

Social Justice in Limbo: Unjust Legislation, an Evasive Court, and its Painful Consequences for OFWs

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I. INTRODUCTION

When a statutory provision is declared unconstitutional by the Supreme Court, what is the status of an amendment, thereafter passed by Congress, containing the same provision?

The question proves itself to be quite puzzling. On one end, some may argue that the statutory provision remains unconstitutional, in light of the unqualified ruling by the highest Court in the land on the issue at hand.¹ On the other end, however, some might anchor their stand on the doctrine of separation of powers,² arguing that the Judicial department should accord respect to the wisdom of the Legislative in the passage of said amendment. At this juncture, it becomes obvious that there is a need to weigh the strengths — or weaknesses — of the arguments heretofore presented. Moreover, the situation also necessitates a closer look at the sensitive relationship between the two

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1. See PHIL. CONST. art. VIII, § 4 (2).
2. See generally *Tan v. Macapagal*, 43 SCRA 677, 681 (1972) & *Planas v. Gil*, 67 Phil. 62, 73 (1939).

co-equal powers of government involved — the Judiciary and the Legislature.

The situation becomes even more baffling when placed within the context of constitutional rights and the special stature that labor holds in the social justice system. The provision in question — Section 7 in Republic Act (R.A.) No. 10022,³ amending R.A. No. 8042,⁴ more

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3. An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes, Republic Act No. 10022, § 7 (2010). Section 7 amended Section 10 of the Republic Act No. 8042, to read —

Money Claims. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLR) shall have the original and exclusive jurisdiction to hear and decide, within [90] calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary[,] and other forms of damage. Consistent with this mandate, the NLR shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal [or] employer and the recruitment [or] placement agency for any and all claims under this [S]ection shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment [or] placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment [or] placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment[,] or modification made locally or in a foreign country of the said contract.

Any compromise [or] amicable settlement or voluntary agreement on money claims inclusive of damages under this [S]ection shall be paid within [30] days from approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid[,] or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement if his placement fee and the deductions made with interest at [12%] per annum, plus his salaries for

commonly known as the Migrant Workers and Overseas Filipino Act of 1995 (Migrant Workers Act). This law affects what is currently one of the most lucrative employments for many fellow countrymen — the Overseas Filipino Worker (OFW).

In 2012, the number of deployed OFWs was a staggering 1,802,031 people⁵ — the highest rate ever recorded⁶ — showcasing a steady increase in deployment since 2008.⁷ The 2013 deployment figure is just as massive, with a reported estimate of about 1.8 million people sent out

the unexpired portion of his employment contract or for three months for every year of the unexpired term, whichever is less.

In case of a final and executory judgement against a foreign employer [or] principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgement award.

Noncompliance with the mandatory periods for resolutions of case provided under this [S]ection shall subject the responsible officials to any or all of the following penalties:

- (a) The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;
- (b) Suspension for not more than [90] days; or
- (c) Dismissal from the service with disqualification to hold any appointive public office for five years.

Provided, however, [t]hat the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph.

Id.

4. An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 8042, § 10 (1995).
5. Philippine Overseas Employment Administration (POEA), 2008–2012 Overseas Employment Statistics (An Unpublished Report on Overseas Employment Statistics), *available at* http://www.poea.gov.ph/stats/2012_stats.pdf (last accessed Sep. 30, 2014).
6. Mayen Jaymalin, *OFW deployment hits 1.8 M in 2013*, PHIL. STAR, Mar. 20, 2014, *available at* <http://www.philstar.com/headlines/2014/03/20/1302935/ofw-deployment-hits-1.8-m-2013> (last accessed Sep. 30, 2014).
7. POEA, *supra* note 5. The number of deployed OFWs in 2008 was 1,236,013. *Id.*

into different parts of the world, thereby matching the 2012 numbers.⁸ It is also quite important to note that unemployment rates have remained high, with rates in 2013 reaching the highest in recent history, peaking at 7.6%.⁹ Obviously, the country's unemployment problem is no joke, and there is still a pressing need for the Philippine government to address the issue and its overreaching effects in society.¹⁰ As stated by Norio Usui, a senior economist at the Asian Development Bank, “[t]he Philippine economy continues to grow[,] but Filipinos continue to suffer due to lack of job [opportunities].”¹¹ It is clearly seen, then, that job offerings from abroad give way to a win-win situation. Many Filipinos, on the one hand, find themselves facing brighter prospects, with chances to earn more for their families back home. The Philippine economy, on the other hand, receives a boost through OFW remittances.¹²

Labor legislation, with its all-encompassing effect on the lives of many OFWs, undoubtedly plays a major role in the well-being and growth of this phenomenon. The current circumstances, as mentioned earlier, showcase a need to ensure that there are sufficient mechanisms to protect, regulate, and establish the rights of OFWs. The 1987 Philippine Constitution, as the fundamental law of the land, “affirms labor as a primary social economic force,”¹³ and mandates the State to “protect the rights of workers and promote their welfare.”¹⁴ Moreover, “[t]he State shall afford full protection to labor, *local and overseas*, organized and unorganized, and promote full employment and equality of employment opportunities for all.”¹⁵

8. Jaymalin, *supra* note 6.

9. Trading Economics, Philippines Unemployment Rate Down to 7%, *available at* <http://www.tradingeconomics.com/philippines/unemployment-rate> (last accessed Sep. 30, 2014).

