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G.R. No. 215370 – *RICHELLE BUSQUE ORDOÑA v. THE LOCAL CIVIL REGISTRAR OF PASIG CITY and ALLAN V. FULGUERAS*

Promulgated:

November 9, 2021

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DISSENTING OPINION

LAZARO - JAVIER, *J.*:

I dissent.

Facts

Petitioner has been married since 2000 to one Ariel Libut. After the wedding, she left the Philippines to work in Qatar. While abroad, she learned that her husband was having a romantic relationship with another woman. She returned to the Philippines. The spouses later separated in fact but not in law.

In 2008, petitioner left again to work in Abu Dhabi, United Arab Emirates. There, she met one Alan Fulgueras. They were intimately involved. She got pregnant. She flew back to the Philippines and gave birth to Alrich Paul Fulgueras (Alrich) in 2010.

The birth certificate of the child indicates his last name as "Fulgueras," and the name of his father as Allan Fulgueras. His birth certificate is supported by an Affidavit of Acknowledgment/Admission of Paternity of Allan Fulgueras. **Petitioner** was herself the **informant** who **supplied these details** for recording in the child's birth certificate. The spaces for the place and date of **marriage** were left **blank**.

Thus, from the beginning, the **birth certificate** already characterized the child's filiation as **non-marital** or **illegitimate**.

Petitioner filed with the trial court a petition for correction, deletion, and cancellation of entries in the child's birth certificate under Rule 108, *Rules of Court*. She sought, and continues to seek, the following forms of relief:

i. Correction of Alrich's last name from "Fulgueras" (the last name of the child's alleged biological father) to "Ordoña" (petitioner's maiden name);
ii. Deletion of entries in the paternal information as stated in Item Nos. 13 to 17 of the birth certificate; and

iii. Cancellation of the Affidavit of Acknowledgment/Admission of Paternity alleged to have been falsely executed to make it appear that it was executed by the biological father of Alrich.

Petitioner claimed that the child's paternal biographical details had been falsified. Her own evidence intended to prove that the child's biological father was not in the Philippines when she gave birth and did not actually acknowledge the child's paternity.

Clearly, the petition under Rule 108 did **not** seek to impugn the legitimacy of Alrich because he was already declared a **non-marital** or **illegitimate** from the time the birth certificate was entered. The confusion arose when the *ponencia* held that the child's birth certificate **cannot determine conclusively** the child's **filiation** because his mother was and still is married when he was conceived and born and therefore he is **presumably legitimate**.

Thus, instead of helping settle the child's status, the *ponencia* brought about an **invisible watermark** of **legitimacy** on the **illegitimate** status ostensibly shown by the child's birth certificate. I maintain my stand that this case could have been decided justly and legally by **granting** the petition and **allowing** the corrections in the child's birth certificate to be made and entered.

Overview of the Dissent

I dissent because the outcome in this case, to put it simply, is **unfair, if not inhumane** to petitioner who for all intents and purposes is a **solo mother**, and of course, to her **child** who will **suffer most** from the **lack of clarity regarding his status**.

Both the trial court and the Court of Appeals **endeavoured to put clarity** on the **child's status** – in the decision of the trial court, the **truth prevailed** – he is **illegitimate** or **non-marital** and **without mentioning** the **presumption of legitimacy**; in the Court of Appeals' ruling, the **powerful patriarchal legal fiction** of **presumed legitimacy** triumphed.

But here, before this Court of last resort, there is **no clarity**. There has been, in my mind, a **retrogression** in the **substantive equality** between women and men. This does not augur well with the Court's own advocacy for **substantive gender equality**. We even have institutionalized our very own ***Committee on Gender Responsiveness in the Judiciary*** and yet we **cannot usher in** gender equality in the way we decide cases that speak directly to gender bias and patriarchal interpretations of our civil laws.

Why do we have to ask our co-equal branch for salvation when salvation is within our reach to do? Besides this **institutional contradiction** is the **child's best interests** that the ruling has opted to cast aside. In his search for his identity, have we done him justice? As a result of the *ponencia*, what and who he is remain especially elusive.

On one hand, the child's birth certificate fixes his **illegitimate** or **non-marital** status. According to the *ponencia*, his birth certificate **cannot be corrected to reflect his own mother's surname**, a legal option which applies otherwise to a legitimate and an illegitimate child alike. His birth certificate **identifies his father** though is **silent** as regards the **date and place of his parents' marriage**. This **silence publicly announces** that he is an **illegitimate** or **non-marital** child.

The **child's birth certificate** is a **tangible fact**. Unless corrected or cancelled and replaced, this birth certificate is the **first** and **best evidence** of the child's filiation. This is the **first document** that the **public** will encounter when dealing with the child's filiation and other birth details.

On the other hand, the *ponencia* acts like an **invisible watermark** on his birth certificate that he is **strongly presumed to be legitimate**. This is the **second document** that speaks to the child's **presumed legitimate** filiation. But, unlike the birth certificate, the *ponencia* is **more difficult** to understand especially to those who barely have relevant encounters with the law.

In practical terms, *since there is **no order** from this Court that his **existing birth certificate** be **amended** to show his **presumed legitimate status***, and there are these **two documents** which speak to the child's filiation, both petitioner and her child will **have to explain his status** – is he **legitimate** or **illegitimate** – every time he is asked about it.

The *ponencia* makes the child **simultaneously** the **product of the love** (perhaps at the wrong time) **of two lonely individuals**, one of whom, the father, may now possibly be regretting the tryst, **and** the **modern** and **legal version** of the **immaculate conception**, the **human being sired by the copulation of Article 164 and Article 167 of the *Family Code***.

While I appreciate the *ponencia's* referral of the present conundrum to Congress for its rightful action, I believe we are **not powerless** to correct here and now the **legal fiction** we are **taking to the extreme** – *the **extreme** being the **reality** that, **with both our feet closest to ground**, we have just **created a human being born out of this legal fiction***. I can only describe this outcome as **being incredible** and **surreal**.

Besides, if I were the child, I **cannot** and **will not be willing to wait** for the settlement of my **identity** as a person and human being – knowing how thorough Congress must be in vetting new legislations as legislations affect broader segments of society than case law would.

As Chair of the ***Committee on Gender Responsiveness in the Judiciary***, I **cannot sit idly by** to wait for miracles to happen.[1] Because if I do, I will **not ever** be a part of the process of worthy changes and my Committee's advocacies on gender sensitivity will all look artificial and never get any closer to reality.

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[1] Attributed to Dr. Prem Jagyasi, Good Reads at https://www.goodreads.com/quotes/tag/idle (last accessed July 8, 2021).

In gist, beyond the generalities, what I propose in this ***Opinion*** is closer to **but short of** the **original** version of the *ponencia*.

I **do not think** we have to carve out an exception. I am **not fond of exceptions** especially when **my ground for objection** is based on the **equality of all human beings in the eyes of the law**. I **abhor** the idea of one gendered class having more rights than other gender classifications. This is **discriminatory** and therefore **unconstitutional**.

The only thing we have to do is, **first, to recognize** that our jurisprudence on **Article 170** of the ***Family Code*** is **gender insensitive** and **outrightly patriarchal**.

