li>• Slight physical injuries, moderate intoxication, and contusions.</li> <li>• The penalty imposable is <i>arresto mayor</i> (maximum of 6 months).</li> </ul>	<ul style="list-style-type: none"> <li>• Art. 147.1 (bodily injuries requiring medical treatment) in relation to Art. 148.4 (specific aggravating circumstance) due to a commission of an offense by a partner (relationship) with a penalty of deprivation of liberty and imprisonment of 2-5 years.</li> <li>• Generic aggravated circumstance under Art 22.2 for taking advantage of the situation.</li> <li>• It is classified as a public crime.</li> </ul>



# 1. How are the facts classified according to the Spanish and Philippine criminal legislations? What crimes have been committed, if any?

	Philippine Penal Laws	Spanish Penal Code
October 27, 2020 incident	<ul style="list-style-type: none"><li>• Sec. 5(A) in relation to Sec. 6(A) of RA 9262 (VAWC) on causing physical harm to the woman.</li><li>• Slight physical injuries and contusions.</li><li>• The penalty imposable is <i>arresto mayor</i> (maximum of 6 months).</li></ul>	<ul style="list-style-type: none"><li>• Art 147.2 in relation to Art 22.2 on gender.</li><li>• Art 153.1 for relationship</li><li>• The penalty is 6 months to 1 year or community service, deprivation of parental rights.</li><li>• It is classified as a public crime.</li></ul>



# 1. How are the facts classified according to the Spanish and Philippine criminal legislations? What crimes have been committed, if any?

	Philippine Penal Laws	Spanish Penal Code
January 1, 2021 incident	<ul style="list-style-type: none"> <li>• Under RA 8353 amending Art. 266-A, par. 1 of the Revised Penal Code, it is considered marital rape.</li> <li>• Penalty is <i>reclusion perpetua</i> (20 years and 1 day to 40 years); no application of aggravating or mitigating circumstances.</li> <li>• It used to be a Crime against Chastity, but was reclassified as Crime against Persons, but considered as a private crime because the offending spouse can be forgiven; and if committed during the existence of marriage, it is marital rape. However, if the marriage is annulled, it is treated as rape (public crime).</li> </ul>	<ul style="list-style-type: none"> <li>• Art.179 (Sexual Assault) aggravated if living together under Art. 180.4 as there is abuse of cohabitation.</li> <li>• The penalty is 12-15 years of imprisonment.</li> <li>• Apply also Art 22.2.</li> <li>• It is considered as public crime.</li> </ul>





# 1. How are the facts classified according to the Spanish and Philippine criminal legislations? What crimes have been committed, if any?

	Philippine Penal Laws	Spanish Penal Code
January 1, 2021 incident (Intoxication and Drug use)	<ul style="list-style-type: none"><li>• Immaterial, neither aggravating nor mitigating because penalty under RA 8353 amending Art 266-A, par. 1 of the Revised Penal Code on marital rape has a fixed penalty of <i>reclusion perpetua</i>.</li></ul>	<ul style="list-style-type: none"><li>• Drug addiction or intoxication is a mitigating circumstance because the capacity of the person is diminished, but if drug use or intoxication is a preparatory act with the intent to commit an offense, it is not treated as a mitigating circumstance.</li></ul>





# 1. How are the facts classified according to the Spanish and Philippine criminal legislations? What crimes have been committed, if any?

	Philippine Penal Laws	Spanish Penal Code
“Other numerous occasions belittled and mistreated”	<ul style="list-style-type: none"> <li>• Sec. 5(I) in relation to Sec. 6(F) of RA 9262 on psychological abuse.</li> <li>• The penalty is <i>prision mayor</i> (6 years and 1 day to 12 years), payment of fine (P100k-300k), mandatory psychological counseling plus reporting compliance to the court.</li> </ul>	<ul style="list-style-type: none"> <li>• “Habitual” mistreatment under Art. 173.2, par. 4 (an environment of violence).</li> <li>• “Occasional” under Art. 153 (bodily harm) includes a single act. <ul style="list-style-type: none"> <li>○ Art. 153 is a special type; different crime – the crime of occasional (single act) maltreatment.</li> </ul> </li> <li>• Art. 148 (specific aggravation for bodily injury) in relation to Art. 147.1. The penalty is 2-5 years of imprisonment.</li> </ul>



## *2. Could the facts in the Philippines be classified according to any special law?*

**Yes, the facts are classified under:**

- 1. RA 9262 (VAWC)**
- 2. Art. 266-A, RPC, as amended by RA 8353**
- 3. RA 8505 (Rape Victim Assistance and Protection Act)**



### ***3. Is there any single rule for accumulation of these crimes according to both legislations? How is it resolved in Spain and in the Philippines?***

Philippine Penal Laws	Spanish Penal Code
<p>No accumulation of crimes under Philippine jurisdiction, but apply specific provisions of special laws. (Example: RA 9262).</p> <p>However, when the physical harm constitutes attempted, frustrated, or consummated parricide/murder/homicide, it shall be punishable under the provisions of the Revised Penal Code.</p>	<p>There is concurrence of crimes (<i>concurso real de delitos</i>). Most serious crimes are to be served first in the order of service of penalty.</p> <p>However, there are instances that there may be a simultaneous service of sentence such as imprisonment and payment of fine.</p>



## 4. Are there specific aggravations or specific crimes in both legislations that pay attention to the involved gender violence?