10. See MST News, *Unemployment remains a problem*, MANILA STAND. TODAY, Feb. 5, 2013, *available at* <http://manilastandardtoday.com/2013/02/05/unemployment-remains-a-problem/> (last accessed Sep. 30, 2014).

11. *Philippine economy strong but unemployment remains challenge: ADB*, PHIL. STAR, Apr. 9, 2013 *available at* <http://www.philstar.com/headlines/2013/04/09/928803/philippine-economy-strong-unemployment-remains-challenge-adb> (last accessed Sep. 30, 2014).

12. See Doris C. Dumlaog, *OFW remittances to Increase by 8.5% in 2014 — Standard Chartered*, PHIL. DAILY INQ., Jan. 13, 2014, *available at* <http://business.inquirer.net/160057/ofw-remittances-to-increase-by-8-5-in-2014-standard-chartered> (last accessed Sep. 30, 2014).

13. PHIL. CONST. art. II, § 18.

14. PHIL. CONST. art. II, § 18.

15. PHIL. CONST. art. XIII, § 3, ¶ 1 (emphasis supplied).

Understandably, all statutory enactments relating to labor issues and standards refer to these constitutional provisions as their basis. The Migrant Workers Act, for one, duplicates the Constitution in its Declaration of Policy,¹⁶ alongside a number of statements, all of which were formulated precisely to address pressing problems and issues that OFWs face in the course of their work.¹⁷ To assure protection and safety to the OFW is the primary consideration,¹⁸ while measures to empower them are laid down in order to guarantee their independence, sustainability, and further growth.¹⁹

Clearly, a labor provision “in limbo” — one whose constitutionality has not been definitively decided — may prove itself to be greatly detrimental to the welfare of the OFWs. Once again, the question is raised — what is one to do when a provision, previously declared unconstitutional by the Court for violating the equal protection clause²⁰, finds its way back into the statute through an amendment

16. See Migrant Workers and Overseas Filipinos Act of 1995, § 2 (b).

17. See, e.g., Migrant Workers and Overseas Filipinos Act of 1995, § 2 (e), (f), (g), & (h). These read —

- (e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any persons by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.
- (f) The right of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment is recognized and guaranteed.
- (g) The State recognizes that the ultimate protection to all migrant workers is the possession of skills. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only to skilled Filipino workers.
- (h) Non-governmental organizations, duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare, the State shall cooperate with them in a spirit of trust and mutual respect.

Id.

18. See PHIL. CONST. art. XIII, § 1, ¶ 1.

19. See PHIL. CONST. art. XIII, § 1, ¶¶ 2-4.

20. PHIL. CONST. art. III, § 1. This Section provides that “[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” PHIL. CONST. art. III, § 1.

passed by Congress? What prevails — the Court's stand on it being violative of a fundamental right or Congress' plenary power?

In this Essay, the Author seeks to highlight the ramifications of the Court's refusal to rule on the constitutionality of Section 10 of the Migrant Workers Act, as amended, as it is seen in recent jurisprudence,²¹ despite a previous declaration on its unconstitutionality in *Serrano v. Gallant Maritime Services, Inc.*²² A discussion on the doctrine of separation of powers is on point, for one finds that this concept is at the core of this issue. However, the Author shall also discuss how the prevalence of this legal abstraction begs the question with regard to its effects on the ground. When a constitutional right is violated, and such has already been clearly established, should the Court wait for the "right time" to decide on it again, or should it fulfill its solemn duty and end the confusion once and for all? The idea of a justiciable controversy,²³ as a concept in law, vis-à-vis the fact of a deprivation of necessary and ample protection is visibly at the forefront of this problem. This Essay hopes to shed some light on the matter at hand.

II. THE MIGRANT WORKERS ACT OF 1995

The Migrant Workers Act, as seen above, was enacted to afford measures for protecting the rights and lives of OFWs.²⁴ The law, as amended, seeks to "uphold the dignity of its citizens whether in the country or overseas, in general, and Filipino migrant workers, in particular[.]"²⁵ In addition, it also assures that "fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated."²⁶ It is apparent that the statute seeks to warrant the full protection of the right of every OFW, not just to life, but to a good life²⁷ — a dignified, honorable, and decent life away from home. It sought to serve as an affirmative pat on the back of every hardworking OFW from every corner of the globe. It was the

21. *See* *Pert/CPM Manpower Exponent Co., Inc. v. Vinuya*, 680 SCRA 284 (2012) & *Skippers United Pacific, Inc. v. Doza*, 665 SCRA 412 (2012).

22. *Serrano v. Gallant Maritime Services, Inc.*, 582 SCRA 254 (2009).

23. *Cutaran v. Department of Environment and Natural Resources*, 350 SCRA 697, 704 (2001). A justiciable controversy has been defined as "a definite and concrete dispute touching on the legal relations of parties having adverse legal interests" which may be resolved by a court of law. *Id.*

24. Migrant Workers and Overseas Filipinos Act of 1995, § 2 (b).

25. *Id.* § 2 (a).

26. *Id.* § 2 (c).

27. *See* *Overseas Workers Welfare Administration v. Chavez*, 524 SCRA 451, 466 (2007).

Congress' way of assuring the OFWs that they were neither alone nor ignored; but rather, the full force of Philippine law was behind them every step of the way.

