In a Class of Their Own: A Review of Quasi-Suspect Classes in Philippine Jurisprudence and the Direct Effect of Case Law in Spurring Legislative Enactments

Jose Ryan S. Pelongco[★]

★ '21 J.D. *cand.*, Ateneo de Manila University School of Law. The Author is a Member of the Board of Editors of the *Ateneo Law Journal*. He was the Lead Editor of the fourth Issue of the 64th Volume and was an Associate Lead Editor of the third Issue of the 62d Volume. He worked as a Legal Assistant in the chambers of Associate Justice Marvic Mario Victor F. Leonen of the Supreme Court of the Philippines from August 2018 to January 2020. He was part of the team which emerged as the Champion of the International Children's Rights Moot Court Competition held in Leiden University, the Netherlands, in April 2019 where he and his fellow counsel for the Applicant also bagged the award for Best Oral Argument for the Applicant. He previously co-wrote *Republic v. Sereno: Revisiting Constitutional Qualifications for Impeachable Public Officers*, 63 ATENEO L.J. 70 (2018) with Atty. Ray Paolo D.J. Santiago and *Making Sense of the Cybercrime Courts' Jurisdiction Over Cybersquatting Cases in Light of the Concurrent Jurisdiction of World Intellectual Property Organization Panels Pursuant to the Uniform Dispute Resolution Policy*, 64 ATENEO L.J. 988 (2020) with Atty. Julianne S. Alberto.

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I. INTRODUCTION

The judiciary has always played a pivotal role in the execution of multifarious constitutional mandates. From civil and political rights to economic, social, cultural, and other rights, the Supreme Court has always been a jealous guardian of the rights and freedoms guaranteed to all people under the fundamental law. One such constitutionally protected right deals with the protection of marginalized, discriminated, or oppressed groups —

> The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.[1]

With this directive, the State is charged with not just ensuring that the general welfare of the populace is taken care of, but also specifically that the wellbeing of the minority is guaranteed. "More succinctly, what the Constitution ushered in with this provision was a mandate of a legal bias in favor of those who are underprivileged."[2] Through the years, it is precisely this "legal bias in favor of those who are underprivileged"[3] which has given rise to various jurisprudence promulgated by the High Court declaring certain classes as marginalized, discriminated, or oppressed.

Some of these groups include women, children, and indigenous peoples, which, as will be explained below, have been declared as quasi-suspect classes in various jurisprudence. Recently, the struggles of members of the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community in Philippine society have taken center-stage not only in the nation's consciousness, but also in the hallowed halls of Padre Faura, with the High Tribunal, in 2019, coming up with another landmark case affecting the millions of LGBTQI+ individuals nationwide.

The legal ramifications of declaring such classes as occupying a vaunted place in our legal system shall be discussed below.

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1. PHIL. CONST. art. XIII, § 1 (1).
2. Sedfrey M. Candelaria & Carissa Agnes L. Olmedo, *Courts and the Social Context Theory: Philippine Judicial Reform as Applied to Vulnerable Sectors*, 50 ATENEO L.J. 823, 824 (2006) (citing JOAQUIN BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1191 (2003 ed.)).
3. JOAQUIN BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1191 (2009 ed.).

II. WOMEN

Article II, Section 14 of the 1987 Constitution[4] states the following —

> Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.[5]

In recognition of women's special status, Congress has seen fit to pass a slew of statutes to ensure the fundamental equality between men and women before the eyes of the law.[6] One such statute, the Anti-Violence Against Women and their Children (VAWC) Act,[7] has been attacked as being violative of the equal protection clause in giving special protection to women over men. In giving short shrift to such a claim, the Supreme Court, in *Garcia v. Judge Drilon*,[8] stated that the law rests on substantial distinctions, and recognizes the subsisting unequal power dynamic between men and women in society —

> The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the

4. PHIL. CONST. art. II, § 14.

5. PHIL. CONST. art. II, § 14.

6. *See* An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995); An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code and for Other Purposes [Anti-Rape Law of 1997], Republic Act No. 8353 (1997); An Act Providing Assistance and Protection for Rape Victims, Establishing for the Purpose a Rape Crisis Center in Every Province and City, Authorizing the Appropriation of Funds Therefor, and for Other Purposes [Rape Victim Assistance and Protection Act of 1998], Republic Act No. 8505 (1998); An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child and Family Cases, Amending Batas Pambansa Bilang 129, as Amended, Otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor and for Other Purposes [Family Courts Act of 1997], Republic Act No. 8369 (1997); An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes [Anti-Violence Against Women and Their Children Act of 2004], Republic Act No. 9262 (2004); & An Act Providing for the Magna Carta of Women [Magna Carta of Women], Republic Act No. 9710 (2009).

7. Anti-Violence Against Women and Their Children Act of 2004.

8. Garcia v. Drilon, 699 SCRA 352 (2013).

> widespread gender bias and prejudice against women all make for real differences justifying the classification under the law.
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> According to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), [V]iolence [A]gainst [W]omen (VAW) is deemed to be closely linked with the unequal power relationship between women and men otherwise known as 'gender-based violence[.'] Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And VAW is a form of men's expression of controlling women to retain power.
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> The United Nations, which has long recognized VAW as a human rights issue, passed its Resolution 48/104 on the Declaration on Elimination of Violence Against Women on [20 December 1993] stating that 'violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions, compared with men.'[9]

In recognizing that women are particularly vulnerable to violence compared to men in general, the Court opined that the Anti-VAWC Act[10] served an important governmental purpose and that the provisions in the Act were substantially related to the purpose of providing special protection to women, thereby passing the intermediate review or middle-tier judicial scrutiny test used in equal protection cases —

> To survive intermediate review, the classification in the challenged law must (1) serve important governmental objectives, and (2) be substantially related to the achievement of those objectives.
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> Republic Act No. 9262, by affording special and exclusive protection to women and children, who are vulnerable victims of domestic violence, undoubtedly serves the important governmental objectives of protecting human rights, [e]nsuring gender equality, and empowering women. The gender-based classification and the special remedies prescribed by said law in

9. *Id.* at 412.

10. Anti-Violence Against Women and Their Children Act of 2004.

> favor of women and children are substantially related, in fact essentially necessary, to achieve such objectives. Hence, said Act survives the intermediate review or middle-tier judicial scrutiny. The gender-based classification therein is therefore not violative of the equal protection clause embodied in the 1987 Constitution.[11]

Intermediate Scrutiny or Review, as aptly described in the concurring opinion of Chief Justice Teresita Leonardo-de Castro in *Garcia*,[12] "requires that the classification (means) must serve an important governmental objective (ends) and is substantially related to the achievement of such objective. A classification based on sex is the best-established example of an intermediate level of review."[13] In the case of the Anti-VAWC Act,[14] such classification of women as a protected class necessitating the State's enactment of a law protecting them from violence passed the intermediate review test, meaning that such a law was not violative of the equal protection of the Constitution. In making such a declaration, the Court thus proclaimed that classifications based on sex or gender must pass intermediate review in order to be valid.

III. CHILDREN

Article XV, Section 3 (2) of the Constitution[15] states that "Section 3. The State shall defend: ... (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development[.]"[16]

Most notable among the laws which the Legislature has passed in order to afford children these constitutional protections from all forms of abuse and other conditions prejudicial to their development are the previously mentioned Anti-VAWC Act,[17] the Special Protection of Children Against Abuse, Exploitation and Discrimination Act,[18] the Juvenile Justice and

11. *Garcia*, 699 SCRA at 462 (C.J. Leonardo-de Castro, concurring opinion).