Philippine Penal Laws	Spanish Penal Code
<p>Sec. 6(F) in relation to Sec. 5(H) and 5(I) of RA 9262 on the application of the maximum period of the penalty if the acts are committed while the woman or child is pregnant or in the presence of her child. (More than ignominy, it is about adverse childhood experience and danger to the life a pregnant woman and the child.)</p> <p><b>Issue:</b> Reading the last two paragraphs of Sec. 6(F), should this be confined only to the grounds under Sec. 5(H) and 5(I) or will it apply to all of those enumerated under Sec 5. (Refer to <i>MELGAR v. PEOPLE</i>, G.R. No. 223477, FEBRUARY 14, 2018, and <i>XXX v. PEOPLE</i>, G.R. No. 236842, JULY 27, 2020)</p> <p><b>Recommendation:</b> Refer to the Committee on Family Courts for clarification on the interpretation of the last 2 paragraphs of Sec. 6, RA 9262.</p>	<ul style="list-style-type: none"> <li>• Art. 173.2 – gender-based specific crime; elements on gender-based are present (<u>intra-family</u> not specifically gender-based); under care and custody.</li> <li>• Occasional maltreatment in the presence of children becomes a specific aggravating circumstance that increases the penalty. If perpetrated at the victim's house, it becomes a specific aggravating circumstance.</li> </ul> <p>Art. 22.2 – aggravating circumstance (specific on content, not nature; general aggravating but can only be applied to gender-based crimes).</p>



***5. What difference would it make if the crimes were committed on a victim with whom the perpetrator had no partner relationship? What if the victim and the perpetrator are not married? Address these questions under Spanish and Philippine criminal legislations.***

Philippine Penal Laws	Spanish Penal Code
<ul style="list-style-type: none"> <li>• Single sexual intercourse constitutes application of RA 9262.</li> <li>• No partner relationship under Philippine law; dating is considered partner relationship whether without cohabitation.</li> <li>• There is a crime of adultery or concubinage in the Philippines under RPC.</li> </ul>	<ul style="list-style-type: none"> <li>• No counterpart under SPC.</li> <li>• Dating should be more than one occasion and analogous to cohabitation. In case the perpetrator is not married to the victim, nor linked with her in an analogous affective relationship, then the crimes committed are sexual assault and injury or bodily harm.</li> <li>• No counterpart under SPC.</li> </ul>





## 6. If Antonio and Jennifer had children, what consequences would there be for the children in the face of Antonio's sentence under Spanish and Philippine criminal legislations?

Philippine Penal Laws	Spanish Penal Code
<ul style="list-style-type: none"> <li>Philippine case laws recognize the need to protect children being part of the household where domestic abuse occurs. The court underscored in <i>Estacio v. Estacio</i> –</li> <li>Protection orders (BPO, TPO, PPO); safeguard from further harm; Sec. 11 (d) and (e) – provides for relief.</li> <li>Custody of the child and provision for support applying the “Best Interest of the Child” principle, and Tender Age Theory (7 years old).</li> </ul>	<ul style="list-style-type: none"> <li>Art. 153.1</li> <li>Art. 172</li> <li>Deprivation of parental rights for 1-5 years</li> <li>Art. 48 on compulsory separation from offender</li> <li>Tender Age Theory (13 years old)</li> </ul>



# ***GENDER***

## ***(Breakout Sessions 2 and 3)***

**Lecturers:**

**Prof. Ana Isabel Cerezo Dominguez**

**Prof. Deborah Garcia Magna**

**Prof. Ana Maria Prieto Del Pino**

**Reactors/Facilitators:**

**Justice Georgina D. Hidalgo**

**Justice Maria Theresa V. Mendoza-Arcega**

**Judge Flordeliz E. Cabanlit-Fargas**

**KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (Seminar-Workshop)**  
**June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City**





# ***GENDER***

## ***(Breakout Sessions 2 and 3)***

**Participants:**

**Judge Raquel V. Aspiras-Sanchez**

**Judge Amy A. Avellano**

**Judge Maria Beatrice A. Caunan**

**Judge Gorgonio B. Elarmo, Jr.**

**Judge Rico Sebastian D. Liwanag**

**Judge Ethel V. Mercado-Gutay**

**Judge Maria Josefina G. San Juan-Torres**

**Judge Catherine Therese M. Tagle-Salvador**

**Atty. Walesa D.J. Mercurio**

**Atty. Maria Cleofe Gettie C. Sandoval**

**KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (Seminar-Workshop)**  
**June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City**







**KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (Seminar-Workshop)**  
June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City

