

Ending Marital Iniquities and Revisiting the Issues on Divorce: Should it be Finally Allowed in the Philippines?

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I. INTRODUCTION

Ideally, especially in a conservative country like the Philippines, couples who get married are to have children, build stable families and stay together until the end. Such a setting has been and still is the common Filipino concept of a family life.

However, some families experience a different reality. It is undeniable that not all marriages remain a permanent union between husband and wife. This situation is not at all novel and the law provides several remedies to respond to particular marital tribulations falling within its contemplation. But for years now, the Philippine legislature has consistently declined to adopt absolute divorce as another remedy for dysfunctional marriages despite several attempts by some legislators. Expectedly, religious influence in a predominantly Catholic nation plays a factor why there is resistance against a divorce law. In a pastoral letter dated 13 September 1973, then Archbishop of Manila Jaime L. Sin espoused that divorce should not be legalized primarily for the welfare of the children. He said that:

[b]ringing up a baby is a tremendous responsibility. And the mother cannot do it alone. She cannot be expected to discharge her duties as a mother, and still go out and earn a living for herself and the baby. She must have help, and it is the husband who must help her by going out and working. This explains why, among human beings the stability of marriage is necessary. It is necessary for the proper upbringing of the children, for their emotional stability.¹

Together with Malta, the Philippines is the only other country in the world that has not legalized absolute divorce.² What Philippine law

1. Jaime L. Sin, *The Indissolubility of Marriage is Rooted in the Natural Order*, http://www.rcam.org/library/pastoral_statements/1974-1979/0005.html (last accessed Aug. 19, 2007); See also, Commission on Human Rights, Position Paper on Senate Bill No. 782 and House Bill No. 878, www.chr.gov.ph/main%20pages/about%20chr/position%20papers/abthr_pos001-002.htm (last accessed Aug. 4, 2007). The Commission on Human Rights expressed its stern opposition to proposed divorce bills citing constitutional provisions, the Family Code, and even natural law in claiming that divorce "destroys the very concept of family as an inviolable social institution." The Commission added that regardless of one's religion, divorce and giving the spouses the option to remarry is against natural law as it traumatizes the children who are often torn between their parents.
2. Dee Dicen Hunt & Cora Sta. Anna-Gatbonton, *Filipino Women and Sexual Violence: Speaking Out and Providing Services*, <http://www.iwss.org.au/public/forumpapers/philippines.pdf> (last accessed Aug. 18, 2007).

recognizes is relative divorce which only suspends marital relations, as opposed to absolute divorce which dissolves the marital bond of a valid marriage for causes arising after its celebration.³

Undaunted by stern opposition, Gabriela representative Liza Maza filed House Bill No. 4016⁴ to once again open the issue of divorce to debate in the legislature. The bill seeks to amend articles 55 to 66 of the Family Code, making the grounds for legal separation as grounds for divorce. The bill claims to be in harmony with the State policies of strengthening marriages and families, guaranteeing respect for human rights and human dignity, as well as the equality of men and women.⁵

Taking off from the latest proposed legislation and going beyond the arguments against divorce, a scrutinizing look at current marital realities and the available remedies should be made vis-à-vis the goal of protecting marriages and families. Considering that marital violence and adultery (herein referred to as "marital iniquities") are the more common causes of marital breakdown, that the number of petitions for declaration of nullity of marriage filed in courts are staggering, that the Filipino culture is constantly evolving — more particularly, the power relations between spouses, among others — there is a need to re-evaluate the interests sought to be safeguarded by the law which are those of the husband and the wife, those of the children, and of the family in general. At present, is ruling out divorce adhering to the constitutional and statutory mandate to protect marriage in the way it was intended? Should spouses stay together even if the marriage is marred by constant conflict, violence or deceit brought about marital iniquities?

Through these, the arguments against divorce are sought to be reconsidered and its necessity and possible bases in law assessed. After all, the law, as a tool, should continuously evolve in a way that recognizes contemporary situations in society. Recent Supreme Court decisions on marriage-related cases are a testament that the function of the law is to be reflective of and responsive to marital situations, even if they may not be the kind of marriages or families society sanctifies.

3. MELENCIO STA. MARIA JR., *PERSONS AND FAMILY RELATIONS LAW* 326 (2004 ed.).

4. An Act Introducing Divorce in the Philippines, Amending for the Purpose of Title II, Articles 55 to 66 Inclusive and Article 26 of the Family Code of the Philippines, and Repealing Article 36 of the Same Code, and for Other Purposes, House Bill No. 4016, 13th Cong, 1st Sess (2005).

5. *Id.* Explanatory Note.

II. HISTORY OF DIVORCE IN THE PHILIPPINES PRIOR TO THE FAMILY CODE

A. Pre-Spanish Period

Divorce as a custom was accepted in the country prior to the arrival of the Spaniards. Spanish writers described the practice of giving dowry as a significant aspect of divorce. As one Jesuit writer notes:

If the cause of the divorce is unjust, and the man parts from his wife, he loses the dowry; if it is she who leaves him she must restore the dowry to him. But if the man has just cause for divorce and leaves her, his dowry must be restored to him; if in such case, the wife leaves him she retains the dowry.⁶

The adultery of the wife is sufficient ground for the husband to divorce her. On the other hand, there are limited grounds for a woman to divorce her husband. In case the spouses have children, they were equally divided between the father and the mother.⁷

B. Under the Spanish Regime

When the conquerors arrived in 1521, the subject of marriage was placed largely under the Church's jurisdiction. The Catholic Church espoused the doctrine that marriage, once validly contracted, is indissoluble, except by death.⁸ However, under the *Siete Partidas*, relative divorce (legal separation) or *mensa et thoro* was allowed.⁹ It provided:

6. F. C. FISHER, *A MONOGRAPH ON MARRIAGE AND DIVORCE IN THE PHILIPPINES* 8 (1926) (citing FR. PEDRO CHIRINO, S.J., *RELACION DE LAS ISLAS FILIPINAS* (1604)).

7. *Id.*

8. *Id.*

9. *Id.* Article 105 of the Code provided:

The legal grounds for divorce are:

- a) The adultery of the wife in every case, and of the husband when public scandal or disgrace to the wife results therefrom.
- b) Personal violence, or grossly abusive or insulting language or conduct.
- c) Violence inflicted by the husband upon the wife in order to force her to change her religion.
- d) The proposal of the husband to prostitute the wife.
- e) The attempt of the husband or wife to corrupt their sons or to prostitute their daughters, and connivance at their corruption or prostitution.
- f) The sentence of the husband or wife to penalty of imprisonment for life.

Yet with all this, they may separate, if one of them, commit the sin of adultery, or join any religious order, with the consent of the other, after they have known each other carnally. And notwithstanding they separate for one of these causes, no longer to live together, yet the marriage is not dissolved on that account.¹⁰

So great is the tie and force of marriage that when legally contracted it cannot be dissolved, notwithstanding one of the parties should turn heretic of Jew or Moor or should commit adultery. Nevertheless, for any of these causes they may be separated by a judgment of the church, so as to live no longer together, nor to have any carnal connection with one another, according to what is said in the title on the clergy, in the law which begins with the words "otorgondose algunos."¹¹

It was the observation back then that the impossibility of obtaining an absolute divorce resulted to the formation of illicit relations. One writer observed:

Some marriages are bound to result disastrously; and a few healthy and vigorous men or women are inclined to resign themselves to a life of continence because their first matrimonial venture turns out to be a failure. The law would not permit such people to remarry unless released by death from their first marriage; the natural and inevitable consequence was the creation of illicit relations. Cases of desertion are extremely common here. It frequently happens that foreigners married to Filipino women leave the country and disappear. Their abandoned wives cannot remarry, as mere desertion is not now and never has been, in this country, a ground for divorce, and so many of them become mistresses and add to the swarm of illegitimate children.¹²

C. The First Civil Divorce Law

Because of the pitiful condition of wives being habitually maltreated by their husbands or being abandoned,¹³ the Philippine Legislature during the American period passed Act No. 2710 allowing absolute divorce. The act provided:

Sec.1. A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband, committed in any of the forms described in article four hundred and thirty-seven of the Penal Code.

10. Partida IV (3).

11. Partida IV (7).

12. FISHER, *supra* note 6, at 18-19.

13. *Id.*

Sec. 8. A divorce shall not be granted without the guilt of the defendant being established by final sentence in a criminal action.

Sec. 9. The decree of divorce shall dissolve the community of property as soon as such decree becomes final, but shall not dissolve the bonds of matrimony until one year thereafter.¹⁴

Thus, it can be seen that not only were the grounds for divorce limited but also that the decree can only be obtained if there is previous criminal conviction of the defendant. After the divorce becomes final, the parties were free to remarry.

D. Executive Order No. 141

Act No. 2710 was repealed during the Japanese occupation by Executive Order No. 141. The said law provided nine grounds for divorce which included adultery of the wife or concubinage on the part of the husband, incurable insanity, and contagious disease among others.¹⁵ Upon the Philippine liberation, General Douglas MacArthur declared the laws under the Japanese government as null and void, and thus, E.O. 141 was repealed, and Act No. 2710 providing for relative divorce was restored.¹⁶

E. Civil Code of the Philippines

The granting of complete autonomy to the Philippines brought about the need to revise the Civil Code then in effect which was that inherited from the Spaniards. The law approving the new Code was Republic Act No. 386 and the Code itself took effect on 1 July 1950.

Among the provisions therein that was largely contested was the introduction of legal separation. Dr. Jorge Bocobo who was then presiding

14. Act No. 2710, Mar. 11, 1917.

15. The other grounds for divorce under E.O. 141 were:

- a. Attempt by one spouse against the life of the other;
- b. A second or subsequent marriage by either spouse before the former marriage has been legally dissolved;
- c. Impotence;
- d. Intentional or unjustified desertion for one year;
- e. Unexplained absence for three years;
- f. Repeated bodily violence of such nature that the spouses cannot continue living together without endangering the lives of both or one of them; and
- g. Slander by deed or gross insult to such an extent as to make further living together impracticable.