The **next step** is to say that **Article 170** is **not** and **could not have been meant to be exclusive** because –

(i) Its text **does not say explicitly** that only the husband or his heirs have such right (*verba legis non est recedendum – from the words of a statute there should be no departure*).

(ii) Article 170 should be understood in light of the surrounding provisions, which are Articles 167, 168, 169, and 171, which equally contain **no** text signifying **patriarchal exclusivity** (*noscitur a sociis*).

(iii) Statutes should **receive a sensible construction**, such as will give effect to the legislative intention and so as **to avoid an unjust or an absurd conclusion**. Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences. Had petitioner been **compelled to follow the presumption of legitimacy**, she would have **committed offenses punishable** by the *Domestic Adoption Act of 1998* and *The Revised Penal Code*. There would have been **other absurd and unreasonable consequences** as well.

(iv) The rule on standing or personality to file suits is a **rule of procedure** rather than **substantive law**. While Congress is by and large the **author of causes of action**, in the sense of creating or affirming rights that if violated must give rise to remedies, it is the Supreme Court that has the **authority** to say who has the **right** to go to courts, avail of its services, and obtain relief.

The Court should **not** be tied down by precedents and the rule on stare decisis if the jurisprudence we are affirming is **antiquatedly oppressive**. As eloquently observed by then Associate Justice Delos Santos in his opinion in ***Almonte v. People***,[2] the Court should **abandon a rule** that has **proved to be intolerable** and **defying practical workability**, where **the old rule** is **no more than a remnant of an abandoned doctrine**, and where **facts have so changed** or **come to be seen**

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[2] G.R. No. 252117, July 28, 2020.

differently, as to have **robbed** the **old rule** of **significant application** or **justification**.

The **third step** is to **affirm** and **confirm**, once and for all, **consistent jurisprudence** that says **Rule 108** of the ***Rules of Court***,[3] in the *absence of a governing special rule of procedure* that has specific remedial safeguards, is the **direct action** (i.e., **procedure**) for all matters that have to be recorded in the civil registry, including particularly when the correction sought would alter the legitimate status of the child to one of illegitimacy.

This is because **Rule 108** has been **uniformly recognized** as the **procedure** for **ascertaining the truth about the facts recorded** therein.

This is **also** because the purpose of establishing the **true legal status** of a person is the **object of a special proceedings like Rule 108** and **not** an **action** as this has been **technically** defined.[4]

Under **Section 1** of Rule 108, "[a]ny person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located." This ***interested person*** **includes**, obviously, the **mother of the child** whose birth certificate is sought to be amended or corrected,[5] including the change in the status of a child from legitimate to illegitimate.

The **fourth and last step** is to adjudicate whether the mother of the child has adduced **adequate evidence to overcome the presumption of legitimacy** accorded by **Articles 164** and **167** of the ***Family Code***. If she has, then the amendment or correction of the child's birth certificate should be decreed. Otherwise, if she fails to do so, then the **presumption of legitimacy** must prevail over the contrary entries in the birth certificate.

Either way, we give clarity to the child's status. In this **specific instance** *where the child is born while the mother is married to another*, **unless** there are **rules** that would **prevent** a **decision on the merits**, the **result** would be the **correction** of the child's birth certificate. This is to **give clarity** to the **status** of the child and **not to leave** the child **hanging,** let alone, **begging** for answers.

Where a decision **on the merits** is rendered, and though the **presumption** of legitimacy **prevails**, at least the **mother** was given the **opportunity to contest** the presumption **but on the basis of pure facts and pure science on human reproduction**, it is **determined** that *the child could not have been but the child of the marriage*. The child **does not become** the ***child merely of legal fiction***, but based on evidence as to facts, circumstances, and science, **the child is the offspring of some real life legally recognized couple**.

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3 Cancellation or correction of entries in the Civil Registry.

4 *Treyes v. Larlar*, G.R. No. 232579, September 8, 2020.

5 See also Rule 3 of the Implementing Rules and Regulations of RA No. 9048.

In all these steps, our **analytical framework** should consider *not only* the **text** and **jurisprudence directly** relevant to petitioner's claims **by tradition** but also **equity** and **new rights-based developments in law**, such as the **child's best interests**, a **woman's personal liberty** to **make binding decisions** and **choices central** to **individual dignity** and **autonomy**, and the ensuing **discriminatory** and **unequal treatment of a woman** in terms of rights she may exercise if such right to privacy is violated. We **must account** as well for **developments in technology** that have allowed **paternity** to be established with **absolute degree certainty** such as **DNA testing**.

The **context** in which **petitioner's action** and **proposed action** have taken and are taking place is **also important**.

Here, the **context** is as follows: Petitioner's **impugnation** of her child's **legitimacy** occurred at **two (2) instances**: (i) at the **first instance**, when she supplied **basically correct** details about her child's paternity; and (ii) now, by **seeking to correct** the child's birth certificate owing to apparent second thoughts about the father's relationships to petitioner and their child himself.

From the **perspective of the birth certificate** and **petitioner's claims**, petitioner is **not really focused on impugning** the **legitimacy** of her child, though it has **this effect**. Rather, she is **merely correcting in good faith** the **details about his illegitimacy** ***already*** **recorded** in the civil registry.

From a **practical perspective**, petitioner has both the **right** and **duty** to **declare the illegitimacy** of her child at the **first instance** through the child's birth certificate and **pursue** her **Rule 108 petition** to **correct** this birth certificate.

This is **demanded by criminal statutes** that **criminalize false declarations** about a child's parentage. This **would have happened had petitioner literally abided by the child's presumed legitimacy and declared falsely** her husband as the child's father and other entries pertinent to a legitimate child.

By **compelling her not to disclose the truth** because she cannot allegedly impugn the legitimacy of her child, she is **being forced to commit offenses** under the *Domestic Adoption Act of 1998* and *The Revised Penal Code*.

Let me **expound** on this overview below.

Issues

In order to provide correct or at least reasonable answers, we must first identify the issues, *viz.*:

1) In filing the Rule 108 petition, is petitioner **impugning** her child's **legitimacy**?

   a) Does the child's **illegitimate status** in the birth certificate **prevail over** the **presumption of legitimacy**?

b) Does this presumption **pierce** the **prima facie truthfulness** of the facts stated in the birth certificate?

c) Is there a need to seek a **judicial order** to enforce the presumption?

2) Is petitioner **barred from impugning** her child's legitimacy?

3) Is **Rule 108** the **proper remedy** for correction, deletion, and cancellation of entries in the birth certificate of petitioner's child?

4) Should **the petition** be **granted**? Has petitioner been able **to prove** her factual assertions **beyond a shadow of doubt**?

I. Petitioner is impugning her child's legitimacy because this is the truth and it must be so even if we cannot handle the truth.

Petitioner **registered** her child as **illegitimate**. She included the name and other details of the child's father and the father's alleged consent through an Affidavit of Acknowledgment/Admission of Paternity where his signature was forged.

She then **filed a Rule 108 petition to correct entries** in the child's birth certificate – **not** to change his **status** from legitimate to illegitimate, or vice-versa, but **merely to correct entries** to conform to the **truth of the father's participation in the execution** of the birth certificate.

