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Editorial Office
Integrated Bar of the Philippines
No. 15 Doña Julia Vargas Avenue, Ortigas Center,
Pasig City, Metro Manila, Philippines 1600
Telephone: (+632) 8631-3018 • Fax: (+632) 8634-4696
Website: www.ibp.ph • Email: journal@ibp.ph

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EDITOR'S NOTE

Divorce will always be a contentious topic in this country. But discussing it should never be taboo. Recently, a vigorous lobby empowered legislative efforts to pass a law allowing divorce. Though the effort was ultimately overtaken by the 2025 campaign and elections, the movements that fueled it appear to be intent on its revival once the dust settles.

The Journal partnered with the Justice George Malcolm Foundation and U.P. Law to hold a public discussion on divorce. The response surprised the organizers. Attendance - physical and online - was overflowing. And the attendees came from all walks, including distant provinces. It is the hope that the viewpoints offered during the event will be of good use to everyone. As part of that hope, we are reproducing those viewpoints so that all of us can consider and reflect on how we as a nation want to proceed on this issue.

* * *

THE ABSOLUTE DIVORCE BILL IS UNCONSTITUTIONAL^{*}

Chief Justice Hilario G. Davide, Jr.

Thank you, Compañera Fina.

Good morning to you all in this historic Malcolm Theatre. It is a very beautiful day, and Justice George A. Malcolm is smiling at us.

I congratulate the Justice George A. Malcolm Memorial Foundation, Inc., the Philippine Bar Association, and the IBP Journal for sponsoring this forum on House Bill No. 9349 or the Absolute Divorce Act, whose principal author is Representative Lagman.

The bill is entitled **An Act Reinstating Absolute Divorce As An Alternative Mode For The Dissolution of Marriage, or per its Section 1, Absolute Divorce Act.**

As an 88-year-old student of law and one of the Commissioners of the 1986 Constitutional Commission who framed our present 1987 Constitution of the Republic of the Philippines, I must forthwith state that this bill violates this Constitution or is **unconstitutional**.

As a married Roman Catholic, whose beloved wife Gigi is here with us to be sure that I will not change my mind, I also state that this Absolute Divorce Bill violates Divine Law.

I must first briefly explain why it violates Divine Law.

God Himself decreed the institution of marriage.

In the Book of Genesis (2:18-24), it is written:

^{*} Paper Presented by Ret. Chief Justice Hilario G. Davide, Jr. at The Forum on the Absolute Divorce Bill Sponsored by The Justice George A. Malcolm Memorial Foundation Inc., Held on 10 July 2024, From 9:00 A.M to 12:00 noon, at the Malcolm Theater, Up College of Law.

“That is why a man leaves his father and mother and clings to his wife, and the two of them become one body.”

Jesus Christ reaffirmed and further strengthened this Divine mandate.

In the Gospel according to Matthew (19:3-12), Jesus partly said:

“x x x Have you not read that from the beginning the Creator ‘made them male and female’ and said, ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh’? So they are no longer two, but one flesh. Therefore, what God has joined together, no human being must separate.”

This is also written in the Gospel according to St. Mark (10: 7-12).

The Christian religion includes marriage as one of the Seven Sacraments.

Thus, as Divinely instituted, marriage is a **sacred or inviolable social institution**. It is **until death do us part**. **Absolute Divorce is not allowed**.

In our jurisdiction, this doctrine of marriage as a **sacred or inviolable social institution** as proclaimed by Divine Law was first ordained in the Civil Code of the Philippines (Republic Act No. 386) which took effect on 30 August 1950. This Civil Code is an ordinary Human Law. Its Article 52 expressly provides:

Art. 52. **Marriage is not a mere contract but an inviolable social institution**. Its nature, consequences and incidents are governed by law and not subject to stipulation, except that the marriage settlements may to a certain extent fix the property relations during the marriage.

This Civil Law doctrine of marriage **as an inviolable social institution** was elevated or raised as a fundamental law principle,

or as a Constitutional doctrine, or policy in our 1987 Constitution of the Republic of the Philippines which took effect on 2 February 1987. This Constitution enshrines this **inviolable social institution** as the foundation of the family. Thus, the family is also a sacred institution, which in turn is the foundation of the nation. This 1987 Constitution devotes one whole Article on the **Filipino Family**. It is Article XV where sections 1 and 2 provide:

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

SEC. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

As to the sacredness or sanctity of family life. Section 12 of Article II of this Constitution (Declaration of Principles and State Policies), expressly provides in part:

“SEC. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.”

What is the scope of the word **inviolable** in reference to marriage as a social institution?

In the new Oxford Dictionary **inviolable** means “never to be broken, infringed or dishonored.”

In Webster’s Third New International Dictionary, **inviolable** means “incapable of being broken or destroyed; indestructible; secure from violation or infringement; sacrosanct; secure from assault or trespass, untouchable; unassailable.”

In Webster’s New World College Dictionary, **inviolable** means “not to be violated; not to be profaned or injured; sacred; that cannot be violated; indestructible.”

Thus, **marriage as an inviolable social institution by express mandate of the Constitution, is “sacred,” “sacrosanct,” “can never**

be broken, infringed or dishonored,” is “indestructible,” or, is “incapable of being destroyed.”

Our **Family Code** (Executive Order No. 209) promulgated by then-President Corazon C. Aquino, which took effect on August 3, 1988, further clarifies and strengthens this mandate of **inviolability**. **Article I of Chapter I of Title I** (Marriage) thereof expressly provides:

Article 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

Take note of the phrases **“special contract”, “permanent union”, and “inviolable social institution.”**

What then did the authors of this Absolute Divorce bill do to tempt or mislead the people into believing that the Constitution does not prohibit Absolute Divorce? They did it through magic or through misrepresentation.

The magic is accomplished by surreptitiously introducing an amendment to the Constitution consisting of the deletion of the word **inviolable** in Section 2 of Article XV in reference to marriage as an **inviolable social institution**.

This amendment cannot be done by ordinary Legislation but only by any of the three modes of proposing amendments to the Constitution as provided in Sections 1 and 2 of Article XVII of the Constitution, namely by a Constitutional Convention, a Constituent Assembly, or People’s Initiative.

The misrepresentation was done by making it appear in the Bill’s Section 2 entitled Declaration of Policy, where it states, that our State policy on Marriage is that it is only a **social institution**,

and not an **inviolable social institution** as mandated by the Constitution. To them, the word **inviolable** is not in the Constitution. This Section 2 merely states that “**Marriage is a social institution.**” This is a deception or misrepresentation of the highest order because this is not so. The Constitutional Policy is that **Marriage is an inviolable social institution.**

Section 2 of the bill merely reads in part as follows:

SEC. 2. **Declaration of Policy** – While the State continues to protect marriages as a social institution and as the foundation of the family, it shall also give the opportunity to spouses in irremediably failed marriages to secure an absolute divorce decree as an alternative mode for the dissolution of irreparably broken or dysfunctional marriages under limited grounds and well-defined judicial procedures. x x x

As one further reads the Bill, he will sooner discover that the Bill also weakens, demeans, degrades, debases, or even demonizes marriage as a sacred or inviolable social institution. It is making a bad joke on marriage.

To elaborate on this, I will just cite some proofs.

First, in its Section II, the Bill allows **summary judicial proceedings** for absolute divorce on the following grounds:

- (a) when spouses have been separated de facto for five years;
- (b) when one of the spouses has contracted a bigamous marriage.
- (c) when the spouses have been legally separated by judicial decree for at least two years.
- (d) when one of the spouses has been sentenced to imprisonment for at least six (6) years, even if subsequently pardoned; or

- (e) when one of the spouses has undergone a sex reassignment or has transitioned into another sex.

By its definition under Section 4, **summary judicial proceedings** refers to an expeditious manner of resolving a petition for divorce without regard to technical rules, and the petitioner is given an option to be assisted or not by a lawyer. The Family Court may also allow the presentation of evidence *ex parte* as warranted by circumstances. The decision shall be immediately **“final and executory.”**

Needless to stress, it would be easy for couples to avail of this Section II.

Second, Section 5 converts, with modifications, as grounds for a judicial decree of absolute divorce the grounds for legal separation under Article 55 of the Family Code, and the grounds for annulment of marriage under Article 45 of the Family Code.

The modifications include relaxing some grounds and adding new grounds, such as when one of the spouses undergoes a sex reassignment surgery or transitions from one to another sex.

All of the modifications and additional grounds are intended to make it easy to secure a judicial decree of divorce.

Third, the Bill recognizes under Section 6, foreign divorces secured by an alien or Filipino spouse as having the effect of divorces. Under the Bill, on the basis of an authentication by the Philippine Consul in, or proximate to the foreign country where it was secured and subsequent registration with the proper Civil Registry Office in the Philippines or the Office of the Philippines Consul abroad where the Filipino spouse is residing. **It is not required that these divorces be for any of the grounds stated in the Bill.** The parties can, therefore, obtain an absolute divorce in Las Vegas, USA for any reason.

Fourth, in Section 7, this Bill now yields to the finality of a valid canonical, or church dissolution, or nullity of marriage

adjudged by a proper matrimonial tribunal of the Roman Catholic Church or any other recognized sect or denomination. No Judicial process is necessary once the dissolution is authenticated by the proper authorities of the Roman Catholic Church or any other recognized sect or denomination and registered with the proper Civil Registry Office in the Philippines. **It is not required that these dissolutions/nullifications of marriages be for any of the grounds prescribed by law or as provided for in the Bill.**

Thus, the Catholic Church and other religious sect or denominations may grant dissolution or nullification of marriages on grounds other than those prescribed by law or by the proposed Bill. Dissolutions or nullifications may easily be secured by couples who would simply join a sect which could grant fast dissolutions or nullifications. I am afraid that some groups may, for profit, form a religious sect for the business of celebrating and dissolving marriages. Quiboloy may register his group as such sect.

Fifth, it dignifies the nature-defying and morally unacceptable sex exchange by making it as a new ground for Absolute Divorce in Section 5 of the Bill. The exchange is made through sex reassignment surgery, or transitioning into another sex through the use of hormones or surgical procedures. Worse, if either is invoked as ground, **summary judicial proceedings** are allowed under Section 2 of the bill.

Sixth, under Section 12 of the Bill, expert testimony is dispensed with, unless the proper Family Court decides such testimony is indispensable.

All told, this Absolute Divorce Bill would do more irreparable harm than good to our sacred, and inviolable institution of marriage, to our families, and our country.

BASELESS CLAIM THAT THE CONSTITUTION ALLOWS ABSOLUTE DIVORCE

Some sectors claim that our 1987 Constitution does not ban or prohibit Absolute Divorce because, in his book on the 1987

Constitution, Fr. Joaquin Bernas has so stated. Indeed, in his interpellation on Commissioner Chito Gascon, on the latter's proposal that the original Section 2 of the Committee, where he recommend that the Article on the Family to provide that the **"Institution of Marriage is a Foundation of the Family"**. Fr. Bernas asked if this proposal would "carry the meaning of prohibiting a divorce law". Commissioner Gascon answered that it does not. (Record of the Constitutional Commission, vol. 5, page 41.)

For the enlightenment of all, this exchange between Fr. Bernas and Commissioner Gascon took place during the period of sponsorship of the proposed Article on the Family. It was not during the period of amendments. The exact wording of this draft provision as modified was **"Marriage is the foundation of the family and should be protected by the State. The State shall respect the family as an autonomous social institution."** (Record of the Constitutional Commission, vol. 5, page 55). Take note that the word **inviolable** was not yet used.

But during the period of amendments, Commissioner Regalado Maambong introduced this amendment, which the Committee accepted and which the plenary approved:

Marriage as an inviolable social institution is the foundation of the family and shall be protected by the State. (Record of the Constitutional Commission, vol 5, page 56).

To repeat, the Bernas issue related to a proposed provision that did not yet enshrine the word **INVOLABLE**.

In light of all that I have stated, it is obvious that ABSOLUTE DIVORCE is absolutely prohibited under the 1987 Constitution. In short, an Absolute Divorce Law would be UNCONSTITUTIONAL, no matter how beautifully it is embellished or made attractive.

Thank you all for your patience.

May God bless our Filipino marriages, our families and our beloved Philippines.

DIVORCE AS A MATTER OF CHOICE, CULTURE, CONSCIENCE, AND CONSTITUTIONAL RIGHT

Justice Conchita Carpio-Morales

Divorce dissolves a marriage. It is the “legal separation of man and wife, effected by the judgment or decree of a court, and either totally dissolving the marriage relation, or suspending its effects so far as concerns the cohabitation of the parties.”¹ There are two types of divorce: (a) absolute divorce or divorce *a vinculo matrimonii*, and (b) limited divorce or *divorce a mensa et thoro*.²

I am for absolute divorce.

To start with, the dissolution of marriage is not a novel concept, custom, or tradition in this jurisdiction. During the pre-Spanish era, divorce was based on customs, and practices. The *Las Siete Partidas* during the Spanish regime allowed relative divorce or what is now known as legal separation. When the Americans held sway in this country, the Philippine Legislature enacted Act No. 2710 (*An Act to Establish Divorce*) prescribing “adultery on the part of the wife or concubinage on the part of the husband” as the only grounds for divorce. Those grounds must be proven in accordance with the Penal Code. The law took effect on March 11, 1917.³

On March 25, 1943, during the Japanese occupation, the Chairman of the Philippine Executive Commission issued Executive

¹ BLACK’S LAW DICTIONARY, Abridged Fifth Edition, p. 251

² *Republic of the Philippines v. Tanedo-Manalo*, G.R. No. 221029, April 24, 2018, citing *Amor-Catalan v. Court of Appeals*, 543 Phil. 568, 575 (2007) citing in turn *Garcia v. Recio*, 418 Phil. 723, 735-736 (2001).

³ Act No. 2710, An act to Establish Divorce, March 11, 1917, elibrary.judiciary.gov.ph/thebookshelf/showdocs/11/33591 (visited June 19, 2024).

Order No. 141. It expanded the grounds for divorce and repealed Act No. 2710.⁴ Executive Order No. 141 became ineffective when the Americans restored the effectivity of Act No. 2710.⁵ The New Civil Code (Republic Act No. 386), however, repealed Act No. 2710 when it took effect on August 30, 1950. The Civil Code erased divorce from the statute books and instituted a form of limited divorce – legal separation. The Code covers all Filipinos.

Nonetheless, in 1977, the legislative authority promulgated Presidential Decree No. 1083 (*Code of Muslim Personal Laws of the Philippines*).⁶ Its Article 45 defines divorce as “the formal dissolution of the marriage bond” which can be “granted only after the exhaustion of all possible means of reconciliation between the spouses.”⁷ Based on customs and traditions founded on Islam, divorce is practiced to this day by the Muslims in our country.

It is noteworthy that the 2020 survey conducted by the Philippine Statistics Authority shows that, of the 108,667,043 total population of the Philippines, Islam is the religion of 6,981,710 Filipinos, or 6.4% of the total population.⁸ P.D. 1083 allows divorce only for this minority group. The rest of the population, all 93.6%,

⁴ See: *Anaban, et al. v. Anaban-Alfiler*, G.R. No. 249011, March 15, 2021, lawphil.net/judjuris/mar2021/gr_249011.html (visited June 19, 2024). The grounds for divorce under EO 141 are: “(a) adultery and concubinage; (b) attempt on the life of one spouse by the other; (c) a subsequent marriage by either party before the previous one was dissolved; (d) loathsome contagious diseases contracted by either spouse; (e) incurable insanity; (f) impotency; (g) repeated bodily violence by one against the other; (h) intentional or unjustified desertion continuously for at least one year; (i) unexplained absence from the last conjugal abode continuously for at least three years; and (j) slander by deed or gross insult by one spouse against the other.”