12. *Id.*

13. *Id.*

14. Anti-Violence Against Women and Their Children Act of 2004.

15. PHIL. CONST. art. XV, § 3 (2).

16. PHIL. CONST. art. XV, § 3 (2).

17. Anti-Violence Against Women and Their Children Act of 2004.

18. An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610 (1992).

Welfare Act of 2006,[19] the Child and Youth Welfare Code,[20] and the Labor Code.[21]

With regard to a particular subset of children — namely illegitimate children — jurisprudence has been most jealous in guarding their entitlements to support and inheritance from their parents. As early as 1928, in *Barrios v. Enriquez*,[22] the High Court has affirmed this by stating that

> while it is true that [A]rticle 845 of the Civil Code provides that 'illegitimate children who have not the status of natural children shall be entitled to support only,' and therefore cannot demand anything more of those bound by law to support them, it does not prohibit said illegitimate children from receiving, nor their parents from giving them, something more than support, so long as the legitimate children are not prejudiced. If the law permits a testator to dispose of the free third of his hereditary estate in favor of a

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19. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344 (2006).

20. The Child and Youth Welfare Code, Presidential Decree No. 603 (1974).

21. 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 OF THE PHILIPPINES], Presidential Decree No. 442, arts. 139-40 (1974) (as amended). They read in full —

> Article 139. Minimum Employable Age. –
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> (a) No child below fifteen (15) years of age shall be employed, except when he works directly under the sole responsibility of his parents or guardian, and his employment does not in any way interfere with his schooling.
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> (b) Any person between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labor and Employment in appropriate regulations.
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> (c) The foregoing provisions shall in no case allow the employment of a person below eighteen (18) years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor and Employment.
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> Article 140. Prohibition Against Child Discrimination. - No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age.
>
> *Id.*

22. Barrios v. Enriquez, 52 Phil. 509 (1928).

> stranger ([Article] 808 of the Civil Code), there is no legal, moral[,] or social reason to prevent him from making over that third to his illegitimate son who has not the status of a natural son. On the contrary, by reason of blood, the son, although illegitimate, has a preferential right over a stranger unless by his [behavior] he has become unworthy of such consideration.[23]

This was affirmed almost 30 years later, under the regime of the New Civil Code, in *Reyes, et al. v. Zuzuarregui, et al.*,[24] with the Court stating that under the New Civil Code illegitimate children are granted more rights as the Code Commission sought precisely to give them this benefit to compensate for the social faux pas of their parents —

> Previous to the approval of the new Civil Code, illegitimate children who did not have the status of natural, like spurious, were entitled to support only. They were not entitled to succeed as compulsory heirs as were the acknowledged natural children. Under the present law, however, they are not only given support but are entitled to a certain share of the inheritance, the law according to them the same liberal attitude accorded to natural children. In introducing this innovation, the Code Commission gives this justification. 'The transgressions of social conventions committed by the parents should not be visited upon the illegitimate children. The law should not be too severe upon these illegitimate children, be they natural or otherwise, because they do need the special protection of the State. They are born with a social handicap and the law should help them to surmount the disadvantages facing them through the misdeeds of their parents.'[25]

Similar to sex or gender, classifications based on illegitimacy must also undergo intermediate scrutiny or review for them to be held valid under the equal protection clause. According to the *Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc.*,[26]

> [w]hen the classification puts a quasi-suspect class at a disadvantage, it will be treated under intermediate or heightened review. *Classifications based on gender or illegitimacy receives intermediate scrutiny*. To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations.[27]

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23. *Id.* at 512-13.

24. Reyes, et al. v. Zuzuarregui, et al., 102 Phil. 346 (1957).

25. *Id.* at 350.

26. Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc., 800 SCRA 313 (2016).

27. *Id.* at 359 (emphasis supplied).

IV. INDIGENOUS PEOPLES

When it comes to the rights of indigenous peoples, the Constitution has several provisions which directly enjoin their protection by the State. In Article II, Section 22, "[t]he State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."[28] Article XII, Section 5 states that the "State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being."[29] The State, under Article XIII, Section 6, is also tasked with the task of safeguarding "the rights of indigenous communities to their ancestral lands."[30] Article XIV, Section 17 also provides that "the [S]tate shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies."[31]

This has not always been the case, however. In decades past, indigenous people, such as in the case of the Mangyans as described in the seminal case of *Rubi v. Provincial Board of Mindoro*,[32] were practically considered as savages by the government, not entitled to all the rights which are granted to the other "normal" and "Christian" citizens of the Philippines —

> The fundamental objective of governmental policy is to establish friendly relations with the so-called non-Christians, and to promote their educational, agricultural, industrial, and economic development and advancement in civilization. (Note Act Nos. 2208, 2404, 2444.) Act No. 2674 in reestablishing the Bureau of non-Christian Tribes, defines the aim of the Government towards the non-Christian people in the following unequivocal terms [—]
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> 'It shall be the duty of the Bureau of non-Christian Tribes to continue the work for advancement and liberty in favor of the regions inhabited by non-Christian Filipinos and foster by all adequate means and in a systematical, rapid, and complete manner the moral, material, economic, social, and political development of those regions, always having in view the aim of rendering permanent the mutual intelligence between, and complete fusion

28. PHIL. CONST. art. II, § 22.

29. PHIL. CONST. art. XII, § 5.

30. PHIL. CONST. art. XIII, § 6.

31. PHIL. CONST. art. XIV, § 17.

32. Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919).

> of, all the Christian and non-Christian elements populating the provinces of the Archipelago.' ([Section] 3.)
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> May the Manguianes not be considered, as are the Indians in the United States, proper wards of the Filipino people? By the fostering care of a wise Government, may not these unfortunates advance in the 'habits and arts of civilization?' Would it be advisable for the courts to intrude upon a plan, carefully formulated, and apparently working out for the ultimate good of these people?
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> In so far as the Manguianes themselves are concerned, the purpose of the Government is evident. Here, we have on the Island of Mindoro, the Manguianes, leading a nomadic life, making depredations on their more fortunate neighbors, uneducated in the ways of civilization, and doing nothing for the advancement of the Philippine Islands. What the Government wished to do by bringing them into a reservation was to gather together the children for educational purposes, and to improve the health and morals — was in fine, to begin the process of civilization. This method was termed in Spanish times, 'bringing under the bells.' The same idea adapted to the existing situation, has been followed with reference to the Manguianes and other peoples of the same class, because it required, if they are to be improved, that they be gathered together. On these few reservations there live under restraint in some cases, and in other instances voluntarily, a few thousands of the uncivilized people. Segregation really constitutes protection for the Manguianes.
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> Theoretically, one may assert that all men are created free and equal. Practically, we know that the axiom is not precisely accurate. The Manguianes, for instance, are not free, as civilized men are free, and they are not the equals of their more fortunate brothers. True, indeed, they are citizens, with many but not all the rights which citizenship implies. And true, indeed, they are Filipinos. But just as surely, the Manguianes are citizens of a low degree of intelligence, and Filipinos who are a drag upon the progress of the State.[33]

Twenty years later, in *People v. Cayat*,[34] indigenous people were once again at issue. Cayat was a native of Baguio, Benguet, Mountain Province accused and convicted of violating Sections 2 and 3 of Act No. 1639,[35] which

33. *Id.* at 713.

34. People v. Cayat, 68 Phil. 12 (1939).

35. An Act to Prohibit the Sale, Gift, or Other Disposal of any Intoxicating Liquor, Other Than the so-called Native Wines and Liquors, to any Member of a non-Christian Tribe Within the Meaning of Act Numbered Thirteen Hundred and Ninety-Seven, and to Prohibit the use of Such Liquor by any Member of the Tribe, Act No. 1639 (1907). The Act reads in full —

AN ACT TO PROHIBIT THE SALE, GIFT, OR OTHER DISPOSAL OF ANY INTOXICATING LIQUOR, OTHER THAN THE SO-CALLED NATIVE WINES AND LIQUORS, TO ANY MEMBER OF A NON-CHRISTIAN TRIBE WITHIN THE MEANING OF ACT NUMBERED THIRTEEN HUNDRED AND NINETY-SEVEN, AND TO PROHIBIT THE USE OF SUCH LIQUOR BY ANY MEMBER OF SUCH A TRIBE.