In these **two instances**, petitioner **impugned** the legitimacy of her child. What is clear though from her act is that **this is the truth** – the child is **not a child** of petitioner's failed marriage.

Concepcion v. Court of Appeals[6] held that the **status** of a child **accrues** to the child from the **moment of birth**.

Concepcion further ruled that the child's **illegitimate status** in the birth certificate **cannot prevail over** the **presumption of legitimacy**. The presumption **pierces** the **prima facie truthfulness** of the facts stated in the birth certificate, thus:

> The reliance of Gerardo on Jose Gerardo's birth certificate is misplaced. It has no evidentiary value in this case because it was not offered in evidence before the trial court. The rule is that the court shall not consider any evidence which has not been formally offered.

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6 See 505 Phil. 529, 542 (2005).

> Moreover, the **law itself establishes the status of a child from the moment of his birth**. Although a **record of birth or birth certificate may be used as primary evidence of the filiation of a child, as the status of a child is determined by the law itself, proof of filiation is necessary only when the legitimacy of the child is being questioned**, or **when the status of a child born after 300 days following the termination of marriage is sought to be established**.
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> Here, the status of Jose Gerardo as a legitimate child was not under attack as it could not be contested collaterally and, even then, only by the husband or, in extraordinary cases, his heirs. Hence, the presentation of proof of legitimacy in this case was improper and uncalled for.
>
> In addition, a **record of birth is merely prima facie evidence of the facts contained therein. As prima facie evidence, the statements in the record of birth may be rebutted by more preponderant evidence**. It is **not conclusive evidence with respect to the truthfulness of the statements** made therein by the interested parties. **Between the certificate of birth which is prima facie evidence of Jose Gerardo's illegitimacy and the quasi-conclusive presumption of law (rebuttable only by proof beyond reasonable doubt) of his legitimacy, the latter shall prevail.** Not only does it bear more weight, it is also more conducive to the best interests of the child and in consonance with the purpose of the law.[7]

And, there is **no need** to seek a **judicial order** to enforce the **presumption of legitimacy**. The **filiation** of a child is **presumptively fixed from birth** regardless of what the birth certificate states.

As held in ***Treyes v. Larlar***,[8] if a **status** has been **declared by law to exist from a certain moment onwards** (*i.e.*, in that case, status of being an heir; in the case at bar, the presumed legitimacy of the child), the law itself has already made **the declaration** and there is **no more need to obtain** a **judicial order** to **confirm that declaration**.

While admittedly the **presumption of legitimacy** is the law on the matter, this rule ***does not conclude*** this case. This **presumption**, while *quasi-conclusive*, is ***subject to rebuttal***. My assessment of petitioner's evidence leads me to conclude that she was ***able to rebut*** the presumption. More on this later.

Also, while the **presumption** subsists as it is strongly upheld by the *ponencia*, there is the **contrary** statement of the child's filiation in the **birth certificate** itself that **still exists**. While **legally** the birth certificate is **no longer** ***prima facie*** **probative** of the child's filiation, the **mere fact that it still exists**, as in fact it was *actually allowed to stand* according to the present *ponencia*, is a **cause of confusion** and **embarrassment** not only to petitioner's husband, but **more especially** to petitioner herself, and indeed, **most especially** to the child whose status has become unstable and ill-defined.

This reality of confusion and embarrassment makes it **imperative** for us **not to rest** upon the **presumption of legitimacy** but to **go further in justly and**

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7 *Id.*

8 Supra note at 4.

equitably resolving this case. For all we know, given the **prevalence of overseas employment** and **divided families**, petitioner's problematic situation may **not** be **unique** but **too common** to be continuously ignored.

II. Rule 108, Rules of Court is the proper procedure for the claims in the instant case.

The *ponencia* ruled that petitioner's **recourse to Rule 108 is erroneous** because her child's legitimacy could **not** be **impugned collaterally but only directly**.

I most respectfully **disagree**.

One. To begin with, it is **not true**, as suggested by others, that *there is a catena of cases prohibiting the change of a child's marital or legitimate to non-marital or illegitimate to status* through Rule 108 of the *Rules of Court*. On the contrary, **Rule 108 has always been the procedure** to correct a child's status from legitimate to illegitimate provided that the proceedings are made adversarial in nature. To be sure, *if there was such catena of cases*, it would have already been easy to point out **what exactly this proper procedure** is or has been and **under what rule this procedure** could be found – **but** to this date **no such procedure** or **rule has been identified** except to refer to the **ambiguous** phrase *direct action*.

Two. Applying ***Treyes v. Larlar***,[9] petitioner's factual assertions **cannot be threshed out** in an **action**. This is **because** these factual assertions involve the **correction of entries** in the birth certificate of her child. This **ultimate relief** is **predicated upon facts** established by evidence she adduced at the trial court. She is **not claiming any relief against** any person, natural or juridical. She has **no claim against any person**. What she wants is to **correct entries** in her child's birth certificate and to **establish facts** *only towards that end*. This is the **purview not** of an **action but** of a **special proceeding**.

Treyes explained the **difference** between an **action** and a **special proceeding**:

> In the main, **Ypon**, citing certain earlier jurisprudence, **held** that the **determination of a decedent's lawful heirs should be made** in the **corresponding special proceeding, precluding the RTC in an ordinary action for cancellation of title and reconveyance from making the same.**
>
> According to Rule 1, Section 3 (c) of the Rules, **the purpose of a special proceeding is to establish a status, right, or particular fact.** As held early on in Hagans v. Wislizenus, a **"special proceeding"** may be defined as "an application or proceeding **to establish the status** or right of a party, or a particular fact." In special proceedings, the remedy is granted generally upon an application or motion.

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9 *Id.*

> In Pacific Banking Corp. Employees Organization v. Court of Appeals, the Court made the crucial **distinction between** an **ordinary action** and a **special proceeding**:
>
> **Action** is the **act by which one sues another** in a court of justice **for the enforcement** or **protection of a right**, or the **prevention** or **redress of a wrong** while **special proceeding** is **the act** by which one seeks **to establish the status** or right **of a party**, or a **particular fact**. Hence, **action** is distinguished from **special proceeding** in that the former is a **formal demand of a right by one against another**, while the latter is but a **petition for a declaration of a status**, right or **fact**. Where a party-litigant **seeks to recover property from another**, his remedy is to file an **action**. Where his purpose is **to seek the appointment of a guardian** for an insane, his remedy is a **special proceeding** to **establish the fact** or **status of insanity** calling for an appointment of guardianship.
>
> Hence, the **main point of differentiation** between a **civil action** and a **special proceeding** is that in the **former**, a **party sues another for the enforcement or protection of a right** which the party claims he/she is entitled to, such as when a party-litigant seeks to recover property from another, 74 while in the **latter**, a party merely **seeks to have a right established** in his/her favor.
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> **Applying the foregoing to ordinary civil actions for the cancellation of a deed** or instrument and reconveyance of property on the basis of relationship with the decedent, i.e., compulsory or intestate succession, the **plaintiff does not really seek to establish his/her right as an heir**. In truth, the plaintiff **seeks the enforcement of his/her right brought about by his/her being an heir** by operation of law.
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> Restated, the **party does not seek to establish his/her right as an heir** because the law itself already establishes that status. **What he/she aims to do is to merely call for the nullification of a deed**, instrument, or conveyance **as an enforcement or protection of that right** which he/she already possesses by virtue of law.