⁵ *Supra*.

⁶ officialgazette.gov.ph/1977/02/04/presidentialdecree-no-1083-s.1977-2/ (visited June 20, 2024).

⁷ The same article enumerates the grounds for divorce as follows: (a) repudiation of the wife by the husband (*talaq*); (b) vow of continence by the husband (*ila*); (c) injurious assimilation of the wife by the husband (*zihar*); (d) acts of imprecation (*li'an*); (e) redemption by the wife (*knul'*); (f) exercise by the wife of the delegated right to repudiate (*tafwid*); or (g) judicial decree (*faskh*).

⁸ Philippine Statistics Authority, “Religious Affiliation in the Philippines (2020 Census of Population and Housing), psa.gov.ph/content/religion-affiliationphilippines-2020-census-population-and-housing (visited June 20, 2024).

including 85,645,362 or 78.8% Filipinos who belong to the Roman Catholic Church, are not covered by a law that allows the dissolution of a marriage when the husband and wife no longer enjoy the “sanctity of family life.”⁹

Since the grounds for divorce under P.D. No. 1083 are founded on customs and traditions of Islam, people of other faiths or religions avail of Islamic divorce when they find that their existing marriage gets in the way of marrying someone who they feel would be a better spouse. For that purpose, non-Muslim persons, mostly male, seek conversion to Islam.

In *Malaki, et al. v. People*,¹⁰ a couple was married legally in Iglesia ni Cristo rites but soon the husband left for another town where he lived with a Muslim woman. The husband converted to Islam, got married to the Muslim woman in Muslim rites, and a few days later, married her again before a Municipal Trial Court judge. Charged with bigamy, the Muslim couple were found guilty of the crime charged. The Supreme Court affirmed the conviction and took note of the situation as follows:

“Males that have subsisting valid marriages under Civil Law purposely convert to Islamic faith with the sole intention of contracting another marriage that is legally recognized. The contemporary practice capitalizes on the permissibility of polygamy in Islam, whereby the act of conversion to Islamic faith capacitates the male to contract a marriage.

The contemporary practice is characterized by two overriding objectives on the part of the male. First, the male aspires to possess the capacity to remarry without any legal impediment and liability. Second, the male seeks to contract another marriage that is legally recognized. Islamic conversion proves to be a viable means of achieving these overriding objectives.

⁹ CONSTITUTION, Art. II, Sec. 12.

¹⁰ *Malaki v. People*, G.R. No. 221075, November 15, 2021, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67896 (visited June 21, 2024).

It is critical to underscore the dearth of published reports concerning contemporary practice. By its very nature, the reason for the lack of reports is readily apparent – the practice is carried out with a considerable degree of secrecy to mask the real intentions of the male converting to Islam.”¹¹

Hence, the Islamic faith has become a mere tool to fulfill one’s personal needs, not the faith by which one truly believe and abide. As the Court said in *Malaki*, “Conversion to Islam to remarry, and circumvent the laws on bigamy generates legal tensions as it exploits the protective mantle of religious freedom under the Constitution.”

Admittedly, the situation of a *minority* of Filipinos benefiting from a law that allows dissolution of marriage, accords with the State policy that “recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.”¹² The situation, however, of the *majority* of Filipinos not allowed by law to dissolve an abusive or unbearable marriage violates the fundamental right to equal protection of the law,¹³ and defies the basic Constitutional principle mandating the “protection of life, liberty, and property, and the promotion of the general welfare”¹⁴ that *all* Filipinos must enjoy. It is basic in constitutional construction that a State policy cannot be read apart from, and in disregard of constitutional provisions on the Bill of Rights.¹⁵

¹¹ *Ibid.*, quoting Gerard Joseph Jumamil, “Islamic Conversion as Alternative to Civil Divorce: Addressing Tensions Between the Inviolable Institution of Marriage,” 86 PHIL.L.J. 864, 874 (2012).

¹² CONSTITUTION, Art. II, Sec. 22.

¹³ CONSTITUTION, Art. III, Sec. 1.

¹⁴ CONSTITUTION, Art. II, Sec. 5.

¹⁵ The functional or structural method of constitutional construction calls for the analysis of the structures the law constituted and how they are apparently intended to function as a coherent, harmonious system. The Latin maxim is *nemo aliquam partem recte intelligere potest antequam totum perlegit* which means that “no one can properly understand a part until he has read the whole.” (*Principles of Constitutional Construction*, constitution.org/1- Constitution/cons/prin_const.htm [visited June 27, 2024]).

Reinstituting divorce in this country shall give life to the right of *majority* of Filipinos to equal protection of a law, which “requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.”¹⁶ The *Muslim Code of Personal Laws* applies to those who believe in Islam while majority of Filipinos belong to different religions is not a classification that would render inapplicable the right to equal protection of the law. What is material is that those who need a divorce law are similarly situated – mired in a dysfunctional family, and physical, emotional, and financial oppression by a spouse. Surely, the majority of Filipinos deserve a remedy to such situations.

It may be argued that the Constitution requires the State to recognize the “sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.”¹⁷ The same constitutional provision, however, mandates that the State “shall equally protect the life of the mother and the life of the unborn from conception.”¹⁸ One constitutional policy should not be taken in isolation, or treated as if in a vacuum. All policies must be harmonized to achieve the goals of any State policy enshrined in the Constitution.

One needs only to examine the consequences of the decision in *Malaki*. By the conviction for bigamy of the husband in *Malaki*, what could have happened to the first legal non-Muslim wife? Bearing the pain of desertion by her husband, the first wife nonetheless remains married to him, with no right at all to remarry. Otherwise, she, herself, could be charged with bigamy. If they have children, will she be left with the task of rearing them and supporting their financial needs single-handedly? Even if she is gainfully employed, the stigma of a deserted wife would stick to her, thanks to some cultural aberrations, especially in some rural areas.

¹⁶ *Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/55942 (visited June 24, 2024).

¹⁷ CONSTITUTION, Art. II, Sec. 12.

¹⁸ *Ibid.*

Unfortunately, sociocultural practices are among the causes of why some wives simply endure the agony of a failed marriage. She would just grin and bear it, so to speak, to save and preserve the “sanctity” of her marriage, hoping that someday her husband would repent, and stop physically, and verbally assaulting her or causing emotional distress to her. But then, her sufferings are not contained within her household. Her travails would seep through to the neighborhood and her community, victimizing her some mor as the subject of merciless a *chismis*. Good if she has a strong character, and lives in a community that would not care less. But what if she becomes desperate, and commits an act that could only multiply her misery?

Jurisprudence is replete with cases where a distressed wife could react violently to the continuous unreasonable physical attacks and emotional assaults by her husband, with consequent disturbance, if not destruction, of the sanctity of marriage and family, and eventually, with her landing in jail.

In *People v. Genosa*,¹⁹ a parricide case where the husband, after about three years of marital bliss, turned to gambling, drinking, and womanizing that led to his physically and emotionally abusing her. The appellant wife, who was more gainfully employed than he was, would fight back, and for five times, she left home only to return after he sought her forgiveness, and vowed to reform himself.

One day, when she was eight months pregnant with her third child, he came home drunk after spending time at the cockpit. She was by then still looking for him. When she got back home, they had an altercation with him yelling that the child she was bearing was not his, and that he would kill her to stop her nagging. He flexed his arm around her neck to drag her. He was about to open the drawer to get a gun, but failing to open it, he got from his wallet a three-inch blade with which he once threatened to cut her throat. He was able to pry open the drawer with a pipe,

¹⁹ *People v. Marivic Genora*, G.R. No. 135981, January 15, 2004, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/46828 (visited June 22, 2004).

but when he moved to retrieve the blade he had dropped, she smashed his head with the pipe and shot him with the gun from the drawer. She locked the house and left for the city with her children. Her husband was found dead three days later when neighbors smelled stench coming from the house.

The lower court sentenced her to death for the crime of parricide. On an automatic review by the Supreme Court, her new counsel, invoking as a defense the *battered woman syndrome*,²⁰ moved for a retrial of the case on that issue.

The Supreme Court lowered the penalty that would grant her freedom should she qualify for probation. It observed that “the severe beatings repeatedly inflicted on appellant constituted a form of cumulative provocation that broke down her psychological resistance and self-control. The ‘psychological paralysis’ she suffered diminished her willpower, thereby entitling her to the mitigating factor under paragraphs 9 and 10 of Article 13 of the Revised Penal Code.” It added that she “should also be credited with the extenuating circumstance of having acted upon an impulse so powerful as to have naturally produced passion and obfuscation. The acute battering she suffered that fatal night in the hands of her batterer-spouse, in spite of the fact that she was eight months pregnant with their child, so overwhelmed her and put her in the aforesaid emotional and mental state, which overcame her reason and impelled her to vindicate her life and her unborn child.”

In a distressful marriage in this jurisdiction, the wife is usually the underdog. This is pointed out by Ilona Barrero²¹ in

²⁰ As defined by the Supreme Court, a *battered woman* is one “who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights. Battered women include wives or women in any form of intimate relationship with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.”

²¹ Ilona Barrero is an undergraduate in International Relations at the American University and The London School of Economics and Political Science. She is an

*“Divorce Prohibition in the Philippines: A System Serving the Patriarchy.”*²² Thus:

“Women are the primary victims of the illegality of divorce because of the lack of protections granted to them in the patriarchal legal and societal system in the Philippines. Even though women make up about 49.4% of the population in the Philippines, they only make up 34% of the workforce. Filipinas are rarely the main financial providers for their families and since annulments do not grant protections for women or their children, many of them are stuck in marriages to guarantee their livelihoods. x x x [W]omen are afraid to separate from their husbands, especially if they have children who still rely financially on them. Moreover, if couples have no conjugal assets to partition, which is common, especially in poor families, the woman will essentially always be at a loss once the marriage is severed, because the husband’s obligation to provide support ends. Even if a woman decides to accept the possible consequences of an annulment or a legal separation, an uncontested annulment costs about 500,000 Philippine pesos, or 8,998 U.S. Dollars and 8,240 Euros. This cost radically increases if the annulment is contested, along with the fees attributed to the psychological evaluation.”²³

For the thousands of women for whom annulment or separation is an unthinkable option, the reality is quite grim. In a study published in the Asia Pacific Journal of Multidisciplinary Research in 2018, male control of wealth and decision-making within the family structures has been reported as one of the main causes for violence against married Filipinas, as men feel that they deserve to control all major decisions regarding finances and family dynamics.

The effects of macho culture in the Philippines are detrimental to women’s well-being, making them even worse

intern of the *Organizacion de los Estados Americanos* (OAS) in the Office of the Secretary-General that is engaged in defending human rights in the Americas

²² 2 Ilona Barrero (2023). *Divorce Prohibition in the Philippines: A System Serving the Patriarchy*. *Gender in Geopolitics Institute*. <https://igggeo.org/?p=13576&lang=en>

²³ The Supreme Court has done away with psychological evaluation by a psychiatrist or psychologist in cases based on Art. 36 of the Family Code, *infra*.

when compounded by the ban on divorce and the lack of legal financial protection afforded to Filipinas. This same study on violence against women in the Philippines reports a common occurrence of marital rape, as the husband seeks to assert his authority over his wife. The study shows that 37.64% of the instances of violence against women from their spouse, the highest rate of all the aggressor relationships to the victim. Furthermore, economic factors were the most common cause of violence against women in the Philippines. The report cited data from the National Demographic Health Survey which illustrates that women who are in lower income brackets are more likely to be victims of violence. While wealthy women also suffer from intramarital violence, they are more reluctant to report their experiences due to the fact that women are economically trapped in their marriages, even in cases where they suffer abuse from their spouses. Since violence is not a valid reason in the eyes of the law to seek annulment or legal separation (*sic*), women cannot void their marriage if they are suffering from this kind of torment. Additionally, a wealthy Filipina might be able to afford an annulment and the fees associated with psychological exams, but as the rates of women in the workforce and the cultural expectation for men to handle all monetary aspects of a family show cases like these are extremely rare” (*Italics Supplied*).

No woman should experience what Marivic Genosa endured. But when she killed her husband, she could have found the act as the only way to escape from and end her unbearable married life, notwithstanding the laws that she could have invoked and availed.

The repeated physical violence and grossly abusive conduct perpetrated against her for years by her husband is a ground for **legal separation** under Art. 55 of the Family Code.²⁴ It could be her

²⁴ EXECUTIVE ORDER No. 209 issued on July 6, 1987. Art. 55 provides that a petition for legal separation may be filed on any of these grounds: (1) repeated physical violence or grossly abusive conduct directed against the petitioner, a common child of a child of the petitioner; (2) physical violence or moral pressure to change religious or political affiliation; (3) attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner to engage in prostitution, or connivance in such corruption or inducement; (4) final judgment

remedy but while the legal separation decree may order that the spouses shall live separately, they could not remarry. The decree shall also provide for the dissolution of the absolute community of property or conjugal partnership, custody of the children, and disqualification of the offending spouse to inherit from the offended spouse in intestate succession.²⁵

Another remedy she could have availed of is the **declaration of nullity** of the marriage. Art. 36 of the Family Code, as amended by Executive Order No. 227, provides that “a marriage contracted by any party who, at the time of the celebration was *psychologically incapacitated* to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.”²⁶ Many spouses have availed of this remedy²⁷ at the time when the services of a medical practitioner was still required.

sentencing the respondent to imprisonment of more than six years, even if pardoned; (5) drug addiction or habitual alcoholism of the respondent; (6) lesbianism or homosexuality; (7) contracting a subsequent bigamous marriage whether in the Philippines or abroad; (8) sexual infidelity or perversion; (9) attempt by the respondent against the life of the petitioner; (10) abandonment of petitioner by the respondent without justifiable case for more than one year.

²⁵ Art. 63.

²⁶ Art. 37 provides for incestuous marriages that are void from the beginning “whether the relationship between the parties be legitimate or illegitimate” if the marriage is (a) between ascendants and descendants of any degree; and (b) between brothers and sisters, whether of the full or half blood. Art. 38 enumerates the marriages that are void by reason of public policy: (1) between collateral blood relatives, whether legitimate or illegitimate, up to the fourth civil degree; (2) between step-parents and step-children; (3) between parents-in-law and children-in-law; (4) between the adopting parent and the adopted child; (5) between the surviving spouse of the adopting parent and the adopted child; (6) between adopted children and the same adopter; and (7) between parties where one, with the intention to marry the other, killed that other person’s spouse, or his or her own spouse

²⁷ In *Chi Ming Tsoi v. Court of Appeals and Gina Lao-Tsoi*, (G.R. No. 119190, January 16, 1997, elibrary.judiciary.gov.ph/thebooshelf/showdocs/1/34426 [visited June 23, 2024]) petitioner and respondent were married at the Manila Cathedral. They spent their first night together in the house of the respondent, and while they slept on the same bed, petitioner turned his back from her. They went to Baguio City with the bride’s family members but still no coitus transpired between them. They had themselves examined by a doctor who found nothing physically wrong with the respondent but prescribed medication for the petitioner who could have

In *Datu v. Datu*,²⁸ the Supreme Court, citing *Tan-Andal v. Andal*,²⁹ clarified that psychological incapacity is a legal concept, not a medical one.³⁰ Hence, the person “suffering from a certain psychosis, such as schizophrenia, will not make (him or her) automatically psychologically incapacitated to comply with the essential marital obligations under Arts. 68 to 71 of the Family Code.” The Court added in *Republic of the Philippines v. Mola Cruz*³¹ that in such a case, the severance of the marital *vinculum* “will better protect the state’s interest to preserve the sanctity of

penile erection, but he did not bother to return to the doctor as instructed. They did not have sexual intercourse for almost ten months until their separation, with the respondent still a virgin.