By authority of the United States, be it enacted by the Philippine Commission, that:

SEC. 1. The sale, gift, or other disposal to any native of the Philippine Islands who is a member of a non-Christian tribe within the meaning of Act Numbered Thirteen hundred and ninety-seven, of any ardent spirits, ale, beer, wine, or intoxicating liquors of any—exception, kind, either than the so-called native wines and liquors which the members of such tribes have been accustomed themselves to make prior to the passage of this Act, is hereby prohibited and declared to be unlawful: Provided, however, That it shall be lawful: Provided, however, it shall be lawful to administer ardent spirits, ale, beer, wine, or intoxicating liquors of any kind prescription kind to a member of a non-Christian tribe upon a physician's prescription therefor as a remedy for bona fide illness or physical injury, or [ ] so administer it without such prescription in a genuine emergency arising from dangerous illness or physical injury.

SEC. 2. It shall be unlawful for any native of the Philippine Islands who is a member of a non-Christian tribe within the meaning of Act Numbered Thirteen hundred and ninety-seven, to buy, receive, have in his possession, or drink any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, other than the so-called native wines and liquors which the members of such tribes have been accustomed themselves to make prior to the passage of this Act, except as provided in section one hereof; and it shall be the duty of any police officer or other duly authorized agent of the Insular or any provincial, municipal, or township government to seize and forthwith destroy any such liquors found unlawfully in the possession of any member of a non-Christian tribe.

SEC. 3. Any person violating the provisions of section one or section two of this Act shall, upon conviction thereof, be punishable for each offense by a fine of not exceeding two hundred pesos or by imprisonment for a term not exceeding six months, in the discretion of the court.

SEC. 4. The public good requiring the speedy enactment of this bill, the passage of the same is hereby expedited in accordance with section two of 'An Act prescribing the order of procedure by the Commission in the enactment of laws,' passed September twenty-sixth, nineteen hundred.

prohibited non-Christians from possessing or drinking any kind of intoxicating liquor.[36] Cayat assailed the law for being violative of the equal protection clause.[37] The Court, in rebuffing such a challenge and in substantially taking the same discriminatory stance towards indigenous peoples as in *Rubi*, stated that

> [a]s early as 1551, the Spanish Government had assumed an unvarying solicitous attitude towards these inhabitants, and in the different laws of the Indies, their concentration in so-called 'reducciones' (communities) had been persistently attempted with the end in view of according them the 'spiritual and temporal benefits' of civilized life. Throughout the Spanish regime, it had been regarded by the Spanish Government as a sacred 'duty to conscience and humanity' to civilize these less fortunate people living 'in the obscurity of ignorance' and to accord them the 'moral and material advantages' of community life and the 'protection and vigilance afforded them by the same laws.' (Decree of the Governor General of the Philippines, [14 January] 1887.) This policy had not been deflected from during the American period.
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> Since then and up to the present, the government has been constantly vexed with the problem of determining 'those practicable means of bringing about their advancement in civilization and material prosperity.' 'Placed in an alternative of either letting them alone or guiding them in the path of civilization,' the present government 'has chosen to adopt the latter measure as one more in accord with humanity and with the national conscience.' To this end, their homes and firesides have been brought in contact with civilized communities through a network of highways and communications; the benefits of public education have to them been extended; and more lately, even the right of suffrage. And to complement this policy of attraction and assimilation, the Legislature has passed Act No. 1639 undoubtedly to secure for them the blessings of peace and harmony; to facilitate, and not to mar, their rapid and steady march to civilization and culture. It is, therefore, in this light that the Act must be understood and applied.
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> It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law;

> SEC. 5. This Act shall take effect on its passage.
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> Enacted, May 1, 1907.

Id.

36. *Cayat*, 68 Phil. at 15-16.

37. *Id.* at 16.

(3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.

Act No. 1639 satisfies these requirements. The classification rests on real or substantial, not merely imaginary or whimsical, distinctions. It is not based upon 'accident of birth or parentage,' as counsel for the appellant asserts, but upon the degree of civilization and culture. 'The term 'non-Christian tribes' refers, not to religious belief, but, in a way, to the geographical area, and, more directly, to natives of the Philippine Islands of a low grade of civilization, usually living in tribal relationship apart from settled communities.' This distinction is unquestionably reasonable, for the Act was intended to meet the peculiar conditions existing in the non-Christian tribes. The exceptional cases of certain members thereof who at present have reached a position of cultural equality with their Christian brothers, cannot affect the reasonableness of the classification thus established.

That it is germane to the purposes of law cannot be doubted. The prohibition 'to buy, receive, have in his possession, or drink any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, other than the so-called native wines and liquors which the members of such tribes have been accustomed themselves to make prior to the passage of this Act,' is unquestionably designed to insure peace and order in and among the non-Christian tribes. It has been the sad experience of the past, as the observations of the lower court disclose, that the free use of highly intoxicating liquors by the non-Christian tribes have often resulted in lawlessness and crimes, thereby hampering the efforts of the government to raise their standard of life and civilization.

The law is not limited in its application to conditions existing at the time of its enactment. It is intended to apply for all times as long as those conditions exist. The Act was not predicated, as counsel for appellant asserts, upon the assumption that the non-Christians are 'impermeable to any civilizing influence.' On the contrary, the Legislature understood that the civilization of a people is a slow process and that hand in hand with it must go measures of protection and security.

Finally, that the Act applies equally to all members of the class is evident from a perusal thereof. That it may be unfair in its operation against a certain number of non- Christians by reason of their degree of culture, is not an argument against the equality of its application.

...

The law, then, does not seek to mark the non-Christian tribes as 'an inferior or less capable race.' On the contrary, all measures thus far adopted in the promotion of the public policy towards them rest upon a recognition of their inherent right to equality in the enjoyment of those privileges now enjoyed by their Christian brothers. But as there can be no true equality before the law, if there is, in fact, no equality in education, the government has

> endeavored, by appropriate measures, to raise their culture and civilization and secure for them the benefits of their progress, with the ultimate end in view of placing them with their Christian brothers on the basis of true equality.[38]

It would take until the turn of the century, in the case of *Cruz v. Secretary of Environment and Natural Resources*,[39] for the High Court to reconsider its past decisions on indigenous people. The decision involved the constitutionality of Republic Act No. 8371, or the Indigenous Peoples' Rights Act of 1997.[40] In terse language, and with the result of both the deliberations and the re-deliberations of the Court sitting *en banc* producing a 7-7 vote, the Court had no choice but to dismiss the petitions calling for the striking down of several provisions of the law as unconstitutional.[41]

While the *ponencia* was devoid of reasons why the structural integrity of the law should remain unblemished, the various separate opinions (which were made integral parts of the decision) more than made up for this dearth of words.

Justice Puno, in his Separate Opinion, stated that —

> When Congress enacted the Indigenous Peoples Rights Act (IPRA), it introduced *radical* concepts into the Philippine legal system which appear to collide with settled constitutional and jural precepts on [S]tate ownership of land and other natural resources. The sense and subtleties of this law cannot be appreciated without considering its distinct sociology and the labyrinths of its history. This Opinion attempts to interpret IPRA by discovering its soul shrouded by the mist of our history. After all, the IPRA was enacted by Congress not only to fulfill the constitutional mandate of protecting the indigenous cultural communities' right to their ancestral land but more importantly, *to correct a grave historical injustice to our indigenous people*.[42]

Far from being labelled as "non-Christians" and treated as subhuman, the definition of what indigenous people are was also correctly revised in *Cruz* —

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38. *Id*. at 17-19 & 21 (emphases supplied and citations omitted).

39. Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128 (2000).

40. An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [The Indigenous Peoples' Rights Act of 1997], Republic Act No. 8371 (1997).

41. *Cruz*, 347 SCRA at 161.

42. *Id*. at 163 (J. Puno, separate opinion).