Indeed, it has been held that an **action** is **fundamentally different** from the **special proceedings** in **Rule 108** such that the former cannot substitute for the latter.[10]

Petitioner does **not seek** the **enforcement** of a right **against someone**. Hence, she has **no need** for an **action**. Instead, petitioner wants to **correct entries** in the **birth certificate** of his **illegitimate** or **non-marital** child. Of course, she is **required to prove facts** showing the **errors** in the existing entries **and** the **correctness** of the details she wants to enter. This is the domain of **special proceedings**.

Three. We have to **distinguish** between the **grounds** justifying petitioner's factual assertions and the **procedure** for pursuing her claims.

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10 *Republic v. Ontuca*, G.R. No. 232053, July 15, 2020; *Onde v. The Local Civil Registrar*, 742 Phil. 691 (2014); *Spouses Cerulla v. Delantar*, 513 Phil. 237, (2005); *Barco v. Court of Appeals*, 465 Phil. 39 (2004).

The **grounds** are found in **Article 166**[11] in relation to **Article 170**[12] of the *Family Code*. To be **relevant**, the **evidence** to be adduced by petitioner would have to **prove these grounds**. The **grounds** themselves under Article 166 and Article 170, however, **do not ordain** the **procedure** by which the **grounds** are to be established. We **cannot determine** the **procedure** from reading Articles 166 and 170. In fact, if we are to rely **only** upon these provisions, we would be **misled** into believing that **impugning legitimacy** requires an "**action**" – a formal demand of a right by the presumed father against the child when **this is not the case**.

What happens when **impugning legitimacy** is that the presumed father endeavours to **obtain** a **declaration of a status**, right or **fact of illegitimacy** of the child, but **not** to **enforce** a **right against** this child. The **essence** of **this type of claim** is the **essence** of **special proceedings**.

Four. Since petitioner has to initiate **special proceedings**, the **only logical choice** for her is the rule of procedure prescribed by **Rule 108** of the *Rules of Court*. This is because a **Rule 108** proceeding will **not just** be about **correcting entries** in the subject birth certificate, **but** more important, **ascertaining the truth *about the facts*** recorded therein. The **what, why, how, where** and **when** as regards the child's birth will **necessarily be inquired** into and **litigated** *before* a **declaration** and **registration** of a **status**, right, or fact could be made.

These are the **twin purposes** of Rule 108 so it ***cannot be said*** that this rule of procedure is **not** a **direct** proceeding for impugning the legitimacy of the child.

Five. Case law has **consistently held** that "even **substantial errors in a civil registry may be corrected through a petition filed under Rule 108**, with the ***true facts established*** and the **parties aggrieved by the error** availing themselves of the appropriate adversarial proceeding."[13] This **includes** the ***unearthing of facts*** and **correction of entries** in the civil register pertaining to one's ***filiation***.

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[11] ARTICLE 166. Legitimacy of a child may be impugned only on the following grounds:
(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:
(a) the physical incapacity of the husband to have sexual intercourse with his wife;
(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or
(c) serious illness of the husband, which absolutely prevented sexual intercourse;
(2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or
(3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence. (255a)

[12] ARTICLE 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded. If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier. (263a)

[13] Supra note 10 at 55; see also *Republic v. Ontuca*, G.R. No. 232053, July 15, 2020; *Republic v. Manda*, G.R. No. 200102. (2019); *Onde v. The Local Civil Registrar of Las Piñas City*, 742 Phil. 691, 696 (2014).

There is **no other procedure** as **direct** as **Rule 108** in the **impugnation of legitimate filiation**. In **past cases** involving *filiation* and *Rule 108* as the remedy resorted to, the **fact-patterns** were **the same**.

This **template** could be illustrated, thus: a petitioner **seeks to correct filiation**, for example, from legitimate to illegitimate, **because the petitioner's circumstances** call for such correction, such as there really was no marriage or the petitioner was sired by another man. The rule used is **Rule 108**. Evidence is presented to prove the claims.

In these past cases, except for requiring adversarial proceedings, the Court has **consistently accepted Rule 108** as the **proper procedure for such purpose**.

Republic v. Coseteng-Magpayo[14] is one of these template cases.

In ***Coseteng-Magpayo***, the **issue** was the **proper procedure to be followed** when the change sought to be effected in the birth certificate affects the civil status of the respondent therein **from legitimate to illegitimate**. The respondent therein claimed that **his parents were never legally married**; he filed a **petition to change his name** from "Julian Edward Emerson Coseteng Magpayo," the name appearing in his birth certificate, to "Julian Edward Emerson Marquez-Lim Coseteng."

The notice setting the petition for hearing was published and, since there was no opposition, the trial court issued an order of general default and eventually granted the petition of the respondent therein by, *inter alia*, deleting the entry on the date and place of marriage of his parents and correcting his surname from "Magpayo" to "Coseteng."

The Supreme Court reversed the trial court's decision **since the proper remedy** would have been to file a **petition under Rule 108 of the *Rules of Court***, and **not** a **petition for change of name**. The Court ruled that **the change sought** by the respondent therein **involved his civil status as a legitimate child**; it may **only be given due course through** an **adversarial** proceeding under **Rule 108**.

Five. In ***Treyes v. Larlar***,[15] the Court through Justice Caguioa held that there is no need to file a separate special proceeding to **declare** a **status** that a person already has **by operation of law**. In *Treyes*, heirship accrues from the decedent's time of death. No declaration to this effect is necessary for that heir to recover property as an heir. This status can be established in the civil action for recovery of property.

Following this ruling in *Treyes*, it is true that a child born to a mother who is married to another is **deemed legitimate** and this presumed status accrues from the **moment of birth. No judicial declaration is required** to obtain legitimate status because this status is given by operation of law.

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14 See 656 Phil. 550 (2011).

15 Supra note 4.

On the other hand, the **change of status** whether from legitimacy to illegitimacy or vice-versa is **not presumed by law**. One **has to work** for this change. It is **not something** that comes about **by operation of law**, unlike legitimacy or illegitimacy or heirship.

How does one go about seeking the **declaration of a change in status**? As *Treyes* itself explained, this is done ***through special proceedings*** and ***not an action***.

Rule 1, Section 3 of the *Rules of Court* provides that "[a] special proceeding is a **remedy** by which a party **seeks to establish a status**, a right, or a particular fact." **Rule 108 creates a remedy to rectify facts of a person's life** which are **recorded by the State** pursuant to **Act No. 3753**, the *Civil Register Law*. These are facts of public consequence that include one's **birth**, which the State has an interest in recording.

Thus, a **Rule 108 proceeding** is the **proper procedure**, a **direct** *proceeding* **to establish a child's status**, since the object of special proceedings (such as that in Rule 108 of the Rules of Court) is **precisely to establish the status** or right of a party or a particular fact.