16. I ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 311 (1990).

over the Code Commission, adamantly resisted the proposal. But with the united stand of the Philippine Congress and the Catholic population, absolute divorce was excluded from the proposed code and legal separation incorporated.¹⁷

The provision on legal separation in the Civil Code¹⁸ provided only two grounds and prior conviction for any of the offenses was not required. It provided:

Art. 97. A petition for legal separation may be filed:

1. For adultery on the part of the wife and for concubinage on the part of the husband as defined in the Penal Code; or
2. An attempt by one spouse against the life of the other.¹⁹

Admittedly, under the Civil Code, the disadvantaged position of women was observable. For a wife to be able to obtain a decree of legal separation, concubinage²⁰ on the part of the husband had to be proved and sexual intercourse not falling under its definition will not suffice. On the other hand, a husband may file for legal separation on the ground of the wife's adultery²¹ which means that a single act of intercourse with a man other than her husband may constitute a ground. Hence, in the Family Code, the

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

18. An Act to Ordain and Institute the Civil Code of the Philippine [NEW CIVIL CODE], Republic Act No. 386 (1950).

19. NEW CIVIL CODE, art. 97.

20. REVISED PENAL CODE, art. 334:

Art. 334. *Concubinage* – Any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or who shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

The concubine shall suffer the penalty of *destierro*.

21. REVISED PENAL CODE, art. 333:

Art. 333. *Who are guilty of adultery*. – Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the married, even if the marriage be subsequently declared void.

Adultery shall be punished by *prision correccional* in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed.

ground of sexual infidelity was substituted to equalize the position of the husband and the wife.²²

III. MARRIAGE AND FAMILY: FILIPINO STYLE

*The family is basic to the life of Filipinos. It is the center of their universe. Much of what they do, what they think, and what they idealize, among others, are first learned within the narrow confines of the family before these are enriched, modified, or frustrated by other institutions in the larger community.*²³

Settling down and founding a family is the norm in Philippine society. When one reaches marrying age, marriage is viewed as the culmination of carefree living which is then replaced by the stability and security of family life.²⁴ Families are seen as the pillars of a decent society, and marriage in turn, as the cornerstone of strong families.

This chapter will explore the traditional marital relations in the Philippines as well as the different laws on marriage and family enacted to protect these esteemed institutions.

A. Marriage and Family Under Philippine Laws

1. The Constitution

The adoption of three different constitutions in the Philippines shows the evolving policy of the State towards marriage and the family, as well as the primacy it accords to them.

The 1935 Constitution contained no provision on marriage and family. It was only in the 1973 Constitution that a provision on the family found its way in the supreme law of the land. It provided:

Sec. 4. The State shall strengthen the family as a basic social institution. The natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the government.²⁵

The adoption of the 1987 Constitution not only retained a provision in the Declaration of Principles and State Policies on the family²⁶ but also

22. TOLENTINO, *supra* note 16, at 322.

23. F. LANDA JOCANO, *FILIPINO SOCIAL ORGANIZATION* 11 (1998).

24. See, TAMARLANE R. LANA, O.P., ANA MA. A. OCAMPO, THELMA A. SANTOS, MARY JOYCE O. LAIG, *MARRIAGE AND FAMILY: A LIFE OF LOVE AND COMMITMENT* 3 (2004).

25. 1973 PHIL. CONST. art II, § 4. (superseded 1987)

26. PHIL. CONST. art II, § 12. It provides:

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall

incorporated a separate article on the promotion of family rights. Further, a specific provision on marriage was also enshrined therein. The article entitled "The Family" reads in part:

Sec. 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its social development.²⁷

Sec. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.²⁸

When the 1987 Constitution was being formulated, the Civil Code was already in effect and had a chapter devoted on "The Family as an Institution." In spite of this, the commissioners intended to emphasize the primacy of the family; thus, the resulting article. The inclusion of a separate article on the family was deemed necessary by the Constitutional Commission as explained by Commissioner Maria Teresa F. Nieva in her sponsorship remarks. She elucidated that, in some foreign countries, the family as a basic institution has ceased to be the State's primary interest. But as the Filipino culture is centered on the family, she advocated that the core values of the Filipino family can be the country's enduring contribution to the rest of the world, and thus, the family deserves the State's full protection.²⁹ She said:

While history affirms the family's indispensable role as primary educator, economic provider, cultural mediator and spiritual formator, the rights of the family are often ignored and even undermined by legal, social and economic structures and programs.

Society and the State are therefore, called upon to protect the rights of families to participate, in cooperation with other families in concerted action in defense of its rights and responsibilities ... As we draft our new Constitution, we have the singular opportunity and responsibility to explicate our commitment to the Filipino family through safeguarding its inalienable rights and enhancing its total development in all spheres of life - social, economic, political and spiritual.³⁰

2. The Family Code of the Philippines

equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and development of moral character shall receive support of the government.

27. PHIL. CONST. art XV, § 1.

28. PHIL. CONST. art XV, § 2.

29. V RECCRD OF THE 1986 CONSTITUTIONAL COMMISSION 36.

30. *Id.* at 37.

Executive Order No. 209³¹ was signed into law on 6 July 1987. Prior to that, the Civil Code of the Philippines was the governing law on marriage and the family. The enactment of a new law was necessitated by the changes and developments which have occurred since the adoption of the Civil Code some decades before the Family Code.³²

2.1. Marriage

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 the law and not subject to stipulation, except that marriage settlement may fix the property relations during the marriage within the limits provided by this Code.³³

It is said that the term marriage invokes different meanings. First, marriage refers to the procedure that binds two people as husband and wife. It refers to the act uniting a man and woman who then are bound to discharge their duties as spouses.³⁴ Their act of becoming husband and wife results into a change in their status which becomes the State's interest. In this sense, marriage is considered a social institution — the foundation of the family and domestic relations which are of "utmost importance to civilization and social progress."³⁵ Thus, the Family Code speaks of the law's role on the consequences, nature and incidents of marriage because of marriage's impact on family and society.

The Code also describes marriage as a special contract of permanent union. It differs from an ordinary contract in the following respects:

1. Ordinary contracts may be entered into by any number of persons, whether the same or different sex, while marriage can be entered into only by one man or woman;
2. In ordinary contracts, the agreement of the parties have the force of law between them while in marriage the law fixes the right and duties of parties;
3. Ordinary contracts can be terminated by mutual agreement of the parties, while marriage cannot be so terminated; neither can it be terminated even though one of the parties subsequently becomes incapable of performing his part; and

31. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1987).

32. FAMILY CODE, Whereas Clause.

33. *Id.* art. 1.

34. TOLENTINO, *supra* note 16, at 220.

35. *Id.* at 221.

4. Breach of ordinary contracts gives rise to an action for damages, while breach of obligations of a husband and wife does not give rise to such action ...³⁶

2.2. The Family

The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.³⁷

B. The Traditional Husband and Wife Relations

Marriage may be viewed as a contract over which the State takes particular interest in, but it is equally important to consider that marriage is a union between two people. And as in any other relationship, the marriage of a husband and wife has its own power structure.

Definitely, the Filipino wife has influence in the family but she possesses authority less than that of her husband.³⁸ Male dominance as household head is evidenced by censuses which show that as long as both spouses are present, it most likely that it is the husband who heads the family.³⁹ The patriarchal character of the family developed during the Spanish regime during which male dominance became the norm. Hence, it became socially acceptable for the wife to subordinate herself to her husband and to refer to him as the authority figure in the family.⁴⁰

The wife, being more relationship-oriented, is more dependent on the marriage and is seen as the one responsible in keeping the marriage intact.⁴¹ It has been observed that:

Our culture holds the woman personally responsible for the quality of home and family life; when the household isn't running well, the woman must be incompetent. When the husband strays, the wife must have been inadequate. A nag, most likely. When the children are not well-behaved, the mother must have neglected them. In our culture, family failure is the woman's personal failure.⁴²

36. *Id.* at 223.

37. FAMILY CODE, art. 149.

38. BELEN T. MEDINA, THE FILIPINO FAMILY 173 (2001 ed.) [hereinafter MEDINA, FILIPINO FAMILY].

39. *Id.* at 171.

40. *Id.*

41. *Id.* at 173.

42. Ted Gonzales, S.J., *The Filipino Context of Infidelity and Resilience*, <http://www.eapi.admu.edu.ph/eapro03/gonzales.htm> (last accessed Jan. 4, 2008) (citing McCann-Erickson National Women's Study, 1996).

Generally, the wife is also more economically-dependent on her husband and not the other way around. Her earnings, if she is also employed, is only to supplement her husband's income. And notwithstanding a job outside the home, household management is a task she must still attend to. It is a responsibility which is "assumed and expected to be mainly hers."⁴³ Research revealed that generally, husbands are not amenable to switching roles or becoming "house-husbands" as this is contrary to the *macho* image of being a breadwinner.⁴⁴

IV. MARITAL INIQUITIES AS MARITAL REALITIES

Though the Philippines may be considered a conservative country whose values are familial in nature, this certainly does not guarantee that intact marriages are always made of strong and stable partnerships between spouses. It has been asked whether it is logical to conclude that since a majority of Filipino families stay together, the bond between the husband and wife is necessarily a strong one.⁴⁵ The query was answered in the negative, explaining that spouses may only be held together by external compulsion rather than internal motivation.⁴⁶

Those whose marriages become intolerable look for a way out. According to the Office of the Clerk of Court of Quezon City, 75-80 percent of cases filed in their family courts per year are for petitions of nullity of marriage. In addition, the records of the Office of the Solicitor General show a continuous increase in the petitions filed from 2001 until present.

In a study involving petitioners in such nullity cases, the most common reasons given by the petitioners can generally be categorized into the following: 1) adultery and desertion; 2) substance abuse (drugs and alcohol) without, or usually with verbal or physical/sexual abuse; 3) immaturity; 4) conflicts about in-laws and finances; 5) psychiatric disorder/neurosis/psychosis and/or 6) sexual dysfunction.⁴⁷

A closer look into the most cited reasons — adultery and physical abuse will reveal the marital iniquities that the victim spouse endures as well as the detrimental effects it brings to the whole family. These two acts are referred to as "marital iniquities" not only because of their devastating impact, but

43. MEDINA, FILIPINO FAMILY, *supra* note 38, at 173.

44. BELEN T. MEDINA, ISSUES RELATING TO FILIPINO MARRIAGE AND FAMILY, IN THE FILIPINO FAMILY, A SPECTRUM OF VIEWS AND ISSUES 29 (Aurora Perez ed., 1995) [hereinafter MEDINA, ISSUES].

45. Frank Lynch, *The Conjugal Bond Where the Philippines Charges*, 8 Philippine Sociological Review, 49-50 (1960).

46. *Id.*

47. NATIVIDAD A. DAYAN, ESTRELLA T. TIONGSON-MAGNO, MARIA CARIDAD H. TARROJA, MARRIAGES MADE ON EARTH 39 (2001).

mostly because these acts reveal the perpetrator-spouse's perceived superiority over their partner,⁴⁸ thus, their conduct contrary to their marital vows and obligations. Although the law mandates that the husband and the wife are "obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support," some spouses have to live in constant threat, deceit and abuse.