> Indigenous Cultural Communities or Indigenous Peoples refer to a group of people or homogeneous societies who have continuously lived as an organized community on communally bounded and defined territory. These groups of people have actually occupied, possessed[,] and utilized their territories under claim of ownership since time immemorial. They share common bonds of language, customs, traditions[,] and other distinctive cultural traits, or, they, by their resistance to political, social[,] and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the Filipino majority. ICCs/IPs also include descendants of ICCs/IPs who inhabited the country at the time of conquest or colonization, who retain some or all of their own social, economic, cultural[,] and political institutions but who may have been displaced from their traditional territories or who may have resettled outside their ancestral domains.[43]

Justice Puno also exhorts everyone to be more mindful of the country's colonial history and to always ensure that the rights of indigenous people/indigenous cultural communities are effectively enmeshed in our national legal framework —

> The struggle of the Filipinos throughout colonial history had been plagued by ethnic and religious differences. These differences were carried over and magnified by the Philippine government through the imposition of a national legal order that is mostly foreign in origin or derivation. Largely unpopulist, the present legal system has resulted in the alienation of a large sector of society, specifically, the indigenous peoples. The histories and cultures of the indigenes are relevant to the evolution of Philippine culture and are vital to the understanding of contemporary problems. It is through the IPRA that an attempt was made by our legislators to understand Filipino society not in terms of myths and biases but through common experiences in the course of history. The Philippines became a democracy a centennial ago and the decolonization process still continues. *If the evolution of the Filipino people into a democratic society is to truly proceed democratically, i.e., if the Filipinos as a whole are to participate fully in the task of continuing democratization, it is this Court's duty to acknowledge the presence of indigenous and customary laws in the country and affirm their co-existence with the land laws in our national legal system.*[44]

Unlike women and illegitimate children, the Court has yet to make a categorical pronouncement if the classification of being an indigenous person must pass intermediate review or scrutiny in order to be declared as non-violative of the equal protection clause. However, a concurring opinion in *Garcia* is most instructive and compelling in arguing for the inclusion of the

43. *Id.* at 176.

44. *Id.* at 241 (emphasis supplied).

category of "indigenous peoples" as one of those which must merit heightened scrutiny from the Court —

> I accept that for purposes of advocacy and for a given historical period, it may be important to highlight abuse of women qua women. This strategy was useful in the passing of Republic Act No. 9262. It was a strategy that assured that the problem of battered women and children in the context of various intimate relationships becomes publicly visible. However, unlike advocacy, laws have the tendency to be resilient and permanent. Its existence may transcend historical periods that dictate effective advocacy. Laws also have a constitutive function [—] the tendency to create false consciousness when the labels and categories it mandates succeed in reducing past evils but turn a blind eye to other issues.
>
> For instance, one of the first cases that laid down the requisites for determining whether there was a violation of the equal protection of the law clause of the Constitution was the 1939 case of [*People v. Cayat*]. It laid down the requirements of reasonable classification which requires that it (a) must rest on substantial distinctions, (b) must be germane to the purposes of the law, (c) must not be limited to existing conditions only, and (d) must apply equally to all members of the same class. Even as early as 1919, the Court in *Rubi v. Provincial Board of Mindoro* recognized the concept of reasonable classification holding that 'the pledge that no person shall be denied the equal protection of the laws is not infringed by a statute which is applicable to all of a class. The classification must have a reasonable basis and cannot be purely arbitrary in nature.'
>
> Yet, it is in these two cases that the Court concluded the following:
>
> As authority of a judicial nature is the decision of the Supreme Court in the case of *United States* [*v.*] *Tubban*. The question here arose as to the effect of a tribal marriage in connection with article 423 of the Penal Code concerning the husband who surprises his wife in the act of adultery. In discussing the point, the court makes use of the following language:
>
> [W]e are not advised of any provision of law which recognizes as legal a tribal marriage of so-called non-Christians or members of uncivilized tribes, celebrated within that province without compliance with the requisites prescribed by General Orders No. 68 ... . We hold also that the fact that the accused is shown to be a member of an uncivilized tribe, of a low order of intelligence, uncultured and uneducated, should be taken into consideration as a second marked extenuating circumstance ... .
>
> The description of the label and the stereotype of 'non-Christian tribe' would later on be corrected by the Constitution, law, and jurisprudence.
>
> The description of the label and the stereotype that only women can be considered victims may also evolve in the same way. We should hope that

> the situation of patriarchy will not be permanent. Better cultural structures more affirming of human dignity should evolve.[45]

Given the lack of guidance from any other existing jurisprudence as to how to treat indigenous people or indigenous cultural communities as a class of persons, it can be reasonably inferred based on the above that they can also be counted as a quasi-suspect class, along with women and illegitimate children, to which intermediate review or scrutiny must also apply.

V. RAMIFICATIONS OF DECLARING A CERTAIN GROUP AS MARGINALIZED, DISCRIMINATED, OR OPPRESSED

From a review of the foregoing cases, it can safely be surmised that the Court, in declaring certain classes — such as women, children, and indigenous peoples — as marginalized, discriminated, or oppressed, is merely giving life to the constitutional and statutory safeguards which are already accorded to such groups. This means that they do not get *additional* access to certain rights or benefits under the law, but that they *already* had access to these enumerated rights or benefits in the first place. The High Court merely gives a definitive ruling that such rights or benefits should not be denied to them in the first place.

Under Article VIII, Section 1 of the 1987 Constitution[46] —

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to *settle actual controversies involving rights which are legally demandable and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[47]

The plain text of the Constitution bears out the proposition that the duty of the judiciary as a whole is merely limited to settling *actual controversies involving rights which are legally demandable and enforceable*. In short, these rights already exist in the first place, by virtue of either the organic law or by statute. Judicial power does not include the power to *create* such rights, but rather to

45. *Garcia*, 699 SCRA at 503 (J. Leonen, concurring opinion) (citing S. Walby, *The 'Declining Significance' or the 'Changing Forms' of Patriarchy?*, *in* PATRIARCHY AND ECONOMIC DEVELOPMENT: WOMEN'S POSITIONS AT THE END OF THE TWENTIETH CENTURY 19 (1996)) (emphases supplied).

46. PHIL. CONST. art. VIII, § 1.

47. PHIL. CONST. art. VIII, § 1.

confer upon individuals such rights as are already existing or vested in them under the current legal system.[48]

In the landmark case of *Marbury v. Madison*,[49] which defined for the first time what judicial power is, and its scope, was quite emphatic in saying that the province of the judiciary is really to declare what the law is, and not how the law should be —

> That the people have an original right to establish for their future government such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental. And as the authority from which they proceed, is supreme, and can seldom act, they are designed to be permanent.
>
> This original and supreme will organizes the government and assigns to different departments their respective powers. It may either stop here or establish certain limits not to be transcended by those departments.
>
> The Government of the United States is of the latter description. The powers of the Legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it, or that the Legislature may alter the Constitution by an ordinary act.
>
> ...

48. As an example, the rule-making power of the Supreme Court as laid out in Article VIII, § 5 (5) merely gives the High Court the power to

> [*p*]*romulgate rules concerning the protection and enforcement of constitutional rights*, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and *shall not diminish, increase, or* modify substantive rights.

PHIL. CONST. art. VIII, § 5 (5) (emphases supplied).

49. Marbury v. Madison, 5 U.S. 137 (1803).

> If an act of the Legislature repugnant to the Constitution is void, does it, notwithstanding its invalidity, bind the Courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory, and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.
>
> It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.
>
> So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.[50]

As aptly laid down in the case of *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*,[51] for the Court to exercise its judicial power "there must first be a justiciable controversy. Pleadings before this court must show a violation of an existing legal right or a controversy that is ripe for judicial determination."[52] It is precisely why the judiciary has been called "the weakest branch of government,"[53] for it maintains a passive role in governmental affairs, patiently biding its time until a case or controversy presents itself before it. That is why it may neither "diminish, increase, or modify substantive rights"[54] but merely declares that such set of rights apply to a given individual or group of individuals.