One of the means of protection accorded to OFWs through the Migrant Workers Act can be found in Section 4, as it provides that OFWs will only be permitted to work in countries where it is determined that the rights of migrant workers will be protected.²⁸ Section 6 enumerates the acts that constitute illegal recruitment.²⁹

28. Migrant Workers and Overseas Filipinos Act of 1995, § 4.

29. *Id.* § 6. The following acts constitute illegal recruitment:

- (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
- (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) To give any false notice, testimony, information or document[,] or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;
- (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
- (e) To influence or attempt to influence any persons or entity not to employ any worker who has not applied for employment through his agency;
- (f) To engage in the recruitment or placement of workers in jobs harmful to public health[,] morality[,] or to the dignity of the Republic of the Philippines;
- (g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
- (h) To fail to submit reports on the status of employment, placement vacancies, remittances of foreign exchange earnings, separations from jobs, departures[,] and such other matters or information as may be required by the Secretary of Labor and Employment;
- (i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment [(DOLE)] from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the [DOLE];
- (j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation

Section 7 narrates the penalties for the commission of said acts, with the maximum penalty of life imprisonment in cases that qualify as economic sabotage.³⁰ Other [S]ections provide the venue for filing criminal cases;³¹ prescriptive periods;³² jurisdiction of administrative agencies and courts for disputes related to the statute's provisions;³³ mandatory repatriation;³⁴ the creation of an emergency repatriation fund³⁵ and a legal assistance fund;³⁶ the establishment of a replacement and monitoring center;³⁷ and an outline of the role of different government agencies for its effective implementation.³⁸ Taken together, a perusal of the provisions clearly indicates an intention to safeguard the rights and needs of OFWs before, during, and after deployment.

Obviously, the pertinent provision in question is Section 10 — which governs the amount a slighted OFW employee may recover in case of “termination of overseas employment without just, valid[,] or authorized cause as defined by law or contract[.]”³⁹ It provides that a terminated OFW employee shall recover “full reimbursement of his placement fee with interest of 12% per annum, plus his salaries for the

engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

- (k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;
- (l) Failure to actually deploy without valid reasons as determined by the [DOLE]; and
- (m) Failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage.

Id.

30. *Id.* § 7.

31. *Id.* § 9.

32. *Id.* § 12.

33. Migrant Workers and Overseas Filipinos Act of 1995, § 9.

34. *Id.* § 16.

35. *Id.* § 15.

36. *Id.* § 25.

37. *Id.* § 17.

38. *Id.* § 23.

39. Migrant Workers and Overseas Filipinos Act of 1995, § 10.

unexpired portion of his employment contract or for three months for every year of the unexpired term, whichever is less.”⁴⁰ The last clause in the provision, providing for payment of “three months for every year of the unexpired term, whichever is less”⁴¹ is the contested provision.

III. RELIEF GRANTED — *SERRANO V. GALLANT MARITIME SERVICES*

The facts of the case are uncomplicated and clear. Antonio M. Serrano, a Filipino seafarer, was hired by Gallant Maritime Services, Inc. and Marlow Navigation Co., Ltd. under a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment.⁴² However, in 1998, Serrano was made to accept a “side contract” with downgraded benefits and a demotion, with a subsequent promise that the terms under the original contract would eventually be given to him.⁴³ Unfortunately, this promise was not fulfilled, and Serrano, upon refusal to accede to the modified and downgraded terms, was repatriated to the Philippines after two months and seven days of work in the vessel assigned to him.⁴⁴ Thereafter, Serrano filed a complaint for constructive dismissal with the Labor Arbiter (LA).⁴⁵ The latter, then, rendered a decision declaring the dismissal of Serrano illegal awarding him monetary benefits in accordance with the subject clause in R.A. No. 8042.⁴⁶ The National Labor Relations Commission (NLRC) modified the LA’s decision by changing the base pay for computation, but nonetheless upheld the application to the three-month unexpired portion of the Contract of Employment.⁴⁷

The clause’s constitutionality was raised in the NLRC, but this motion was denied.⁴⁸ The issue on its constitutionality was thereafter raised in the Court of Appeals (CA), but such was likewise avoided when the appellate court rendered its decision, while still applying the questioned clause in the determination of Serrano’s monetary award.⁴⁹

When the Court decided the case on a petition for *certiorari*, a strong and unequivocal pronouncement was made — the clause “or for three

40. *Id.*

41. *Id.*

42. *Serrano*, 582 SCRA at 263.

43. *Id.*

44. *Id.* at 263-64.

45. *Id.* at 264.

46. *Id.* at 265.

47. *Id.* at 266.

48. *Serrano*, 582 SCRA at 267.

49. *Id.*

months for every year of the unexpired term, whichever is less” in Section 10 of R.A. No. 8042 was unconstitutional.⁵⁰ The Court stated that the clause infringed on the OFW’s right to equal protection under the Constitution.⁵¹ The Court, citing the case of *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,⁵² elucidated on the value of labor in Philippine society by stating that

[o]ur present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. And the obligation to afford protection to labor is incumbent not only on the [L]egislative and [E]xecutive branches but also on the [J]udiciary to translate this pledge into a living reality. Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.⁵³

In order to decide the issue at hand, the Court employed the principle of strict judicial scrutiny,⁵⁴ as the subject provision was seen as a possible impediment to the workers’ fundamental human rights.⁵⁵ The clause was considered to contain

a legislative classification which impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class [and] is presumed unconstitutional[.] [T]he burden is upon the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest.⁵⁶

It was further established that

if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. *A weak and watered down view would call for the*

50. *Id.* at 304.

51. *Id.* at 276-77.

52. *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 446 SCRA 299 (2004).

53. *Serrano*, 582 SCRA at 281 (citing *Central Bank Employees Association, Inc.*, 446 SCRA at 388-89) (emphasis ommitted).