Six. I am **aware** of the rulings in ***Miller v. Miller***[16] and ***Braza v. City Civil Registrar of Himamaylan City***.[17] These cases make the **broad statement** that Rule 108 is **inappropriate** for *declaring the nullity of one's marriage* for being bigamous and *impugning the illegitimate status* of an alleged half-sibling by changing the surname in the birth certificate from the surname of the purported father to the surname of the mother.

These cases are **not on all-fours** with the case here.

Braza involved a petition that brazenly sought to **declare a marriage void for being bigamous** through a **Rule 108** proceeding. This the Supreme Court **did not allow** because there is a **specially dedicated rule of procedure** for **this claim – A.M. No. 02-11-10-SC**.[18]

As explained in ***Fujiki v. Marinay***,[19] Rule 108 **cannot substitute** for A.M. No. 02-11-10-SC because the latter has **procedural** and **substantive safeguards in place** before a marriage may be declared a nullity. Hence, ***Braza*** was held in ***Fujiki*** to be **inapplicable** in cases that **do not involve** the use of rules of procedure **specially dedicated** to the particular claim.

Thus:

> To be sure, a **petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a**

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16 G.R No. 200344, August 28, 2019.
17 622 Phil. 654, 659 (2019).
18 RE: PROPOSED RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES.
19 See 712 Phil. 524 (2009).

> **marriage**. A **direct action is necessary to prevent circumvention** of the **substantive and procedural safeguards of marriage** under the Family Code, **A.M. No. 02-11-10-SC** and other related laws. **Among these safeguards** are the requirement of proving the limited grounds for the dissolution of marriage, support pendente lite of the spouses and children, the liquidation, partition and distribution of the properties of the spouses, and the investigation of the public prosecutor to determine collusion. A **direct action** for declaration of nullity or annulment of marriage is **also necessary to prevent circumvention of the jurisdiction of the Family Courts** under the Family Courts Act of 1997 (Republic Act No. 8369), as a petition for cancellation or correction of entries in the civil registry may be filed in the Regional Trial Court "where the corresponding civil registry is located."

This is the **reason** why a petitioner **cannot dissolve their**[20] **marriage** by the mere expedient of changing their entry of marriage in the civil registry – because of the **existence** of the *rule of procedure* and *its safeguards* **especially dedicated** to the **nullification** of marriages – **A.M. No. 02-11-10-SC**. There is therefore **no reason** to resort to Rule 108 for the purpose of declaring a marriage void.

But a declaration of change of status from **legitimate to illegitimate** is **not covered** by the ruling in ***Braza***. The reason is that there is **no especially dedicated rule of procedure** for this declaration. As explained above, Article 166 and Article 170 **only state** the **grounds** for impugning legitimacy **but not** the **procedure** for pursuing these grounds.

With no **dedicated procedure for changing filiation**, Rule 108 fills in the void. The Supreme Court has recognized this for a long time now.

On the other hand, ***Miller*** has key differences with the present case.

For one, the petitioner in ***Miller*** **did not have personal knowledge** of the **actual intimacies** between his father and the respondent's mother to be able to conclude that his father is **not** also respondent's father. **Here**, petitioner **has personal knowledge** of facts for her to credibly conclude about the circumstances surrounding her child's birth.

For another, ***Miller*** is based on the ruling in ***Braza*** which **does not apply** to the case at bar because ***Braza*** pertained to the declaration of a marriage as a bigamous marriage that is **governed not by Rule 108 but by A.M. No. 02-11-10-SC**.

III. Petitioner is not barred from impugning her child's legitimacy.

The **bar** against petitioner from impugning her child's legitimacy is said to be founded upon **Article 170** of the *Family Code* –

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20 I use "their" to indicate gender neutrality, indeterminacy or non-affiliation with traditional gender categories.

> The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.
>
> If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier. (263a)

The **jurisprudence** on **Article 170** construed this provision as giving the *husband* and *only exceptionally his heirs* the **exclusive right to impugn** the legitimacy of a child. The rule has been expressed thus:

> x x x **Impugning the legitimacy of the child is a strictly personal right of the husband, or in exceptional cases, his heirs** for the simple **reason** that **he is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces** and **he should be the one to decide whether to conceal that infidelity or expose it in view of the moral and economic interest involved.** It is only in exceptional cases that his heirs are allowed to contest such legitimacy. **Outside of these cases, none — even his heirs — can impugn legitimacy; that would amount to an insult to his memory.** x x x
>
> x x x x
>
> x x x It is settled that a child born within a valid marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. We cannot allow petitioner to maintain his present petition and subvert the clear mandate of the law that only the husband, or in exceptional circumstances, his heirs, could impugn the legitimacy of a child born in a valid and subsisting marriage. The child himself cannot choose his own filiation. If the husband, presumed to be the father does not impugn the legitimacy of the child, then the status of the child is fixed, and the latter cannot choose to be the child of his mother's alleged paramour. On the other hand, if the presumption of legitimacy is overthrown, the child cannot elect the paternity of the husband who successfully defeated the presumption.[21]

As I have stated, in **understanding this rule**, especially its **rationale**, we should consider *not only* the **text** and **jurisprudence directly** relevant to petitioner's claims **by tradition** but also according to–

(i) **equity**,

(ii) **factual context**,

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[21] *Liyao Jr. v. Tanhoti-Liyao*, 428 Phil. 628, 641 (2002).

(iii) **new rights-based developments in law**, such as the **child's best interests**, a **woman's personal liberty** to **make binding decisions** and **choices central** to **individual dignity** and **autonomy**, and the ensuing **discriminatory** and **unequal treatment of a woman** in terms of rights she may exercise if such right to privacy is violated, and

(iv) **developments in technology** for proving **paternity** such as **DNA testing**.

I most respectfully submit that the **rationale** for the rule is **gender insensitive** and **utterly patriarchal**.

The **rationale** presupposes the wife's fault. Regardless of fault, it **conceals** ***but dignifies*** the implicit **silencing** of the wife on *choices central to her dignity and autonomy*. One such choice that is **denied her** is her volition to **make a declaration** as regards **her child's paternity**.

True, unrequited love and failed relationships are **painful** and **stressful** for the abandoned, either the woman or the man. But both of them have the **equal right** to fall in and out of love. It is **not only** the husband who falls and fails; the wife **does too** and **she should *not* be punished more than the husband would be**. Denying her the standing to impugn the legitimacy of her own child is one **punishment over and above** that **meted** upon a **husband** who **sires** a **child outside of marriage**.

While the *community holds value judgments*, the **law ought to be neutral** and to hold both of them to be **equal possessors** of the **right** to **establish truthfully** the child's paternity. This is especially true, and actually we must be more solicitous, to the wife **because** the child, before evidence is even presented on **paternity**, is first and foremost **already** ***her child***.

The **rationale** for the **jurisprudence** on Article 170 also **accepts** as **taken for granted** and **natural** the **moral and economic power** of the husband over the wife. This may be true in some instances but this has been the **product of gender roles** that society has nurtured for so long. Now, *that power* must be **equally shared**. The **moral** and **economic compass** is for **both the husband and the wife to share** as regards the rights and privileges and the duties and responsibilities appurtenant thereto. It is **no longer** the **husband who decides** by his lonesome. He is expected to share **at least** the decision-making power to the wife.

