



**Women's
Priority
Legislative
Agenda
for the 18th Congress**

**Ensuring Women's
Equal Rights in
Marriage and
Family Relations**

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Amending the Family Code of the Philippines to remove traces of inequality between spouses with respect to their ability: to provide parental consent to marry, to administer their community property or conjugal partnership, to exercise their parental authority over the person and legal partnership over the property of common children.

WHAT IS THE ISSUE? WHY IS THE ISSUE IMPORTANT?

The Family Code of the Philippines was enacted in 1987 to attune the legal framework on marriage and family relations to contemporary developments and trends.ⁱ Despite these efforts to update the law, it still contains several provisions that undermine the equality of women and men by giving primacy to the decision of the husband and/or father over that of the wife and/or mother.

On the exercise of parental consent to marry

Article 14 of the Family Code 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 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.ⁱⁱ 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 would be left unheeded.

Notably, the first two sentences of the provision form part of the instructions printed on Municipal Form No. 92 or “Consent to Marriage of a Person Under Age” which is still in use and available at the local civil registrar.

On the administration and enjoyment of the 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.”

The legislative justification for the giving of preference to the decision of the husband in the above provisions is to make sure that there is an intermediate modus vivendi (a practical compromise) before the spouses wind up in court.ⁱⁱⁱ This reinforces gender stereotypes that the husband is the decisive “head of the family”. While the rationale is to prevent a vacuum concerning the administration and management of the spouses’ properties, the sex of a spouse is not a sufficient basis to justify the upholding of one’s decision over the other. Men and women are equal before the law, and the fact that they are married should not lower a woman’s status vis-a-vis her male spouse.

On the exercise of parental authority over the person of common children and legal guardianship over their properties

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 provisions show that the authority to make decisions affecting the children ultimately belong to the father. While the law seeks to preserve familial harmony and peace, it should still recognize that mothers also have the equal right to determine what would serve their children's best interests. In case of disagreement, both parents should be allowed to show on an equal standing, that their decision is appropriate, without one of them being presumed to be more sensible.

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

Article 16.1. of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls on the States 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.

Moreover, Republic Act No. 9710 or the Magna Carta of Women, the local translation of the provisions of CEDAW, mandates the review and amendment and/or repeal of laws that are discriminatory to women.

POLICY RECOMMENDATION

Although the Family Code generally observes the fundamental equality of women and men as enshrined in our Constitution, traces of unfair provisions remain. Articles 14, 96, 124, 211 and 225 perpetuate the unequal status of spouses and preserve outdated concepts of patriarchy within the family, and thus, should be amended. Hence:

1. It is recommended that Article 14 of the Family Code be amended to remove the preference for the father's decision in giving or withholding consent to a child's marriage by:
 - a) Merely requiring the consent of either of the parents;
 - b) Requiring 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 had custody over the child during their minority.
2. Instead of automatically favoring the decision of the husband in case of disagreement, the matter must be expediently settled before the courts by both spouses who must show on an equal footing, the judiciousness of their proposed management of their absolute community or conjugal property.

Thus, it is recommended that the second sentence of the first paragraph of Articles 96 and 124 be amended as follows: **"In case of disagreement either spouse shall have recourse to the court for proper remedy in a summary proceeding. Neither of the spouses shall unilaterally carry out acts of administration and enjoyment of the property without first obtaining a proper judicial order."**

3. Disagreements between parents over matters involving the welfare of their children must be resolved in a manner that would prevent unnecessary delay as well as uphold the equality of rights between mothers and fathers. Thus, it is recommended that 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 the court for proper remedy in a summary proceeding which must be resolved to serve the best interest of the child. xxx**"*

*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 for proper remedy in a summary proceeding which must be resolved to serve the best interest of the child. xxx**"*

ⁱ Sempio-Diy, Alicia (1988). Handbook on the Family Code of the Philippines. Quezon City: Central Lawbook Publishing Co., Inc.

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

ⁱⁱⁱ 185th Meeting of the Civil Code and Family Law Committees, June 27, 1987, p. 5