54. *Serrano*, 582 SCRA at 282-83.

55. *Id.*

56. *Id.* at 278.

*abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines.*⁵⁷

This principle of strict judicial scrutiny, utilized by the Court in light of its belief that it acts as soldier and as primary protector of the rights of the people, is applied not just against legislation passed by Congress, and acts by government instrumentalities, in the execution of their functions, but even against private entities infringing upon one's human rights granted under the Constitution and international law.⁵⁸

Upon the application of the aforementioned principle, it was determined that the clause was unconstitutional for violating Section 1 of Article III and Section 13 of Article XIII of the Constitution.⁵⁹ As pillars meant to uphold fundamental human rights, both provisions in the Constitution were deemed to have been violated by the subject clause for not upholding

the rights [which should] translate to economic security and parity[.] [A]ll monetary benefits should be equally enjoyed by workers of similar category, while all monetary obligations should be borne by them in equal degree; none should be denied the protection of the laws which is enjoyed by, or spared the burden imposed on, others in like circumstances.⁶⁰

One of the primary factors given due attention by the Court in light of its declaration was the disparity, brought about by the clause, between OFWs with employment contracts that last for less than one year versus those with employment contracts with terms of one year or more.⁶¹ In highlighting this unwarranted discrimination, the Court retraced previous jurisprudence on the issue at hand.⁶² Analysis of such information displayed a clear inequality between these workers, with those holding contracts for one year or more bearing the brunt of the injustice.⁶³ This was borne out by factual circumstances, and taken together, was interpreted by the Court as a clear-cut indication of the fundamental flaw in the provision.⁶⁴

Moreover, the Court took cognizance of the fact that such a distinction did not exist prior to the passage of R.A. No. 8042 —

57. *Id.* at 281-82 (emphasis supplied).

58. *Id.* at 282.

59. *Id.* at 276.

60. *Serrano*, 582 SCRA at 272.

61. *Id.* at 283.

62. *Id.* at 285-89.

63. *Id.* at 287.

64. *Id.*

It is plain that prior to R.A. No. 8042, all OFWs, regardless of contract periods or the unexpired portions thereof, were treated alike in terms of the computation of their monetary benefits in case of illegal dismissal. Their claims were subjected to a uniform rule of computation [—] their basic salaries multiplied by the entire unexpired portion of their employment contracts.

The enactment of the subject clause in R.A. No. 8042 introduced a differentiated rule of computation of the money claims of illegally dismissed OFWs based on their employment periods, in the process *singling out* one category whose contracts have an unexpired portion of one year or more and subjecting them to the peculiar disadvantage of having their monetary awards limited to their salaries for [three] months or for the unexpired portion thereof, whichever is less, but all the while sparing the other category from such prejudice, simply because the latter's unexpired contracts fall short of one year.⁶⁵

The Court also mentioned that the law before R.A. No. 8042 was passed did not differentiate between OFWs who were illegally dismissed and local employees with fixed-term employment.⁶⁶ The Court elucidated that

prior to R.A. No. 8042, OFWs and local workers with fixed-term employment who were illegally discharged were treated alike in terms of the computation of their money claims [—] they were uniformly entitled to their salaries for the entire unexpired portions of their contracts. But with the enactment of R.A. No. 8042, specifically the adoption of the subject clause, illegally dismissed OFWs with an unexpired portion of one year or more in their employment contract have since been differently treated in that their money claims are subject to a [three]-month cap, whereas no such limitation is imposed on local workers with fixed-term employment.

The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a [three]-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.⁶⁷

Finally, the Court emphasized that it saw no public interest being served by the execution and implementation of the provision.⁶⁸ It took notice of the fact that no evidence was satisfactorily shown to prove that the inclusion of the questioned clause sought to serve a purpose

65. *Id.* at 289.

66. *Serrano*, 582 SCRA at 291.

67. *Id.* at 295.

68. *Id.* at 296.

which was vital to the State's interest.⁶⁹ The Court also found that the subject clause did not serve the State's mandate to protect and uphold the rights of the Filipino workers.⁷⁰ While the Office of the Solicitor-General (OSG), in its memorandum presented to the Court, asserted that the clause was relevant to the public good because it gave "Filipino seafarers [a] better chance of getting hired by foreign employers[, and that t]he limitation also protects the interest of local placement agencies, which otherwise may be made to shoulder millions of pesos in 'termination pay[.]'"⁷¹ the Court nonetheless remained unconvinced of the presence of any compelling state interest that fell squarely in line with the wisdom of the provision.⁷²

The argument with regard to the protection of the placement agencies and employers was likewise held to be unmoving and incredulous.⁷³ The Court explained the failure of such to convince in this wise —

There can never be a justification for any form of government action that alleviates the burden of one sector, but imposes the same burden on another sector, especially when the favored sector is composed of private businesses such as placement agencies, while the disadvantaged sector is composed of OFWs whose protection no less than the Constitution commands. *The idea that private business interest can be elevated to the level of a compelling state interest is odious.*⁷⁴

Serrano undoubtedly, unmistakably, and unabashedly dictates that the subject clause in R.A. No. 8042 is unconstitutional because it violates a fundamental human right, one that is given due accord by the Constitution, and held out to be the most sacrosanct among all those sought to be protected by the law.⁷⁵ It has been made clear, thus far, that the Court — by employing the principle of strict judicial scrutiny, by its study of previous jurisprudence, and by its analysis of the wisdom of R.A. No. 8042 — found more than sufficient basis to hold the subject clause in Section 10 of R.A. No. 8042 unconstitutional.⁷⁶ There

69. *Id.*

70. *Id.* at 299.