A. Physical Abuse

My husband of twenty years was a perfect husband and father until he took to drinking five years ago. Now he refuses to work and beats the children and me everyday. He has left me several times for other women but he keeps coming back because he says I am his wife and he has every right to do what he wants with me. He has become a beast; he rapes me every so often that I tremble at the sight of him. What can I do? I want to get out of this miserable situation soon or I'll lose my mind like my mother and her mother before her.

I want to begin a new life for myself and for children and especially for my daughters. But is a new life possible if I don't get out of this hell?⁴⁹

The Bureau of Women's Welfare of the Department of Social Welfare and Development documented 850 cases of spousal abuse in 1991.⁵⁰ The numbers increased to a staggering 7,850 cases of wife battering in 1997.⁵¹ On the whole, 65 percent of the cases of violence against women were caused by their husbands or male partners.⁵² Another report on 30 battered wives confirmed that alcohol and drug use contributed to their husband's abusive behavior.⁵³

These figures may even be an imprecise representation of the true state of spousal abuse in the country. Surveys likely underestimate the gravity of violence in intimate relationships because of the ambivalence of the victims to relate their experiences.⁵⁴ Women are hindered by shame, self-blame, blind loyalty to the perpetrator and fear.

48. See, MEDINA, FILIPINO FAMILY *supra* note 38, at 171; Marianne G. Alano, *Infidelity: The Dynamics of the Querida System in the Philippines* 7 (1995) (Dissertation, Faculty of the Graduate School, Ateneo de Manila University).

49. Patricia Sarenas, *A Philippine Law on Divorce*, in A Forum on Divorce and Family Violence: 'til death do us part? (2000) (citing the statement of a peasant woman).

50. *Id.*

51. *Id.*

52. *Id.*

53. Women's Crisis Center, *Kape, Incest and Wife Battering: A WCC Report*, in *Studies on Family Violence* 11 (1998).

54. Rosena D. Sanchez and Lourdesita Sobrevega-Chan, *Women and Men's Perspective on Wife Battering*, in *Studies on Family Violence* 6 (1998).

Cultural norms play a part in the perpetration of violence between spouses. Research shows that in many cultures, women are "trained to accept physical and emotional chastisement as part of the husband's prerogative, making them less likely to identify themselves as victims of abuse."⁵⁵ Although it is not absolutely true that it is only the women who experience physical abuse in marital relationships, repeated domestic violence is overwhelmingly initiated by men and inflicted on women.⁵⁶

A study involving 200 wives and 200 husbands in rural and urban communities in the Philippines revealed that the men were more open to talk about themselves as batterers as proof that they are the ones who wield the power in their relationship.⁵⁷ The husbands admitted to beating their wives when they have done something wrong or when they fail to perform traditional gender roles.⁵⁸ They perceive that anger and aggression are acceptable behaviors for men in dealing with marital conflict.⁵⁹

The outlook exhibited by the men in this particular study demonstrates a patriarchal attitude which is a vestige of the Philippines' subjugation by the Spaniards. During the colonial period, the position of males in society and in the family dominated those of the females. The wives' subservience towards the husband as the authority in the family was deeply ingrained as the social norm.⁶⁰ Such expectation from the wife extends to the obligation to keep the marriage intact. Despite abuse and exploitation, a traditional Filipina, will endure it, hoping that her husband will eventually change.⁶¹

Physical abuse has various detrimental effects to the victim. Aside from the bodily pain that the victim endures which may include deep lacerations and wounds due to hacking, stabbing or gunshots, bruises, contusions, hematomas and burns, among others, a victim's mental and emotional health is also compromised. A victim develops fears, anxiety, phobias, sleeping disorders, shame, guilt, and loss of self-esteem.⁶² Another study conducted by John Hopkins revealed that abused women are also at a higher risk of

55. *Id.*

56. Carolina Ruiz-Austria, *Wife Battery and Psychological Incapacity Under Article 36 of the Family Code: Issues in Feminist Legal Advocacy* at http://www.geocities.com/women_lead/newsletter3.html (last accessed Jan. 4, 2008).

57. Sanchez, *supra* note 54 at 7.

58. *Id.*

59. *Id.* (citing Barbara Lent, *Reports on Wife Assault*, Ontario Medical Association 10 (1991)).

60. MEDINA, FILIPINO FAMILY *supra* note 38, at 171.

61. *Id.* at 173.

62. WCC Report, *supra* note 53, at 6.

miscarriages, stillbirths and infant deaths and their children are more likely to be malnourished.⁶³

Domestic violence also affects the parenting capability of a victim. A physically abused parent may have difficulty nurturing their children due to depression or preoccupation with violence. They may be irritable, numb or emotionally withdrawn. They may also become violent towards their children. Domestic violence results into a parent becoming ill-equipped to attend to the children's basic needs.⁶⁴

On the other hand, children's exposure to physical abuse, though they may not themselves be victims may also lead to psychological distress. They are forced to grow up faster than usual and to take on responsibilities at home. They also experience isolation from other children as normal activities such as having friends over at the house can be an impossibility. Their eating and sleeping patterns are affected, as well as their academic performance in school. They may also develop behavioral problems such as violent outbursts or aggression.⁶⁵ Children whose homes are a violent environment are also very likely to have violent homes in the future. Studies show that 60-80 percent of batterers come from homes where domestic violence occur.⁶⁶

B. Marital Infidelity

My husband has been sleeping around for almost two years now. Our relationship can be compared to a seesaw. It is a never-ending cycle of unkept promises, emotional and psychological games. Though he does not physically hurt me, he tortures me in a different way. -Liana⁶⁷

Like wife battering, marital infidelity is also a common cause for the separation of spouses. In the Filipino culture, infidelities may range from casual relationships to having a kept mistress or paramour.⁶⁸ And although a

63. Domestic Violence: An Overview, at <http://www.findcounseling.com/journal/domestic-violence/domestic-violence-effects.html> (last accessed Jan. 4, 2008).

64. *Id.*

65. *Id.*

66. Edward W. Gondolf and Ellen R. Fisher, *Wife Battering, in Case Studies in Family Violence* 282 (Robert T. Ammerman, Michel Hersen eds., 1991).

67. Marites Villacarlos-Berba, *Marital infidelity is domestic abuse*, *Phil. Star*, Oct. 15, 2000, at L-14.

68. GONZALES S.J., *supra* note 42.

majority of Filipinos disapprove of extramarital relations,⁶⁹ wives still deem it as the family's number one stressor.⁷⁰

Marital infidelity appears to be a male-gender phenomenon in the Philippines.⁷¹ In a nationwide study of 200 subjects, 24 percent of the participants reported that their fathers had an affair but none of the respondents admitted that their mothers had extramarital relations⁷².

Unfaithful husbands, just like physically abusive spouses, justify their infidelity by resorting to traditional gender roles. They feel that once they fulfill their obligation of providing for their families, their extramarital activities should not be an issue.⁷³ For them, "[S]ex outside of marriage is appropriate and extramarital relations are okay should one be able to afford it and/or provided the material needs of the legitimate family are met."⁷⁴

Infidelity also illustrates the premium that male spouses place on their *pagkalalaki* or machismo. It has been written that:

This complex imposes on the man a repertoire of behaviors to prove his "inherent" superiority over women. This includes pride in his prowess as seen in his sexual pursuits and number of offspring as primary gauge. To avoid being teased as *pundido* (if his wife does not conceive), the Filipino male resorts to having children with other women, usually engaging in *panganay* (begetting a first-born child from different women) which he is proud of because *may magdadala ng apelyido* (somebody would continue his family lineage).⁷⁵

However, even if this is how husbands view infidelity, they take a different stand when it is their wives who are guilty of indiscretion. A husband who carries on an affair is not despised but a wife who does the same is condemned.⁷⁶

69. Linda Luz Guerrero, *The Filipino Family, Gender Roles and Other Women's Issues: The 1994 ISSP Survey Q.C. Social Weather Stations* (1995). 88% of 1200 respondents disapproved of extramarital relations.

70. GONZALES S.J., *supra* note 42 (citing MARIA LOURDES ARELLANO CARANDANG, *FILIPINO CHILDREN UNDER STRESS* (1987)).

71. *Id.*

72. *Id.*

73. *Id.* (citing MARIA CONCEPCION LIWAG, ALMA DELA CRUZ, MA. ELIZABETH MACAPAGAL, *HOW WE RAISE OUR DAUGHTERS AND SONS: CHILD-REARING AND GENDER SOCIALIZATION IN THE PHILIPPINES* (1997)).

74. *Id.*

75. Alano, *supra* note 48, at 7.

76. MEDINA, *FILIPINO FAMILY*, *supra* note 38, at 174.

Marital infidelity has been likened to domestic abuse. Instead of inflicting apparent wounds and bruises, marital infidelity brings about emotional and psychological abuse.⁷⁷ Thus:

Being unfaithful to one's partner is abusive because the psychological results of emotional pain and the trauma can be devastating or even more harmful than a violent physical attack. It results in humiliation, hurt rejection and loss for the injured partner since it attacks the person's self-worth and ego.

Those who stick with partners who are unfaithful often display the same psychological and social symptoms exhibited by victims of systematic abuse. They have this feeling of deep personal suffering, low self-esteem and a sense of worthlessness. They feel a lack of control over their lives. A strong dependency on the betraying partner and a need for his approval is likely to exhibit itself. They begin to have a distorted sense of reality in which they begin to believe that they had caused the battering or the unfaithfulness of their partner.⁷⁸

And what do children have to say about the indiscretions committed by their fathers? In the same survey by Alano, children, one of whose parents has been unfaithful, see that it is a reasonable cause for separation.⁷⁹ They are conscious of the undeserved burden it places on the wife and children. Compared to respondents who have not experienced being affected by an affair, they are more resolute that such indiscretion does not help the marriage.⁸⁰

Children who are exposed to a parent's infidelity may also be affected behaviorally or psychologically by the affair. They naturally learn about relationships from their parents and thus, they develop views and attitudes from what they have been exposed to. Generally, children see their parents' own relationship as ideal and if the relationship is one which is filled with conflict or is lacking in trust, those may be carried into their future relations with other people.⁸¹

V. THE INCAPACITATED SUPREME COURT: DENYING PETITIONS FOR THE DECLARATION OF NULLITY OF MARRIAGE

Recent decisions of the Supreme Court denied petitions for nullity of marriage based on psychological incapacity despite the apparent irreparable

77. Berba, *supra* note 67, at L-13.

78. *Id.*

79. Alano, *supra* note 48, at 159.

80. *Id.*

81. Michelle A. Koski, *Adult Children of Parental Infidelity and Their Perspectives of Love, Intimate Relationships and Marriage*, <http://www.uwstout.edu/lib/thesis/2001/2001koskim.pdf> (last accessed Jan. 4, 2008).

relations between the parties. These cases also concretely show situations of couples where marital iniquities previously discussed are present and thus, the resort to the remedy of nullifying the marriage. Basically, what these cases show is that there are situations when even if the spouses themselves no longer have a functioning marriage to speak of, the law, somehow constrains them to be bound together.

