



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

Adopting Divorce in the Family Code

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This policy brief provides the rationale for adopting divorce in the Family Code of the Philippines.

WHAT IS THE ISSUE? / WHY IS THE ISSUE IMPORTANT?

The Philippines remains to be the only country in the world apart from the Vatican, without a generally applicable divorce law.

Spouses who no longer wish to stay married have limited options under the Family Code. One option is through the filing of a petition for declaration of nullity of marriage which means that the marriage was void from its very beginning because:

- It lacks any of the essential and formal requisites of marriage (*Art. 4*), or it is a marriage which is void from the beginning under *Art. 35* of the Family Code;
- The other spouse is psychologically incapacitated to comply with the essential marital obligations of marriage (*Art. 36*).
- It is an incestuous marriage (*Art. 37*), or a marriage against public policy (*Art. 38*);
- One of the parties remarried, invoking the absolute nullity of a previous marriage, but there was no final judgment declaring such previous marriage void (*Article 40*);
- The marriage is bigamous or polygamous (*Art. 41*); or
- It is a subsequent marriage under *Article 41* of the Family Code, where both spouses acted in bad faith (*Art. 44*).

Another option is annulment which may only be availed of if the marriage is valid but voidable for some cause existing at the time of the marriage. These causes include: the failure to obtain parental consent in case any of the parties was 18 years of age or over but below 21; the insanity of either party; the vitiation of person's consent to marry (through fraud, force, intimidation, or undue influence); impotence; and affliction of serious and incurable sexually transmitted disease.

However, due to the absence of a divorce law in the Philippines, there is no legal remedy available that would result in the dissolution of valid marriages. This is with exception to the provisions on divorce under Presidential Decree No. 1083 or the Code of Muslim Personal Laws, which is of limited applicabilityⁱ, and

Article 26 of the Family Code, which allows for the judicial recognition of divorce decrees obtained abroad where the marriage was between a Filipino citizen and a foreign national.

The legal remedies available for spouses with problematic marriages are not only limited but have also been shown to be lengthy and expensive to the point of being cost-prohibitive especially to spouses who are solely engaged in domestic work.

Some spouses try to file such cases, hoping to show that the breakdown of their marriage was due to the fault of their spouses (e.g., infidelity, physical or sexual violence directed against the spouse or their child, drug addiction), just to realize that their only recourse under the law is legal separation, a remedy which does not actually sever their marital ties and does not allow them to remarry. This only allows spouses to live separately from the guilty spouse and to divide their properties, among others. It also does not shield them from being charged with adultery or concubinage by their legal spouses as a form of retaliation if they decide to enter into new relationships. Children borne of such unions also do not acquire legitimate status and suffer as a consequence.

These restrictions discount the need for the full healing of victims of domestic abuse, most of whom are female. The 2017 National Demographic and Health Survey (NDHS) results showed that almost one in four ever-married women have experienced any form of physical, sexual, or emotional violence by their current or most recent husband/partner. Alarming, 19% of currently married women have experienced physical abuse from their husbands while many experience emotional and other forms of non-personal violence which are the most common types of spousal violence. While some of these women seek protection orders and criminal actions against their abusive partner, many of them remain married due to the absence of an absolute divorce law.

The burden of failed marriages usually falls on women due to cultural stereotypes and the current legal system of our country. Women are sometimes solely burdened to financially provide for their children and they balance this with their personal struggles of loneliness and social stigma.ⁱⁱ

The impact of domestic violence on children should also be considered. Studies suggest that there is a correlation between witnessing domestic violence or intimate partner violence and the development of children.ⁱⁱⁱ Most of those who have witnessed domestic violence have exhibited aggressiveness, hyperarousal, anti-social behaviors, fearfulness, withdrawn behaviors, avoidant behaviors, inhibited behaviors, and developmental regression.^{iv}

A law on absolute divorce is not new in our country^v. Act. No. 2710 (March 11, 1917) introduced absolute divorce in the Philippines, replacing Spanish civil laws which only referred to relative divorce or legal separation^{vi}. The said law allowed divorce on the ground of criminal conviction for adultery or concubinage. This was in force until the Japanese Occupation but was repealed by Executive Order No. 141 on March 25, 1943. The Executive Order cited eleven grounds for divorce, many of which were similar to the present grounds for legal separation under the Family Code. However, with the reinstatement of American sovereignty over the country, Act No. 2710 once again became in force. This was later supplanted with the enactment of Republic Act No. 386 or the Civil Code of the Philippines which only allowed legal separation based on two grounds: (1) adultery on the part of the wife and/or concubinage on the part of the husband; and (2) an attempt by one spouse against the life of another. The inclusion of divorce in the law was deliberated upon by the Code Commission but was substituted due to the overwhelming pressure from conservatives.