The respondent filed a petition for the declaration of nullity of the marriage pursuant to Art. 36 of the Family Code. In court, the respondent declared that the petitioner was “impotent, a closet homosexual, as he did not show his penis” and that she saw the petitioner using an eyebrow pencil and the cleansing cream of his mother. For his part, the petitioner claimed that he loved her and would want to stay married to her, but he needed time to perform his marital obligation. To this claim, the respondent countered that the reason why the petitioner wanted to stay married to her was his desire to maintain his resident status in this country.

The trial court granted the petition for nullity of marriage under Art. 36 of the Family Code, which the Court of Appeals affirmed. In denying the petition for the reversal of the decision of the Court of Appeals, the Supreme Court adopted the ruling of the Court of Appeals that –

“... After almost ten months of cohabitation, the admission that the husband is reluctant or unwilling to perform the sexual act with his wife whom he professes to love very dearly, and who has not posed any insurmountable resistance to his alleged approaches, is indicative of a hopeless situation, and of a serious personality disorder that constitutes psychological incapacity to discharge the basic marital covenants within the contemplation of the Family Code.”

²⁸ *Datu v. Datu*, G.R. No. 209278, September 15, 2021, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67869 (visited June 23, 2024).

²⁹ *Tan-Andal v. Andal*, G.R. No. 196359, May 11, 2011.

³⁰ In *Republic of the Philippines v. Mola Cruz* (G.R. No. 236629, July 23, 2018, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64583 [visited June 24, 2024]), however, the Supreme Court relied on the findings of the clinical psychologist that the wife had histrionic personality disorder that existed even prior to her marriage.

³¹ *Ibid.*

marriage and family, the importance of which seems utterly lost on respondent.”

Another legal recourse is a petition for the **annulment of the marriage** under Art. 45 of the Family Code.³² Art. 45 (3) provides that a marriage may be annulled if the “consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife.” Art. 46 enumerates the circumstances constituting fraud under Art. 45 (3).³³ In a case where the husband charged his wife with fraud because she gave birth to a child three years *before* they got married, and through DNA test, the child was found to be sired by another man,³⁴ the Court made this interesting observation:

³² Art. 45 provides that a marriage may be annulled for any of the following causes, existing at the time of the marriage: (1) the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife; (2) either party was of unsound mind, unless such party after coming of reason, freely cohabited with the other as husband and wife; (3) the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife; (4) the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife; (5) either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or (6) either party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable.

³³ Art. 46 provides that any of these circumstances shall constitute fraud referred to in Art. 45 (3): (1) non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude; (2) concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband; (3) concealment of sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or (4) concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage. Art. 46 also states that “[N]o other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

³⁴ *In Republic of the Philippines v. Villacorta* (G.R. No. 249953, June 23, 2021, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67585 [visited June 23,

“Non-disclosure of a husband’s pre-marital relationship with another woman is not one of the enumerated circumstances that would constitute a ground for annulment, and it is further excluded by the last paragraph of the article, providing that ‘no other misrepresentation or deceit as to [x x x] chastity’ shall be a ground for an action to annul a marriage. While a woman may detest such non-disclosure of premarital lewdness or feel having been thereby cheated into giving her consent to the marriage, nevertheless the law does not assuage her grief after her consent was solemnly given, for upon marriage she entered into an institution in which society, and not herself alone, is interested. The lawmaker’s intent being plain, the Court’s duty is to give effect to the same, whether it agrees with the rule or not.”

The Court concluded that the purported fraud that the wife might have committed is a “policy question better left to the political branches of government.” In other words, even the existing laws on termination of marriage must be re-examined by the legislature for violation of the equal protection clause and for clearly failing to consider socio-cultural changes in this country.

2024)), a couple became sweethearts but soon ended their relationship. When they were separated, the man heard about his former girlfriend having another boyfriend. When the girlfriend communicated with her first boyfriend, they reconciled and soon the girlfriend got pregnant. She assured the boyfriend that her second boyfriend never touched her, and the first boyfriend believed her. Three years after giving birth to her child, the couple got married. They had another child, but they began quarreling about so many things including the paternity of the first child. The husband submitted to a DNA test which proved that he was not the father of the child. The wife was incredulous although she admitted having sex with her second boyfriend when she was drunk and sought forgiveness for that single “sin.”

The husband filed a petition for annulment of the marriage under Art. 45 (3) of the Family Code on the ground of fraud committed by his wife. The Supreme Court dismissed the petition to annul the marriage for lack of merit. It held that Art. 46 (2) of the Family Code is clear that the pregnancy of the wife should be at the time of the celebration of the marriage. In this instance, the marriage was celebrated after three years from the birth of the child. Moreover, the wife was in good faith in claiming that she herself did not know she was impregnated by her second boyfriend.

In an early study of the Women's Legal Bureau, Inc. entitled "*The Relevance of Divorce in the Philippines*,"³⁵ the three remedies of legal separation, declaration of nullity, and annulment of marriage, are distinguished from divorce as follows:

"Divorce is different from the three remedies. In divorce, a *valid* marriage is terminated. The grounds for its termination have nothing to do with any defect or omission at the time the marriage is celebrated. It focuses on what happened during the existence of the marriage."

In this country that is financially supported by remittances coming from OFWs (Overseas Filipino Workers), marriages celebrated between a Filipino and a foreigner result in problems if they decide to terminate their marriage through divorce allowed in the foreign country where they contracted the marriage. The Filipino must hurdle the nationality rule enunciated in Art. 15 of the Civil Code for the divorce to be recognized in this country. It states: "Laws relating to family rights and duties, or to the status, condition, and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." By this provision of law, divorced Filipinos remain married even after a divorce decree has been handed by the foreign court. The foreign spouse may remarry. But should the divorced Filipino find a suitable spouse, he or she must go through the rigors of recognition of the divorce decree in our court.

In *Republic of the Philippines v. Tanedo-Manalo*,³⁶ a Filipina married a Japanese in San Juan City, but the couple lived in Japan and had a child. Soon they got divorced in Japan under Japanese law.

The Filipina erroneously filed here a petition to cancel entry of marriage in the civil registry of San Juan. The petition was

³⁵ Published in 1998 for the *Sama-samang Inisyatiba ng Kababaihan sa Pagbabago ng Batas at Lipunan* (SIBOL) with the financial assistance of the United Nations Population Fund (UNFPA), and with Jennifer M. Bernardo as researcher-writer, Lorna Q. Israel as research consultant, and Evalyn G. Ursua as over-all editor.

³⁶ *Supra*.

amended to a petition for recognition and enforcement of a foreign judgment. Having eventually reached the Supreme Court it remanded the case to the lower court for reception of evidence on the Japanese law on divorce.

In interpreting Art. 26, paragraph 2 of the Family Code states that “[w]here a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law,” the Supreme Court *en banc* said:

“The declared State policy that marriage, as an inviolable institution, is the foundation of the family and shall be protected by the State, should not be read in total isolation but must be harmonized with other constitutional provisions. Aside from strengthening the solidarity of the Filipino family, the State is equally mandated to actively promote its total development. It is also obligated to defend, among others, the right of children to special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. To our mind, the State cannot effectively enforce these obligations, if We limit the application of Paragraph 2 of Article 26 only to those foreign divorces initiated by the alien spouse. It is not amiss to point that women and children are almost always the helpless victims of all forms of domestic abuse and violence. In fact, among the notable legislation passed in order to minimize, if not eradicate the menace, are R.A. No. 6955 (prohibiting mail order bride and similar practices), R.A. No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), R.A. No. 9710 (*The Magna Carta of Women*), R.A. No. 10354 (*The Responsible Parenthood and Reproductive Health Act of 2012*), and R.A. No. 9208 (*Anti-Trafficking of Persons Act of 2003*), as amended by R.A. No. 10364 (*Expanded AntiTrafficking in Persons Act of 2012*). Moreover, in protecting and strengthening the Filipino family as a basic autonomous social institution, the Court must not lose sight of the constitutional mandate to value the dignity of every human person, guarantee full respect

to human rights, and ensure the fundamental equality before the law of women and men.”

In the same vein, the Court expounded further:

“The 1987 Constitution expresses that marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the state. Nevertheless, it was not meant to be a general prohibition on divorce because Commissioner Jose Luis Martin C. Gascon, in response to a question by Father Joaquin G. Bernas during the deliberations of the 1986 Constitutional Commission was categorical about this point. Their exchange reveal as follows:

MR. RAMA. May I ask that Commissioner Bernas be recognized.

THE PRESIDING OFFICER (Mr. Colayco). Commissioner Bernas is recognized.

FR. BERNAS. Just one question, and I am not sure if it has been categorically answered. I refer specifically to the proposal of Commissioner Gascon. Is this to be understood as a prohibition of a general law on divorce? His intention is to make this a prohibition so that legislature cannot pass a divorce law.

MR. GASCON. Mr. Presiding Officer, that was not primarily my intention. My intention was primarily to encourage the social institution of marriage, but not necessarily discourage divorce. But now that he mentioned the issue of divorce, my personal opinion is to discourage it, Mr. Presiding Officer.

FR. BERNAS. No, my question is more categorical. Does this carry the meaning of prohibiting a divorce law?

MR. GASCON. No, Mr. Presiding Officer.

FR. BERNAS. Thank you.”

As quoted by the Supreme Court *en banc*, this exchange of views by the framers of the 1987 Constitution only means that the possibility of a divorce law being enacted despite the constitutional provision declaring the inviolability of marriage as a social institution, is not farfetched.

Secs. 1 and 2³⁷ of Article XV of the Constitution may only be construed as guidelines for the State to achieve the goals of an ideal marriage and family life. In working towards those goals, the State may not be oblivious of the realities obtaining in families. It cannot brush aside abuses and brutalities committed by a spouse against the other spouse that affect not only them, but their children as well. It cannot close its eyes to realities that only destroy, if not desecrate, marriage and the family.

Thus, in *Republic of the Philippines v. Claur*,³⁸ where both husband and wife were declared psychologically incapacitated to marry, the Supreme Court said that since the spouses “failed to establish a functional family because of their failure to perform their essential marital obligations, x x x [t]here is no more love and respect and *this is not the kind that the State wants to preserve*” (Italics Supplied).

In the lecture of Ilona Barrero mentioned earlier, she described the Philippines as a “society seeking change,” and discussed why divorce is a necessity. Thus:

“Article 16 of the Universal Declaration of Human Rights states that every human has the right to marry and have a family they wish to. Women and children are also granted the same rights during marriage and divorce. Most relevant is the Article’s explicit invocation of the duty of the State to

³⁷ *Section 1.* The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

³⁸ *Republic v. Claur*, G.R. No. 246868, February 15, 2022, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67911 (visited June 27, 2024).

provide protection to its citizens in any of the above scenarios. Even if divorce is not a human right, protection is, and the State of the Philippines is failing to provide such protection to the thousands of economically and socially vulnerable women stuck in unwanted or even dangerous marriages. The most recent statistical analysis on domestic violence in the Philippines, released by the Philippine Statistic Authority in 2017, reports that ¼ of women in the Philippines have experienced spousal violence – be it physical, emotional, or sexual abuse. 20% of these women have experienced emotional violence, and 14% of them physical violation. In these cases of domestic abuse, couples cannot pursue annulment, as previously mentioned, but they can pursue legal separation. This mechanism is essentially a way to physically remove the married couple from one another, but changes nothing in the sense of protection for the abused or childcare necessities. Finding an escape from an unsuccessful marriage in the Philippines is essentially impossible. Annulments in the Philippines are (*sic*) also subject to high levels of social stigma, especially for women who are expected to stay to a marriage and “not give up” on their union. Sexist discourses such as this are common in the country, further discouraging women from severing their unions with unwanted husbands.

Poor women suffer the most: the lack of asset division, lack of access to legal resources for annulments, and bearing the brunt of childcare all combine to strip them of any chance to leave a marriage. Granted, there are several non-governmental organizations (NGOs) operating in the Philippines that exist to help Filipinas achieve financial stability and flee from unwanted situations. For example, the GREAT Women Project³⁹ aims to provide Filipinas with tools for economic empowerment. This project works with government entities to help women owners of small businesses who had hesitated to expand because their partners exercised control of their ventures, or because they had to juggle a full-time job with childcare. There are also many temporary domestic violence shelters throughout the Philippines, which offer crisis resources and childcare help

³⁹ GREAT means Gender Responsive Economic Actions for the Transformation of Women, which is a project led by the Philippine Commission on Women.

for women in need. While the presence of these kinds of organizations is invaluable, they are not able to fulfill the State's job to protect women in abusive marriages."

In the 2017 study entitled "*Divorce and Separation in the Philippines: Trends and Correlates*,"⁴⁰ Jeofrey B. Abalos made these observations:

"The influence of education on union dissolution in the Philippines is consistent with the expectation that in settings where union dissolution is relatively low and the cost of dissolution is high, better-educated women are more likely to end their union. Higher education gives Filipino women the necessary economic resources to leave a bad marriage. In fact, frequently the deciding factor among Filipino women when leaving their spouses is their ability to handle the financial consequences of the marriage breakdown (Mendoza-Ventura 1981). In addition, only women with substantial financial resources can afford the high cost of obtaining legal separation or annulment in the Philippines. Although either party can initiate a dissolution, qualitative evidence indicates that among the highly educated who are legally separated from their spouses, it is mostly the wives who initiated the legal process and paid for it (Escareal-Go 2014). Finally, considering the empowerment and independence afforded by higher education enables highly educated Filipino women to rise above this stigma.

The Filipino woman's childhood place of residence also has significant influence on her likelihood of experiencing union dissolution. Filipino women raised in urban areas are more likely to have their unions dissolved than their rural counterparts. The lower odds of dissolution of Filipino women reared in rural compared to urban communities could be attributed to the traditional values and beliefs instilled in them during their younger years (Medina 2015). Unlike women reared in urban settings, those raised in rural areas may also have been influenced by their parents and family members in their mate selection processes, and thus

⁴⁰ <http://www.demographic-research.org/Volumes/Vol36/50/>

may have experienced much stronger social pressure to keep their union intact.

Finally, religion and ethnicity also emerged as significant correlates of union dissolution among women in the Philippines. Muslim women are more likely to experience divorce or separation than Catholic women. This could be due to the lack of legal restrictions among Muslim women, since divorce is considered legal under Muslim law. The strong opposition of the Catholic hierarchy to divorce and separation may also have discouraged Filipino women from dissolving their unions. Finally, Ilonggo and Bicolano women have lower odds of experiencing union dissolution than their Tagalog counterparts. Tagalog women are mostly from the highly urbanized areas in the Philippines, Metro Manila, and their exposure to this urban environment may have raised their odds of experiencing union dissolution compared to their counterparts from less urbanized settings.”