71. *Id.* at 296.

72. *Serrano*, 582 SCRA at 298.

73. *Id.* at 299.

74. *Id.* (emphasis supplied).

75. *Id.* at 303. "The more significant violation, however, that the disputed portion of Section 10 spawns relates to its character as a police power measure, and its failure to meet the substantive due process requirements of Article III, Section 1 of the Constitution." *Id.* at 316. (J. Brion, concurring opinion).

76. *Id.* at 304.

is more than enough weight by which the Court anchored its decision on, and sufficient — if not all-encompassing — depth for the ratio in *Serrano*. It must also be emphasized that the decision was accompanied by two strong concurring opinions, both written by two Justices considered to be senior magistrates of the Court. On the one hand, Justice Antonio T. Carpio believed the subject clause to be unconstitutional as an invalid exercise of the police power.⁷⁷ On the other hand, Justice Arturo D. Brion argued that the unconstitutionality of the subject clause arises from its violation of the constitutional provisions on labor and the substantive aspects of the due process clause.⁷⁸ This essentially highlights the fact that the subject clause may be suffering from more flaws than the majority may have laid down in the main decision of the case. To the Author's mind, both concurring opinions lay down what seems to be more than sufficient legal basis to strike down the clause, and such can be interpreted to mean that the subject clause is beyond salvation. The clause is so infirm that to keep it alive would be a blatant disregard for and an obvious violation of fundamental human rights.

The lengthy discussion of the case is meant to adequately show that the *Serrano* decision was obviously in line with public interest, public good, and mandate of protection for fundamental rights under the Constitution. Hence, this leads the Author to ask the question — what leads the Court to arrive at the statement that it has decided to put off its ruling on the constitutionality of the exact same provision, resurrected by legislation, which affects the exact same class, and still suffers from the exact same disabilities?

IV. THE ANOMALY THAT IS R.A. NO. 10022, AND POST-*SERRANO* JURISPRUDENCE

It bears noting that *Serrano* was decided with finality in 2009 — a good 11 years after *Serrano*'s cause of action accrued. *Serrano* himself actually filed a petition with the Court seeking execution of the judgment award in his favor due to old age and sickness.⁷⁹ A year later, in 2010, R.A. No. 10022 was passed — and the law still contained the controversial clause previously declared unconstitutional.⁸⁰ Worse, two decisions promulgated post-*Serrano* and after the passage of R.A. No. 10022 express an alarming view, with the Court choosing not to make

77. *Serrano*, 582 SCRA at 305 (J. Carpio, concurring opinion).

78. *Serrano*, 582 SCRA at 311 (J. Brion, concurring opinion).

79. *Serrano*, 582 SCRA at 268.

80. See R.A. No. 10022, § 7.

any definitive statements on the constitutionality of the subject clause.⁸¹ While many would say that these actions are clearly in line with the doctrine of separation of powers, the Author is disturbed that the letter of the law has made it possible for fundamental rights to be sacrificed. After all, this only means one thing — the sorry fact that the plight of OFWs with contracts for one year or more has returned. The ills, injustices, and inequalities cured by *Serrano* are back, and there is no indication that they will be swept away soon. This is problematic, considering the compelling state interest at play, with fundamental rights guaranteed to OFWs being violated or circumvented.

*Skippers United Pacific, Inc. v. Doza*⁸² was decided in 2012, and involved three OFW seafarers found by the CA to have been illegally dismissed.⁸³ In affirming this, the Court avoided making any pronouncements on the constitutionality of the subject clause, now found in Section 7 of R.A. No. 10022, which, as mentioned earlier, effectively amended R.A. No. 8042.⁸⁴ The Court briefly summarized the chronology of events and stated as such —

[I]n 24 March 2009, [in] *Serrano* [], the Court, in an [en banc] [d]ecision, declared unconstitutional the clause ‘or for three months for every year of the unexpired term, whichever is less’ and awarded the entire unexpired portion of the employment contract to the overseas Filipino worker.

On 8 March 2010, however, Section 7 of [R.A. No. 10022] amended Section 10 of the Migrant Workers Act, and once again reiterated the provision of awarding the unexpired portion of the [employment] contract or three months for every year of the unexpired term, whichever is less.

Nevertheless, since the termination occurred on January 1999 before the passage of the amendatory R.A. [No.] 10022, we shall apply R.A. [No.] 8042, as unamended, *without touching on the constitutionality of Section 7 of R.A. [No.] 10022*.⁸⁵

In choosing not to rule on the constitutionality of the provision in R.A. No. 10022, the Court effectively created some confusion — what was the status of the clause? Did it remain unconstitutional because of *Serrano*, or was it given new life by virtue of the passage of R.A. No. 10022?

81. See generally *Pert/CPM Manpower Exponent Co., Inc.*, 680 SCRA at 305 & *Skippers United Pacific, Inc.*, 665 SCRA at 430.

82. *Skippers United Pacific, Inc.*, 665 SCRA.

83. *Id.* at 424-25.

84. *Id.* at 430.

85. *Id.* at 429-30 (emphasis supplied).