The Civil Code was then updated with the enactment of the Family Code in 1987. However, the legal framework on marriage and family relations only allows for relative divorce or legal separation. Thus presently, the Philippines does not have a law on divorce.

In Spain, the country which brought Catholicism to the Philippines and other parts of the world, obtaining a divorce does not require any grounds or reasons from either party. Spouses need only to wait three months after the performance of the marriage before either spouse may file for divorce. Other strong Catholic nations such as Brazil^{vii}, and Mexico^{viii} have also their form of no-fault divorce laws in their respective Civil Codes.

In 2011, Malta became the last country in Europe to introduce divorce legislation due to the changing perspectives of the younger Maltese generation who no longer see the traditional family as the only model for the domestic unit.^{ix}

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

The concept of divorce has been encompassed in several international commitments and national law. Article 16 of the Universal Declaration of Human Rights provides that “men and women of full age, without any

limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution”.

Additionally, Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls upon the State Parties to “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: (a) The same right to enter into marriage; (b) The same right to choose a spouse; (c) The same rights and responsibilities during marriage and at its dissolution;”

The same is reiterated in the CEDAW Concluding Observations No. 50 (July 22, 2016) which calls for, among other, the expediting of “the harmonization of the Family Code and other laws on marriage and family relations with the Convention and the Magna Carta for Women and ensure equality of women and men in marriage as well as upon the dissolution of marriage, including by expediting adoption of the long-pending Divorce Bill and taking into account the Committee’s general recommendations No. 21 (1994) on equality in marriage and family relations and No. 29 (2013) on economic consequences of marriage, family relations and their dissolution;”

Section 19 of Republic Act No. 9710 or the Magna Carta of Women (MCW) states that “the State shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure: (a) the same rights to enter into and leave marriages or common-law relationships referred to under the Family Code without prejudice to personal or religious beliefs;”

POLICY RECOMMENDATION

The value and sanctity of marriage as a basic institution is upheld by the quality and stability of marital relationships. It is not diminished by a law that allows for the dissolution of abusive or dysfunctional marriages that are beyond any hopes of rehabilitation. The preservation of such marital ties for its sake alone does little to keep or repair family connections, which in reality have been torn apart for various reasons, without any more chance for reconciliation. Thus, a divorce process should be made available to enable already “broken” families to heal and start anew.

As such, the following are recommended:

1. Adopt divorce in the Family Code based on certain grounds, allowing divorced individuals to remarry. This includes provisions for: the dissolution of their property regimes (absolute community, conjugal partnership of gains or as provided in marriage settlements); and the retention of legal status of legitimate children of divorced parents. The custody and financial support of children shall be determined by the

court based on existing provisions of the Family Code.

2. The grounds for divorce may include:

- a. The grounds for legal separation under Article 55 of the Family Code, provided that the ground of physical violence or abusive conduct need not be repeated nor gross in extent;
- b. The non-revocation of a decree of legal separation after two years from its finality;
- c. Separation-in-fact for at least five years;

- d. The transition of either spouse from their birth-assigned sex to another; and
- e. Irreconcilable marital differences and conflicts which have resulted in the total breakdown of the marriage beyond repair, despite earnest and repeated efforts at reconciliation, shall entitle either spouse or both spouses to petition for absolute divorce; Provided that the observance of a mandatory cooling-off period be required before parties can proceed or file for divorce based on this ground.

3. Simplify the divorce process and reduce the cost of the procedure especially for indigents.

ⁱ The Code applies to divorce wherein both parties are Muslims, or wherein the only Muslim is the male party and the marriage is solemnized in accordance with Muslim law or the Code in any part of the Philippines. See Articles 13(1)(2) of the P.D. 1083

ⁱⁱ Edelvina S. Relucio, *The Stresses and Coping Reactions of Separated Women: An Exploratory Study* (ADMU, 1995)

ⁱⁱⁱ Terra L. Pingley, "The Impact of Witnessing Domestic Violence on Children: A Systematic Review",

^{iv} Pingley, "The Impact of Witnessing...", page 18

^v Republic of the Philippines v. Marelyn Manalo (G.R. No. 221029, April 24, 2018)

^{vi} Deogracias T. Reyes, "History of Divorce Legislation in the Philippines since 1900"

^{vii} Constitutional Amendment No. 66, 2010. <http://english.tse.jus.br/arquivos/constitutional-amendment-no-66-2010>

^{viii} Artículo 272 de Código Civil Federal. Retrieved on from

https://docs.mexico.justia.com/federales/codigo_civil_federal.pdf

^{ix} Angela Abela, "Divorce in Malta", https://www.academia.edu/1492164/Divorce_in_Malta