A. *Marcos v. Marcos*⁸²

Brenda (petitioner) and Wilson (respondent) have been married for more than 20 years when petitioner sought the nullification of their marriage based on respondent's psychological incapacity. Petitioner alleged that whenever she would urge her husband to find employment so that the children would see him as a responsible head of the family, he would beat her up and also subjected their children to the same violence. He even forced her to have sex with him even if she was exhausted from work.⁸³ The spouses eventually lived separately. However, respondent continued to show up at their house and during one heated argument, he turned violent which led his family to leave and seek refuge in a relative's house. In another instance, he ran after his family with a samurai.⁸⁴

The lower court upheld that respondent's failure to find employment to support his family and his violent behavior towards them constituted psychological incapacity.

The Supreme Court however, held that the petitioner's evidence failed to establish respondent's psychological incapacity. According to the Court, the testimonies given by the petitioner, her children, and of the social worker who interviewed the latter, were not enough to conclude that respondent's "defects" were rooted in causes prior to the union or that they were incurable.⁸⁵ The Court said that the respondent's behavior can be attributed to the fact that he was not gainfully employed for more than six years during which period he became a drunkard, failed to support the family and eventually left them, thus the psychological illness could not be said to be in existence at the inception of the marriage.⁸⁶ Though the Court admitted that there may have been lack of material support, physical violence and abandonment, these as shown by the petitioner's evidence would only constitute grounds for legal separation.

82. *Marcos v. Marcos*, 343 SCRA 755 (2000).

83. *Id.* at 759.

84. *Id.*

85. *Id.* at 764.

86. *Id.* at 764-765.

*B. Pesca v. Pesca*⁸⁷

Lorna (petitioner) filed a petition to nullify her marriage to Zosimo (respondent) citing his cruelty and violence, irresponsibility and habitual drinking as manifestations of his incapacity to perform his marital obligations.

It was alleged that respondent spent most of his time with his friends and not his family. He even subjected petitioner and their children to physical violence. In one instance, he pointed a gun at his wife and threatened to kill her in front of their kids. Petitioner, unable to take her husband's behavior, left the respondent together with the children. But due to his plea and promise to change his ways, she forgave him and returned home. Respondent however, continued his abusive ways which led petitioner to file a case for physical injuries and to respondent's conviction.⁸⁸

Despite these, the Supreme Court denied the petition citing the cases of *Santos v. Court of Appeals* and the Molina doctrine. It held that the totality of the evidence presented by the petitioner did not make out a case for psychological incapacity; that emotional immaturity and irresponsibility do not automatically constitute psychological incapacity.⁸⁹

The Court reiterated the inviolability of marriage and said:

While the Court commiserates with petitioner in her unhappy marital relationship with respondent, totally terminating that relationship, however, may not necessarily be the fitting denouement to it. In these cases, the law has not quite given up, neither should we.⁹⁰

*C. Dedel v. Court of Appeals*⁹¹

David (petitioner) married Sharon (respondent) and their union produced four children. He filed a petition to nullify their marriage based on Article 36 of the Family Code. He alleged that his wife had several affairs with three different men including a Jordanian national whom she later on married. When her illicit relations ended, petitioner accepted her and her illegitimate children back home.⁹² However, she eventually abandoned him to live with her Jordanian paramour abroad.

An expert witness testified that respondent was suffering from Anti-Social Personality Disorder as shown by her blatant display of infidelity and indiscretions without any demonstration of guilt.⁹³ It was sought to be

87. *Pesca v. Pesca*, 356 SCRA 588 (2001).

88. *Id.* at 591.

89. *Id.* at 594.

90. *Id.*

91. *Dedel v. Court of Appeals*, 421 SCRA 461 (2004).

92. *Id.* at 463.

93. *Id.* at 466.

equated that respondent's acts of infidelity, abandonment, and irresponsibility in handling their marriage amounted to psychological incapacity to perform her marital obligations.

However, the Supreme Court upheld that the totality of evidence does not establish that respondent is psychologically incapacitated to perform marital obligations. "[R]espondent's sexual infidelity can hardly qualify as being mentally or physically ill to such an extent that she could have not known the obligations she was assuming, or knowing them, could have not given a valid assumption thereof."⁹⁴ The Court further held:

Respondent's sexual infidelity or perversion and abandonment do not by themselves constitute psychological incapacity within the contemplation of the Family Code. Neither could her emotional immaturity and irresponsibility be equated with psychological incapacity. It must be shown that these acts are manifestations of a *disordered personality* which make respondent *completely* unable to discharge the essential obligations of the marital state, not merely due to her youth, immaturity or sexual promiscuity.

At best, the circumstances relied upon by petitioner are grounds for legal separation under Article 55 of the Family Code.⁹⁵

In conclusion, the Court commiserated with petitioner, saying:

We cannot deny the grief, frustration and even desperation of petitioner in his present situation. Regrettably, there are circumstances, like in this case, where neither law nor society can provide the specific answers to every individual problem. While we sympathize with petitioner's marital predicament, our first and foremost duty is to apply the law no matter how harsh it may be.⁹⁶

*D. Republic v. Iyoy*⁹⁷

Crasus (petitioner) married Fely (respondent) and their union produced five children. During their co-habitation, petitioner discovered that his wife was ill-tempered, extravagant and was a nag. More than 20 years after they got married, respondent left petitioner and their children and went to the United States. Thereafter, she sent divorce papers to petitioner. Even if respondent never acted on the papers, he learned that petitioner already married an American, has a child by him and is openly using her American surname.⁹⁸

The lower court held that:

94. *Id.*

95. *Id.*

96. *Id.* at 467.

97. *Republic v. Iyoy*, 476 SCRA 508 (2005).

98. *Id.* at 514.

[D]efendant's posture being an irresponsible wife erringly reveals her very low regard for that sacred and inviolable institution of marriage which is the foundation of human society throughout the civilized world ... defendant is bereft of the mind, will and heart to comply with her marital obligations, such incapacity was already there at the time of the marriage in question is shown by defendant's own attitude towards her marriage to plaintiff.⁹⁹

Again, the Supreme Court held that the totality of evidence and petitioner's allegations may indeed be indications of psychological incapacity. However, petitioner failed to establish the root cause for such, and thus, the gravity, incurability and its existence prior to marriage has not been proved.¹⁰⁰ The Court said:

At most, Fely's abandonment, sexual infidelity, and bigamy, give respondent Crasus grounds to file for legal separation under Article 55 of the Family Code of the Philippines, but not for declaration of nullity of marriage under Article 36 of the same Code. While this Court commiserates with respondent Crasus for being continuously shackled to what is now a hopeless and loveless marriage, this is one of those situations where neither law nor society can provide the specific answer to every individual problem.¹⁰¹

*E. Perez-Ferraris v. Ferraris*¹⁰²

Petitioner filed a petition for declaration of nullity of her marriage with respondent. The lower court denied the petition holding that "there was no evidence that respondent is mentally or physically ill to such extent that he could have not known the obligations he was assuming, or knowing them, could have not given valid assumption thereof."¹⁰³ Further, it said that epilepsy is not equivalent to psychological incapacity and that respondent's infidelity has not been sufficiently proved.¹⁰⁴

The Court of Appeals affirmed the lower court's decision saying the expert testimony failed to establish that there was a "natal or supervening disabling factor" in respondent's character that incapacitate him from complying with his marital obligations.

The Supreme Court made the similar findings and upheld:

[R]espondent's alleged mixed personality disorder, the "leaving-the-house" attitude whenever they quarreled, the violent tendencies during epileptic

99. *Id.* at 517.

100. *Id.* at 526.

101. *Id.* at 532.

102. *Perez-Ferraris v. Ferraris*, 495 SCRA 396 (2006).

103. *Id.* at 399.

104. *Id.*

attacks, the sexual infidelity, the abandonment and lack of support, and his preference to spend more time with his band mates than his family, are not rooted on some debilitating psychological condition but a mere refusal or unwillingness to assume the essential obligations of marriage.¹⁰⁵

While petitioner's marriage with the respondent failed and appears to be without hope of reconciliation, the remedy however is not always to have a declared void *ab initio* on the ground of psychological incapacity. An unsatisfactory marriage, however, is not a null and void marriage. No less than the Constitution recognizes the sanctity of marriage and the unity of the family; it decrees marriage as legally "inviolable" and protects it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.¹⁰⁶

VI. ANALYSIS

A. *Evolving Norms of Marriage and Family*

The Family Code of the Philippines was passed into law in 1987 with clear objectives to be achieved — to provide a law that considers Filipino customs, values and ideals reflecting contemporary trends and conditions brought about by many changes.¹⁰⁷ Two decades thereafter, it may be high time to look again into present marital realities, how culture affects them and how the law acknowledges these developments.

I. Changing Values and Changing Marital Situations: Cultural Trend

Dr. Ricardo G. Abad Ph.D., a sociologist from the Ateneo de Manila University observed that families were more tightly knit three or more decades ago. However, because of various extraneous forces, the then typical situation of having the father as breadwinner and the mother as housewife and primary caretaker of children is no longer the typical set-up of Filipino families. Presently, more and more wives seek employment and

105. *Id.* at 402.

106. *Id.* at 403.

107. The Whereas clause of the Family Code provides:

WHEREAS, almost four decades have passed since the adoption of the Civil Code of the Philippines;

WHEREAS, experience under said Code as well as pervasive changes and developments have necessitated revision of its provision on marriage and family relations to bring them closer to Filipino customs, values and ideals and reflect contemporary trends and conditions;

WHEREAS, there is a need to implement policies embodied in the new Constitution that strengthen marriage and the family as basic social institutions and ensure equality between men and women.

consequently partake to a greater extent in the economic aspects of family life:

Wives now have attained higher levels of education and have entered the labor force in large numbers. Some even go abroad. They're bringing home the bacon, too, so to speak, and that gives them economic power in the household. They already had power over domestic life and now they have added power.¹⁰⁸

The uphill battle against double standards in the family has also been going on for some time now. Dr. Abad however observes that some double standards remain in place. For instance, it is still a more common occurrence for husbands to commit marital infidelity, although the number of wives committing indiscretions may also be higher than before. In any case, it has also been written that:

Indeed, it is an accepted fact that the Filipina wife today is getting to be more and more independent psychologically and economically from her husband. She is becoming more aware of the discrimination she has been subjected to and is now more and more assertive of her rights.¹⁰⁹

A proof of this enhanced assertiveness is the rising number of reports of physical abuse within marriages.¹¹⁰ What seemed to be a private affair between husbands and wives a few decades ago has become the subject of social awareness campaigns that even prominent personalities come out publicly with their own personal experiences.¹¹¹ Thus, the societal expectation that a suffering wife should keep to herself her husband's faults

¹⁰⁸ Interview with Dr. Ricardo G. Abad, Ph.D., Professor, Department of Sociology and Anthropology, Ateneo de Manila University (June 12, 2007); See also, MEDINA, *FILIPINO FAMILY*, *supra* note 48, at 174-75.