In *Pert/CPM Manpower Exponent Co. Inc. v. Vinuya*,⁸⁶ the Court once again failed to rule on the constitutionality of the subject clause found in R.A. No. 10022.⁸⁷ Three OFW factory employees were found by the CA to have been illegally dismissed by their employer,⁸⁸ and the Court affirmed this decision.⁸⁹ The Court also reiterated its previous pronouncement in *Yap v. Thenamaris Ship's Management*,⁹⁰ sustaining the retroactive application of *Serrano* to the case at hand.⁹¹ The Court also negatively decided on the retroactivity of R.A. No. 10022; having passed in 2010, the law could not apply to the parties involved who filed their complaint in 2007.⁹² The Court went on to state that

[L]aws shall have no retroactive effect, unless the contrary is provided. By its very nature, the amendment introduced by R.A. [No.] 10022 — restoring a provision of R.A. [No.] 8042 declared unconstitutional — cannot be given retroactive effect, not only because there is no express declaration of retroactivity in the law, but because retroactive application will result in an impairment of a right that had accrued to the respondents by virtue of the *Serrano* ruling — entitlement to their salaries for the unexpired portion of their employment contracts.⁹³

The Court once again refused to rule on the constitutionality of R.A. No. 10022, averring that

[W]hether or not R.A. [No.] 10022 is constitutional is not for us to rule upon in the present case as this is an issue that is not squarely before us. In other words, this is an issue that awaits its proper day in court; in the meanwhile, we make no pronouncement on it.⁹⁴

Were it not for *Yap*, the aggrieved parties in *Pert/CPM Manpower Exponent Co., Inc.* would have obviously had to suffer the consequences of the restored provision in R.A. No. 10022. This is implied by the fact that the Court thought it wise to assert the retroactivity of *Serrano* for their protection. Had the Court never ruled on such retroactivity, the OFWs in *Pert/CPM Manpower Exponent Co., Inc.* would obviously have had to bear the brunt of Section 7 of R.A. No. 10022. For all the reasons mentioned earlier, and as can be seen in *Serrano*, such

86. *Pert/CPM Manpower Exponent Co., Inc.*, 680 SCRA.

87. *Id.* at 292.

88. *Id.* at 292-93.

89. *Id.* at 305.

90. *Yap v. Thenamaris Ship's Management*, 649 SCRA 369 (2011).

91. *Id.* at 380-81 & *Pert/CPM Manpower Exponent Co., Inc.*, 680 SCRA at 305.

92. *Pert/CPM Manpower Exponent Co., Inc.*, 680 SCRA at 305.

93. *Id.*

94. *Id.*

consequences are unjust, unfair, and violative of an OFW's fundamental right to equal protection under the Constitution.

V. A SUBSTANTIVE DUTY

Why did the Court not make a pronouncement on a clause that has exactly the same effect and consequence as that found to be unconstitutional in *Serrano*? The Court argues that the issue has not been raised, hence it has to wait for its proper day in court;⁹⁵ and that it is an issue not yet ripe for adjudication.⁹⁶ These are basically some of the essential requisites that must exist before the Court can exercise its power of judicial review.⁹⁷ One may deduce that this means one very important thing — the Court's duty to apply its mandate under the system of checks and balances has not yet arisen. While such is well-understood and widely accepted as part and parcel of the grant of power to the Judiciary under the Constitution,⁹⁸ the Author is disturbed that the application of such may be used to subvert and further violate fundamental rights granted under the same.

It is clear that the power of judicial review highlights one of the most — if not the most — significant duties of the Judiciary as a branch of government. The power of judicial review is defined as the Court's "power to declare a law, treaty, international or executive agreement, presidential decree, proclamation, order, instruction, ordinance, or regulation unconstitutional."⁹⁹ It was granted to the Judiciary, not because it was to prevail over the other two branches of government, namely, the Executive and the Legislative, but rather because it sought to lay down the fundamental principle that the "Constitution is

95. *Id.*

96. *See generally* Guingona, Jr. v. Court of Appeals, 292 SCRA 402, 414-15 (1998). An issue is ripe for adjudication "when the act being challenged has had a direct adverse effect on the individual challenging it." *Id.*

97. *Id.* at 412-13. Judicial review has the following requisites:

- (a) there must be an actual case calling for the exercise of judicial power;
- (b) the question must be ripe for adjudication; and
- (c) the person challenging must have 'standing,' that is, he has personal and substantial interest in the case, such that he has sustained or will sustain direct injury.

Id.

98. PHIL. CONST. art. VIII, § 1.

99. JOAQUIN G. BERNAS, S.J., THE PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 337 (2011 ed.).

superior” over all.¹⁰⁰ The power of judicial review clothes the Court with an effective means to truly serve as an instrument for checks and balances against possible circumventions or violations of the Constitution.¹⁰¹ The power of judicial review strengthens the concept of separation of powers mandated by the fundamental law of the land.

The Court has established that the doctrine of separation of powers is

a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. [...] And the [J]udiciary in turn, with the [Court] as the final arbiter, *effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.*¹⁰²

The mention of the power of judicial review as corollary to the doctrine of separation of powers is not to be ignored. This power, as accorded to the Judiciary, was seen as a means by which any act or law made possible through an improper exercise of authority, by either the Legislative or Executive branch, could be struck down and made inoperative.

It must be noted, however, that the exercise of checks and balances is not lodged solely in the Judiciary. In *Javellana v. The Executive Secretary*,¹⁰³ the Court stated that

[t]his principle of separation of powers[,] under the presidential system[,] goes hand in hand with the system of checks and balances, under which each department is vested by the [f]undamental [l]aw with some powers to forestall, restrain[,] or arrest a possible or actual misuse or abuse of powers by the other departments. Hence, the appointing power of the Executive, his pardoning power, his veto power, his authority to call the Legislature or Congress to special sessions and even to prescribe or limit the object or objects of legislation that may be taken up in such sessions, etc. Conversely,

100. See *Marbury v. Madison*, 5 U.S. 137, 178 (1803).

101. PHIL. CONST. art. VIII, § 4 (2).

102. *Francisco, Jr. v. Nagmamalakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, 415 SCRA 44, 124 (emphasis supplied).