In relation to the abovementioned jurisprudence discussing women, children, and indigenous peoples as a quasi-suspect class which triggers the application of intermediate review or scrutiny in order to meet the threshold to become valid classifications in equal protection cases, the Court did not, then, make a pronouncement that they were entitled to additional sets of rights or benefits, but rather that they should have access to the already existing set of rights which have been accorded to them not only by the highest law of

50. *Id.* at 178 (emphases supplied).

51. In Re Supreme Court Judicial Independence v. Judiciary Development Fund, 746 SCRA 352 (2015).

52. *Id.* at 361.

53. *Id.* at 371.

54. PHIL. CONST. art. VIII, § 5 (5).

the land, but also by the special laws passed by Congress which aim to protect these vulnerable groups.

The Supreme Court's pronouncements, then, that a certain class is marginalized, discriminated, or oppressed necessarily prompts the application of either heightened or strict scrutiny in order to meet the equal protection threshold for any class legislation which was enacted by Congress for that specific group. That is why in the cases enumerated above there were various challenges by certain sectors of society brought all the way to the courts to determine the constitutionality of the law in relation to the specific marginalized group, thereby necessitating the use of judicial power in order to determine whether or not the specific statute in relation to that discriminated group was valid or not.

A. The LGBTQI+ Community in Philippine Jurisprudence

As far as a class considered to be marginalized, discriminated, or oppressed, members of the LGBTQI+ community certainly fit the mold. According to a report submitted to the United Nations Office of the High Commissioner for Human Rights, "[a]lthough the Philippines has signed and ratified most of the core human rights instruments, including the ICCPR, ICECSR, CEDAW, CRC, CRPD, CERD and other human rights treaties, Philippine society and culture maintain much prejudice towards the LGBT community, and lacks basic sensitivity and recognition of [ ] LGBT rights."[55]

Meanwhile, according to a United Nations Development Program report, "LGBT individuals face challenges in employment both on an individual level and as members of a community that is subject to discrimination and abuse. This can be compounded by the weak social status and position of the individuals involved."[56]

55. Office of the United Nations High Commissioner for Human Rights, The Status of Lesbian, Gay, Bisexual and Transgender Rights: Submission to the Human Rights Council for Universal Periodic Review 13th Session, *available at* https://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS1_UPR_PHL_S13_2012_JointSubmission1_E.pdf (last accessed Sep. 30, 2020).

56. United Nations Development Program & United States Agency for International Development, Being LGBT in Asia: The Philippines Country Report at 35, *available at* https://www.usaid.gov/sites/default/files/documents/1861/2014%20UNDP-USAID%20Philippines%20LGBT%20Country%20Report%20-%20FINAL.pdf (last accessed Sep. 30, 2020).

The report adds —

> In the Philippines, the governing law between employers and employees is known as the Labor Code of the Philippines, also known as Presidential Decree 442. While several articles of the Code have been amended, its main policy is the protection of workers. However, LGBT people in the Philippines encounter discriminatory practices that affect their employment status. Ocampo (2011) noted that there are no statistics to show the extent of employment-related SOGI discrimination in the Philippines. Government agencies that should be involved in issues of SOGI discrimination do not report on LGBT discrimination. As such, 'SOGI discrimination is a category of workplace discrimination that has not become part of mainstream policy dialogues.'
>
> For many LGBT people, discrimination starts even before they are employed. For instance, there are cases of male-to-female transgender women being told by recruitment officers that they will only be hired if they presented themselves as males by cutting their hair short, dressing in men's clothes, and acting in stereotypically masculine ways. For those already employed, there are cases of dismissals of LGBT employees solely because of their SOGI. In the case of lesbian employees, LeAP!, (2004) reported that 'discrimination can occur in the process of hiring, in the assigning of wages, in the granting of benefits and promotions, and the retention of ... employees.'[57]

The country may be cautiously tolerant of people in the LGBTQI+ community, but real acceptance is still an elusive dream.

It is with this backdrop that the case of *Ang Ladlad v. COMELEC*[58] was decided by the High Court. In 2010, the Court granted the petition of LGBTQI+ party list group *Ang Ladlad* to participate in the national elections, discounting the arguments of the Commission on Elections (COMELEC) that allowing such a group to participate would go against public morals and the Filipinos' religious beliefs.[59] The Court was at pains to point out the fact that

> moral disapproval, without more, is not a sufficient governmental interest to justify exclusion of homosexuals from participation in the party-list system. The denial of Ang Ladlad's registration on purely moral grounds amounts more to a statement of dislike and disapproval of homosexuals, rather than a tool to further any substantial public interest. Respondent's blanket justifications give rise to the inevitable conclusion that the COMELEC targets homosexuals themselves as a class, not because of any particular

57. *Id.*

58. Ang Ladlad LGBT Party v. Commission on Elections, 618 SCRA 32 (2010).

59. *Id.* at 59.

> morally reprehensible act. It is this selective targeting that implicates our equal protection clause.[60]

However, while recognizing that the *Ang Ladlad* partylist had the same right to participate in the partylist system on the same grounds as other marginalized and under-represented sectors, the Court was nevertheless clear in stating that they were not yet in a position to declare members of the LGBTQI+ community as a separate class subject to heightened or strict scrutiny —

> From the standpoint of the political process, the lesbian, gay, bisexual, and transgender [community] have the same interest in participating in the party-list system on the same basis as other political parties similarly situated. State intrusion in this case is equally burdensome. Hence, laws of general application should apply with equal force to LGBTs, and they deserve to participate in the party-list system on the same basis as other marginalized and under-represented sectors.
>
> It bears stressing that our finding that COMELEC's act of differentiating LGBTs from heterosexuals insofar as the party-list system is concerned does not imply that any other law distinguishing between heterosexuals and homosexuals under different circumstances would similarly fail. *We disagree with the OSG's position that homosexuals are a class in themselves for the purposes of the equal protection clause. We are not prepared to single out homosexuals as a separate class meriting special or differentiated treatment. We have not received sufficient evidence to this effect, and it is simply unnecessary to make such a ruling today.* Petitioner itself has merely demanded that it be recognized under the same basis as all other groups similarly situated, and that the COMELEC made 'an unwarranted and impermissible classification not justified by the circumstances of the case.'[61]

Recently, the Supreme Court, in *Falcis v. Civil Registrar General*,[62] voted 15-0 to dismiss the Petition for Certiorari and Prohibition filed by Atty. Jesus Falcis III which sought to declare as unconstitutional Articles 1 and 2 of the Family Code[63] which limits the institution of marriage between men and women alone. The reason for the dismissal was based on procedural grounds, namely the petitioner's lack of standing, his violation of the principle of hierarchy of courts, and his failure to raise an actual, justiciable controversy.

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60 *Id.* at 62.

61. *Id.* at 65 (emphases supplied).

62. Jesus Nicardo M. Falcis, III v. Civil Registrar General, G.R. No. 217910, Sep. 3, 2019, *available at* http://sc.judiciary.gov.ph/8227 (last accessed Sep. 30, 2020).

63. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209, arts. 1 & 2 (1987).

In other words, the Court dismissed the petition without expounding on the substantive issues surrounding marriage equality in the Philippines.

However, in the Supreme Court's press statement (which lifted pertinent lines from the *Falcis* itself), the Court was also unequivocal in pronouncing that "[f]rom its plain text, the Constitution does not define, or restrict, marriage on the basis of sex, gender, sexual orientation, or gender identity or expression[.]"[64] Through Justice Mario Victor F. Leonen's *ponencia*, the Court also duly noted and

> recognized the protracted history of discrimination and marginalization faced by the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community, along with their still ongoing struggle for equality, acknowledged that same-sex couples may morally claim that they have a right against discrimination for their choice of relationships, and that official recognition of their partnerships may, for now, be a matter that should be addressed to Congress.[65]

It would seem, then, that the Court has counted as among the marginalized, discriminated, or oppressed groups in this country members of the LGBTQI+ community.