So there is every reason to **disown now** the **rationale** for the *rule of exclusivity in favour of the husband*.

Contrary to some favoured opinions, the **doctrine of gender equality** does **not** arise only from the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). While an important of international social legislation, CEDAW is **not the only** binding legal document on **gender equality**. We do **not** have to bother ourselves about **judicially legislating** the provisions of CEDAW into our municipal law – this is because we **do not have to look far** for authoritative precedents on gender equality. We have **ample supply of local laws** that await implementation in actual cases.

The following list is **not exhaustive** but illustrative:

- *Constitution*, Article II, 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."

- *Constitution*, Article XIII, Section 14: "SECTION 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."

- RA 9710 (2009) "The Magna Carta of Women"

- RA 11313 (2019) "An Act Defining Gender-Based Sexual Harassment In Streets, Public Spaces, Online, Workplaces, And Educational Or Training Institutions, Providing Protective Measures And Prescribing Penalties Therefor"

- RA 9995 (2010) "An Act Defining And Penalizing The Crime Of Photo And Video Voyeurism, Prescribing Penalties Therefor, And For Other Purposes"

- RA 9262 (2004) "An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And For Other Purposes"

- RA 8505 (1998), "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"

- RA 8353 (1997) "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"

- RA 7877 (1995) "An Act Declaring Sexual Harassment Unlawful In The Employment, Education Or Training Environment, And For Other Purposes"

- RA 7192 (1992) "An Act Promoting The Integration Of Women As Full And Equal Partners Of Men In Development And Nation Building And For Other Purposes"

- PD 633 (1975) "Creating A National Commission On The Role Of Filipino Women"

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- RA 11210 (2019) "An Act Increasing The Maternity Leave Period To One Hundred Five (105) Days For Female Workers With An Option To Extend For An Additional Thirty (30) Days Without Pay, And Granting An Additional Fifteen (15) Days For Solo Mothers, And For Other Purposes"

- RA 10398 (2013) "An Act Declaring November Twenty-Five Of Every Year As "National Consciousness Day For The Elimination Of Violence Against Women And Children"

- RA 8972 (2000) "An Act Providing For Benefits And Privileges To Solo Parents And Their Children, Appropriating Funds Therefor And For Other Purposes"

- PCW BR 001-10 (2010) "Approving And Adopting The Implementing Rules And Regulations Of Republic Act No. 9710 Otherwise Known As The "Magna Carta Of Women"

- EO 77 (2002) "Approving And Adopting The Framework Plan For Women [2001-2004] And Intensifying The Implementation Of The 5% Budget Provision For Gender And Development Programs And Projects"

- DPWH DO 130-16 (2016) "Subject: Guidelines for the Implementation of the Provisions of Republic Act No. 6685 and Republic Act No. 9710 or the Magna Carta of Women)"

Clearly, the Philippines has enough set of **local laws** that demand ***substantive* equality between men and women**. While these laws could have better been expanded to equality among all genders and non-genders alike, for purposes of the present case, suffice it to state that **we have enough laws on gender equality** that **ought to be reflected in the way this Court and other courts interpret legal provisions**.

Laws are **living trees**. Seen this way, **narrow technical approaches** to understanding the laws are to be **eschewed**.[22] This **also suggests** that **the past plays a critical but non-exclusive role in determining the content of the rights and obligations** outlined by our laws.[23] The laws as living trees **though rooted in past and present institutions** must be **capable of growth to meet the future**.[24] Laws are **intended to set a standard upon which the present as well as future conduct** is to be tested.[25]

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22 See Reference re Provincial Electoral Boundaries, 1991 CarswellSask 188, 1991 CarswellSask 403, [1991] 2 S.C.R. 158, [1991] (Supreme Court of Canada).

23 *Id.*

24 *Id.*

25 *Id.*

Therefore, the **meaning of Article 170** of the *Family Code* is **not to be determined solely** by the degree to which this provision was understood by the framers of this provision in the *Family Code* since **their deliberations were prior to the enactment of laws** meant to provide **affirmative relief** on **gender equality**.

This admonition is as apt in defining the **standing of a mother to challenge the legitimacy** of her child as it is in **abandoning jurisprudence** requiring separate special proceedings to declare the heirs of a deceased.[26] The **mother's standing to do so**, while rooted in and hence to some extent defined by historical and existing practices, **cannot be viewed as frozen by particular historical anomalies**.[27] What must be sought is the **broader philosophy underlying** the **historical development** of the **mother's standing** on this matter – a **philosophy** which is not only **capable of explaining the past** but also of ***animating the future***. This ***underlying philosophy*** is that our society and jurisprudence **have long been under the yoke of patriarchy** which **legal developments** in our country have deigned **to reject** to achieve **gender equality**.

This **method of interpreting** provisions in our **civil laws** has been **accepted as the way to go** by the Supreme Court.

In ***Alanis III v. Court of Appeals***[28] the Court interpreted Article 364 of the *Civil Code* in a manner that speaks to the constitutional value and mandate of **gender equality**. The Court invoked the ***CEDAW*** as it did the same **legal developments** referred to above. The Court found **no issue** respecting the **direct application** of ***CEDAW*** to **actual cases**.

Illustrative of this **enlightened** method of statutory construction, which is **adopted** in this *Opinion* to **support** the **jettisoning** of the **jurisprudence** on **Article 170** of the *Family Code*, *Alanis III* expounded:

> The fundamental equality of women and men before the law shall be ensured by the State. This is guaranteed by no less than the Constitution, a statute, and an international convention to which the Philippines is a party.
>
> **In 1980, the Philippines became a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, and is thus now part of the Philippine legal system.** As a state party to the Convention, the Philippines bound itself to the following:
>
> **Article 2**
>
> **(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;**

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26 Supra note 4.
27 Supra note 22.
28 G.R. No. 216425, November 11, 2020.

Article 5

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]

Non-discrimination against women is also an emerging customary norm. Thus, the State has the **duty to actively modify what is in its power to modify, to ensure that women are not discriminated.**

Accordingly, **Article II, Section 14 of the 1987 Constitution reiterated the State's commitment to ensure gender equality**:

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.**

In keeping with the Convention, **Article II, Section 14 of the Constitution requires that the State be active in ensuring gender equality.** This provision is **even more noticeably proactive than the more widely-invoked equal protection and due process clauses** under the Bill of Rights. In ***Racho v. Tanaka***, this Court observed:

This constitutional provision provides a more active application than the passive orientation of Article III, Section 1 of the Constitution does, which simply states that no person shall "be denied the equal protection of the laws." Equal protection, within the context of Article III, Section 1 only provides that any legal burden or benefit that is given to men must also be given to women. It does not require the State **to actively pursue "affirmative ways and means to battle the patriarchy — that complex of political, cultural, and economic factors that ensure women's disempowerment."**

Article II, Section 14 implies the State's positive duty to actively dismantle the existing patriarchy by addressing the culture that supports it.

