



Women's Priority Legislative Agenda for the 17th Congress

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Ensuring Women's Equal Rights in Marriage and Family Relations: Amending Articles 14, 19, 124, 211 and 225 of the Family Code of the Philippines

Philippine
Commission
on Women



POLICY BRIEF NO. 6

This policy brief provides the rationale for amending Articles 14, 19, 124, 211 and 225 of the Family Code of the Philippines. It explains how traces of inequality between the spouses are still maintained in the said law, as well as legal and practical bases for policy makers to address the issue.

WHAT IS THE ISSUE? WHAT HAS BEEN OUR RECENT EXPERIENCE/S WITH REGARDS TO THE ISSUE?

The Family Code of the Philippines was enacted to amend various antiquated provisions of our Civil Code, introducing for that matter new laws on marriage and family relations, among others, which are more attuned with contemporary developments and trends in the modern times. Despite its introduction of more progressive provisions, the Family Code still contains some articles that undermine equality between man and woman by giving primacy over the decision of the husband and/or father.

On the exercise of parental consent to marry, Article 14 provides that:

“Art. 14. In case either or both of the contracting parties, not having been emancipated by a previous marriage, are between the ages of eighteen and twenty-one, they shall, in addition to the requirements of the preceding articles, exhibit to the local civil registrar, the consent to their marriage of their father, mother, surviving parent or guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be manifested in writing by the interested party, who personally appears before the proper local civil registrar, or in the form of an affidavit made in the presence of two witnesses and attested before any official

authorized by law to administer oaths. The personal manifestation shall be recorded in both applications for marriage license, and the affidavit, if one is executed instead, shall be attached to said applications.” (Emphasis supplied)

The first two sentences of Article 14 form part of the instructions printed on Municipal Form No. 92 or Consent of Marriage of an underage person which is still being used by the local civil registrar.¹ The phrase “in the order mentioned” underscored above shows that the law is explicitly partial to the father’s decision to give or withhold consent to the marriage of a son or daughter. Thus, if the mother consents but the father objects to the marriage, there is no valid consent to the said marriage.² On the other hand, even when the mother may have serious objections to the marriage, the child’s father could decide otherwise and the mothers’ reservations will be left unheeded.

On the administration and enjoyment of community property or conjugal partnership, relevant portions of Articles 96 and 124 provide that:

*“Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. **In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision...xxx”***

“Art. 124. The administration and enjoyment of

the conjugal partnership shall belong to both spouses jointly. ***In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision...xxx.***"

On the exercise of parental authority over the person and legal guardianship over the property of common children, pertinent portions of Articles 211 and 225 state that:

"Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary...xxx" (Emphasis supplied.)

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary...xxx" (Emphasis supplied)

The above-quoted provisions automatically give the husband/father the power to decide and completely divest the wife/mother of any say unless she resorts to judicial action. This is discriminatory to women because it uses the proxy standard of sex by blindly presuming that the man always knows the best thing to do for the family, whereas the woman is not fit to make such sound judgment.

The rational and reasonable criteria in determining who between the spouses/parents should exercise decision-making in family affairs should be on account of their professional, educational or personal experiences, not on account of their sex or gender. While the Family Code seeks to preserve harmony and peace among the family members, it must not go as far as to undermine the right of the wife/mother to decide alongside the husband/father. In case of disagreement, she must be given the equal opportunity to prove that her stance or opinion is more practical, more sensible and more beneficial for the family.

WHY IS THE ISSUE IMPORTANT?

Men and women are equal before the law, and the fact that they are married should not lower a

a woman's status vis-a-vis her male spouse. On the contrary, their being husband and wife should give them equal rights and opportunity in decision-making.

While it is recognized that the Family Code generally observes the fundamental equality of women and men as enshrined in our Constitution, traces of unfair provisions still remain, and which need to be amended. Articles 14, 96, 124, 211 and 225 perpetuate the unequal status of spouses and preserve the old concept of patriarchy within the family. A household that is set up on a patriarchal basis, with the husband/father determining fundamental conditions and making the key decisions often result to the deterioration of the status of women, making it inconsistent with the concepts of gender equality and non-discrimination.