Unlike the previous examples of women, children, and indigenous people being declared as a marginalized class, however, there was no clear statutory basis in which the Court in *Falcis* could point to as definitively stating that members of the LGBTQI+ community already had access to, in this case, the right to marry which is granted to the heteronormative majority. It would seem, then, that from a strictly legal standpoint, and based on the previous jurisprudence discussed regarding discriminated groups under the Philippine legal system, the LGBTQI+ are no better off post-*Falcis* than they were before the decision was promulgated. However, this strict reading of jurisprudential principles lacks a more nuanced appreciation of the way judicial power is being used and applied in the Philippine legal system.

64. GMA News, @gmanews, Tweet, Sep. 3, 2019, 2:10 p.m., TWITTER, *available at* https://twitter.com/gmanews/status/1168768275515232256 (last accessed Sep. 30, 2020).

65. *Id.*

B. The Direct Effect of "Judicial Legislation" in Congressional Statute-Making

As early as 1985, in *Salonga v. Pano*,[66] the Court had already declared that the totality of judicial power is not solely confined to the strict mandate laid out in Article VIII, Section 1 of the Constitution[67] —

> Recent developments in this case serve to focus attention on a not too [well-known] aspect of the Supreme Court's functions.
>
> The setting aside or declaring void, in proper cases, of intrusions of State authority into areas reserved by the Bill of Rights for the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will is not the totality of the Court's functions.
>
> The Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees.
>
> In [*De la Camara v. Enage*], the petitioner who questioned a [₱1,195,200.00] bail bond as excessive and, therefore, constitutionally void, escaped from the provincial jail while his petition was pending. The petition became moot because of his escape but we nonetheless rendered a decision and stated:
>
> 'The fact that the case is moot and academic should not preclude this Tribunal from setting forth in language clear and unmistakable, the obligation of fidelity on the part of lower court judges to the unequivocal command of the Constitution that excessive bail shall not be required.'
>
> In [*Gonzales v. Marcos*] whether or not the Cultural Center of the Philippines could validly be created through an executive order was mooted by Presidential Decree No. 15, the Center's new charter pursuant to the President's legislative powers under martial law. *Still, this Court discussed the constitutional mandate on the preservation and development of Filipino culture for national identity.*

66. Salonga v. Pano, 134 SCRA 438 (1985).

67. PHIL. CONST. art. VIII, § 1.

> In the habeas corpus case of *Aquino, Jr. v. Enrile*, during the pendency of the case, 26 petitioners were released from custody and one withdrew his petition. The sole remaining petitioner was facing charges of murder, subversion, and illegal possession of firearms. *The fact that the petition was moot and academic did not prevent this Court in the exercise of its symbolic function from promulgating one of the most voluminous decisions ever printed in the Reports*.[68]

In certain cases, the Court's function of "educating bench and bar on the extent of protection given by constitutional guarantees"[69] has led to Congress taking direct action and enacting statutes which enforce these constitutional mandates. For instance, in *People v. Ritter*,[70] the Court was forced to acquit a known pedophile despite evidence clearly showing that he was the perpetrator of a plethora of deplorable, yet non-criminal, acts committed on a minor as there was absence of a law which would have convicted him of his heinous deeds —

> Though we are acquitting the appellant for the crime of rape with homicide, we emphasize that we are not ruling that he is innocent or blameless. It is only the constitutional presumption of innocence and the failure of the prosecution to build an airtight case for conviction which saved him, not that the facts of unlawful conduct do not exist. As earlier stated, there is the likelihood that he did insert the vibrator whose end was left inside Rosario's vaginal canal and that the vibrator may have caused her death. True, we cannot convict on probabilities or possibilities but civil liability does not require proof beyond reasonable doubt. The Court can order the payment of indemnity on the facts found in the records of this case.
>
> The appellant certainly committed acts contrary to morals, good customs, public order[,] or public policy. As earlier mentioned, the appellant has abused Filipino children, enticing them with money. *We* [*cannot*] *overstress the responsibility for proper behavior of all adults in the Philippines, including the appellant towards young children. The sexual exploitation committed by the appellant should not and* [*cannot*] *be condoned*. Thus, considering the circumstances of the case, we are awarding damages to the heirs of Rosario Baluyot in the amount of [₱30,000.00].

68. *Salonga*, 134 SCRA at 464 (emphases supplied).

69. *Id*. at 463.

70. People v. Ritter, 194 SCRA 690 (1991).

> And finally, the Court deplores the lack of criminal laws which will adequately protect street children from exploitation by pedophiles, pimps, and, perhaps, their own parents or guardians who profit from the sale of young bodies. The provisions on statutory rape and other related offenses were never intended for the relatively recent influx of pedophiles taking advantage of rampant poverty among the forgotten segments of our society. Newspaper and magazine articles, media exposes, college dissertations, and other studies deal at length with this serious social problem but pedophiles like the appellant will continue to enter the Philippines and foreign publications catering to them will continue to advertise the availability of Filipino street children unless the Government acts and acts soon. *We have to acquit the appellant because the Bill of Rights commands us to do so. We, however, express the Court's concern about the problem of street children and the evils committed against them. Something must be done about it.*[71]

Ritter was promulgated on 5 March 1991. Over a year later, on 17 June 1992, Congress enacted Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act,[72] which codified as offenses child prostitution,[73] attempting to commit child prostitution,[74] child trafficking,[75] attempting to commit child trafficking,[76] coercing children to perform in indecent shows or model in indecent publications,[77] and other acts of abuse.[78]

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71. *Ritter*, 194 SCRA at 723 (emphases supplied).

72. Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

73. *Id.* § 5. It reads in full —

> Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
>
> (1) Acting as a procurer of a child prostitute;
>
> (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under [12] years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under [12] years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Id.

74. *Id.* § 6. It reads in full —

Section 6. Attempt To Commit Child Prostitution. – There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two [ ] degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

Id.

75. *Id.* § 7. It reads in full —

> Section 7. Child Trafficking. – Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of *reclusion temporal* to *reclusion perpetua*. The penalty shall be imposed in its maximum period when the victim is under [12] years of age.

Special Protection of Children Against Abuse, Exploitation and Discrimination Act, § 7.

76. *Id.* § 8. It reads in full —

> Section 8. Attempt to Commit Child Trafficking. – There is an attempt to commit child trafficking under Section 7 of this Act:
>
> (a) When a child travels alone to a foreign country without valid reason therefor and without clearance issued by the Department of Social Welfare and Development or written permit or justification from the child's parents or legal guardian;
>
> (b) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking; or
>
> (c) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or
>
> (d) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-during institutions who can be offered for the purpose of child trafficking.
>
> A penalty lower two [ ] degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking under this Act.

Id.

77. *Id.* § 9. It reads in full —

> Section 9. Obscene Publications and Indecent Shows. – Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of *prision mayor* in its medium period.
>
> If the child used as a performer, subject or seller/distributor is below [12] years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of *prision mayor* in its medium period.

Id.

78. *Id.* § 10. It reads in full —

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

(b) Any person who shall keep or have in his company a minor, [12] years or under or who in [10] years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of *prision mayor* in its maximum period and a fine of not less than Fifty thousand pesos (₱50,000): Provided, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition or acts in the performance of a social, moral or legal duty.

(c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph shall suffer the penalty *of prision mayor* in its medium period and a fine of not less than Forty thousand pesos (₱40,000); Provided, however, That should the perpetrator be an ascendant, stepparent or guardian of the minor, the penalty to be imposed shall be *prision mayor* in its maximum period, a fine of not less than Fifty thousand pesos (₱50,000), and the loss of parental authority over the minor.

(d) Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described shall be imposed a penalty of *prision mayor* in its medium period and a fine of not less than Fifty thousand pesos (P50,000), and the loss of the license to operate such a place or establishment.