[I]t seems that that the modern educated Filipina no longer accepts a subordinate position. Her high educational attainment has given her the dignity, the confidence, and the ability to participate as equal with men in many activities outside the home. In the past, only the male members of the family were allowed to pursue higher education because "girls would marry eventually and their activities will be limited to child care ..." This view seems to have changed, for parents today apparently rely on their daughters more than their sons to study, conscientiously keep stable jobs, and provide support in their old age...

¹⁰⁹ MEDINA, *FILIPINO FAMILY*, *supra* note 48, at 174-75.

¹¹⁰ See, *supra* note 49.

¹¹¹ See, Is Plinky Recto a Victim of Domestic Violence?, <http://www.abs-cbn.com/Entertainment/ent-113905-buzz.aspx> (last accessed Dec. 19, 2007); See, Ruffa Gutierrez finds an ally in the party-list Gabriela, <http://ricojr.wordpress.com/2007/06/13/ruffa-gutierrez-finds-an-ally-in-the-party-list-gabriela> (last accessed Dec. 19, 2007); See, MJ's wife files kidnap, grave coercion raps, <http://www.malaya.com.ph/juno7/news8.htm> (last accessed Dec. 19, 2007).

seems to be gradually gaining exceptions, such as when one own's well-being is at stake.

With these realities, it is not at all surprising that people seek the law's aid to end their desolate situations. The petitions filed in court for nullity of marriage and annulment has consistently risen from 2001 to present.¹¹² Even Filipino perception towards the concept of absolute divorce has changed through time. In 1996, respondents to a survey revealed that Filipinos slightly opposed divorce.¹¹³ Almost a decade later, in another survey, 43% of the respondents agreed that married couples who have already separated and cannot reconcile anymore should be allowed to divorce.¹¹⁴ Further, several divorce bills have been filed in Congress despite the rather unwelcome reception. Certainly, if a divorce bill is an entirely unnecessary and inept proposition, it wouldn't merit as much perseverance from legislators who risk losing political support from traditionalists by advocating for absolute divorce.

With all these, the question to ask is whether Philippine culture is ready for a divorce law inasmuch as contemporary realities seem to be in themselves a clamor for liberation from iniquitous situations. Dr. Abad thinks so and explains that finally having a divorce law does not necessarily mean that marriage and family will be eroded as institutions:

The Philippines is ready, I think, but not the church and state. The greatest obstacles to the divorce law are organized religion and political power and both are locked in arms on this matter.

The challenge has been to find ways to contour the institution to suit the contemporary condition, including the possibility of divorce (at least in those places where it is illegal) and same-sex marriage. The phenomenon of dual earning households, the relative absence of parents in the lives of children, and the rising power of women in the family are among the forces to be reckoned with. But down with marriage? That's not even a remote possibility.

How will it erode? Do you think that there will be more divorces than marriages? That will not happen — as seen in countries with long-standing divorce laws. Many people at the start might seek a divorce (after all many

¹¹² The records of the Office of the Solicitor General reveal that cases of Nullity and Annulment cases filed in Courts have been increasing yearly. From 2001 to 2006, a total of 35,864 cases were filed. Of these cases, 4,520 were filed in 2001 and 7,138 were filed in 2006.

¹¹³ Joy D.L. Casuga, *Cohabitation, Marriage and Divorce: Attitudes in the Philippines and 21 Other Countries*, Social Weather Stations (1996). 1,200 respondents were asked to agree or disagree with the statement: "Divorce is usually the best solution when a couple can't seem to work out their marriage problems."

¹¹⁴ Agreement/Disagreement on Issues, Social Weather Stations, May 14-23 (2005).

bad marriages have been bottled up for years), but the initial surge will tend to peter out eventually.

Do you then think that couples will not make special effort to reconcile differences and opt instead for divorce as the easy solution? Do you also think that divorce will destroy the notion that marriage is a permanent bond, a forever and ever arrangement? Not necessarily. One can strive for a permanent arrangement and also realize that some relationships ... may turn sour and be irreparable. In this case, a divorce will help liberate the couple, the marriage, and the family from further harm.¹¹⁵

The possibility of having divorce in the country, viewed as a means rather than an end in itself, may even be a transforming tool for the evolving culture of husband and wife relations. Although, there is a sense of contingency imputed to marriage in the context of divorce, it may prove effective in leveling the terms of a marriage.¹¹⁶ Admittedly, unconditional commitment is the very essence of a union, but in the Filipino context, it has also facilitated the constancy of commitment under the terms of the dominant spouse leading to abuse and iniquities. Ironically, a sense of contingency can encourage enhanced positive values from the spouses such as responsibility, respect, mutual care-taking and equality which can lead to even stronger relationships.¹¹⁷ In this context, the possibility of divorce does not even imply the conclusion of a union, but rather, serves as a call to evaluate marital relations and the inequalities occurring therein.

In the end, what the evolving Filipino culture implies is that, when one finally decides to liberate himself/herself from a destructive relationship, he or she must have an effective legal option to be able to do so.

2. Changing Values and Changing Marital Situations: Judicial Trend

Not only is the phenomenon of change pervasive in the culture of power relations within marriage itself, recent Supreme Court decisions seem to be cognizant of atypical marital relations and the intricacies affecting it. *Estrada v. Escritor*¹¹⁸ affirms that our country is a pluralistic society where religious freedom is valued and thus, a union valid before a congregation was upheld though such is not sanctioned under civil law. On the other hand, *Republic v. Orbecido III*¹¹⁹ illustrates that no culture can shun divorce absolutely because of the closer integration of people from different nations. And lastly, in

115. Abad, *supra* note 108 (emphasis supplied).

116. KARLA B. HACKSTAFF, MARRIAGE IN A CULTURE OF DIVORCE 201 (1999).

117. *Id.* at 202.

118. *Estrada v. Escritor*, 492 SCRA 1 (2006).

119. *Republic v. Orbecido III*, 472 SCRA 114 (2005).

Antonio v. Reyes,¹²⁰ the Court pronounced that State interest should also be protected against unions that do not promote family life.

2.1. *Estrada v. Escritor*

Respondent *Escritor*, a court interpreter was charged with committing "disgraceful and immoral conduct" violating the Revised Administrative Code. The complaint was based on the finding that the respondent was living with a man not her husband and consequently, bore a son out of the live-in arrangement.¹²¹

Respondent admitted that when she started living with another man, her husband was still alive and was with another woman. She defended herself by asserting that being a member of the Jehovah's Witness, their arrangement was in accordance with their religious belief and was sanctioned by their congregation. She claimed that by executing a "Declaration Pledging Faithfulness," members of their congregation who have been abandoned by their spouses and are not eligible to enter into marital relations under civil law, may enter into a new union which is binding within the congregation.¹²²

The Court went into an in-depth discussion of religious freedom as recognized by the Constitution.¹²³ It ruled that benevolent neutrality-accommodation is the spirit, intent and framework behind the Constitution¹²⁴ and that "the State must articulate in specific terms the state interest involved in preventing the exemption, which must be compelling, for only the gravest abuses, endangering paramount interests can limit the fundamental right to religious freedom."¹²⁵ Although the Office of the Solicitor General (OSG) contended that "the State has a compelling interest

120. *Antonio v. Reyes*, 464 SCRA 353 (2006).

121. *Estrada*, 429 SCRA at 27.

122. *Id.*

123. PHIL. CONST. art III, § 5 provides:

Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

124. *Estrada v. Escritor*, 492 SCRA 1, 66 (2006). Benevolent neutrality theory was explained thus:

[W]ith respect to these governmental actions, accommodation of religion may be allowed, not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. The purpose of accommodation is to remove a burden on, or facilitate the exercise of, a person's or institution's religion.

125. *Id.* at 84.

to override respondent's claimed religious belief and practice, in order to protect marriage and the family as basic social institutions," the Court upheld that respondent's action cannot be penalized for the government's failure to show how and to what extent the government's objective will be undermined if exemptions are granted.¹²⁶

2.2. *Republic of the Philippines v. Orbecido III*

Respondent Orbecido and Villanueva were both Filipino citizens at the time of their marriage. The latter left respondent and went to the United States bringing along their son. Later, he discovered that his wife had been naturalized as an American citizen, has obtained a divorce and remarried.¹²⁷

As a consequence, respondent filed a petition for authority to remarry invoking paragraph 2 of article 26 of the Family Code.¹²⁸ The OSG contended that such provision only applies to a valid mixed marriage or that celebrated between a Filipino citizen and a foreigner and that the proper remedy is to file a petition for annulment or legal separation.¹²⁹

The Supreme Court found for the respondent. It held that:

[r]ecords of the proceedings of the Family Code deliberations showed that the intent of paragraph 2 of article 26, according to Judge Alicia Sempio-Diy, a member of the Civil Code Revision Committee is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse.¹³⁰

Thus, the provision should be interpreted to contemplate cases involving spouses who at the time of marriage were Filipino citizens and one later on became a naturalized foreign citizen who obtains a divorce decree.¹³¹

2.3 *Antonio v. Reyes*

¹²⁶. *Id.* at 85.

¹²⁷. *Republic v. Orbecido III*, 472 SCRA 114 (2005).

¹²⁸. FAMILY CODE, art. 26 provides:

Art. 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (40), (5) and (6), 36, 37 and 38.

Where a marriage between a Filipino citizen 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.

¹²⁹. *Republic*, 472 SCRA at 117 (2005).

¹³⁰. *Id.* at 121.