In this predominantly Catholic nation, the Constitution and the Family Code are basically rooted in religious norms to the point that some people,⁴¹ including judges, mistakenly consider Catholic norms and Civil Law as so intertwined that these cannot be segregated from each other. In *Tilar v. Tilar, et al.*,⁴² the husband filed a petition for declaration of nullity of his marriage in Catholic rites on the ground of psychological incapacity of his wife to marry. The Regional Trial Court dismissed the petition, declaring that it cannot validly pass upon the validity of the church marriage on the ground of separation of the Church and the State.

The Supreme Court directed the RTC to resolve the petition of the husband on the ground that a marriage solemnized in a Catholic church by a priest performing Catholic rites is in accordance with the Family Code. It said: “*Although the marriage is considered a sacrament in the Catholic church, it has civil and*

⁴¹ See: Manuel (Lolong) M. Lazaro, mb.com.ph/2018/04/23/marriage-is-an-indissoluble-inviolable-divine-and-constituional-institution (visited June 27, 2024).

⁴² *Tilar v. Tilar*, G.R. No. 214529, July 12, 2017, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63283 (visited June 28, 2024).

legal consequences which are governed by the Family Code. x x x. Notably, the proceedings for church annulment which is in accordance with the norms of Canon Law is not binding upon the State as the couple is still considered married to each other in the eyes of Civil Law. Thus, the principle of separation of the church and the state finds no application in this case” (Italics Supplied).

Under the constitutional principle of inviolability of separation of Church and State,⁴³ the termination of a marriage under Civil Law, be it through declaration of nullity, annulment, or legal separation, cannot be viewed as an intrusion into religious norms and practices. Should a divorce law be enacted and married Catholics avail of it, they should still seek matrimonial divorce under the Canon Law for them to completely sever the marriage bond obtained in Catholic church rites.

It is noteworthy, however, that the Catholic Church does not completely prohibit divorce. The *Catechism of the Catholic Church*⁴⁴ states:

2383. The *separation* of spouses while maintaining the marriage bond can be legitimate in certain cases provided by canon law.

If civil divorce remains the only possible way of ensuring certain legal rights, the care of the children, or the protection of inheritance, it can be tolerated and does not constitute a moral offense (italics in the original)

The Church acknowledges the fact that there are “numerous Catholics in many countries who have recourse to *civil divorce* and contract new civil unions.”⁴⁵ The Catholic Church cannot but

⁴³ CONSTITUTION, Art. II, Sec. 6.

⁴⁴ From its definitive edition, which is “based on the Latin ‘*editio typica*’ including the latest modifications published by Word & Life Publications of CBCP/ECCCE in Manila. The Latin “*Editio Typica*” of the Catechism was promulgated by Pope John Paul II on August 18, 1997.

⁴⁵ CATECHISM OF THE CATHOLIC CHURCH, 1650.

address that fact and its consequences when a Catholic faithful resorts to civil divorce.⁴⁶

From the perspective of Catholics, however, *tolerance* of a civil divorce “does not touch the true bond of the marriage, which stands intact between the spouses and in the sight of God.”⁴⁷ Failed marriages are considered as due to two general causes: (1) “lack of commitment, an unwillingness to suffer for a greater good, and a selfish predisposition x x x [under the presumption] that everything necessary was there for the marriage to succeed but someone chose otherwise x x x [and that it is] not that anything vital was missing for a valid marriage bond; what was missing was authentic love”; and (2) “some serious misunderstandings, wrong intentions, or deep problems that were present from before the wedding prevented a valid marriage bond from ever forming.”⁴⁸ These “general causes” of failed marriage, may be addressed by a civil law divorce.

Divine Law and its exercise are concerns of the Church. What concerns the government now is *civil divorce*. In these “harsh

⁴⁶ The *Catechism of the Catholic Church* provides:

1650. Today there are numerous Catholics in many countries who have recourse to civil *divorce* and contract new civil unions. In fidelity to the words of Jesus Christ – “Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery” – the Church maintains that a new union cannot be recognized as valid, if the first marriage was. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God’s law. Consequently, they cannot receive Eucharistic communion as long as this situation persists. For the same reason, they cannot exercise certain ecclesiastical responsibilities. Reconciliation through the sacrament of Penance can be granted only to those who have repented for having violated the sign of the covenant and of fidelity to Christ, and who are committed to living in complete continence.

⁴⁷ Leila Miller, “*Eight Things You Have to Know About the Church’s Teaching on Divorce*,” March 24, 2017, catholic.com/magazine/online-edition/eightthings-you-have-to-know-about-the-church’s-teaching-on-divorce (visited June 30, 2024).

⁴⁸ Rose Sweet, “*Divorce, Annulment, Remarriage, and Communion: A Catholic Primer*,” July 5, 2018, (catholic.com/magazine/print-edition/divorce-annulmentremarriage-and-communion-a-catholic-primer (visted June 30, 2024). 49 Position Paper of Chief Justice Hilario G. Davide, Jr.

and difficult times,”⁴⁹ maintaining a clearly broken marriage caused by the violation of the human rights of a spouse and/or their children, or the oppressive financial distress and dissipation caused to the family, may only desecrate the sanctity of marriage and family, as the Supreme Court held in *Mola Cruz*.

The unsettling reality in this country of many married couples separating, whether legally or *de facto*, cannot simply be swept aside on account of religious beliefs and practices. Separated couples are expected to desire freedom from their status that, under present laws, appears to be in limbo. The survey conducted by the Social Weather Stations on March 21 to 25, 2024, shows that of married couples who have already separated under irreconcilable circumstances, 50% are for legalizing divorce, 31% disagreed, and 17% are undecided.⁵⁰ How about those outside the sphere of such surveys who simply stay in a marriage brutalized by abuses and assaults because there is no way out for them? This situation must be addressed by the State not only through *ayudas* and palliatives that do not get into the bottom of the problem. One such recourse is absolute divorce.

Soon after the House of Representatives approved House Bill No. 9349 (*An Act Reinstating Absolute Divorce as An Alternative Mode for the Dissolution of Marriage*), the Catholic Bishops Conference of the Philippines (CBCP) issued a statement, through Fr. Jerome Secillano, that the House betrayed its “constitutional mandate to uphold marriage and the family,” adding that “[i]n essence, divorce is anti-family, anti-marriage and anti-children.”

It appears, however, that the CBCP statement did not come from a solid and unified voice. On June 9, 2024, the KU-Leuven Ateneo Center for Catholic Theology and Social Justice published in Sun Star Cebu an article entitled “*For Better, For Worse: On the Divorce Bill in Congress*.”⁵¹ In part, the article states:

⁴⁹ Position Paper of Chief Justice Hilario G. Davide, Jr

⁵⁰ sws.org.ph/swsmain/artcdisppage/?artcsyscode (visited June 30, 2024).

⁵¹ sunstar.com.ph/cebu/tell-it-to-sunstar-for-better-for-worse-on-the-divorcebill-in-congress (visited June 21, 2024).

“The Absolute Divorce Bill is a public policy issue, not a religious one. Having no divorce law in our country does not mean that we are already upholding and promoting the sanctity of marriage. At the same time, supporting and having a divorce law does not necessarily mean we are endangering the institution of marriage. While not ideal, divorce as contemplated by the authors of the bill is only for irreparable marriages. Catholics who are in healthy marriages and are against it are not compelled to get one.”

The article states that to avoid civil divorce once a law authorizes it, the Church has a lot of responsibilities to fulfill for its flock to prevent them from resorting to divorce.⁵²

House Bill No. 9349 has been transmitted to the Senate where it will undergo scrutiny in the legislative mill. We trust that once the bill is approved into law, it will address only the hopeless and irremediable marital conditions that violate the fundamental human rights of spouses and their children, and clearly provides accessibility of divorce to the poor who are usually the bearers of the brunt of an unhappy union.

I am for absolute divorce, but availing of it should be a matter of conscience, choice, culture, and constitutional rights of individuals.

* * *

⁵² In this regard, the *Catechism of the Catholic Church* provides:

1651. Toward Christians who live in this situation, and who often keep the faith and desire to bring up their children in a Christian manner, priests and the whole community must manifest an attentive solicitude, so that they do not consider themselves separated from the Church, in whose life they can and must participate as baptized persons:

They should be encouraged to listen to the Word of God, to attend the Sacrifice of the Mass, to persevere in prayer, to contribute to works of charity and to community efforts for justice, to bring up their children in the Christian faith, to cultivate the spirit and practice of penance and thus implore, day by day, God's grace

THE CONSTITUTIONALITY OF DIVORCE IN THE PHILIPPINES

Joseph Peter J. Calleja

The Dean of the UP College of Law, Dean Darlene Marie Berberabe, the faculty of UP Law, members of the George Malcom Foundation, headed by its Chair, Justice Antonio Carpio, former Chief Justice Hilario Davide, former Ombudsman Conchita Carpio Morales, incumbent and former justices of the court, fellow members of the Integrated Bar and the academe, students and friends, good morning!

Today, we will rise to the question of the necessity or the benefits of having an absolute divorce law. As lawyers, the first question that we need to discuss is constitutionality.

Sad to say, many discussions on divorce, although important, focused on necessity or benefits like - being in an abusive relationship, economic abuse, or having irreconcilable differences. Yet as lawyers, we were taught that the fundamental question is- is the law constitutional? Constitutionality precedes necessity or benefits.

Thus, if the proposed divorce law is passed by Congress - does it violate the Constitution?

Section 2, Article XV, of the Constitution, states:

THE FAMILY

xxx

Section 2. Marriage, as an **inviolable social institution**, is the foundation of

the family and shall be protected by the State. (*Emphasis ours*)

xxx

The critical word is “inviolable” which means cannot be broken or cannot be violated. If we follow the *Verba Legis* or the Plain Meaning Rule, there could be no divorce under the present Constitution.

However, divorce proponents invoke the framers’ intent. They cite the question of the late Jesuit constitutionalist, Fr. Joaquin Bernas to the late Human Rights Commissioner Chito Gascon, whether the provision, which aims to strengthen the family, is to ban an absolute divorce law. Under the Intention Rule, divorce proponents argue that there is no prohibition under the Constitution, as it was “not the intent” of the framers to ban absolute divorce.

I would like to navigate the discussion on these premises.

First, *Verba Legis* is the rule. *Ratio Legis est Anima* (or the Intention Rule) is the exception.

In *Francisco vs. House of Representatives*,¹ our Supreme Court gives a guideline on how the Constitution or the law is interpreted:

“First, *verba legis*, that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed.

We look to the language of the document itself in our search for its meaning. They (the words) are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails.

¹ G.R. No. 160261, November 10, 2003, 415 SCRA 44.

Second, **where there is ambiguity**, *ratio legis est anima*. The words of the Constitution should be interpreted in accordance with the intent of its framers.

“The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.

And third, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole.

We think it safer to construe the Constitution from what appears upon its face. The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof.”

Having these principles in mind, let us now examine Section 2, Article XV. Let us go back:

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State. (*Emphasis ours*)

Section 2, Article XV, gives two (2) constitutional safeguards against a divorce law.

First, is the word “inviolable” and second – “shall be protected by the State”. “Inviolable” describes the social institution, that is marriage, which shall likewise be protected by the State.

Is there something technical or ambiguous in the said provision? Is the word “inviolable” technical or ambiguous to justify interpretation or construction?

I have consulted or read different sources- dictionaries- in particular, and so far no meaning or interpretation of the word contradicts one by the other. In plain, simple language- “inviolable means” – to uphold, to preserve, to defend, or to hold sacred. These are dictionary meanings of the word, hence, the term is not ambiguous nor technical. It is not capable of two or more contradictory interpretations.

The second constitutional safeguard is the last phrase of Section 2. The Constitution mandates that the state shall protect marriage.

Interestingly, the Constitution did not distinguish whether the State should protect only working or abusive marriages. It simply says, “marriage” and since there is no distinction neither should we distinguish a failed from a successful marriage.

Where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit, nec nos distinguere debemus.*

Thus, the constitutional safeguard and obligation of the State to protect marriage extends to all kinds of marriages. And passing a divorce law by the State will violate its solemn duty.

Jurisprudence is clear that the text of the Constitution is controlling regardless of any constitutional commissioner’s recorded discourse. **Application is the rule. Construction is the exception.**

Now, let us assume that constitutional interpretation or construction is the applicable method. Let us invoke, like many of divorce proponents do – the questioning of Fr. Bernas to Comm. Gason. Let us see if, *assuming arguendo*, the Intention Rule applies.

Let us go to the slides:

Kindly see the dates when the said questioning happened and when the commissioners inserted the word “inviolable”.

Here, the Gascon-Bernas exchange is irrelevant when one considers that at the time Comm. Bernas interpellated Comm. Gascon, the word “inviolable” was not yet part of the proposed draft on marriage. In other words, Comm. Gascon answered the way he did according to the state of the draft, as it was written, on that day. This exchange occurred on September 24, 1986:

“THE PRESIDING OFFICER (Mr. Colayco).
Commissioner Bernas is recognized.

“FR. BERNAS. Just one question, and I am not sure if it has been categorically answered. I refer specifically to the proposal of Commissioner Gascon. Is this to be understood as a prohibition of a general law on divorce? His intention is to make this a prohibition that the legislature cannot a divorce law.

“MR. GASCON. Mr. Presiding Officer, that was not primarily my intention. My intention was primarily to encourage the social institution of marriage, but not necessarily discourage divorce. But now that he mentioned the issue of divorce. My personal opinion is to discourage it, Mr. Presiding Officer.

“FR. BERNAS NO. My question is more categorical. Does this carry the meaning of prohibiting a divorce law?

“MR. GASCON. No. Presiding Officer.

“FR. BERNAS. Thank you.”²

² Records of the 1986 Constitutional Commission, Vol. V, p.41.

However, on the following day September 25, 1986, Commissioner Regalado Maambong made a proposal to add the word “inviolable” to the draft:

“MR. MAAMBONG. May I introduce an amendment after "MARRIAGE," we say: "MARRIAGE AS INVOLABLE SOCIAL INSTITUTION IS THE FOUNDATION OF T'HE FAMILY AND SHALL BE PROTECTED BY THE STATE."

“I am introducing this amendment to realign it again with Article 52 of the New Code which says that "marriage is not mere contract but a social institution."

“MR. OPLE: I accept the Amendment and I hope the committee does the same, presiding Officer.

“MS. NIEVA. We accept, Mr. Presiding officer.

“BENGZON. With the same interpretation as articulated earlier on the basis of my question.

“VOTING

“THE PRESIDING OFFICER (Mr. Rodrigo) Is the body ready to vote?

“As many as are in favor of the amendment, as amended, please raise their hand. (*Several members raised their hands*)

“As many as are against, please raise their hand. (*No Member raised his hand.*)

“The results show 18 votes in favor and none against; the proposed amendment is approved.”³

³ Records of the 1986 Constitutional Commission, Vol. V, p.56.