In *People v. Genosa*,[79] accused Marivic Genosa was convicted of parricide for the death of her husband and was sentenced to death. On automatic review to the Court, she pleaded that her act of killing her husband was equivalent to self-defense due to her suffering from "battered woman syndrome" due to the repeated and severe beatings she had received throughout the years from her spouse. The Court, then, was quite revolutionary in its stance of remanding the case to the regional trial court to receive evidence from experts on the "battered woman syndrome," to wit —

> It is a hornbook rule that an appeal in criminal cases opens the entire records to review. The Court may pass upon all relevant issues, including those factual in nature and those that may not have been brought before the trial court. This is true especially in cases involving the imposition of the death penalty, in which the accused must be allowed to avail themselves of all possible avenues for their defense. *Even novel theories such as the 'battered woman syndrome,' which is alleged to be equivalent to self-defense, should be heard, given due consideration and ruled upon on the merits, not rejected merely on technical or*

> (e) Any person who shall use, coerce, force or intimidate a street child or any other child to:
>
> (1) Beg or use begging as a means of living;
>
> (2) Act as conduit or middlemen in drug trafficking or pushing; or
>
> (3) Conduct any illegal activities, shall suffer the penalty of *prision correccional* in its medium period to *reclusion perpetua*.
>
> For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under [12] years of age. The penalty for the commission of acts punishable under [Articles] 337, 339, 340[,] and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years age.
>
> The victim of the acts committed under this section shall be entrusted to the care of the Department of Social Welfare and Development.
>
> Special Protection of Children Against Abuse, Exploitation and Discrimination Act, § 10.

79. People v. Genosa, 341 SCRA 493 (2000).

> *procedural grounds*. Criminal conviction must rest on proof of guilt beyond reasonable doubt.
>
> ...
>
> Indeed, there is [a] legal and jurisprudential lacuna with respect to the so-called 'battered woman syndrome' as a possible modifying circumstance that could affect the criminal liability or penalty of the accused. The discourse of appellant on the subject in her Omnibus Motion has convinced the Court that the syndrome deserves serious consideration, especially in the light of its possible effect on her very life. It could be that very thin line between death and life or even acquittal. The Court cannot, for mere technical or procedural objections, deny appellant the opportunity to offer this defense, for any criminal conviction must be based on proof of guilt beyond reasonable doubt. Accused persons facing the possibility of the death penalty must be given fair opportunities to proffer all defenses possible that could save them from capital punishment.
>
> ...
>
> WHEREFORE, the Urgent Omnibus Motion of Appellant Marivic Genosa is PARTLY GRANTED. The case is hereby REMANDED to the trial court for the reception of expert psychological and/or psychiatric opinion on the 'battered woman syndrome' plea, within ninety (90) days from notice, and, thereafter to forthwith report to this Court the proceedings taken, together with the copies of the TSN and relevant documentary evidence, if any, submitted.[80]

Three years after, in 2004, in the second iteration of *Genosa*,[81] while the Court did not appreciate the "battered woman syndrome" in her favor, as the facts militated against her and it was not yet etched as statutory law, they nevertheless took meticulous care in explaining how this novel theory could be applied to society today —

> Admitting she killed her husband, appellant anchors her prayer for acquittal on a novel theory — the 'battered woman syndrome' (BWS), which allegedly constitutes self-defense. Under the proven facts, however, she is not entitled to complete exoneration because there was no unlawful aggression — no immediate and unexpected attack on her by her batterer-husband at the time she shot him.
>
> ...
>
> Being a novel concept in our jurisprudence, the battered woman syndrome was neither easy nor simple to analyze and recognize vis-à-vis the given set of facts in the present case. The Court agonized on how to apply the theory

80. *Id*. at 494, 499 & 501-02 (emphases supplied).

81. People v. Genosa, 419 SCRA 537 (2004).

> as a modern-day reality. It took great effort beyond the normal manner in which decisions are made — on the basis of existing law and jurisprudence applicable to the proven facts. To give a just and proper resolution of the case, it endeavored to take a good look at studies conducted here and abroad in order to understand the intricacies of the syndrome and the distinct personality of the chronically abused person. Certainly, the Court has learned much. And definitely, the solicitor general and appellant's counsel, Atty. Katrina Legarda, have helped it in such learning process.
>
> While our hearts empathize with recurrently battered persons, we can only work within the limits of law, jurisprudence and given facts. We cannot make or invent them. Neither can we amend the Revised Penal Code. Only Congress, in its wisdom, may do so.
>
> *The Court, however, is not discounting the possibility of self-defense arising from the battered woman syndrome.* We now sum up our main points. First, each of the phases of the cycle of violence must be proven to have characterized at least two battering episodes between the appellant and her intimate partner. Second, the final acute battering episode preceding the killing of the batterer must have produced in the battered person's mind an actual fear of an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life. Third, at the time of the killing, the batterer must have posed probable — not necessarily immediate and actual — grave harm to the accused, based on the history of violence perpetrated by the former against the latter. Taken altogether, these circumstances could satisfy the requisites of self-defense. Under the existing facts of the present case, however, not all of these elements were duly established.[82]

The second *Genosa* case was promulgated on 15 January 2004. Barely three months after, on 8 March 2004, Congress enacted Republic Act No. 9262, or the Anti-Violence Against Women and Their Children Act of 2004.[83] The "battered woman syndrome" was defined in Section 3 (c) and adopted as a defense in Section 26 of the law —

> SECTION 3. *Definition of Terms*. - As used in this Act,
>
> ...
>
> (c) '*Battered Woman Syndrome*' refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.[84]
>
> ...

82. *Id.* at 542 & 594 (emphases supplied).

83. Anti-Violence Against Women and Their Children Act of 2004.

84. *Id.* § 3.

> SECTION 26. *Battered Woman Syndrome as a Defense*. – Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.
>
> In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/ psychologists.[85]

As seen in the abovementioned cases, while in the strict legal sense the Court seemed powerless to confer the necessary protections on abused children and battered women as marginalized classes, the Court's insistent pronouncements directly led to congressional action in ensuring that the wrongs committed were made right.

C. Falcis as a Clarion Call for Congressional Action on the Plight of the LGBTQI+ Community

In relation to *Falcis*, and the general public clamor for equality for all, the Congress of the Philippines has also taken up the cudgels for members of the LGBTQI+ community. Legislators from both upper and lower houses have filed their respective versions of the Sexual Orientation and Gender Identity and Expression (SOGIE) Equality Bill, also known as the Anti-Discrimination Bill (ADB). In the current 18th Congress, no less than 10 versions have been filed by different members of the House of Representatives,[86] while the Senate has four similarly pending bills.[87] All the bills, though with differing provisions, seek to prevent all forms of discrimination against all people based on their sexual orientation, and gender identity or expression.

On its face, these various versions of the SOGIE Equality Bill can be said to be class legislation, as they refer specifically to a marginalized class. Logically, then, it could be inferred that due to the Court's pronouncement in *Falcis* that

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85. *Id.* § 26.

86. *See* H.B. No. 00095, 18th Cong. 1st Reg. Sess. (2019); H.B. No. 00134, 18th Cong. 1st Reg. Sess. (2019); H.B. No. 00160, 18th Cong. 1st Reg. Sess. (2019); H.B. No. 00258, 18th Cong. 1st Reg. Sess. (2019); H.B. No. 00640, 18th Cong. 1st Reg. Sess. (2019); H.B. No. 01041, 18th Cong. 1st Reg. Sess. (2019); H.B. No. 01359, 18th Cong. 1st Reg. Sess. (2019); H.B. No. 02211, 18th Cong. 1st Reg. Sess. (2019); H.B. No. 02870, 18th Cong. 1st Reg. Sess. (2019); & H.B. No. 04474, 18th Cong. 1st Reg. Sess. (2019).