¹³¹. *Id.*

Petitioner and respondent were married in 1989. Three years after, petitioner filed a petition for nullity of marriage based on respondent's alleged psychological incapacity. Petitioner alleged that his wife persistently lied about herself, her profession, and generally, about everything.¹³² For instance, respondent concealed the fact that she has an illegitimate child and petitioner had to learn the truth from other sources.¹³³ She also misrepresented herself to be a psychiatrist and a singer, invented the existence of certain people and claiming them to be her friends when such were not the case, and even imputed that her brother-in-law attempted to rape her. The trial court granted the petition and held that respondent's fabrication of stories and personalities enabled her to live in a fantasy world and made her incapable of fulfilling her marital obligations.¹³⁴

The Supreme Court affirmed such finding and held that petitioner was able to satisfy the requirements for proving psychological incapacity as laid down by the *Molina* doctrine. It held that corollary to the State's obligation to protect marriage as the foundation of the family is the duty to *defend the State against ill-equipped marriages that do not further family life*.¹³⁵

Gleaned from these three cases is the Court's awareness that the family is not a rigid or static structure. In *Estrada*, although there was heavy reliance upon religious freedom in the *ponencia* and on the government's failure to specifically allege compelling interest, it is still evident that the Court was compassionate and opted to protect a union, though not legally sanctioned, but otherwise had the badges of a functioning marital relationship. The Court further cited concurring opinions from its original decision dated 4 August 2003 by Justices Bellosillo and Vitug, to wit:

[T]o deny the exemption would effectively break up "an otherwise ideal union of two individuals who have managed to stay together as husband and wife [approximately twenty-five years]" and have the effect of defeating the very substance of marriage and the family.¹³⁶

Justice Bellosillo further emphasized the gradual recognition of other forms of families in Philippine legislation. He recalled how solo parenthood and de facto separated couples were condemned some years back for not conforming to the traditional notion of marriage and family. However, he observed that "recent social legislation has compassionately redefined the concept of family to include single mothers and their children regardless of the mother's civil status, otherwise no single parent would be employed by

¹³². *Antonio v. Reyes*, 484 SCRA 353 (2006).

¹³³. *Id.* at 363.

¹³⁴. *Id.*

¹³⁵. *Id.* at 373 (emphasis supplied).

¹³⁶. *Estrada v. Escritor*, 492 SCRA 1, 85 (2006).

the government service, and that would be discriminatory, if not to say, unconstitutional."¹³⁷

There is indeed an undeniable inclination towards a more benevolent and realistic approach towards marriage and family life, even in judicial decisions. The Court also seemingly wanted to eliminate injustice, either by doing away with breaking up a unique union or constraining a person to remain married to an absent spouse who has remarried. Meanwhile, there was also an explicit acknowledgement that marriages that do not promote the State's interest of building stable families should not be encouraged.

Apart from *Estrada, Orbecido, and Reyes*, cases rejecting petitions for nullity of marriage above discussed had the Court commiserating with petitioners in their hopeless situations — their spouses treating them with cruelty both physically and emotionally, and yet they remain bound to their tormentors.

Two conclusions can be deduced from these Court pronouncements. First, that the law as interpreted by the Court is constantly confronted by unprecedented problems and thus, has to be continuously overhauled, "adapting it to the realities of ever-changing social, industrial and political conditions."¹³⁸ Because human relationships evolve, legal relationships may not stand an enduring form.¹³⁹

Second, by recognizing different marital situations in these cases, it can be surmised that strong marriage partnerships don't always come in the form that the law describes them to be. In the same way, spouses' adherence to the law that marriage is the foundation of the family does not strongly guarantee that all marriages live up to that role. If the latter is the case, absolute divorce, in cases determined proper, will allow the courts to provide adequate relief to burdened spouses and not merely commiserate with them in their difficult situation. Otherwise, the court's hands will continue to be strapped, broken marriages will remain as they are, and family members will continuously have to endure the burden and complexities of an exhausted relationship.

3. Changing Values and Changing Marital Situations: International Trend

Outside the Philippines, the same traditional precepts on marriage and family are likewise being challenged. Marriages and families all over the world are not spared from the trend of evolution and transformation. Although there are fundamentals that remain, the dynamics and relations seem to be

137. *Estrada v. Escritor* 408 SCRA 1, 200 (2003) (Bellosillo, J., concurring).

138. Jerome Frank, *Law and the Modern Mind* (1930) cited in Emiliano R. Navarro, Readings on Jurisprudence.

139. *Id.*

embracing new patterns and even the United Nations has recognized this reality:

The process of rapid demographic and socio-economic change throughout the world has influenced patterns of family formation and family life, generating considerable change in family composition and structure. Traditional notions of gender-based division of parental and domestic functions and participation in the paid labor force do not reflect current realities and aspirations...widespread migration, forced shifts of population caused by violent conflicts and wars, urbanization, poverty, natural disasters and other causes of displacement have placed greater strains on the family, since assistance from extended family support networks is often no longer available.¹⁴⁰

In the international sphere, the family as a unit is increasingly being perceived in the context of human rights. With this shift in attitude, there is a greater consensus that there is a need to protect both the family and individual family members, in particular:

Human rights law has become a powerful tool with which to challenge the public/private distinction. The incursion of the State into the traditionally private sphere of the family, for example, has been justified on the grounds of the significant human rights at stake. Thus, the family privacy argument has largely been rejected where it shields violations of human rights, at least in theory.¹⁴¹

In particular, an international convention dealing with the matter of human rights and equality of rights within the family is the Convention on the Elimination of all Forms of Discrimination against Women¹⁴² (CEDAW) which specifically tackles the strained relation of family law and gender inequality. CEDAW was adopted by the General Assembly of the United Nations in 1979 and has been ratified by more than 170 parties. The Convention is rooted in the goals of the United Nations to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women. Specifically, CEDAW aims for equality between men and women in marriage and family relations.

Article 1 of the CEDAW defines discrimination as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment

140. International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, ¶ 5.1 U.N. Doc. A/CONF.171/13 (Oct. 18, 1994).

141. Barbara Stark, *When Globalization Hits Home: International Family Law Comes of Age*, 39 VAND. J. TRANSNAT'L L. 1551 (2006).

142. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sep. 3, 1981 (The CEDAW was ratified on Aug. 5, 1981 and entered into force for the Philippines on Sep. 4, 1981).

or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁴³

Meanwhile, article 5 (a) also imposes the obligation on State parties to:

modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ...¹⁴⁴

General Recommendation No. 19 specifically construed that the definition of discrimination under article 1 includes gender-based violence defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."¹⁴⁵ General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women further emphasized that:

11. [t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion ... The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms ...¹⁴⁶

Article 16 of the Convention specifically deals with marriage and divorce: "State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... The same rights and responsibility during marriage and at its dissolution;"¹⁴⁷ Although many state parties made reservations to this provision, it has encouraged the reform of divorce laws in different countries to make divorce more readily available.¹⁴⁸

The Philippines is a signatory to the CEDAW. Thus, it is under the obligation to address situations that perpetuate inequality between men and women. The Philippines has specifically attended to the problem of violence

143. *Id.* art. 1.

144. *Id.* art. 5.

145. CEDAW, General Recommendation No. 19, ¶ 6 (1992), <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last accessed Jan. 4, 2008).

146. *Id.* ¶ 11.

147. CEDAW, *supra* note 142, art. 16.

148. Stark, *supra* note 141, at 1582.

within the family by enacting Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004 which aims to protect women and their children from physical, psychological and economic abuses in the context of marital, dating or common-law relationships.¹⁴⁹ However, such move may not suffice. In response to the Fifth and Sixth Periodic Report of the Philippines to the Committee on Elimination of Discrimination Against Women,¹⁵⁰ the Committee expressed its concern over the lack of divorce laws in the country. Specifically, the Committee recommended:

The Committee urges the State Party to introduce and support vigorously legislation which permits divorce, allows women to remarry after divorce, and grants women and men the same rights to administer property during marriage and equal rights to property on divorce. It also recommends that women be granted the same right to initiate divorce on the same terms as men.¹⁵¹

Everywhere else, states have amended their traditional domestic laws as a result of broadened scope of human rights law. Ethiopia, for one, barred child marriages to comply with international family law. In 2003, a Massachusetts court rendered a decision striking down the bar to same-sex marriage.¹⁵² Both decisions were based on an expansive and inclusive notion of rights.

From these, it can be gleaned that human rights law is in turn shaping family rights. It has been said that modern family laws' goal is to explore and establish the legal parameters of changing relationships in an equally changing world.¹⁵³ This changing view recognizes both the familial rights and the individual fulfillment of the family members:

Human rights law now focuses on the importance of recognizing the centrality of every individual in every family and every society. It also recognizes the importance of family life for individual fulfillment. Thus, the international approach views family life in terms of individual rights and personal fulfillment. This conception of family life may seem paradoxical; especially when applied to an institution historically viewed in terms of obligation and of the need to erase most of its member's individuality. Yet

149. An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefore, And For Other Purposes [ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004], Republic Act No. 9262 (2004).

150. Concluding Comments of the Committee on the Elimination of Discrimination against Women: Philippines, CEDAW/C/PHI/CO/6, 36th Session, Aug. 25, 2006.

151. *Id.* ¶ 31.

152. Stark, *supra* note 141, at 1599.

153. *Id.* at 1603.

international human rights law now clearly recognizes the significance of families for individuals and even views family life as a necessary source for individual fulfillment.¹⁵⁴

4. Conclusions from Cultural, Judicial and International Trends

Justice Oliver Wendell Holmes Jr., once said:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.¹⁵⁵

As already mentioned, the Family Code was crafted with the same principle behind it. It was meant to be a body of laws that reflect contemporary trends and conditions. The three trends discussed are a testimony that there are new realities to contend with. The legislature may have been able to shut its eyes to reasons supporting divorce adduced in the past, but it does not change the reality just the same. Spouses have, and will continue to separate when their relationships are no longer nurturing even without legal sanction. Or worse, wives, or even husbands will just endure the abuse, deceit and other forms of suffering together with their children who are equally distressed by their parents' chaotic relationship.

But such does not have to be the case if the Family Code, in accordance with its avowed purpose, will be amended to make it attuned to the changing times and situations of the Filipino family. More so, if it will begin to consider that the plight of the spouses who have endured the violence and indiscretion of their partners are, contrary to the obligations of spouses to observe mutual love, respect and fidelity, as stated in the Family Code. From the three trends, it is evident that there is an acknowledgment of the iniquities suffered and the burdens carried by those whose marriages have broken down. It is high time that the remedy of divorce be made available because as people's circumstances change, the law should be ready to move forward as well.

B. *The Quality of Institutions that the Law Seeks to Protect vis-à-vis the Kind of Protection Afforded*

154. ROGER LEVESQUE, CULTURE AND FAMILY VIOLENCE FOSTERING CHANGE THROUGH HUMAN RIGHTS LAW 30 (2001) cited in Ma. Veronica Abutan, Securing the Christian Spouse's Right to Equal Protection and Against Discrimination: A Move for the Institutionalization of Absolute Divorce as an Alternative Mode of Dissolving Marriage 52 (2004) (unpublished J.D. thesis, Ateneo de Manila University, School of Law) (on file with the Ateneo Law Thesis Center, Ateneo de Manila University, School of Law).