103. *Javellana v. The Executive Secretary*, 50 SCRA 30 (1973).

Congress or an agency or arm thereof — such as the Commission on Appointments — may approve or disapprove some appointments made by the President. It, also, has the power of appropriation, to ‘define, prescribe, and apportion the jurisdiction of the various courts,’ as well as that of impeachment. Upon the other hand, under the judicial power vested by the Constitution, the ‘[Court] and ... such inferior courts as may be established by law,’ may settle or decide with finality, not only justiciable controversies between private individuals or entities, but, also, disputes or conflicts between a private individual or entity, on the one hand, and an officer or branch of the government, on the other, or between two officers or branches of service, when the latter officer or branch is charged with acting without jurisdiction or in excess thereof or in violation of [the] law.¹⁰⁴

Clearly, the system of checks and balances is seen and understood to be a primordial consideration with regard to the government’s exercise of its power and functions.¹⁰⁵ A failure by one branch of government to fulfill its mandate under such system is to undermine the Constitution, and to do so is to misuse one’s power as granted under said fundamental law. A failure to properly “check” the actions of one branch of government, seen to be in excess of its power, whether such exercise be due to mere oversight or grave abuse of discretion, is to fail to do one’s primary obligation under the Constitution. Conformably, one would say that the system of checks and balances is an active limit to the doctrine of separation of powers, mainly because no one branch of government shall exercise any form of absolute power in any way.

Moreover, the Court has also stated that

[t]he [] Constitution separates governmental power among the [L]egislative, [E]xecutive[,] and [J]udicial branches to avert tyranny by ‘[safeguarding] against the encroachment or aggrandizement of one branch at the expense of the other.’ However, the principle of separation of powers recognized that a ‘hermetic sealing off of the three branches of [g]overnment from one another would preclude the

104. *Id.* at 84-85.

105. *See* *Angara v. Electoral Commission*, 63 Phil. 139 (1936). The Court stated that

[t]he separation [] of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other.

Id. at 156.

establishment of a [n]ation capable of governing itself effectively[;']
hence, *the separation of powers between the branches is not absolute*.¹⁰⁶

With all the foregoing, why is it necessary to highlight these principles in light of the issue at hand? Why is it important to emphasize the fact that the separation of powers between the three branches of government is not absolute? The Author posits that it is pertinent to do so because it demands that attention be given to Congress' act of passing R.A. No. 10022 as an unauthorized exercise of power, which needs to be checked by the Court. As mentioned by Christian A. Drilon, "[i]s it possible that, with all of the lawyers working for the Senate, not one of them became aware of the [Court's] ruling [in *Serrano*?] This would seem to be the case[.]"¹⁰⁷ The Author finds this puzzling, if not deeply alarming, for what is to be said of a Congress that does not seem to be updating itself with pertinent laws and jurisprudence? What would one think of a Congress which does not even bother to note a ruling as socially significant as *Serrano*? It boggles the mind, and worse, it upsets the presumed competency of said branch of government.

Also, Drilon proposes that the void *ab initio* theory¹⁰⁸ be applied to the case at hand. This means that a statute declared unconstitutional by the Court is "not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."¹⁰⁹ Drilon also suggests that it may be considered "an empty legislative declaration without force or vitality ... [with] no more force or validity than a piece of blank paper."¹¹⁰ The Author agrees and believes that such would be ideal in this case. As the effects of the subject clause are so oppressive, and so blatantly against an OFW's right to be given what he is due, to apply such theory is the just and equitable answer to the problem.

106. *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 549 SCRA 77, 165-66 (2008) (J. Puno, dissenting opinion) (emphasis supplied).

107. Christian A. Drilon, *Legislating the Unconstitutional: Reconciling Republic Act No. 10022 and Serrano v. Gallant Maritime Services, Inc.*, at 9-10 (An Unpublished Term Paper Submitted to Atty. Cesario Azucena, Jr. for Labor Law I Class at the Ateneo de Manila University School of Law) (on file with Author).

108. *Id.* (citing OLIVER PETER FIELD, *THE EFFECT OF AN UNCONSTITUTIONAL STATUTE* 3-9 (2002 ed.)).

109. *Id.* at 11.

110. *Id.*

The Author finds, as mentioned earlier, that the Court's reason for avoiding the constitutional question of the subject clause in R.A. No. 10022 was because it felt that the issue was not ripe for adjudication. As established by jurisprudence, it is understood that an issue is such when "the governmental act being challenged must have had an adverse effect on the person challenging it."¹¹¹ In both *Skippers United Pacific, Inc.* and *Pert/CPM Manpower Exponent Co., Inc.*, the illegal dismissals occurred prior to the passage of R.A. No. 10022, thereby meaning that the parties in said cases were not covered by the law, pursuant to its declared non-retroactivity.¹¹² At face, it would seem that the Court only did its job — it only addressed issues before it, not touching on an aspect which was not considered to be an "actual case calling for the exercise of judicial power."¹¹³ The parties in *Skippers United Pacific, Inc.* and *Pert/CPM Manpower Exponent Co., Inc.* were, after all, protected by the retroactivity of *Serrano*, and were not actually suffering from the adverse effects of R.A. No. 10022.¹¹⁴ The Author concedes this, and understands the Court's astuteness in this wise. However, the Author is also reminded of the bare reality that this indicates one highly significant development — that all OFWs illegally dismissed after the passage of R.A. No. 10022 will not actually feel the equalizing and socially just effects of *Serrano*. Said illegally dismissed OFWs will be faced with the consequences of *Skippers United Pacific, Inc.* and *Pert/CPM Manpower Exponent Co., Inc.*, and will thus be forced to litigate their cases, all the way to the Court, in order to seek another pronouncement that will save them from the injustices brought about by the subject clause. It is of no question that the judicial process often moves at a snail's pace, and to submit the illegally dismissed OFWs to this torture is practically tantamount to a failure to protect their fundamental rights granted under the Constitution.¹¹⁵