The *Maambong* amendment was voted for by the commissioners unanimously. Thus, it was only at that point when the 1986 Constitutional Commission declared the intention to keep marriage as an unbreakable, social institution. The additional word “inviolable”, which was used as an adjective of the word marriage, was accepted by the subject committee without question, **unquestioned even by Fr. Bernas himself, thus, the amendment was accepted without any negative vote.**

To emphasize, Article 52 of the Civil Code, and later in Article 1 of the Family Code, speak of Marriage as an inviolable social institution. In fact, the Civil Code was passed with the premise that there is no absolute divorce under the civil code, and was later on embodied in the Family Code. **Thus, logically, the Constitutional Commissioners, contrary to the misleading Bernas-Gascon exchange, did, in fact, intend to retain the *status quo* with the Constitution in mind, i.e., that absolute divorce is prohibited.**

Finally, the framers voted for, and without any objection made, on the present wordings of Article XV, Section 2, that it affirms the continuing prohibition of marriage, based on its simple and clear reading. When the words of the law are clear, there is only room for application.

Thank you and have a pleasant morning!

* * *

OUTSIDE UNCONSTITUTIONAL: POSITIONING DIVORCE WITHIN AND BEYOND THE 1987 CONSTITUTION

Patricia Anne D. Sta. Maria

Introduction

Good morning to everyone here, and before anything I would like to say how honored I am to be here amongst former Chief Justice Davide, former Justice and Ombudswoman Carpio-Morales, and Professor Calleja. I am usually a nervous person, so I do not dream of public speaking in the slightest. But now that I am here, it is my pleasure to do so with very distinguished co-panelists. So thank you to the Justice Malcolm Memorial Foundation, and the partners for the invitation. As you may have heard, I'm from that other school in Rockwell, so however much or little you expect of me, I do hope I live up to at least that. Incidentally, I did learn Constitution I and II from Fr. Bernas, and it was his birthday I think two days ago. I am sure he is up in heaven, delighted that once again the source of much discord and disruption.

I'd like to structure my remarks around two main lines of inquiry. The *first* is divorce and the Constitution, and whether we should treat the question of divorce as a constitutional question. I begin here because I think there is a danger when we make Constitutions say things they do not, or adhere to some constitutional or legal absolutes when the reality is something else entirely. The *second* is divorce as a remedy and policy, and there I'd like to go into why I think we should pass the divorce law, and why I believe it is not an enemy of the family nor of marriage.

Is Divorce a Constitutional Question?

Or, in other words, given what we know about our Constitution, how do we position divorce in a legal discourse? Our Constitution takes lessons from the past but also looks towards the future. It is as much about aspirations as it is about the rules

we memorize in class. In tackling divorce and asking whether it is a right or if it can be legally done, we have to refrain from being over-zealous with Constitutional superiority. Yes, the Constitution is the fundamental law. Nothing can rise above it. But a Constitution does not deal with everything. It does not dictate every exact rule or policy the country lives by, and we have to refrain from insisting that it does. As I previously mentioned, our Constitution is part aspirational, meaning it has left things to be done by those who will come after. It creates the space for democratic processes, however messy they may be, through which we the Filipino people discover for ourselves what we value and how we want to shape our country and our laws. We do the Constitution a disservice if we reject the opportunities it gives us for genuine law-making, and community-building in favor of an abbreviated inquiry which ends at whether something is constitutional or not.

Going back to divorce, the question then is, does the Constitution give us rules, or say anything about divorce? My position is that it neither prohibits nor mandates divorce. It says things about ideas we associate with divorce, depending on where we're coming from: marriage, family, religion, equality, children, and so on. But divorce directly, not so much. There is no Constitutional prohibition on divorce, and nothing in the Constitution is inherently contradictory to the idea of a divorce law.

Now of course this is different from whether the specific provisions of a divorce law that will eventually come to be, whether those are constitutional or not. But the idea of a divorce law, I believe, is not inherently unconstitutional.

The Constitution, Divorce, and the Family

What about family and marriage? The big inquiry here is how we treat Section 2 of Article XV, which says that "Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State." The Constitution here upholds an ideal: a thriving family, and, at its core: a strong marriage. Can we

take this as a prohibition on divorce, or a call to uphold marriage at all costs? No. It is true that we should protect marriages, but protecting is not the same as treating them as untouchable. Our own laws reflect this: there are already a multitude of ways marriages “end” under our laws. What I hope we take away from Article XV is that our Constitution values the family. The marriages we must protect are those that nurture and enrich the family, and give it a solid foundation. If then a marriage does not: if it becomes harmful to the family, why not allow people to end those marriages? If a divorce can help a family, it should be made available.

What of inviolability? Inviolability is interesting because it is not itself the command in Section 2, unlike when the word is used in other instances in the Constitution. The command in Section 2 is to protect marriage. But even if we do not get into it with the wording of the Constitution, just taking from how we treat other similarly inviolable things, inviolability is a principle we adhere to. It does not mean, however, that the policies, the accommodations, and the laws we create to address the lived experience of Filipinos contradict inviolability. We can respect the inviolability of marriage as an ideal while also providing remedies for the people who are navigating the realities of irreparable ones. We can hope marriages in general last lifetimes, but also recognize that some will not. These are not incompatible positions.

Divorce as policy and law

I now go to divorce as policy, and why I think it would be beneficial for the country to have divorce. I was reading the House Bill the other day and was pleasantly surprised to see it describe itself as a “pro-woman legislation.” As an aside, I’ve been raised to think that “pro-woman” is how we should describe everything. All of us. This is good because it is something that needs to be said.

The reality is that majority of those at the receiving end of domestic abuse are women, and it is these women who will greatly benefit from a divorce law. The ability to leave and cut ties with a violent, unfaithful, or grossly negligent spouse is a remedy which

we should afford everyone, especially women who are often the disadvantaged party in the dynamic. I would go so far as to say the law should make it easy to do this. Divorce answers that need.

Even when the actuations of a couple do not cross the line of criminality, consider what family life is like when there is grave incompatibility or constant discord between spouses. Can we honestly say that the environment that creates is compatible with the safety and happiness of parents and children? Some of you here may have opinions about how far couples can work things out or what marriages can or cannot get past. But, in all likelihood, only the people in that family will truly know what is right for them. Why deprive them of the choice to end a marriage if they know it is what will help them? We do not need to excessively dictate on the most intimate and private of decisions, which adults who have entered into marriage are fully capable of making, and should have the right to make.

In fact, I would argue that divorce facilitates other rights we do have: our rights to liberty, bodily autonomy, decisional privacy, safety and security, and even the right to raise families in accordance with our beliefs. In the proper situations, divorce, while initially painful and disruptive, can be life-giving. It is not anathema to our individual rights nor our integrity as a community.

I end these initial remarks by saying that we do not put fire exits in buildings in hopes that the buildings will burn down. Similarly, we do not legislate divorce wanting marriages to fail. What we do want is to give people another chance, and to recognize that some people make mistakes, in some cases, some people are the mistakes. People change. They can change throughout their lives, even after marriage, and maybe not for the better. We cannot trap people in burning rooms, hoping to admire an undisturbed façade from the outside. We cannot uphold detached ideas of marriage, and inviolability at the expense of the people who live and breathe, and in some cases bleed in these marriages. Divorce is not the enemy of the family nor of marriages. The things that destroy marriage exist, whether or not we pass this law. Divorce is

instead, a remedy, and a chance for families to save themselves
from the worst effects of these very same things. Thank you.

* * *

SIX ARTICLES ON DIVORCE

Dean Jeremy Benigno I. Gatdula

01. Divorce means freedom? Not really. Nor is it free.

Originally published in BusinessWorld, 25 April 2015

There is a near-universal consensus that divorce is a good thing to be had in the Philippines. Many surveys claim that a majority of Filipinos are in favor of divorce laws. The Philippines, after all, is one of only two countries in the world that still does not allow for divorce. But near unanimity does not make right. There was a time when everyone thought the world was flat.

The arguments for divorce are varied and multilayered. But many, to be frank, are not serious. Some want divorce simply because the Catholic Church is against it. Others' motivation is hatred for the so-called patriarchy which is silly. The Philippines ranks among the world's best for a woman to live in, fourth in the world with most women managers (including the media), had two women presidents, a presiding Chief Justice (with associate justices), and numerous members of Congress.

Instead, this article seeks to put forth preliminary thoughts on one argument relatively worthy of consideration: the idea of divorce as embodying people's "freedom to choose."

On "freedom," so the argument goes, people should have the right to decide how to go about their lives.

By not having a divorce law, unhappy married couples are forced to be stuck together or have to go through the more difficult, more expensive "annulment" process. A divorce law, so it is said, makes it easier for people to get out of the married state faster and cheaper, and to get on with their lives as quickly as possible.

Only, that's not how reality works.

There are two avenues for divorce currently being proposed: the "fault" divorce (e.g., those related to legal separation or psychological incapacity) and "no-fault" divorce (i.e., "irreconcilable differences"). Both require that they be proven in court, without collusion between the parties as certified by the State. These require expenses related to gathering evidence and legal representation, all quite similar to the annulment process.

But even assuming the proposed "no-fault" form of divorce does result in the quicker grant of divorce decrees, every divorce inevitably results in the need to give alimony or support, as well as (if there are children) the matter of visitation rights.

And this is where the "freedom" argument goes awry: whereas ordinary married couples are generally free any way they want to privately pool their resources, bring up their children, use their assets, and live and work where and how they please without State interference, every divorce decree essentially stems from a public conflict that draws the State in to interfere and control the family's future: from tracking (and even prosecuting) errant parents, determining the children's upbringing, regulating visitation, enforcing support, and monitoring the wealth size of the estranged couple.

Furthermore, the "freedom" argument presupposes that both couples agree to the divorce. Anecdotally, a majority of the annulment cases filed were opposed or not agreed to by the non-petitioning party.

Think about that in relation to the proposed no-fault "irreconcilable differences" divorce scenario: if marriage is indeed a contract (albeit "special," but let's forget that for now) which both parties freely decided to enter into "until death do they part," what then is the justification to allow one party to unilaterally terminate that contract?

In other words, where is the freedom of choice for that other “no-fault” party who wants to go on and make the marriage work?

Now relate that in economic and development policy terms: can one logically create a stable, prosperous society (i.e., necessitating planning, assembling assets, collecting wealth, training youth) whose foundation is built on a multitude of contracts designed (and at the time of entry, agreed) to be permanent but in actuality can be unilaterally terminated anytime for any reason?

“...if marriage is indeed a contract (albeit “special,” but let’s forget that for now) which both parties freely decide to enter into “until death do they part,” what then is the justification to allow one party to unilaterally terminate that contract?”

The final “freedom” argument boils down to this: the government must remain neutral and give couples the individual freedom to divorce.

This position is misguided.

The government never is neutral. And when it inescapably chooses a side, it will inevitably affect all Filipinos -- whether they be for divorce or not.

If it legislates for divorce, the government essentially chooses a side that overturns centuries of established Philippine marriage tradition. Furthermore, the government’s divorce stand (advertently or not) supports the probability of increasing divorce cases (by one account, as much as 88%), divorce cases that the government will need to enforce, monitor, and regulate for years (even decades) -- the costs to be charged not to the divorced couple but through taxes paid by the greater majority of married Filipinos.

The foregoing treads alongside the context of numerous studies tying divorce rates with depreciated child learning and psychological health, lowered adult productivity, and significant damage to overall economic and social development.

Three other things to note: One, no religious arguments were made here. Two, there is a need for people to appreciate a better meaning of “freedom.” And three, despite people’s strong denial of it, marriage is more permanent than is realized.

02. Divorce is just a bad idea.

Originally published in BusinessWorld, 08 May 2015

After my article “Divorce means freedom? Not really. Nor is it free” (April 24 issue) came out, I’ve received quite a number of comments -- many nonsensical, a few quite interesting, and raising relevant arguments. None, however, addressed the particular point I made about the nature of divorce drawing in greater (if not total) State control over ordinary families. The same could be said about the economic costs of divorce, both on the family and on the country in general.

Some of the comments came from foreigners (because they indicated themselves as such), saying that my Catholic views have no place in a public debate. This is ridiculous for two reasons: First, because this is as meritorious as me saying foreigners have no right to comment on a Philippine issue; and, second, because my article never even referred to Catholic doctrine at all.

A few did say that they’ve gone through a divorce, and are quite happy now, financially secure, with children healthy and maturing well.

Well, good for them. But many studies would find they’re the exception rather than the rule. And one can’t simply make legislation overturning centuries of tradition and history for the exception.

In any event, the studies we do have indicate that only a small percentage of divorces in the United States involved conflicted or irreparably broken marriages. The greater number of divorces arose from such relatively mundane reasons as “falling out of love”

or “burnout.” Better marriage preparation or counseling can resolve this.

As for really conflicted marriages, which I repeat is in the minority, they often involve drugs, alcoholism, physical abuse, or homosexuality and these are already covered by our laws on legal separation.

Incidentally, the one ground that local divorce advocates keep using to make their case is that of “domestic violence” (or physical abuse). In reality, this actually ranks quite low as a cause for divorce (at least in the US). In some surveys, they don’t appear at all which makes sense. Marriage is actually a good protection against physical abuse -- it’s the jumping from one relationship to another that increases the chance of coming across an individual prone to violence. Anecdotal evidence would show that instances of incestuous rape happen more often to children with separated parents where the rapist is more likely to be the new “stepfather” or “step-relative” of the child.

Still, why not allow for the transition from legal separation (that doesn’t permit remarriage) to divorce (which does)? After all, shouldn’t people have a second shot at happiness in life? Related to this is the “fire escape/safety valve” argument in favor of divorce. These are pretty good arguments, frankly. But in the end, they have to be rejected.

There are several reasons: One fundamental, a number practical. One practical reason: Should society really allow the junkie, alcoholic, or abuser to inflict his behavior on a new spouse?

Another is the effect that a law constructed for a minority (i.e., really conflicted marriages) may have on the majority (ordinary marriages with their normal ebb and flow). Studies show that divorce laws (particularly “no-fault divorce”) historically contribute to encouraging the breakup of marriages exponentially through time (with US studies indicating increases at 10% annually, with one giving a high rate of 88%).

But the fundamental reason is this: Marriage has a specific definition by its nature. A definition not constructed (but merely recognized) by the State, nor is it a social construct. Rather, the definition comes from our logical understanding of human nature independent of our wills or passing emotions and is borne out as true by history.

Robert George's formulation is quite useful for the present discussion: "Marriage is a comprehensive union, made possible by the sexual complementarity of man and woman, ordered to the all-encompassing goods of procreation and family life."

"Marriage has a specific definition by its nature. A definition not constructed (but merely recognized) by the State."

As such, marriage has the following essential elements: heterosexual, monogamous, exclusive, and permanent. To eliminate an element is to cause a redefinition of marriage, which inevitably will present profound implications on our society.

In fact, it is through this matter of redefinition that one sees the connection that the national debate on divorce has with the debate on legal recognition for same-sex marriage.

To redefine marriage allowing for its non-permanence (i.e., divorce), one removes a principle that effectively excludes polygamous marriages. With divorce, there's no difference between a serial and a simultaneous polygamist. And yet, one must remember that marriages are also for the psychological and material welfare of children.

And since redefinition is possible, there is then no reason not to redefine marriage to include homosexual couplings -- thus removing a fundamental principle (that of marriage being directed to the procreation of and care for children) that excludes all other types of personal relationships ("throuples," bestial, incestuous, social, etc.) that people's fervid imaginations can care to create.

In which case, there is really no point then in having marriage at all.

03. Divorce and the progressive ambition to destroy the family.

Originally published in BusinessWorld, 15 May 2015

The thing is: many (but definitely not all) of those advocating for divorce want the traditional family structure of biologically related father, mother, and child to be rid. I've received comments related to my previous article "Divorce is just a bad idea" (08 May issue) where people implicitly declared they are not against the idea of traditional marriage being done away with.