155. OLIVER WENDELL HOLMES, THE COMMON LAW 1 (1881).

During the deliberations for the 1987 Constitution, the question on whether the article devoted to the family prohibits the enactment of a law allowing divorce was categorically answered in the negative:

MR. NOLLEDO. My last question is with respect to the Gascon amendment, just inserted now. It reads: "Sec. 2 (e) The Institution of marriage as the foundation of the family in effect shall be defended by the State." Can the Commissioner give examples of the ways by which the State may defend the institution of marriage as the foundation of the family? Does it do away with divorce?

MR. GASCON. I guess it would discourage divorce. However, this will be subject to existing customary and traditional laws. In fact, it is to my knowledge that divorce is being practiced in, let us say, the Cordilleras or Muslim Mindanao.

MR. NOLLEDO. No, excluding Muslim Mindanao or the Cordilleras. Is Congress prevented from passing a divorce law with respect to Christian Philippines, if we adopt the provision that the State shall defend the institution of marriage as the foundation of the family?

MR. GASCON. What I mean when I encourage the proposal, "defend the institution of marriage," and if the proposal will be pushed through, "the social institution of marriage," is to emphasize that those who wish to marry and establish a family have the right to expect from society the moral, educational, social, and economic conditions which will enable them to exercise their right to mature and responsible marriage.

So it is a more positive thing, that when we speak of defending the social institution of marriage, the society must encourage marriage by insuring the other conditions which will support the basic institution or social institution of marriage.

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 it to be understood as a prohibition of a general law on divorce? His intention is to make this a prohibition so that the 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.

Thus, it is evident from the deliberations that the thrust of protecting the institutions of marriage and the family is to ensure that "other conditions" will contribute to the healthy existence of these institutions, and not

prohibiting the enactment of a law to remedy marital iniquities that cause detrimental effects to the family members. Ideally, the State should ensure that there will be sufficient employment for breadwinners, government concession for working parents, quality education for the children among others.¹⁵⁶ It does not disallow a solution for spouses and children trapped in dysfunctional relations.

The Constitution also speaks of actively promoting the family's total development. Therefore, the overall well-being of the family — social, economic, political, cultural and spiritual life of the person and the family must be advanced.¹⁵⁷ Commissioner Blas Ople even elucidated on what "total human development" means under the provision — that the family would provide the moral, intellectual foundation, orientation for a fully

156. See e.g., V RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 45.

Mr. Bennagen: Given the idea of "promoting" and "defending," what could be expected by the family from the State? And what if the State cannot meet these expectations?

Ms. Nieva: What we are saying is that the State should exert efforts to promote or defend these goals in the same way that in social justice and in education we had all these provisions that we said that the State should promote.

Mr. Bennagen: For instance, a very recent study by the Center for Research and Communications, headed by Commissioner Bernardo Villegas, claims that the threshold wage of a Metro Manila family is around P5,868 per month.

Ms. Nieva: Yes, when we thinking of the right of the family, we are not saying here that it is only one wage earner who should earn enough to maintain the whole family.

Mr. Bennagen: Yes. Even given that, considering the annual or monthly income of Filipino families, what can families below this wage bracket do in relation to their claims on the State, assuming this is passed?

Ms. Nieva: I think we take this in the same way we take the provisions on labor, that there should be all of these just remunerations. What can labor do if they do not receive these just wages?

Mr. Bennagen: I think that is a different case because if one is a laborer, then that laborer can make claims on capital. But this one is the right of the family to a decent family wage. And it is the State which is expected to defend that right?

Ms. Nieva: To defend or promote, I think what we want is to emphasize that the families have a right to live decent human lives.

Mr. Bennagen: I think that there is no problem about that.

Ms. Nieva: Therefore, the State should do everything in its power to help the family achieve that goal.

157. V RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 37.

developed personality and the source for emotional stability aside from material needs.¹⁵⁸ Such advancement may be seriously stunted or may even become an impossibility altogether if marital relations are always strained and if family members live in an atmosphere of animosity towards each other. In evaluating whether a marriage should be kept together, the interests of "healthy interpersonal relations of the spouses, welfare of the children and the common good"¹⁵⁹ are at stake. It has been said that not one of these require absolute indissolubility of marriage, in fact, these may "even demand the dissolution of the marital relationship."¹⁶⁰ In such cases, for instance, when the spouse and the children have been largely exposed to different kinds of abuses in their own homes, it is the law's obligation to come to their aid. After all, the Constitution does not make a distinction as to what kinds of families to protect — healthy or otherwise, families deserve protection in the manner suitable to their situations.

House Bill No. 4016 filed by Representative Liza Maza aspires to facilitate the attainment of the same goals. The bill was drafted with the policies of strengthening the family, respect for human rights and human dignity, and equality of men and women as considerations.¹⁶¹ Its impetus is to protect the disadvantaged members of the family by giving the spouse an option "to avail of remedies that will pave the way for the attainment of their full human development and self-fulfillment and the protection of their human rights."¹⁶² While the remedy will allow the parties to remarry, its chief purpose is for the achievement of tranquil and dignified lives for the parties involved. The bill is grounded on the reality that protecting the institutions of marriage and family does not depend on the sheer number of existing marriages but on the quality of these unions.

Certainly, both the Constitution and the Family Code speak of giving utmost protection to the two revered institutions of marriage and family. However, the kind of family that the law envisions — both the Constitution and the Family Code, is one where the spouses have mutual love, respect and fidelity to each other. These obligations are highly personal and no legal compulsion should force spouses to observe the same.¹⁶³ If such is the case, it is quite unlikely that the law envisioned constraining burdensome family life for the sole objective of keeping members physically together despite a clear showing that they are better off otherwise.

158. V RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 46.

159. Joaquin G. Bernas, S.J., *Civil Divorce and Religious Freedom*, 20 ATENEO L.J. 46 (1976).

160. *Id.* at 48.

161. H.B. No. 4016, Explanatory Note.

162. *Id.*

163. STA. MARIA, *supra* note 3, at 376 (citing *Ramirez-Cuaderno v. Cuaderno*, 12 SCRA 505 (1964)).

C. *Relief for Victims of Marital Iniquities: Inadequacy of Legal Separation*

In the recent decisions of the Supreme Court denying petitions for nullity of marriage based on psychological incapacity, the Court reiterated that, at most, the grounds they have invoked and the evidence they have presented, would only suffice as basis for legal separation.¹⁶⁴

However, this remedy leaves much to be desired for estranged spouses — they remain as husband and wife after a court battle. They are only entitled to live separately from each other¹⁶⁵ but not free to remarry and start a new life, and thus, it has been referred to as the “twilight zone of a sick relationship.”¹⁶⁶

The process of getting a decree of legal separation may just be as tough as that of nullity of marriage or annulment even if at the end of the court proceedings, the parties remain spouses. The State, through the prosecutor,

164. The common grounds referred to in these cases are physical violence, marital infidelity and abandonment. The Family Code provides ten grounds for legal separation:

Art. 55. A petition for legal separation may be filed on any of the following grounds:

- (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
- (10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term “child” shall include a child by nature or by adoption.

165. See, FAMILY CODE, art. 61.

166. JIM LOPEZ, RULES OF DISENGAGEMENT: THE LAW OF ANNULMENT OF MARRIAGE: HOW TO REGAIN YOUR FREEDOM TO RE-MARRYING IN THE PHILIPPINES 47 (2002).

takes part to ensure that there is no collusion between the parties.¹⁶⁷ A cooling-off period of six months¹⁶⁸ even needs to be observed to give parties a chance to reconcile and the court has to be satisfied that a reunion is no longer possible before a decree may be granted.¹⁶⁹ The decree results in dissolution of the community or conjugal partnership with the offending spouse deprived of any share in the profits and shall be disqualified from inheriting by intestate succession from the offended party.¹⁷⁰ But just the same, the latter remains married to the spouse who physically maltreated him or her or who was unfaithful or who has abandoned the family. On top of that, if the offended party is the wife, her surname cannot be reverted to her maiden name because she remains married to her husband.¹⁷¹ In addition, because of the existing marital bond, it is said that legal separation only places spouses “in a situation where there is an irresistible temptation to the commission of adultery, unless they possess more frigidity, or more virtue than generally falls to the share of human beings.”¹⁷² Either spouse can be held criminally liable for concubinage or adultery, as the case may be.

Thus, legal separation does not really afford an adequate remedy for spouses. They may have separate residences and some legal intricacies (such as custody over children and right to property) may be settled; however, the most significant relationship in the scenario, the one whose strains caused them to part ways, constrains them to still be bound at least, in writing. What the law seeks to achieve in doing so is perplexing, if not in vain. If the marital relationship has been so damaged that one of the spouses can no longer bear living under the same roof with the other, what justifies the continued existence of the marital bond? If one has endured physical abuse or marital infidelity and opts to start anew without the individual who reneged on his or her marital obligations to “observe mutual love, respect and fidelity,” why not give complete liberty to enable them to live fuller lives and develop their best selves, probably in new relationships that merit legal benefits? After all, one of the law’s purposes is “to enable the

167. See, FAMILY CODE, art. 60 (“No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment. In any case, the court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed.”).

168. See, *id.* art. 58 (“An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition.”).

169. See, *id.* art. 59. (“No legal separation may be decreed unless the court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable.”).

170. *Id.* art. 63.

171. *Laperal v. Republic*, 6 SCRA 357 (1962).

172. JOHN W. MORLAND, *KEEZER ON THE LAW OF MARRIAGE AND DIVORCE* 306 (1946).

production of human beings who are able, as well as free, to lead fruitful and happy lives."¹⁷³

1. Nullity of marriage based on psychological incapacity

When the Family Law Committee was tasked to draft the new Family Code, it considered including a provision on absolute divorce. Justice J.B.L. was tasked to draft such proposal.¹⁷⁴ However, when the Civil Code Revision Committee and the Family Law Committee subsequently held joint meetings to draft the new Family Code, a definition regarding marriage as a special contract and an inviolable social institution was formulated.¹⁷⁵ Thus, with such definition, the traditional concept of marriage's permanence and staunch opposition from the Catholic Church, the idea of including absolute divorce in the Code was shelved.¹⁷⁶

Article 36 of the Family Code was then formulated and was actually adopted from the Canon Laws of the Catholic Church.¹⁷⁷ It provides:

173. Perfecto V. Fernandez, *Sixty Years of Philippine Law*, 35 PHILIPPINE L.J. 1403 (1960).

174. See, Justice Florida Ruth Romero's separate opinion in Santos v. Court of Appeals, 240 SCRA 20, 39 (1995) (citing Justice Sempio-Diy's letter addressed to Assemblywoman Mercidita Cojuangco-Teodoro in behalf of the Family Law and Civil Code Revision Committee). During its early meetings, the Family Law Committee had thought of including a chapter on absolute divorce in the draft of a new Family Code (Book I of the Civil Code) that it had been tasked by the IBP and the UP Law Center to prepare. In fact, some members of the Committee were in favor of a no-fault divorce between the spouses after a number of years of separation, legal or *de-facto*. Justice J.B.L. Reyes was then requested to prepare a proposal for an action for dissolution of marriage and the effects thereof based on two grounds: (a) five continuous years of separation between the spouses, with or without a judicial decree of legal separation, and (b) whenever a married person would have obtained a decree of absolute divorce in another country. Actually, such a proposal is one for absolute divorce but called by another name. Later, even the Civil Code Revision Committee took time to discuss the proposal of Justice Reyes on this matter.