The danger of this reality is obvious. Truthfully, the Court stayed within the bounds of its limits when it chose not to rule on the

111. BERNAS, *supra* note 99, at 337 (citing *Tan*, 43 SCRA at 697).

112. *Pert/CPM Manpower Exponent Co., Inc.*, 680 SCRA at 305 & *Skippers United Pacific, Inc.*, 665 SCRA at 430.

113. BERNAS, *supra* note 99, at 337.

114. *Pert/CPM Manpower Exponent Co., Inc.*, 680 SCRA at 305 & *Skippers United Pacific, Inc.*, 665 SCRA at 430.

115. See PHIL. CONST. art. III, §§ 1 & 16. Section 1 reads "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." Section 16 provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." PHIL. CONST. art. III §§ 1 & 16.

constitutionality of the subject clause in R.A. No. 10022. However, a strict application of the technicalities and requisites laid down under the law and jurisprudence dispenses with the substantive rights and needs of said aggrieved individuals. The Author is not convinced that a strict technical application of judicial principles is called for in such a situation. The Court itself has repeatedly displayed its capacity to excuse technicalities in order to uphold fundamental rights.¹¹⁶ The Author submits that a more lenient application of such is required at this time.

VI. SOCIAL JUSTICE AND THE PAINFUL EFFECTS OF R.A. NO. 10022

As an instrument of social justice, the rights accorded to laborers are accorded much priority and importance. Social justice is understood to be the

humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the [g]overnment of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community[.]¹¹⁷

It is also seen as “consistent with the fundamental and paramount objective of the [S]tate of promoting the health, comfort, and quiet of all persons, and of bringing about ‘the greatest good to the greatest number.’”¹¹⁸

If the protection of labor rights is a means of “bringing about ‘the greatest good to the greatest number,’”¹¹⁹ then there is no doubt in the Author’s mind that an unequivocal pronouncement by the Court that the subject clause cannot — and should never — have force and effect is the only way to ensure such protection. To sanction the application of subject clause by hiding behind requisites and technicalities is equivalent to turning a blind eye to the abuses brought about by the law. There is no telling if a hundred — maybe even a thousand, or more — OFWs are currently feeling the painful effects of the subject clause. There is no way of finding out, because as it is known and

116. *See, e.g.*, *Bank of the Philippines Islands v. Court of Appeals*, 632 SCRA 322, 332 (2010); *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, 550 SCRA 562, 580 (2008); & *Aguam v. Court of Appeals*, 332 SCRA 784, 789 (2000).

117. *Calalang v. Williams et al.*, 70 Phil. 726, 734-35 (1940).

118. *Id.* at 735.

119. *Id.*

understood, not every injustice finds its way into the courts, and not every painful consequence is properly indemnified, redressed, and protected. At this very moment, thousands of OFWs run the risk of having to live with this grave ill. There is no need to wait for the alarm to ring in order to heed the resounding call for justice.

A pronouncement, decision, or statement by the Court on the constitutionality — or clear unconstitutionality — of the subject clause, as restored in R.A. No. 10022, will become part of the law of the land.¹²⁰ This will mean that employers, agencies, and private instrumentalities engaged in the employment of OFWs will be bound by it. Such a pronouncement can and will be used against them, should there be any threat of deviation from such. It is not hard to imagine that the same employers, agencies, and private instrumentalities are currently using *Skippers United Pacific, Inc.* and *Pert/CPM Manpower Exponent Co., Inc.* against OFWs clamoring for more monetary compensation. If the Court finally settles this issue, the power will be returned to the laborers — where it rightfully belongs — for it is their ultimate right to seek proper indemnity and redress from illegal dismissal and unfair treatment.¹²¹ And that, the Author finds, is truly what it means to see social justice in action.¹²²

VII. CONCLUSION

More often than not, when a question on constitutionality remains unanswered, it brings about something more than a legal topic that is up for debate or discussion. On the contrary, a question like that means that someone — whether it be a private or public individual, or someone in a position of power against those beneath him — is suffering the consequences. This, in itself, smacks of injustice; and that injustice is even more prevalent if it involves a class of society in urgent need of protection and security. This highlights the fact that issues on labor need to be acted on at once, and never put to the side to wait, because to do so means that the laborer himself will wait as well. The

120. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 8 (1950).

121. See PHIL. CONST. art. XIII, § 3.

122. See also A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE] Presidential Decree No. 442, as amended, art. 3 (1974).

pain that comes with that wait presents a compelling state interest that must be improved and fixed as soon as possible, for every waiting workingman pays a price much higher than what should be asked of him, at any given point in time. The effects of the price to be paid are boundless, and the Court, with all its judicial wisdom, is respectfully asked to wield the power of its pen and relieve the millions in pain — and those at the risk of feeling that pain — of their tremendous suffering.