It isn't surprising when one remembers that "no-fault" divorce actually originated from that long-held communist objective to destroy the traditional family. As related by Donald M. Bolas ("No Fault Divorce: Born in the Soviet Union?", 1975), the Bolsheviks regarded the traditional family as a "bourgeois" institution. When they came into power in 1917, they systematically set out to destroy it.

Interestingly, one of their first moves was to remove the classification "illegitimate children." Ostensibly to equalize the legal status of all children, the real aim was to diminish the value of being born in wedlock.

After that came the measures to coercively redefine marriage. For communist Russia, marriage became simply a "State action," with divorce an administrative process. Note that the no-fault divorce created by the communist State was actually unique in that it is arguably the first kind of lawsuit where the complainant (the person petitioning for divorce) does not even have to provide reasons or prove his claim. There is just no defense available for the respondent in this type of case.

And since this kind of divorce is very easy to come by, it is no surprise then to hear accounts of people being married twenty

times. This was actually encouraged by the communist government, even setting up a “free love” bureau where people could hook up with like-minded partners.

The practice, according to Mr. Bolas, reached the United States and infiltrated its legal system. The US today has no-fault divorce as a norm, where every first marriage practically has a 50-50 chance of being ended by it (subsequent marriages have even higher percentages of heading to divorce).

But the question is: why would communists and their presumptive heir, today’s Progressives, be so against the idea of traditional marriages?

The key lies with our social system called “subsidiarity”: the principle that essentially says individuals should have the freedom to choose and act responsibly for themselves in achieving the common good. If individual action is too difficult, then the family steps in, then the neighborhood, then the town. Only when really necessary, does the national government come in the picture. In the subsidiarity’s framework, religious and non-governmental institutions play a crucial role in the formation of people’s character.

Progressives would have none of that. Ideologically believing they know better than you in how to run your life but history having proved them unelectable, they instead patiently engaged in the indoctrination of the bureaucracy (as well as the academe and media). Having achieved control (at least intellectually) of a substantial part of those sectors of society, they now hungrily attempt what they’ve long sought against their rivals in influence: the removal of religion and the traditional family.

Measures supportive of contraceptives, divorce, and same-sex marriage, as well as labeling religious belief as bigoted or medieval, are all designed to eradicate religion and the family’s influence on people and instead have the people dependent exclusively on government; all for the purpose of achieving the Progressive ambition of dictating the peoples’ thought and beliefs.

Relatedly, it also becomes understandable why the mere suggestion that better marriage preparation and counseling are more effective remedies than divorce would be met with violent derision by divorce advocates. Because, the fact is: it's true.

Funnily enough, the best marriage preparers and counselors happen to be not secular facilities (all usually under government regulation) but rather religious institutions.

Contrary to the Progressive lie that no difference exists between religious and non-religious couples (at least as divorce rates are concerned), Georgetown University's Center for Applied Research in the Apostolate found in 2013 that, even in "divorce-is-completely-acceptable-US," Catholics have way lower divorce rates: "Catholics stand out with only 28% of the ever-married having divorced at some point."

Compare this with a divorce rate of 40% for those with no religious affiliation. As one commentator puts it: "The factor making the most difference is religious commitment and practice. Couples who... take their faith seriously enjoy significantly lower divorce rates than mere church members, the general public, and non-believers."

What's more, University of Denver sociologists found that: "Whether young or old, male or female, low income or not, those who said that they were more religious reported higher average levels of commitment to their partners, higher levels of marital satisfaction, less thinking and talking about divorce and lower levels of negative interaction."

So while this column took pains to defend traditional marriage without resorting to religious arguments, it would appear that religious beliefs should indeed have a say in the public square after all.

"Because funnily enough, the best marriage preparers and counselors happen to be not secular facilities (all usually

under government regulation) but rather religious institutions.”

04. Divorce and its damaging effect on children. And on society.

Originally published in BusinessWorld, 11 August 2017

"We know the statistics – that children who grow up without a father are five times more likely to live in poverty and commit crime; nine times more likely to drop out of schools and twenty times more likely to end up in prison. They are more likely to have behavioral problems, or run away from home, or become teenage parents themselves. And the foundations of our community are weaker because of it."

That was Barack Obama, speaking on Father's Day 2008. He should know, himself being a product of a single-parent household.

It's pretty much acknowledged that depression, suicidal tendencies, mental illness, and the inability to handle stress are rising among today's children and the preferred primary villain for this is social media.

In one school gathering I attended recently, psychiatrists from a popular metro university clung to this theory, all the while ignoring the possibility of another, more obvious cause.

As I wrote in a previous article, social commentators and medical experts have long pointed to the “changing family structure, and it turns out that adolescent depression and suicide are closely linked with divorce and single parenting. Teens who live with a single parent have twice the rate of suicide attempts as those who live with both parents. The same is true of other forms of distress and self-harm.” (The Kids Are Not All Right, Mona Charen, National Review, 02 June 2017)

Author and historian Joshua Charles admits that "older generations are inclined to be harsh toward Millennials. We

certainly deserve it, in some ways. We avoid marriage and family life and when we marry, we tend to marry late.

Millennials seem 'afraid of commitment.' We won't 'settle down.'"

But, as Charles points out, "part of the reason is way too many of us have seen our parents, you, divorce". "No generation has seen divorce among its parents as much as the Millennial generation. I would not at all be surprised that it has necessarily played a role in many Millennials' decisions to get married later, not at all, or to go on 'test runs' with significant others through cohabitation." (What's Wrong With Millennials? Partly, Their Parents' Divorces, The Stream, 04 August 2017)

Unfortunately, studies have shown that the latter "remedy", that is cohabiting before marriage, also tends to an increased likelihood of divorce.

The myth being perpetuated is that divorce is a far more acceptable alternative for children, rather than having them see their parents fight all the time. Not true.

While children in quite high-conflict homes may benefit by being removed from that environment (not necessarily through a divorce), the situation of children in lower-conflict marriages (of which 2/3 of divorces are of this type) can get much worse following a divorce.

Furthermore, children experience lasting tension even after their parents divorce, particularly as a result of the increasing differences in their parents' values and ideas. The point: children of even so-called "good divorces" fare worse emotionally than children who grew up in an unhappy but "low-conflict" marriage (see oryourmarriage.org, citing Paul R. Amato and Alan Booth, *A Generation at Risk*, Cambridge, MA: Harvard University Press, 1997; also *Ten Findings from a National Study on the Moral and Spiritual Lives of Children of Divorce*, Elizabeth Marquardt).

What makes divorces even more devastatingly ironic is that studies have conclusively shown that "children benefit if parents can stay together and work out their problems rather than get a divorce". Read this alongside the research showing that only if couples stick together, reform themselves, and pull through, they'll find themselves much happier later on ("very happy" or "quite happy"; see foryourmarriage.org, citing Linda J. Waite and Maggie Gallagher, *The Case for Marriage*, 2000).

To continue with divorce's irony, we move on to marriage's crucial role in poverty alleviation.

As Princeton's Robert P. George cogently puts it (*Marriage - Can We Have Justice Without It? An Interview*, *The Plough*, 25 June 2014): "Virtues are indispensable in any society, since its legal, political, and economic institutions depend on them. But these virtues aren't produced by legal, political, or economic institutions: they are produced by the family, which in turn is based on the marital covenant between husband and wife. When that is compromised – when the marriage culture begins to erode and then collapse in a community – the consequences are easy to see."

The thing is "marriage is the original and best department of health, education, and welfare. It plays an indispensable role in providing children with the structure, nurturing, and education that enables them both to flourish and to contribute to the flourishing of others. It enables them to become people who will respect themselves and respect others, and will order their own lives according to virtues like honesty, integrity, conscientiousness, the willingness to work hard, to defer gratification, and to respect the property and lives of others."

The point is: for the sake of kids, just say no to divorce.

05. Divorce is a deadly killer!

Pardon the quite unsubtle clickbait title. It is, to be clear, not meant to disrespect or make light of anybody's circumstance. But two things: this article's focus is on divorce specifically (and not of

couples contemplating it) but also, it describes really how strongly some people feel about the matter.

Let's face it: divorce signifies failure.

It's hardly a thing to be celebrated.

Nobody gets married, in fact nobody grows up, hoping to get divorced. Something went wrong and in an array of difficult choices, divorce happens to be one of them. But it's far from the best solution.

Divorce's worst victims, as study upon study will show, are children.

Divorce "is catastrophic for children", and it "is destructive to both boys and girls. But each sex suffers differently. Girls who grow up deprived of their father are more likely to become depressed, more likely to self-harm, and more likely to be promiscuous. But they still have their mothers, with whom they clearly identify. Boys do not have a comparable identification and thus suffer more from father's absence. They also tend to act out in a manner that's harmful to others, which girls typically do not." (Suzanne Venker, "Missing fathers and America's broken boys," February 2018)

The US today is notorious for school shootings. But what mainstream media (mostly liberal) refuse to report is that most, if not all of the shooters were bereft of fathers, "whether due to divorce, death, or imprisonment" as Susan Goldberg points out ("When Will We Have the Guts to Link Fatherlessness to School Shootings?" February 2018).

Then there's this: "72% of adolescent murderers grew up without fathers; the same for 60% of all rapists. 70% of juveniles in state institutions grew up in single- or no-parent situations. The number of single-parent households is a good predictor of violent crime in a community, while the poverty rate is not." (Terry Brennan, cofounder, Leading Women for Shared Parenting)

Contrary to what others say that the negative effects on children of divorced parents are merely short-term, Amy Desai (of Focus on the Family) reports:

“Psychologist Judith Wallerstein followed a group of children of divorce from the 1970s into the 1990s. Interviewing them at 18 months and then 5, 10, 15, and 25 years after the divorce, she expected to find that they had bounced back. But what she found was dismaying: Even 25 years after the divorce, these children continued to experience substantial expectations of failure, fear of loss, fear of change, and fear of conflict. Twenty-five years!

The children in Wallerstein’s study were especially challenged when they began to form their own romantic relationships. As Wallerstein explains, “Contrary to what we have long thought, the major impact of divorce does not occur during childhood or adolescence. Rather, it rises in adulthood as serious romantic relationships move center stage ...”

Other researchers confirm Wallerstein’s findings. Specifically, compared to kids from intact homes, children who experienced their parents’ divorce view premarital sex and cohabitation more favorably. This is disturbing news given that cohabiting couples have more breakups, greater risk of domestic violence, and are more likely to experience divorce.”

Therapist Steven Earll points out, “Children never get over divorce. It is a great loss that is in their lives forever. It is like a grief that is never over. All special events, such as holidays, plays, sports, graduations, marriages, births of children, etc., bring up the loss created by divorce as well as the family relationship conflicts that result from the ‘extended family’ celebrating any event.”

In fact, Dr. Wallerstein explodes another myth, “that if the parents are happier the children will be happier, too.” So the argument goes: divorce frees children from living in an unhappy home. Not true.

“Indeed, many adults who are trapped in very unhappy marriages would be surprised to learn that their children are relatively content. They don’t care if mom and dad sleep in different beds as long as the family is together.” (see Brent Barlow, Brigham Young University, “Marriage Crossroads: Why Divorce Is Often Not The Best Option,” 2003)

Considering the stakes, we must avoid what Tim Wu calls the “tyranny of convenience,” which “fails to acknowledge that difficulty is a constitutive feature of human experience.”

Indeed, seeing their parents persevere in very difficult situations is perhaps one of the greatest things that can be given to children.

Finally, it’s quite tiresome hearing people parrot the line that to go against divorce is a step back to the dark ages. Most anthropological studies agree that human sexual development (from pre-humans to humans) went roughly by this sequence:

Group sex free for all => then temporary pairings => then longer termed “open” pairings => then marriage but with divorce => then (with the coming of Christianity) absolute permanent marriage.

Going by this chronology, to go with divorce is actually a regression.

Perhaps someone should tell that to Congress.

06. The Two-Parent Advantage (or why a divorce law is a dumb idea)

Esquire Philippines recently came out with a rather curious article, declaring that the “Philippines Has the Most Number of Singles in Southeast Asia” and that the country is “practically the capital of *singleville* in the region” (February 2024).

Thus, culling “data from the UN Population Division for 2021 posted on SeaAsia Stats Facebook page shows that the Philippines tops the list of Southeast Asian countries with the most number of single people (49 percent) -- almost half its population. The definition adopted for 'single' encompasses individuals who are unmarried, divorced, separated, or widowed”.

It's curious because the matter is truly not something to celebrate about. Yet, despite Esquire's decision to cheerfully quote a Miley Cyrus song within the article, Esquire still managed to fail to mention the context of such rising singlehood and its price:

- The Philippines has '58% female' Pornhub viewers, the only country in the world where female porn viewers outnumber males.
- 58.1% or 844,909 of newborn Filipino babies are illegitimate.
- 20% of marriages in the Philippines will be broken, with 82% of such broken marriages involving children.
- A WHO study finds that there are 15 million solo parents in the Philippines, with 95% (or more than 14 million) of whom are women.
- The Philippines registers among the highest in Southeast Asia for teenage pregnancies, with births by girls 14 years old and below increased by 7% in 2019 compared to the previous year, which also represents a nearly 300% rise from 2000.
- The total fertility rate (TFR) of Filipino women aged 15 to 49 years dropped from 2.7 children per woman in 2017 to 1.9 in 2022. With the lower TFR, the country is already below the replacement fertility rate of 2.1 children per woman.

The Philippines is now reaping the fruits of universities and media ramming progressive policies on our children. Then there's the divorce bill to make matters worse. If we insist on being a society where "anything goes", it won't be long before our society itself is gone.

Gratifyingly, Melissa Kearney, the University of Maryland's Neil Moskowitz Professor of Economics, recently came out with the highly relevant and quite commonsensical book "The Two- Parent Privilege". Here, she presents a data-driven defense of marriage and declares

that to depreciate it leads to economic problems, fractures society, and badly hinders children's development.

Presenting no religious arguments and based on more than a decade of economic research, the Two-Parent Privilege demonstrates that “marriage, for all its challenges and faults, may be our best path to a more equitable future” and that when two adults marry, such immensely and comprehensively benefits not only the married couple but their children as well.

Indeed, “two parents combined have more resources than one. Two parents in a home bring in the earnings —or at least the earnings capacity of two adults. So, in a very straightforward way, we see that kids growing up in single-mother homes are five times more likely to live in poverty than kids growing up in married-parent homes. (Kids in single-father homes are three times as likely to live in poverty.)

Some of that reflects the fact that people with lower levels of education or income are more likely to become single parents. But even if you compare across moms of the same education group, you see that kids who grow up in a household with two parents have household incomes that are about twice as high. That means that those parents are paying for things like a nicer house in a safe neighborhood with good school districts. But they also spend more time with their kids.

We see that kids who grow up with married parents have more parental time invested in them: reading to your kid, talking to your kid, driving your kids to activities. If there are two parents in the household, there's just more time capacity.” (“Why Two Parents Are the Ultimate Privilege”, Bari Weiss interviewing Melissa Kearney, Free Press, December 2023)

This lines up with previous findings that broken marriages affect society as a whole. Practically every school shooter (for example) was bereft of fathers, “whether due to divorce, death, or imprisonment” (“When Will We Have the Guts to Link Fatherlessness to School Shootings?”, Susan Goldberg, February 2018).