175. *Id.* Marriage was defined as:

[A] special contract of permanent partnership between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is 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 law.

176. Jonathan O. Temporal, *Republic v. Court of Appeals and Molina: Providing Definite Standards for the Interpretation and Application of Article 36 of the Family Code*, 42 ATENEO L.J. 381 (1998).

177. It provides:

"Article 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."¹⁷⁸

Adopting the provision from the Canon Law and making it another ground for the declaration of nullity of marriage was intended to provide a substitute for divorce, to meet the situation of church-annulled marriages that remained valid under civil law and to provide an additional remedy to burdened spouses.¹⁷⁹ Generally therefore, it can be said that the aim of article 36 is "to lower the bar that married spouses seeking to nullify their marriages seek to hurdle."¹⁸⁰ Psychological incapacity was included in the Family Code "to expand and liberalize the grounds for nullifying a marriage."¹⁸¹

The Code Committee did not want to restrict the concept and characterization of this ground of avoiding marriage, thus, the absence of a clear-cut meaning.¹⁸² As held by the Court in *Republic v. Dagdag*:¹⁸³

Whether or not psychological incapacity exists in a given case calling for annulment of a marriage, depends crucially, more than in any field of the law, on the facts of the case. Each case must be judged, not on the basis of a

Canon 1095. They are incapable of contracting marriage:

- 1) Who lack sufficient use of reason;
- 2) Who suffer from a grave defect of discretion of judgment concerning essential matrimonial rights and duties, to be given and accepted mutually;
- 3) Who for causes of psychological nature are unable to assume the essential obligations of marriage.

178. FAMILY CODE, art. 36.

179. ALICIA SEMPIO-DIY, HANDBOOK OF THE FAMILY CODE OF THE PHILIPPINES 36 (1998).

180. Maria Sophia Editha Cruz-Abrenica, *Re-Examining the Concept of Psychological Incapacity: Towards a More Accurate Reflection of Legislative Intent* 51 ATENEO L.J. 596 (2006).

181. Santos v. Court of Appeals, 240 SCRA 20, 35 (1995).

182. See, Salita v. Hon. Magtolis, 233 SCRA 100 (1994). Justice Bellosillo quoted Justice Alicia Sempio-Diy's explanation for such:

The Committee did not give any examples of psychological incapacity for fear that the giving of examples would limit the applicability of the provision under the principle of *eiusdem generis*. Rather, the Committee would like the judge to interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law.

183. *Republic v. Dagdag*, 351 SCRA 425 (2001).

priori assumptions, predilections or generalizations but according to its own facts.¹⁸⁴

Reasonably, even if the legislative intent behind article 36 is to liberalize the grounds for nullifying marriage, it cannot be done without certain legal standards. At present, the fusion of the intent behind article 36 and the *Molina doctrine* laid down in the case of *Republic v. Court of Appeals*¹⁸⁵ aid in

184. *Id.*

185. *Republic v. Court of Appeals*, 268 SCRA 198 (1997). The decision laid down the following guidelines for judges and lawyers in determining whether psychological incapacity exists:

1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological—not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *eiusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must

the treatment of cases for nullity of marriage based on psychological incapacity. But interestingly, ever since the *Molina doctrine* was formulated, there has only been one case where the Supreme Court affirmed the finding of psychological incapacity based on one of the spouse's peculiar behavior of "perennially telling lies, fabricating ridiculous stories, and inventing personalities and situations ..." in *Antonio v. Reyes*.¹⁸⁶

be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally—subject to our law on evidence—what is decreed as canonically invalid should also be decreed civilly void.

186. There were two other cases since 1997 wherein the Court did not disturb a finding of psychological incapacity based on 36. These cases are *Sy v. Court of Appeals*, 386 Phil. 760 (2000) and *Buenaventura v. Court of Appeals*, 454

The numbers indicate that it is rather exigent to invoke article 36 to nullify marriage. The *Molina doctrine* necessitates evidentiary requirements showing antecedence, gravity and incurability which according to the Court in the recent decisions previously discussed, have not been sufficiently met.

Dr. Natividad Dayan, Ph.D., a clinical psychologist observes that the Supreme Court has a rather restrictive interpretation of the concept of psychological incapacity.¹⁸⁷ In relation to that, one difficulty encountered in proving the bases of psychological incapacity is proving the antecedence of the incapacity. Parties may not be aware of their family background and sources of such information, such as parents of the parties or other family members may be defensive or uncooperative. Obtaining data may be difficult.¹⁸⁸ Thus, for instance, a battered wife who files a petition to nullify her marriage under article 36 will need to dig into her husband's past — information which she may have limited access to. In some cases, judges even require petitioners to present the respondents' caretaker during their childhood. Certainly, such may not always be a possibility.¹⁸⁹

Further, while wife battery is usually based on a psychological illness which is one requirement under the *Molina doctrine*, the same may not be necessarily true for marital infidelity.¹⁹⁰ This only proves that there are certain marital iniquities that are rather difficult to prove as grounds for psychological incapacity when not accompanied by other circumstances and such becomes the reason for the denial of many petitions filed in court. However, that does not negate the fact that there are grounds existing which have caused the breakdown of the marriage, and in most cases, such breakdown may no longer be remedied. Thus, to quote the Court in its recent decision, spouses are "continuously shackled to what is now a hopeless and loveless marriage."¹⁹¹

The concept of psychological incapacity was included in the Family Code to provide another option for burdened spouses.¹⁹² However, such

SCRA 261 (2005). However, in *Sy*, the Court found that the marriage was void *ab initio* due to the lack of a marriage license at the time the marriage was solemnized, and thus declined to pass upon the question of psychological incapacity. In *Buenaventura*, since the parties chose not to challenge the trial court's conclusion of psychological incapacity and instead raised questions on the award of damages and support, the Court did not review the finding of psychological incapacity.

187. Interview with Dr. Natividad Dayan, Ph.D., Clinical Psychologist (July 21, 2007).

188. *Id.*

189. *Id.*

190. *Id.*

191. Republic of the Philippines v. Iyoy, 470 SCRA 508, 532 (2005).

192. Abrenica, *supra* note 180, at 653.

spouses who have been physically battered or emotionally abused by their partners' infidelity are faced with stringent requirements which are rather inconsistent with their need to break free from their destructive relationships. Thus, this remedy may not be the best one for those experiencing marital iniquities.

D. Other Issues Regarding Divorce

Divorce as a means of severing a marriage bond has been unavailable in the Philippines for over fifty years now. Even so, this fact has not served as a hindrance for Filipinos to attain the same ends even without the aid of positive law.

One can obtain a divorce decree abroad after being declared a naturalized citizen and such will be valid as enunciated in the case of *Republic v. Orbecido*. One can also join a congregation whose belief permits marital unions not otherwise recognized in civil law. Another common resort is article 36 of the Family Code which has consequently swamped courts with petitions to nullify marriages. And as for many Filipinos, the absence of a divorce law may leave them with no other option but to leave their broken marriages which have been shattered by violence and infidelity without any legal or religious sanction. With the costs necessary in litigating a case for nullity of marriage, those without the means simply walk away when their marital circumstances become unbearable.¹⁹³ It has been argued that such even brings greater evil as it results into more common-law relationships and consequently, illegitimate children whose legal rights are definitely not at par with legitimate ones.¹⁹⁴

In short, people have been doing indirectly what they cannot do directly, out of desperation and the hope that they can have another chance to have stable and functioning relationships. Marriage is not only a contract, but also a union. Thus, even if the former can be kept by external compulsion, the same does not hold true for the latter.

[j]udicial interpretation has unduly restricted the grounds of psychological incapacity for voiding marriages, and thus, no longer accurately reflects the true intent behind the law. The spirit of the law was to liberalize the grounds for declaration of nullity of marriages whereas judicial interpretation has severely limited the concept. In so doing, jurisprudence seems to have arrived at a point where the concepts allowed to be encompassed by jurisprudence are no longer consistent with one another ...

193. See, Karl Wilson, *Filipina women still fighting for right to divorce*, Manila Bulletin, Mar. 21, 2005 at E-5.

194. Jainal D. Rasul, Sr., *Divorce minimizes ill-effects of live-in partnership*, Manila Bulletin, Aug. 11, 2001 at 11.

VII. CONCLUSION

Absolute divorce should finally be allowed in the Philippines. When the law refers to marriage as "an inviolable social institution," it should be construed as referring to marriages that actually serve as strong pillars of the family. It is futile to preserve unions when it is apparent that spouses can no longer perform the basic marital obligations to love, respect and the observance of fidelity. As upheld in *Antonio v. Reyes*, the State also has to be on guard for marriages that do not promote a healthy family life. Family members are only placed at a greater peril if they remain exposed to violence or constant conflict. These families deserve protection as well, not by constraining that they remain together, but rather, by providing them a remedy that will allow them to live free from marital discord.

Moreover, the Family Code was enacted with the avowed purpose of providing a law that is reflective of contemporary trends and conditions. The numerous petitions to dissolve marriages filed in courts, the perils of physical and emotional abuse in family relationships, the evolving power relations of husbands and wives and the inadequacy of remedies available to spouses are the realities that the law should contend with at present. The law's purpose will only be served if it will not shirk from these realities — realities that establish the need for absolute divorce in the country.

Indeed, the law should continuously strive to protect the institutions of marriage and the family because they in turn, build society in general. However, the genuineness of these relations which is determinant of whether they can actually live up to their responsibility to society does not depend solely on legal status. In cases where the latter is the only remaining tie that binds, a remedy should be available for family members to start anew.

Will to Live: A Proposal for a Philippine Law Recognizing, Governing, and Regulating Living Wills

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