WHAT ARE THE EXISTING LAWS OR POLICIES RELATED TO THE ISSUE?

Republic Act No. 9710 or the Magna Carta of Women provides that the government shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Further, the provision on equal treatment before the law mandates the State to review, amend and/or repeal existing laws that are discriminatory to women. This includes ensuring that women and men have the same rights with respect to the ownership, acquisition, management, administration, enjoyment, and disposition of property.

WHAT ARE THE CONSIDERATION IN ADDRESSING THE ISSUE IN THE COUNTRY?

Promoting women's rights and gender equality

Removing the preferential treatment for the father/husband's decision in (1) giving consent to the marriage of a son or daughter; in case of disagreement with the wife (2) in the enjoyment and administration of absolute community or conjugal partnership of gains, and (3) in the exercise of parental authority over the person and legal guardianship over the property of their common child, will contribute to promoting women's rights, ensuring equality before the law between husband and wife, and transforming gender relations between the spouses.

Responding to International Commitments

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls on the States Parties to condemn discrimination against

women in all its forms. Particularly, Article 16.1 of the said Convention mandates State Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and ensure on a basis of equality of men and women (a) the same rights and responsibilities during marriage and at its dissolution; (b) the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; (c) the same rights and responsibilities with regard to guardianship; and (h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration, among others.

Also, Goal No. 5 of the United Nations Sustainable Development Goals targets the adoption and strengthening of policies and legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

POLICY RECOMMENDATION

1. It is recommended that Article 14 be amended to remove the bias in the father's decision to give or withhold consent to a son/daughter's marriage. There are three possible options for this:
 - A. Merely require the consent of either of the parents; or
 - B. Require the consent of both parents; or
 - C. In cases where the husband and wife are separated, the permission should be provided by the parent who has custody over the daughter or son.
2. It is recommended that the second sentence of the first paragraph of Articles 96 and 124 be amended as follows: **"In case of disagreement, the spouses shall resort to court which shall then decide who between the spouses shall administer the property. Neither of the spouses shall unilaterally carry out acts of administration and enjoyment of the property without first obtaining a proper judicial order."**

Instead of automatically favoring the decision of the husband in case of disagreement, the court must intervene to decide which spouse is better fit to administer the property, based on certain objective criteria and evidence. This way, the wife will be given an equal opportunity to show

her capability to administer the conjugal or community property.

3. It is recommended that the entire second sentence of the first paragraph of Articles 211 and 225 be amended as follows:

"Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the spouses shall resort to court which shall then decide the case based on the best interest of the child."

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the spouses shall resort to court which shall then decide the case based on the best interest of the child. xxx"

Parents have equal rights over their common children, and providing for equal rights in the exercise of parental authority over the person and legal guardianship over their property will serve the best interest of the child. Instead of automatically favoring the decision of the father in case of disagreement, it would be better and fairer for the court to intervene and decide, taking into consideration the best interest of the child, as to which parent is better suited to exercise parental authority over the child and legal guardianship over the child's properties.

CONCLUSION

The Family Code of the Philippines is replete with provisions that implement the observance of fundamental equality of women and men. However, such progressive provisions of the Code are being negated by the existence of Articles 14, 19, 124, 211 and 225 which give more weight to the judgment of the husband or father than that of the wife or the mother. These provisions must therefore be amended to eliminate the existing discrimination against a woman (as a spouse and/or as a mother) when it comes to decision-making in the context of family relations.

It is hoped that our legislators will prioritize and favor the immediate enactment of a law to amend the abovementioned Family Code provisions, in the interest of fulfilling their mandate under the Constitution and the Magna Carta of Women, as well as ensuring the best interest of the child.

ENDNOTES

¹Sample at

<http://www.pasay.gov.ph/Pdf/CivilRegistrar/forms/consent%20to%20marriage%20of%20a%20person%20under%20age.pdf>, last accessed 22 August 2016.

²Nolledo, Jose N. (2009). The Family Code of the Philippines Annotated, p. 26

³"Women In Patriarchal Societies", The Origins Of Civilizations, 1992. <http://history-world.org/Civilization,%20women_in_patriarchal_societies.htm>