The advantage of a society reared by two parents (ie., biological parents) homes, is clear, undeniable, and conclusive. To insist on a divorce law despite every fact, logic, and experience is not only to

exhibit blatantly gross hubris, it's also patently unwise, ignorant, and borders on irresponsibility.

Additional recommended readings:

- The Abolition of Marriage by Maggie Gallagher
- The Case for Staying Married by Linda Waite and Maggie Gallagher
- How's Life at Home? New Evidence on Marriage and the Set Point for Happiness by John F. Helliwell and Shawn Grover
- Designed for Sex by Dr. J. Budziszewski
- Marriage: A Basic and Exigent Good by John Finnis
- Natural Law, Marriage, and the Thought of Karol Wojtyla by John J. Coughlin
- Couples on the brink by Marriage Foundation (Benson, H. & McKay, S)

* * *

IS THE RETURN OF ABSOLUTE DIVORCE INEVITABLE?

*Froilyn P. Doyaoen-Pagayatan**

I. Introduction

It is often stated that out of the 195¹ countries in the world, only the Philippines and the Vatican City do not allow absolute divorce.² Only limited divorce or legal separation is allowed but it does not result in the termination of the marriage and the legally separated spouses cannot remarry.³

But it is inaccurate to say that divorce⁴ is not allowed in the Philippines. The marriage statistics of the Philippine Statistics Authority (PSA) from 2018 to 2022 show that the registered marriages in the Philippines include remarriages by parties divorced from their previous spouses.⁵ The table below shows that from 2018⁶ to 2022, thousands of persons were previously married and obtained a divorce before getting married again.

*Senior Lecturer and Gender Law and Policy Program (GLPP) Resource Person, University of the Philippines College of Law.

¹ *How Many Countries Are There in the World?*, WORLD ATLAS WEBSITE, <https://www.worldatlas.com/geography/how-many-countries-are-there-in-the-world.html>. (last visited October 2024).

² Robert Emery, *Cultural Sociology of Divorce: An Encyclopedia* 971-972 (2013), *available at* <https://doi.org/10.4135/9781452274447.n354>.

³ *Republic v. Manalo*, 831 Phil. 33 (2018).

⁴ For clarity, “divorce” is used to refer to absolute divorce while “legal separation” is used to refer to limited divorce.

⁵ Philippine Statistics Authority, *Birth, Marriage, and Death Statistics for 2024* (Provisional, as of 31 January 2025), *available at* <https://psa.gov.ph/statistics/vital-statistics>

⁶ The Philippine Statistics Authority’s statistics on marriage in 2017 and prior years did not reflect information on the previous marital status (single, married, widowed, divorced) of the parties.

Year	Total No. of Marriages	Marriages with <u>Male</u> Party Previously Divorced	Marriages with <u>Female</u> Party Previously Divorced
2022 ⁷	449,428	5,573	1,159
2021 ⁸	356,839	1,683	543
2020 ⁹	240,775	1,467	193
2019 ¹⁰	431,972	5,369	1,085
2018 ¹¹	449,169	4,764	577

In the Family Code of the Philippines (Family Code), a divorce validly obtained abroad by a couple who are both foreigners may be recognized in the Philippines, provided it is consistent with their respective national laws. Moreover, in mixed marriages involving a Filipino and a foreigner, the Filipino spouse is allowed to remarry under Philippine law in case a divorce is validly obtained abroad under the national law of the foreign spouse.¹² It should also be noted that the Code of Muslim Personal Code of the Philippines (Muslim Code)¹³ allows divorce among Muslim Filipinos.

⁷ Philippine Statistics Authority, *Registered Marriages in the Philippines: 2022*, Statistical Tables (2023) available at <https://psa.gov.ph/statistics/vital-statistics/stat-tables>.

⁸ Philippine Statistics Authority, *Registered Marriages in the Philippines: 2021*, Statistical Tables (2023) available at <https://psa.gov.ph/statistics/vital-statistics/node/1684041352>.

⁹ Philippine Statistics Authority, *Registered Marriages in the Philippines, 2020*, Statistical Tables (2022) available at <https://psa.gov.ph/statistics/vital-statistics/node/165610>.

¹⁰ Philippine Statistics Authority, *2019 Philippine Marriage Statistics*, Statistical Tables (2021) available at <https://psa.gov.ph/statistics/vital-statistics/node/163753>.

¹¹ Philippine Statistics Authority, *Marriages in the Philippines, 2018*, Statistical Tables (2019) available at <https://psa.gov.ph/statistics/vital-statistics/node/144732>.

¹² Exec. Order No. 207, as amended by Exec. Order No. 227, Article 26 (1987).

¹³ Pres. Dec. No. 1083 (1977).

It may, therefore, be surmised that the parties who could remarry in the Philippines after obtaining divorce from their previous spouses could be either of the following:

1. Foreigners;
2. Filipinos who are divorced from their foreign spouses; or
3. Muslim Filipinos.¹⁴

Thus, if the spouses are both non-Muslim Filipinos, they cannot remarry in the Philippines even if they can secure a divorce abroad. This highlights how restrictive and discriminatory the Philippine laws are against non-Muslim Filipino couples concerning their freedom to remarry.

With the pending bill in Congress to allow absolute divorce in the Philippines,¹⁵ it is important to recall that divorce has not always been prohibited in the Philippines. Divorce was common among the pre-colonial Filipinos and was allowed during the American and Japanese rule.

II. Pre-Colonial Philippines

During the pre-colonial period, divorce was prevalent among Filipinos.¹⁶ The marriage rites even include the prospect of divorce between the couple about to be married, as recounted by Captain Miguel Loarca, one of the Spanish conquistadores:

While the betrothed pair are drinking together an old man rises, and in a loud voice calls all to silence, as he wishes to speak. He says: "So-and-so marries so-and-so, but on the condition that if the man should through *dissolute conduct fail to support his wife, she will leave him* and shall not be obliged to return anything of the dowry that he has given her; and *she shall have freedom and permission to marry another*

¹⁴ Under the MUSLIM CODE (Pres. Dec. No. 1083), divorce is allowed among Muslims.

¹⁵ H.No. 09349 was approved by the House of Representatives on third reading on May 22, 2024, and received by the House of Senate on June 11, 2024.

¹⁶ Charles Lobingier, *The Primitive Malay Marriage*, 12(2) AMERICAN ANTHROPOLOGIST 255-256 (1910) available at <http://www.jstor.org/stable/659953>.

*man. And therefore, should the woman betray her husband, he can take away the dowry that he gave her, leave her, and marry another woman. Be all of you witnesses for me to this compact.*¹⁷ (Emphasis supplied.)

It is clear from the above that the grounds for divorce were different for the husband, i.e., failure to support his wife, and for the wife, i.e., adultery. Among the Benguet Igorots, the husband is allowed to divorce his wife if she is lazy, barren, or quarrelsome and the barrenness of the wife appears to be a common ground for divorce.¹⁸

Thus, before the Spanish rule in the Philippines, the husband or wife could easily ask for a divorce.¹⁹ However, the guilty party faced economic sanctions, particularly the return or forfeiture of the dowry.²⁰ According to Franciscan missionary Father Juan de Plasencia, who wrote *Customs of the Tagalogs* in 1589,²¹ among the Tagalogs, if the wife left the husband before the birth of children, the dowry would have to be returned. If the wife left to marry another, she would also have to pay a fine consisting of an additional amount equal to the dowry. If it is the husband who left his wife, he forfeits half of the dowry, and the other half is returned to him. If there are children at the time of the divorce, the dowry and the fine would go to the children.²²

¹⁷ *Id.* at 256.

¹⁸ *Id.*

¹⁹ Samuel Wiley, *The History of Marriage Legislation in the Philippines*, 20 ATENEO L.J. 23 (March 1976).

²⁰ *Id.*

²¹ Encarnacion Alzona, *Doctor T.H. Pardo de Tavera and Philippine Historiography*, 2 available at <https://www.nast.dost.gov.ph/images/pdf%20files/Publications/NAST%20Transactions/NAST%201980%20Transactions%20Volume%202/Sym%201%20Doctor%20T.H.%20Pardo%20De%20Ta%20Vera%20and%20Philippines%20Historiography%20Encarnacion%20Alzona.pdf>

²² VII Emma Helen Blair, THE PROJECT GUTENBERG EBOOK OF THE PHILIPPINE ISLANDS, 174 (2004) available at <https://www.gutenberg.org/files/13701/13701-h/13701-h.htm#d0e1500>.

The Moros also practiced divorce before Spanish colonial rule²³ and the sanctions are similar to the Tagalogs. The Moro groom forfeits the dowry if he wrongfully repudiates the wife and if it is the wife who leaves the husband, she must return the dowry. If the wife committed adultery, she must double the amount of the dowry to return.²⁴

III. Spanish Colonization

When the Spaniards ruled over the Philippines, divorce was prohibited. Only legal separation was allowed under Laws 3 and 7, Title 2, Partida IV of the *Siete Partidas* on the following grounds committed by either party:

1. Adultery;
2. Joining a religious order with the consent of the other; or
3. Becoming a heretic.²⁵

But even if the husband and wife would separate and no longer live together, their marriage is not dissolved, and they are not free to marry other persons.²⁶

IV. American Rule

When the Philippines was ceded to the Americans towards the end of the 19th century, they introduced the principles of religious freedom and separation of Church and State. As a result, political modernism entered the Philippines which led to the legalization of divorce through the passage of Act No. 2710, otherwise known as the Divorce Law on March 11, 1917.²⁷ The Supreme Court in the case of *Valdez v. Tuason*²⁸ affirmed that the Divorce Law had

²³ Carmencita Aguilar, *The Muslims in Manila Prior to Colonial Control*, 2(1) JOURNAL OF SOCIAL ISSUES IN SOUTHEAST ASIA 150 (1987).

²⁴ Charles Lobingier, *The Primitive Malay Marriage*, 12(2) AMERICAN ANTHROPOLOGIST 251-252 (1910) available at <http://www.jstor.org/stable/659953>.

²⁵ *Benedicto v. De la Rama*, 3 Phil. 34 (1903).

²⁶ Deogracias Reyes, *History of Divorce Legislation in the Philippines Since 1900*, 1(1) PHILIPPINE STUDIES 43 (1953).

²⁷ *Id.* at 44-45.

²⁸ G.R. No. 14957 (1920).

repealed entirely the legal separation provision of the *Siete Partidas*, to quote:

Comparing the propositions thus stated with the provisions of Act No. 2710, it is quite manifest that the divorce consisting of judicial separation without the dissolution of the bonds of matrimony, which was formerly granted for the adultery of either of the spouses, has been *abrogated and in its place has been substituted the absolute divorce ex vinculis matrimonii*... (Emphasis supplied.)

Under the Divorce Law of 1917, absolute divorce is allowed on two grounds, adultery on the part of the wife, and concubinage on the part of the husband.²⁹ However, it is required that the guilty party is criminally convicted by final judgment of such adultery or concubinage.³⁰ Hence, in the case of *Valdez v. Tuason*, where the husband filed a petition for divorce against his wife on the ground of adultery, the Supreme Court affirmed the dismissal of the petition by the trial court because there was no proof that the wife had been convicted of adultery.

In addition, under the Divorce Law, an action for divorce should be filed within the following prescriptive periods:

1. One (1) year from the date on which the plaintiff became cognizant of the cause;
2. Five (5) years from the date when the cause occurred; and
3. One (1) year from the effectivity of the Divorce Law of 1917, if the cause occurred before the Divorce Law took effect.

In the case of *Juarez v. Turon*,³¹ the husband had personal knowledge of the adultery of the wife in August 1924. An information for adultery was filed in January 1926 and in March 1926, a decision was rendered convicting the wife of adultery. The criminal conviction became final and executory and, subsequently, the husband filed the complaint for divorce in February 1927,

²⁹ Act No. 2710 (1917), §1.

³⁰ *Id.*, § 8.

³¹ 51 Phil. 786 (1928).

which was dismissed because it was filed more than one (1) year from the time the husband knew of his wife's adultery.

The cases of *Valdez v. Tuason* and *Juarez v. Turon* manifest the restrictive nature of the Divorce Law. In both cases, the Supreme Court denied the petitions for divorce and cited the law's policy to protect the institution of marriage.

V. Japanese Invasion and Liberation

During the Japanese invasion, the Chairman of the Philippine Executive Commission promulgated Executive Order No. 141, which repealed the restrictive Divorce Law and increased to eleven (11) the grounds for divorce, namely:³²

1. Adultery/concubinage
2. Attempt against the life of the spouse
3. Second or subsequent marriage
4. Contagious disease
5. Incurable insanity
6. Impotency
7. Criminal conviction with a penalty of six (6) years of imprisonment
8. Repeated bodily violence
9. Intentional or unjustified desertion for at least one (1) year
10. Unexplained absence for three (3) consecutive years
11. Slander by deed or gross insult

Since Executive Order No. 141 provides more grounds for divorce, it was more liberal than the Divorce Law. Taking advantage of this, a man named Justo Baptista petitioned for divorce against his wife on May 21, 1943. However, the trial court denied the petition for divorce since the grounds alleged (desertion for at least a year and slander by deed) had not been established. Upon appeal, the Supreme Court affirmed the trial court because Executive Order No. 141 was no longer in effect. With the Japanese

³² Baptista v. Castaneda, 76 Phil. 461 (1946).

invaders gone and the restoration of the Commonwealth Government, the restrictive Divorce Act was likewise restored.³³

VI. Civil Code of the Philippines

The Civil Code of the Philippines,³⁴ which took effect on August 30, 1950, did not provide for divorce.³⁵ Only legal separation was allowed on two (2) grounds:

1. Adultery on the part of the wife and concubinage on the part of the husband; and
2. Attempt by one spouse against the life of the other.³⁶

Only void or voidable marriages may be terminated to enable the spouses to remarry.³⁷ An action for declaration of nullity of a void marriage may be filed on the following grounds:

1. Those contracted under the ages of sixteen and fourteen years by the male and female respectively, even with the consent of the parents;
2. Those solemnized by any person not legally authorized to perform marriages;
3. Those solemnized without a marriage license, save marriages of exceptional character;
4. Bigamous or polygamous marriages;
5. Incestuous marriages;
6. Those where one or both contracting parties have been found guilty of the killing of the spouse of either of them; or
7. Those between stepbrothers and stepsisters, stepfathers and stepdaughters, stepmothers and stepsons, adopting father or mother and adopted, the adopted and the surviving spouse of the adopter, adopter and surviving

³³ *Id.*

³⁴ Rep. Act No. 386 (1949).

³⁵ *Medina v. Koike*, 791 Phil. 645 (2016).

³⁶ Rep. Act No. 386 (1949), Title IV.