87. *See* S.B. No. 689, 18th Cong. 1st Reg. Sess. (2019); S.B. No. 412, 18th Cong. 1st Reg. Sess. (2019); S.B. No. 315, 18th Cong. 1st Reg. Sess. (2019); & S.B. No. 159, 18th Cong. 1st Reg. Sess. (2019).

members of the LGBTQI+ community are an oppressed minority, that necessarily entails that any legislation related to people from this group must be subjected to heightened or intermediate scrutiny or review in order for such legislation to be valid to pass the equal protection standards.

From a strictly textualist reading of past Court decisions regarding quasi-suspect classes, one would initially come to the conclusion that *Falcis* presented a different set of facts (i.e., there was no actual justiciable controversy presented to the Court *en banc* and there was no statutory law being questioned). However, on closer inspection, and in using the framework of the Supreme Court's role of "educating bench and bar on the extent of protection given by constitutional guarantees"[88] in *Salonga*, and using *Ritter, Genosa* (2000), and *Genosa* (2004) as guides, one comes to a more nuanced conclusion that *Falcis* more closely mirrors the developments in the latter cases, and from these one can say that although the Court has not given the sought for relief of granting marriage equality to the petitioner in *Falcis*, the Court's pronouncements on the LGBTQI+ community are a colossal step in the right direction —

> *In contemporary times, as this Court has noted, there is no penalty in the Philippines for engaging in what may be called 'homosexual conduct.'* Notably, Republic Act No. 11166, otherwise known as the Philippine HIV and AIDS Policy Act, provides for non-discrimination in Section 2:
>
> Sec. 2. Declaration of Policies. –
>
> ...
>
> Policies and practices that discriminate on the basis of perceived or actual HIV status, sex, gender, sexual orientation, gender identity and expression, age, economic status, disability, and ethnicity hamper the enjoyment of basic human rights and freedoms guaranteed in the Constitution and are deemed inimical to national interest.
>
> *However, discrimination remains. Hence, the call for equal rights and legislative protection continues.*
>
> *To address the continuing discrimination suffered by the LGBTQI+ community in the Philippines, a number of legislative measures have been filed in Congress.*
>
> For instance, the following bills were filed in the 17th Congress: (1) House Bill No. 267, or the Anti-SOGIE (Sexual Orientation and Gender Identity or Expression) Discrimination Bill, which was eventually consolidated, along with other bills, into House Bill No. 4982; (2) House Bill No. 79, which focused on the same subject as House Bill No. 267; (3) House Bill No. 2952, which aims to establish an LGBT Help and Protection Desks in all Philippine National Police (PNP) stations nationwide; [(4)] House Bill No. 5584, which

88. *Id.*

aims to define domestic violence against individuals, including members of the LGBTQI+ community other than women and children; and [(5)] Senate Bill No. 1271, otherwise known as the Anti-Discrimination Bill.

As of the 18th Congress, steps are being taken to pass the Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) Equality Bill, with at least 10 Congressional bills and four Senate bills against discrimination based on sexual orientation and gender identity pending.

While comprehensive anti-discrimination measures which address the specific conditions faced by the LGBTQI+ community have yet to be enacted, Congress had made headway in instituting protective measures. Republic Act No. 11313, or the Safe Spaces Act, specifically addresses 'transphobic, homophobic, and sexist slurs,' and penalizes gender-based street and public spaces sexual harassment:

Sec. 3. Definition of Terms. – As used in this Act:

Catcalling refers to unwanted remarks directed towards a person, commonly done in the form of wolf-whistling and misogynistic, transphobic, homophobic, and sexist slurs;

...

Sec. 4. *Gender-based Streets and Public Spaces Sexual Harassment*. – The crimes of gender-based streets and public spaces sexual harassment are committed through ant unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.

Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks, and parks. Acts constitutive of gender-based streets and public spaces sexual harassment are those performed in buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public markets, transportation terminals[,] or public utility vehicles.

In the absence of a comprehensive national law, local government units have passed ordinances recognizing and upholding SOGIESC. In Quezon City, City Ordinance No. 2357, or the Quezon City Gender-Fair Ordinance, was passed. In Davao City, Ordinance No. 0417-12 was passed, penalizing acts that discriminate sexual and gender orientation. In 2018, the Davao City Government announced that it would establish an 'all-gender' comfort room to accommodate members of the LGBTQI+ community. Its purpose, Vice Mayor Bernard Al-ag stated, is 'to reduce discrimination in the preferred gender of the people.'

> Meanwhile, the San Juan City Government passed Ordinance No. 55, which provides for anti-discrimination of members of the LGBT community. The Mandaluyong City Government passed Ordinance No. 698 in 2018 to 'uphold the rights of all Filipinos especially those discriminated by reason of gender identity and sexual orientation.' In 2019, during the Metro Manila Pride March and Festival, the Marikina City Government announced the enactment of City Ordinance No. 065, its anti-discrimination ordinance.
>
> Moreover, the Philippine Commission on Women has listed other local government units that adopted anti-discrimination ordinances to prohibit discrimination based on sexual orientation and gender identity:
>
> Angeles City in Pampanga, Antipolo City, Bacolod City in Negros Occidental, Batangas City in Batangas, Candon City in Ilocos Sur, Cebu City, Dagupan City in Pangasinan, ... Mandaue City, Puerto Princesa, ... Vigan City in Ilocos Sur, Municipality of San Julian in Eastern Samar, Province of Agusan del Norte, Province of Batangas[,] and Province of Cavite.
>
> *The history of erasure, discrimination, and marginalization of the LGBTQI+ community impels this Court to make careful pronouncements[,] lest it cheapen the resistance, or worse, thrust the whole struggle for equality back to the long shadow of oppression and exclusion. The basic requirement of actual case or controversy allows this Court to make grounded declarations with clear and practical consequences.*[89]

It could not be clearer from the Court's pronouncements above that despite the procedural blow it dealt to the petitioner in *Falcis*, it does not in any way erase the substantial points raised regarding the plight of the LGBTQI+ community in reality and in law today. Indeed, this idea is best expressed in the concurring opinion of Justice Francis Jardeleza in *Falcis*, wherein he said that he "vote[s] to DISMISS the petitions, [but] not the idea of marriage equality."[90]

VI. CONCLUSION

A review of jurisprudence spanning more than a century presents us with certain groups of marginalized, discriminated, or oppressed individuals which are deserving of protection not only from the Court, but also from the constitution and the laws as well. These quasi-suspect classes, namely women, children, and indigenous people, deserve protection not because jurisprudence has declared them entitled to *special or additional* rights or benefits over that of the other citizens, but precisely because case law has adjudged them to be

89. *Falcis*, G.R. No. 217910 at 43-46 (emphases supplied and citations omitted).

90. *Id*. at 2 (J. Jardeleza, concurring opinion).

recipients of *existing* statutory or constitutional rights or benefits which are necessary for their general welfare and wellbeing.

There are cases, however, where the Court, despite an *absence* of *clear* statutory rights being granted to members of a quasi-suspect class, have nevertheless proclaimed that they are deserving of protection under the law under the Court's function of "educating bench and bar on the extent of protection given by constitutional guarantees."[91]

Members of the LGBTQI+ community have recently been declared to be marginalized, discriminated, or oppressed individuals by the High Court, and are therefore among the quasi-suspect classes such as women, children, and indigenous peoples. Despite the lack of statutory support for the rights which they claim under the law, the Court's pronouncements in *Falcis* serve as a compelling call to Congress to provide the necessary legislation in enforcing LGBTQI+'s constitutionally protected freedoms.

The judiciary is the repository of all judicial power. While it is their constitutional mandate to "settle actual controversies involving rights which are legally demandable and enforceable,"[92] it is also their function to declare to what degree constitutional rights and freedoms granted to everyone affect society as a whole. In relation to this, pronouncements made by the Supreme Court regarding this are equally as important as doctrines laid down in the dispositive portions of decisions, for it is with these highly persuasive words that Congressional action is spurred and what were erstwhile mere policies become fully embedded in our country's legal firmament.

91. *Salonga*, 134 SCRA at 463.

92. PHIL. CONST. art. VIII, § 1.