With the Philippines as a state party to the Convention, the emerging customary norm, and not least of all in accordance with its constitutional duty, Congress enacted **Republic Act No. 7192, or the Women in Development and Nation Building Act.** Reiterating Article II, Section 14, **the law lays down the steps the government would take to attain this policy:**

SECTION 2. Declaration of Policy. — The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provide women rights and opportunities equal to that of men.

To attain the foregoing policy:

(1) A substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women;

> (2) **All government departments shall ensure that women benefit equally and participate directly in the development programs and projects of said department**, specifically those funded under official foreign development assistance, to ensure the full participation and involvement of women in the development process; and
>
> (3) **All government departments and agencies shall review and revise all their** regulations, circulars, **issuances and procedures to remove gender bias therein.**
>
> **Courts**, like all other government departments and agencies, **must ensure the fundamental equality of women and men before the law.** Accordingly, **where the text of a law allows for an interpretation that treats women and men more equally, that is the correct interpretation.**

We must also appraise **technological developments** that have made **paternity determinations exact** and **foolproof.** One such progress is **DNA testing.** When **Article 170** of the *Family Code* was deliberated upon, the **advantages** that we now have of **resorting to DNA testing** to establish **paternity** were not available. The framers of Article 170 were clearly and convincingly **not cognizant** of this scientific testing because, otherwise, they would have mentioned or referred to it. But with DNA testing, it has become **illogical** and **contrary to reason** to **continue denying** to the **wife** the ***standing*** to **question** or **challenge** her own child's legitimacy.

Technological developments have made the **overarching power of presumptions** such as the *presumption of legitimacy* and its concomitant **bar-rule** or **preclusion rule** *anachronistic* and **arbitrary** because the **presumptions** these doctrines hold **can already be easily debunked** by science. The situation is akin to **putting premium to form over undeniable substance** should we continue to restrict the standing to impugn legitimacy to the husband and only exceptionally his heirs and deny this same personality to the wife **despite the availability of infallible means to establish the wife's claim of illegitimacy.**

Further, in addition to the foregoing factors that the interpretation of Article 170 should weigh in, the Court could resort to the **traditional analytical tools** of **statutory construction** to reach the ineluctable conclusion that **Article 170** is **not** and **could not have been meant to exclude the wife.**

Thus:

(i) Its text **does not say explicitly** that only the husband or his heirs have such right (*verba legis non est recedendum – from the words of a statute there should be no departure*).

The **text** *identifies* the husband and his heirs as parties to impugn the legitimacy of a child. It does **not say** however that **only they** could do so. So the *verba legis* **cannot justify** the rule of exclusivity that jurisprudence has ruled to be the case.

(ii) Article 170 should be understood in light of the surrounding provisions, which are Articles 167, 168, 169, and 171, which equally contain **no** text signifying **patriarchal exclusivity** (*noscitur a sociis*).

Neither can we point to **Articles 167, 168, 169** and **171** to justify the rule of exclusivity.

In fact, **Article 167** mentions that the **wife may impugn** the legitimacy of her child – **but** the **child** is nonetheless ***presumed to be legitimate***.[29] So **Article 167** establishes the **presumption of legitimacy** but **does not exclude** the mother from **being able to impugn** the child's legitimacy. In fact, it says that the **mother may declare against** the child's legitimacy.

Speaking to the termination of a marriage and the birth of a child within 300 days after such termination, **Article 168** is **not relevant to the issue** because it **says nothing** about the mother *not being able to impugn* the legitimacy of her child.

Article 169 refers to Article 168 – but the important takeaway from **Article 169** is that "**whoever** alleges such legitimacy or illegitimacy" is **bound to prove** the claim if the child is born after 300 days from the termination of marriage. **Article 169** does **not** impose a rule of exclusivity but recognizes the **right of "whoever"** to impugn a child's legitimacy.

Finally, **Article 171** imposes **no rule** that **only the heirs may impugn** the legitimacy of a child. It says "the heirs of the husband may impugn…" Of course, the wife is an heir but it is irrelevant to this case because petitioner's husband is still alive.

As the surrounding provisions themselves show, there is **nothing sacrosanct** about this **rule of exclusivity** as the jurisprudential rationale for Article 170 makes it appear to be so. The provisions around Article 170 are **not** indicative of an intention to impose a rule of exclusivity.

(iii) Statutes should **receive a sensible construction**, such as will give effect to the legislative intention and so as **to avoid an unjust or an absurd conclusion**. Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences. Had petitioner been **compelled to follow the presumption of legitimacy**, she would have **committed offenses punishable** by the *Domestic Adoption Act of 1998* and *The Revised Penal Code*. There would have been other absurd and unreasonable consequences as well.

We **cannot impose** the **rule of exclusivity** here because it would **compel petitioner to commit crimes** punishable by the *Domestic Adoption Act of 1998* and *The Revised Penal Code*. Consider these statutes:

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[29] The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress. (256a)

1. Section 21, RA 8552 (2019), *Domestic Adoption Act of 1998*: "Violations and Penalties. — … (b) Any person who shall cause the **fictitious registration of the birth of a child under the name(s) of a person(s) who is not his/her biological parent(s)** shall be guilty of simulation of birth, and shall be punished by prision mayor in its medium period and a fine not exceeding Fifty thousand pesos (P50,000.00)."

2. Article 347, *The Revised Penal Code*: "Simulation of Births, Substitution of One Child for Another and Concealment or Abandonment of a Legitimate Child. — The **simulation of births** and the substitution of one child for another shall be **punished by prisión mayor and a fine of not exceeding 1,000 pesos**…."

3. Article 172, *The Revised Penal Code*: "Falsification by Private Individuals and Use of Falsified Documents. — The penalty of prisión correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon… 1. **Any private individual who shall commit any of the falsifications** enumerated in the next preceding article **in any public or official document** or letter of exchange or any other kind of commercial document…. Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree."

Another **absurd result** if the right to impugn is **withheld from the mother** of the subject child is to **foster** an **illusion** or a **false reality upon the child**. If unrebutted by the person who is in the **most unique position to know**, the **presumption** of the child's **legitimacy** would **run counter** to the **actual facts of his being**.

Not only is the child **being rejected** by the **father whom the law** through the presumption is **foisting upon him** to be his father. Still, **the law** says he is the child's father. But his **public record** in the form of his **birth certificate** introduces a **different father** or **no father** to the world. In **real life** situations, the child **will be required to explain** the **discrepancy** in his situation – why **his father in the birth certificate** is either unknown or different from the father whom he is forced to introduce as **his father by legal fiction**.

This is a **traumatic** scenario for a child. He has **no clarity as to his being**. He is **forced to publicly announce his illegitimacy** every time the presumption compels him to declare otherwise. The **only solution** to avoid this trauma is to give the mother the **liberty to declare the true facts** behind the child's status. To rule **otherwise** is to **subvert** the **best interests of the child**.

Additionally, the rule of exclusivity **deprives** the wife of her right to make personal choices on matters central to her **dignity** and **autonomy**. No doubt, the **paternity** of the child she carried for nine months and will be rearing *by her lonesome* is **central** to her **dignity** and **autonomy**. There is **no debate** on this. **No**

husband has the **credibility** to argue otherwise since he was **not the one** who carried the child for nine months and **neither** will he have the **opportunity to rear the child** who is **not his own**.