³⁷ *Id.* art. 80-91.

spouse of adopted, and legitimate children of adopter and adopted.³⁸

Voidable marriages may be terminated through a petition for annulment on the following grounds:

1. That the party in whose behalf it is sought to have the marriage annulled was between the ages of sixteen and twenty years if male, or between the ages of fourteen and eighteen years, if female and the marriage was solemnized without the consent of the parent, guardian or person having authority over the party;
2. In a subsequent marriage where the first spouse of one of the parties had been absent for seven (7) consecutive years or believed to be dead by the present spouse, the spouse who was absent or believed to be dead was, in fact, living;
3. Either party was of unsound mind;
4. The consent of either party was obtained by fraud;
5. The consent of either party was obtained by force or intimidation; or
6. Either party was, at the time of marriage, physically incapable of entering into the married state.³⁹

VII. Muslim Code

The Muslim Code was promulgated on February 4, 1977, and took effect on May 16, 1977.⁴⁰ It recognizes divorce between Muslims as well as in mixed marriages where only the male party is a Muslim.⁴¹ The grounds for divorce under the Muslim Code are:

1. Repudiation of the wife by the husband (*talaq*);
2. Vow of continence by the husband (*ila*);
3. Injurious assimilation of the wife by the husband (*zihar*);
4. Acts of imprecation (*li'an*);
5. Redemption by the wife (*khul'*);

³⁸ *Id.*

³⁹ *Id.*art. 85.

⁴⁰ *Malaki v. People*, 914 Phil. 608 (2021).

⁴¹ *Pacasum v. Zamoranos*, 807 Phil. 783.

6. Exercise by the wife of the delegated right to repudiate (*tafwid*); or
7. Judicial decree (*faskh*).⁴²

In the case of *Zamoranos v. Pacasum*,⁴³ the husband and wife were both Muslim converts who got married in Islamic rites. Subsequently, they divorced by *talaq* and the dissolution of their marriage was confirmed by a Shari'a Circuit District Court. The Supreme Court affirmed the dissolution of their marriage and held that they may remarry.

VIII. Family Code

The Family Code,⁴⁴ which took effect on August 3, 1988, also did not allow divorce. As in the Civil Code, the Family Code allowed legal separation, but it expanded the grounds to ten (10), namely:

1. Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
 2. Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
 3. Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
 4. Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
 5. Drug addiction or habitual alcoholism of the respondent;
 6. Lesbianism or homosexuality of the respondent;
 7. Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
 8. Sexual infidelity or perversion;
 9. Attempt by the respondent against the life of the petitioner;
- or

⁴² Pres. Dec. No. 1083, art. 45 (1977).

⁴³ 665 Phil. 447 (2011).

⁴⁴ Exec. Order No. 209 (1987).

10. Abandonment of petitioner by respondent without justifiable cause for more than one year.⁴⁵

The Family Code retained declaration of nullity of a void marriage and annulment of a voidable marriage⁴⁶ as the only means to terminate marriages so that the parties could remarry.

Nevertheless, two (2) important changes related to divorce were introduced in the Family Code. These are 1.) inclusion of psychological incapacity as a ground for void marriages (Article 36),⁴⁷ and 2.) recognition and enforcement of foreign divorce in a mixed marriage between a foreign and Filipino spouse (Article 26, 2nd paragraph).⁴⁸ The provisions about psychological incapacity and recognition of foreign divorce in a mixed marriage were so contentious that the original version of the Family Code (Executive Order No. 209), which was signed into law by then President Corazon C. Aquino on July 6, 1987, had to be amended through Executive Order No. 227, which was signed into law barely two (2) weeks later on July 17, 1987, to reflect the present language of Articles 36 and 26 of the Family Code.

A. *Psychological Incapacity*

Under Article 36 of the Family Code, a marriage may be declared void based on psychological incapacity. Psychological incapacity was intended to be an alternative to divorce.⁴⁹ However,

⁴⁵ *Id.*, art. 55.

⁴⁶ *Id.*, art. 35-54.

⁴⁷ The provision reads:

“Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.”

⁴⁸ The provision reads:

“Where a marriage between a Filipino and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.”

⁴⁹ *Tan-Andal v. Andal*, 902 Phil. 596 (2021).

courts have been interpreting Article 36 of the Family Code rigidly, as stated by the Supreme Court in *Tan-Andal v. Andal*, to quote:

Because of the restrictive interpretation resulting from the application of the *Molina* guidelines, this Court pronounced in the 2009 case of *Ngo Te v. Yu-Te* that “jurisprudential doctrine has unnecessarily imposed a perspective by which psychological incapacity should be viewed,” a view that is “totally inconsistent with the way the concept was formulated.”⁵⁰ (Citations omitted.)

Moreover, there is a fundamental distinction between divorce and psychological incapacity. Under Article 36 of the Family Code, psychological incapacity must exist at the time of celebration of marriage. On the other hand, the causes for divorce may have developed after the marriage celebration.

B. Foreign Divorce in Mixed Marriages

In the second paragraph of Article 26 of the Family Code, a foreign divorce may capacitate the Filipino spouse to remarry provided the following are present:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
2. A valid divorce is obtained abroad by the foreign spouse capacitating him or her to remarry.⁵¹

As originally intended, the second paragraph of Article 26 of the Family Code applies to a situation where, at the time of the celebration of the marriage, one of the parties is a Filipino citizen and the other is a foreigner. However, the Supreme Court in *Republic v. Orbecido*⁵² expanded the applicability of this provision to cases where the spouses are both Filipino citizens at the time of the celebration of their marriage but one of them subsequently acquires foreign citizenship. Based on the Supreme Court decision

⁵⁰ *Id.*

⁵¹ *Republic v. Manalo*, 831 Phil. 33 (2018).

⁵² 509 Phil. 108 (2005).

in *Republic v. Orbecido*, Filipino citizens who later become naturalized as foreign citizens may validly obtain a divorce from their Filipino spouses.

Moreover, in *Republic v. Manalo*,⁵³ which involved a Filipina wife and a Japanese husband, the Supreme Court ruled that the second paragraph of Article 26 of the Family Code covers a situation in which it is the Filipino spouse who secured the foreign decree of divorce.

The second paragraph of Article 26 of the Family Code is intended to address the unfair situation that results when a foreigner obtains a valid divorce abroad against a Filipino citizen, leaving the latter stuck in a marriage without a spouse. According to the Supreme Court in *Republic v. Manalo*, “the Filipino spouse should not be discriminated on in his or her country if the ends of justice are to be served.”⁵⁴

However, the second paragraph of Article 26 of the Family Code applies only to Filipinos who marry foreigners or Filipinos who acquire foreign citizenship after the marriage with a fellow Filipino. But, for the vast majority of Filipino couples who cannot afford or do not want to acquire foreign citizenship, divorce is not available to them.

During the deliberations of the Joint Civil Code and Family Law Committees (Joint Committee) on July 16, 1987, (then) Undersecretary Flerida Ruth P. Romero stated that the recognition of the foreign divorce to capacitate the Filipino spouse to remarry does not apply to marriages between Filipino citizens because “only those who can afford to go abroad would be benefited.”⁵⁵

This was also the sentiment raised by the late Justice Jose B. L. Reyes during the deliberations of the Joint Committee in their meeting on July 11, 1987, as follows:

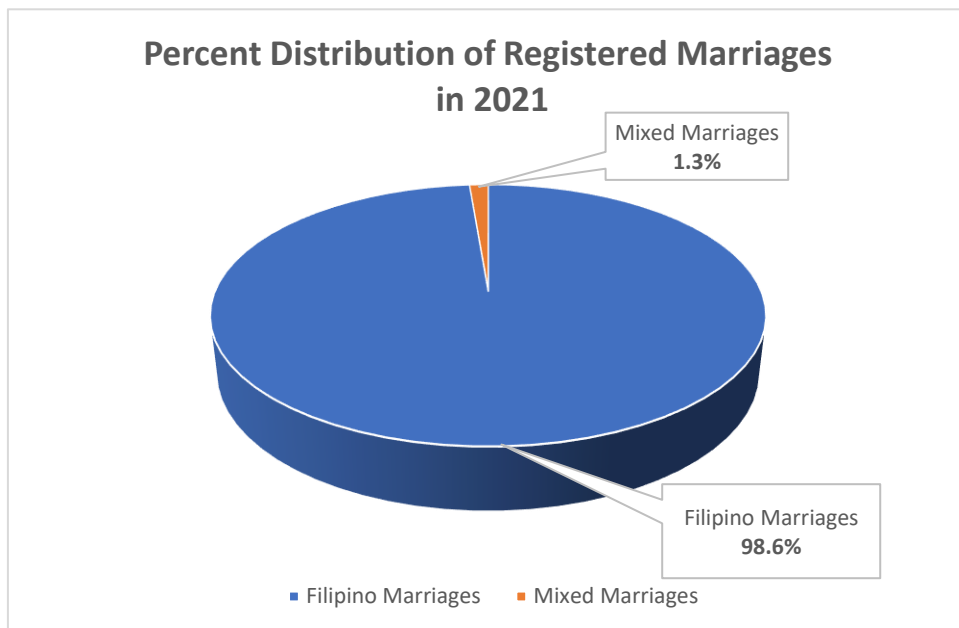
⁵³ *Republic v. Manalo*, 831 Phil. 33 (2018).

⁵⁴ *Id.*

⁵⁵ Minutes of the 188th Meeting of the Civil Code and Family Law Committees on July 16, 1987, UP Law Center 3.

Justice Reyes commented that the provision will in effect enforce a foreign divorce on the Philippines. He added that the basic problem is that the provision **favors only those who can afford to go abroad to get a divorce and discriminate against those who cannot afford to do so.**⁵⁶ (Emphasis supplied.)

Data from the PSA shows that only a small percentage of registered marriages in the Philippines are mixed marriages or marriages between a Filipino and a foreigner. In 2021, for instance, 351,869 registered marriages (98.6%) were between Filipino men and women, while 4,787 registered marriages (1.3%) were mixed marriages or between Filipinos and foreign nationals.⁵⁷



⁵⁶ Minutes of the 187th Meeting of the Civil Code and Family Law Committees on July 11, 1987, UP Law Center 14.

⁵⁷ Philippine Statistics Authority, 2021 Vital Statistics Report: Marriage Statistics xxxvi (2023) *available at* [library.psa.gov.ph/kohaimages/PSA/ebookreader/viewebook.html?out=1&d=pdf/d5d34947e00bcfe69549c751f1b6e34d_2021_VITAL_STATISTICS_REPORT - MARRIAGE.pdf&speech=1&ref=https://library.psa.gov.ph/cgi-bin/koha/opac-detail.pl?biblionumber=29552&bibliionumber=29552#book/39](https://library.psa.gov.ph/kohaimages/PSA/ebookreader/viewebook.html?out=1&d=pdf/d5d34947e00bcfe69549c751f1b6e34d_2021_VITAL_STATISTICS_REPORT_-_MARRIAGE.pdf&speech=1&ref=https://library.psa.gov.ph/cgi-bin/koha/opac-detail.pl?biblionumber=29552&bibliionumber=29552#book/39)

This shows that the vast majority of Filipinos who marry fellow Filipinos are discriminated against and are put at a disadvantage in their own land. They are prohibited from remarrying even if they can secure a foreign divorce, which will not be recognized under the second paragraph of Article 26 of the Family Code.

IX. Marriage and Divorce Among Indigenous Peoples

The Civil Code and Family Code both grant validity to marriages between Muslims or other ethnic and cultural communities that are performed following their customs, rites, or practices. Such marriages are valid even without a marriage license.⁵⁸

For indigenous peoples, the Implementing Rules and Regulations (IRR) of the Indigenous Peoples' Rights Act of 1997 (Republic Act No. 8371) recognizes marriages performed following customary laws, rites, traditions, and practices as valid. Moreover, the IRR provides that the testimony of authorized community elders/authorities of traditional socio-political structures shall be recognized as evidence of marriage for registration purposes.⁵⁹

The table below contains PSA data showing that registered marriages from 2018 to 2021 include thousands which were performed following tribal ceremonies.

Year	Total No. of Marriages	Civil Ceremony	Roman Catholic	Other Religious Rites	Muslim Tradition	Tribal Ceremony
2021 ⁶⁰	356,839	141,183	114,660	94,146	3,747	3,103
2020 ⁶¹	240,775	119,903	67,233	48,155	3,212	2,272
2019 ⁶²	431,972	166,691	156,481	98,959	5,993	3,848
2018 ⁶³	449,169	171,423	164,588	103,084	6,200	3,810

⁶⁰ Philippine Statistics Authority, *Registered Marriages in the Philippines: 2021*, Statistical Tables (2023) available at <https://psa.gov.ph/statistics/vital-statistics/node/1684041352>.

⁶¹ Philippine Statistics Authority, *Registered Marriages in the Philippines, 2020*, Statistical Tables (2022) available at <https://psa.gov.ph/statistics/vital-statistics/node/165610>.

But, while the law recognizes the validity of tribal marriages, the divorce of members of indigenous tribes is not considered valid. In the case of *Anaban v. Anaban-Alfiler*,⁶⁴ the Supreme Court ruled on the validity of a divorce between members of the Ibaloi tribe which was approved by the council of tribe elders. According to the Supreme Court:

Clearly, both the old Civil Code and the IPRA-IRR provisions limited the State recognition to "*marriages performed*" in accordance with customary laws, rites, traditions, and practices. There is *no mention* of the recognition of dissolution of marriage in accordance with the IP's customs.

On this score, we emphasize that Muslim customs, rites, and practices are the only non-Christian customary law recognized by the State through the enactment of Presidential Decree No. 1083 otherwise known as the Code of Muslim Personal Laws of the Philippines. The same in fact bears an entire chapter exclusively dedicated to divorce.⁶⁵ (Citation omitted.)

Since the divorce of the members of the Ibaloi tribe was not recognized as valid in *Anaban v. Anaban-Alfiler*, the subsequent marriage of the husband with another woman was declared as bigamous and the children borne out of such subsequent marriage were considered illegitimate children.

Hence, we have an absurd situation in which tribal customs are applied in determining the validity of a marriage between

⁶⁰ Philippine Statistics Authority, *Registered Marriages in the Philippines: 2021*, Statistical Tables (2023) available at <https://psa.gov.ph/statistics/vital-statistics/node/1684041352>.

⁶¹ Philippine Statistics Authority, *Registered Marriages in the Philippines, 2020*, Statistical Tables (2022) available at <https://psa.gov.ph/statistics/vital-statistics/node/165610>.

⁶² Philippine Statistics Authority, *2019 Philippine Marriage Statistics*, Statistical Tables (2021) available at <https://psa.gov.ph/statistics/vital-statistics/node/163753>.

⁶³ Philippine Statistics Authority, *Marriages in the Philippines, 2018*, Statistical Tables (2019) available at <https://psa.gov.ph/statistics/vital-statistics/node/144732>.

⁶⁴ 898 Phil. 421 (2021).

⁶⁵ *Anaban v. Anaban-Alfiler*, 898 Phil. 421 (2021).

members of indigenous tribes, but the Family Code governs the dissolution of the same marriage. Not only is this situation contrary to the state policy under the Indigenous Peoples' Rights Act of 1997 to protect the rights of the indigenous peoples to preserve and develop their cultures, but it also discriminates against non-Muslim indigenous tribes.

X. Conclusion

History shows that divorce was allowed during the pre-colonial period and American and Japanese rule. Even under present laws, divorce is recognized but only for Muslim Filipinos or Filipinos who marry foreigners or become foreigners themselves.

This legal milieu shows the discrimination against non-Muslim Filipino spouses who cannot afford to secure foreign citizenship, and subsequently, foreign decree of divorce. The limited recognition of divorce in the Philippines has resulted in the discrimination of most Filipino spouses in their own land. If divorce were allowed for all in the Philippines, Filipino spouses who are not financially capable of securing foreign citizenship and divorce would not have to be stuck in their marriage.

Now is the time to do away with this undue restriction on the freedom to remarry for Filipino couples. Divorce should be brought back for everyone's benefit in the Philippines.

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