



Women's Priority Legislative Agenda for the 18th Congress

Recognizing Sexual Abuse and Focusing on the Violence and Abusive Conduct as Grounds for Legal Separation

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This policy brief provides the rationale for amending the Family Code provision on Legal Separation, focusing on the violence and abusive conduct as grounds for legal separation and recognizing sexual abuse.

WHAT IS THE ISSUE? WHY IS THE ISSUE IMPORTANT?

Legal separation is a remedy available to persons who no longer wish to live with their spouses based on grounds enumerated under Article 55 of the Family Code. One of such grounds is repeated physical violence or grossly abusive conduct, to wit:

“Article. 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; xxx”

While the provision recognizes spousal abuse as a ground for availing of the remedy, it still requires that the petitioner must either establish the frequency of infliction of bodily harm or demonstrate the severity of the abusive conduct. These imply that an aggrieved spouse can seek recourse only when they have already experienced several instances of physical violence or when the abuse they received is insufferable.

It is recognized in jurisprudence that victims of spousal violence are predominantly womenⁱ. Women victims of domestic violence suffer from immediate to long-term multiple physical, sexual and mental consequences, including deathⁱⁱ.

According to the 2017 National Demographic and Health Survey (NDHS), 1 out of 4 (or 24%) ever-married women have experienced physical, sexual, or emotional violence by their current or most recent husband/partner. In the same survey, those who experienced physical or sexual violence sustained cuts, bruises, or aches (36%), followed by eye injuries, sprains, dislocations, or burns (11%)ⁱⁱⁱ while some reported deep wounds, broken bones, broken teeth, or other serious injuries (4%).

Similarly, data provides that four percent (4%) of ever-married women have experienced both physical and sexual violence. Based on the 2018 Philippine National Police report, the most reported VAW-related cases are violations of RA 9262 or the Anti-Violence against Women and their Children Act of 2004, with 14,116 cases or 38 cases a day.

Some women who have not escaped their hostile marital situations also reach the extent of becoming “battered” by undergoing recurring cycles of violence. Battered women, as explained in *People v. Genosa (G.R. No. 135981, 15 January 2004)*, “feel unsafe, suffer from pervasive anxiety, and usually fail to leave the relationship”^{iv}.

Appropriate intervention and legal remedies should be made available to victims of domestic abuse at the outset, even before the effects on their physical and mental health become more serious. It is stressed that the qualifying terms in the law undermine a married person’s right to their physical security since a singular physical attack or any form of abuse is widely considered as reprehensible and is even punishable under applicable penal laws. Allowing the language of the provision to remain as such increases the chances of permanent damage to victims of abuse and even death.

The said provision also failed to consider sexual violence as a ground for legal separation. Majority of currently married women (87%) shared that they can say no to their husband if they do not want to have sexual intercourse. However, five percent (5%) of women age 15-49 have ever experienced sexual violence.^v In *People v. Jumawan*, the Supreme Court explained that “...marriage is not a license to forcibly rape their wives. A husband does not own his wife’s body by reason of marriage. By marrying, she does not divest herself of the human right to an exclusive autonomy over her own body and thus, she can lawfully opt to give or withhold her consent to marital coitus.”^{vi}

The law as it stands does not take into consideration the realities of persons affected by it. The longer it remains as such, the more it reinforces the batterers’ attempts to control and demean their victims and contribute to perpetuating violence against women within the sanctity of the home. It eventually affects the women’s families, the community and the country at large. It has tremendous costs, from greater health care and legal expenses and losses in productivity, impacting national budgets and overall development.^{vii} Victim-spouses should, thus, be given protection from further hardship,

by removing the present burden of proving the frequency and severity of physical violence and abuse.

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

Article 2 of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls upon the States Parties to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

Article 16 of the CEDAW calls upon the State Parties to take all appropriate measures to eliminate discrimination against women and ensure equality of men and women in all matters relating to marriage and family relations while CEDAW General Recommendation No. 19 prohibits gender-based violence.

Republic Act No. 9710 or the Magna Carta of Women (MCW) defines violence against women (VAW) as “any act of gender-based violence that results in, or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.”

The MCW also calls for the amendment and repeal of laws that are discriminatory to women, which among others, include Article 55 of the Family Code of the Philippines.

VAW is considered a public crime under RA 9262. It recognizes sexual abuse as a form of “violence against women and their children. The State is also bound “to protect the family and its members, particularly women and children from violence and threats to their personal safety and security.”

POLICY RECOMMENDATION

It is proposed that Article 55 (1) of the FCP be amended to include sexual violence and remove “repeated” and “grossly” and focus on the acts committed rather than the severity and instances of violence and abusive conduct. The proposed amendment shall read as follows:

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

- 1. PHYSICAL AND/OR SEXUAL petitioner; *VIOLENCE, OR ABUSIVE CONDUCT directed against the petitioner, a common child, or a child of the petitioner; XXX”*

By amending the said provision, women are guaranteed sufficient protection under the law, consistent with R.A. 9262 as well as a chance to reclaim their sense of safety, secure their properties and have custody of their minor children, among others.

ⁱ Garcia vs. Drilon (G.R. No. 179267, June 25, 2013)

ⁱⁱ Ending Violence Against Women (March 2015), <http://www.unwomen.org/en/what-we-do/ending-violence-against-women#sthash.DwQ4xfLi.dpuf>

ⁱⁱⁱ NDHS 2017, page 227

^{iv} Psychologist Nancy Kaser-Boyd testifying as an expert on the battered woman syndrome in *Depetris v. Kuykendall* as cited in *People of the Philippines vs. Marivic Genosa* (G.R. No. 135981, January 15, 2004)

^v NDHS 2017, page 221

^{vi} *People vs. Jumawan*, https://www.lawphil.net/judjuris/juri2014/apr2014/gr_187495_2014.html

^{vii} Ending Violence Against Women (March 2015), <http://www.unwomen.org/en/what-we-do/ending-violence-against-women#sthash.DwQ4xfLi.dpuf>