Denying the wife her standing to challenge her child's legitimacy is **most acutely oppressive** when the wife finds herself in **abusive situations**. It is a **strong public policy** to protect the wife and her child from all forms of criminal abuse. This protection is constant and absolute – it is **not diminished** by the wife's **justified** or **unjustified infidelity**. It is both for **the child's best interests** and the **wife's fundamental privacy right** that she or the child **be allowed to prove** the child's true paternity and in the process challenge the child's legitimacy. A wife who has a **pedophile for a husband** or an **abuser for a spouse**, and who finds happiness and dignity with some other male partner, is **entitled** to **seek relief from the courts** to **prove her child's true provenance**. To continue to refuse her this standing and relief is **abusing her twice over**, initially by her husband and *soon after by the interpretation of Article 170*. I **rebuff** any suggestion that the **framers of Article 170** intended to be *instruments of abuse for all of eternity* who would *never wish to change their minds* amidst the continuing awareness and dedication of the law to gender equality and technological advancements.

As then Justice Reyes stressed in his opinion in ***Spouses Imbong v. Ochoa Jr.***,[30] the **wife/mother** is a **woman**, an **individual**, a **human being**, and a **possessor of rights** on her **own accord**. Her **person** and **dignity** are **defined** not only by her **association to another or others** but also if not more by her own **self-worth** and **self-image** –

> **Yet the marital couple is not an independent entity**, with a mind and heart of its own, **but an association of two individuals**, each with a separate intellectual and emotional makeup. While the law affirms that the right of privacy inheres in marital relationships, it likewise recognizes that **a spouse, as an individual per se, equally has personal autonomy and privacy rights apart from the right to marital privacy** guaranteed by the Constitution. A spouse's personal autonomy and privacy rights, as an individual per se, among others, necessitates that **his/her decision on matters affecting his/her health, including reproductive health, be respected and given preference.**

Indeed, to keep the right to impugn **exclusive to the male spouse** in the family is to **perpetuate** the **discriminatory practice against women in general**.

There are **practical considerations** as well. If petitioner's **husband** would be the **only person** who could **set right** the child's paternity, what **incentive** would he have **to act** to impugn the child's legitimacy?

The child's birth certificate still enters him as an **illegitimate** or **non-marital** child. True, there is the **presumption of legitimacy** *fictionally* **watermarked** on his birth certificate. **Nonetheless** the birth certificate **remains silent** on the child's date of marriage, name of father, and surname. Would this presumption of legitimacy still **matter at all** to the husband when his name is **not even implicated** in the birth certificate?

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[30] See 732 Phil. 1, 531 (2014).

More, assuming that petitioner's husband is **minded to act**, in practical terms, **what document** will be the **object of his *direct* action** so petitioner's husband can **impugn** the **presumed legitimacy** of the child? Will it be the *ponencia* that **confirmed** the presumption of legitimacy *even if* the *ponencia* towards the end of its discussion **itself suggested** the alternative that the child **may after all be illegitimate**? Will the **object document** be the child's birth certificate though it still says that the child is illegitimate?

Lastly, it will **not be for the best interests of the child** to compel the father **to disown the child** repeatedly **in public** and at a **forum** that would be distressing and scarring to the latter. **In contrast**, we **actually now have** the **perfect legal scenario to avoid** this public and cruel embarrassment to petitioner, her husband, petitioner's non-marital partner, and **most especially the child**.

The **present proceeding** is this option. Given the arguments in this *Opinion*, what petitioner did and what she is now seeking from the Court, taken collectively, will be the **most discreet legal action** that could be **taken to avoid** the distress and scars to the child.

These are considerations that warrant a review and reversal of the **rule of exclusivity** that Article 170 has been **forced to signify** by jurisprudence.

(iv) The rule on standing or personality to file suits is a **rule of procedure** rather than **substantive law**. While Congress is by and large the **author of causes of action**, in the sense of creating or affirming rights that if violated must give rise to remedies, it is the Supreme Court that has the **authority** to say who has the **right** to go to courts, avail of its services, and obtain relief.

In any event, the **rule on standing** or **personality to sue** is **the Court's duty** and **authority** to establish. This is a **procedural rule** that the ***Constitution*** has textually committed to the Court to ordain. It is **not a substantive rule** that emanates from Article 170, which as argued above, **does not anyway say so**. This Court is **duty-bound** to correct an error in the interpretation of Article 170. This Court must **not perpetuate** a **discriminatory** and **flawed** interpretation of Article 170.

We also **do not have to wait** for Congressional action, which though helpful, is **not necessary**. The issue is one of **standing** or **personality** to start a suit. The Court **owns** that power.

In fact, Section 1 of Rule 108 **already gives the mother the standing** to file a petition thereunder:

> Who May File Petition. — **Any person interested in any act, event, order or decree concerning the civil status of persons** which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located.

Obviously, the mother is an **interested party** to seek the correction of the **birth certificate** of her child.

In sum, as I have said, the Court should **reject antiquatedly oppressive precedents**. Then Justice Delos Santos in his opinion in ***Almonte v. People***[31] said as much:

> As to the legal effect of case laws, the Philippines exercises a unique brand of the common law doctrine of stare decisis. Up to a certain degree, this Court will uphold an established precedent and, **if need be, evaluate such prior ruling by**: (a) determining whether the rule **has proved to be intolerable** simply in **defying practical workability**; (b) considering whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; (c) determining **whether related principles of law have so far developed as to have the old rule no more than a remnant of an abandoned doctrine**; and, (d) finding out **whether facts have so changed or come to be seen differently, as to have robbed the old rule of significant application or justification**.

The above-discussions **clearly illustrate** each of the highlighted instances why a **precedent** should be **abandoned**. And we ought not to forget, here, we are **not just** talking about **lifeless** legal provisions but principles of law **infused by real lives of existing individuals**.

The Court is respectfully implored **to act now**. It has the **power to make a difference** in real peoples' lives. We **must grant the right to the mother** of a child to impugn the legitimacy of her child. There are **no adverse consequences** to this but **only beneficial ones**. There is **nothing to fear** because she **still has to prove the merits** of her claims **beyond a shadow of doubt**.

IV. Petitioner's factual assertions and prayer should be granted because she was able to prove the same beyond a shadow of doubt.

Petitioner's factual assertions are based on Article 166 (1) (b), which states:

> (1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of... (b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible x x x

Hence, Petitioner, therefore, was **able to rebut the presumption of legitimacy** and **prove beyond reasonable doubt** her child's **illegitimacy**.

As for the surname of petitioner's child, petitioner was also **able to prove clearly and convincingly, more than preponderantly**, that the child's father **did**

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[31] G.R. No. 252117, July 28, 2020.

not sign the birth certificate and **did not execute** the Affidavit of Acknowledgment/Admission of Paternity.

Conclusion

ACCORDINGLY, I vote to grant the present petition and declare petitioner's child Alrich Paul Fulgueras a non-marital or illegitimate child, and order the correction of entries in the child's birth certificate as prayed for by his mother, herein petitioner.

Amy C. Lazaro-Javier