

Who Needs Divorce in the Philippines?

*Charmian K. Gloria*¹

Introduction

The debate on whether or not divorce should be legalized in the Philippines involves moral, social, economic, and psychological issues. These issues pose valid considerations in resolving the debate, given that our Constitution holds sacred the dignity of every human person,² the sanctity of family life,³ the protection of the youth's moral, spiritual, intellectual and social well-being,⁴ as well as the fundamental equality of men and women before the law.⁵

Various concern groups passionately argue and defend their respective viewpoints. The proponents of divorce are led by groups advocating women's rights. They are supported primarily by women who are abused by their husbands, women whose Filipino husbands have divorced them in other countries and remarried, and spouses (husbands and/or wives) who find their respective interests mutually exclusive and their differences irreconcilable. There are also individuals who sympathize with the plight of these men and women.⁶

On the other hand, those opposing the legalization of divorce in the Philippines include the Roman Catholic Church and individuals who believe that divorce is unconstitutional, that it is anathema to Filipino culture, that it is immoral, that it will destroy the Filipino family, that it will legalize promiscuity, that it will contribute to the increase in broken families, that it will be abused by spouses who find it easier to give up on their marriage rather than try to reconcile their differences, that it will lead to custody battles, and that it will be detrimental for the children.⁷

This paper seeks to examine the legal options available to spouses whose marriage falls apart, and to determine whether divorce is necessary in the Philippines.

¹ The author holds office at C.K. GLORIA & Associates located at the Valgosons Realty Bldg. II, 214 C.M. Recto St., Davao City. She has been engaged in the private practice of law since 1993, with emphasis on Family Law and other areas of Civil Law.

² Constitution, Art. II, Sec. 11.

³ *Id.*, Sec. 12.

⁴ *Id.*, Sec. 13.

⁵ *Id.*, Sec. 14.

⁶ See <http://www.gov.ph/forum> (visited on February 2, 2007).

⁷ *Id.*

Divorce in Pre-Colonial Philippines

Contrary to the general perception, divorce is part of Filipino culture. According to Heidi K. Gloria,⁸ who specializes in the study of the ethnic history of the Philippines, before the colonial government of Spain imposed a new legal order, divorce was widely practiced among the indigenous peoples of the Philippines. Among the indigenous peoples that used to practice divorce were the Kalinga of the Cordillera Autonomous Region, the Ifugao of Mountain Province, the Manobo of Mindanao, the T'boli of Lake Sebu, the Tiruray of Cotabato, the Higaonon of Bukidnon, the Bagobo of Davao and the Muslims.

The establishment of an independent Philippine republic did not carry with it a reinstatement of the indigenous laws. However, in 1977, the Code of Muslim Personal Laws⁹ was passed, allowing Muslim marriages to be governed by Islamic Law, and thereby allowing divorce for marriages between Muslim Filipinos. No similar law, however, has been passed allowing marriages solemnized in accordance with the traditions of other indigenous groups to be governed by their own indigenous laws.

At present, the Philippines is one of the only two remaining countries in the world without a divorce law. The other is the Republic of Malta, which is a small nation in Southern Europe, in the Mediterranean area.

Termination of Marriage

At present, the Family Code is the only law which governs marriages of all non-Muslim Filipinos, regardless of membership in any ethnic group or religion. While it does not allow divorce as a legal remedy for non-Muslim Filipinos, it recognizes and gives legal effect to divorce when the divorce decree is obtained abroad and any of the following conditions is present: (a) one of the spouses is an alien and it was the alien spouse who obtained the divorce decree,¹⁰ or (b) although both spouses are Filipino, one acquired foreign citizenship, obtained the divorce decree and remarried.¹¹ In either case, Philippine law considers the marriage lawfully terminated and allows the Filipino spouse to remarry.¹² Thus, spouses of a failed marriage who are both Filipino, with neither planning to acquire foreign citizenship, are restricted to the remedies provided by the Family Code.

⁸ Heidi K. Gloria, Ph.D. is a historian who completed her doctorate degree in Ethnohistory at the University of the Philippines in Diliman, Quezon City, Philippines. She is the founding editor of *Tambara*, the first *Ateneo de Davao University Journal*, and the author of the first history book on the Davao Region (see *Kasaysayan ng Davao*, 1979).

⁹ See Pres. Decree No. 1083, arts. 45-57 in relation to art. 13 (February 4, 1977).

¹⁰ See E.O. No. 209, as amended by E.O. 227, art. 26.

¹¹ See *Republic of the Philippines vs. Cipriano Orbecido III*, G.R. No. 154380 (October 5, 2005).

¹² *Id.*, and E.O. No. 209, as amended by E.O. 227, art. 26.

Under the Family Code, a spouse who is seeking relief from the effects of marriage may avail of any of the following remedies: (a) legal separation,¹³ (b) annulment of marriage,¹⁴ and (c) declaration of nullity of marriage.¹⁵

Legal Separation. In a petition for legal separation, there is an implied admission on the part of the spouse filing the petition (hereinafter referred to as the “innocent spouse”) that the marriage was validly contracted or entered into but an act was thereafter committed by the other spouse (hereinafter referred to as the “the spouse at fault”) that justifies the separation of the spouses in terms of living and property arrangements. The petition may be filed if the the spouse at fault (a) repeatedly committed acts of physical violence or grossly abusive conduct against the innocent spouse, a common child or a child of the innocent spouse; (b) inflicted physical violence or moral pressure on the innocent spouse to compel the latter to change religious or political affiliation; (c) attempted to corrupt or induce the innocent spouse, a common child, or a child of the innocent spouse, to engage in prostitution, or connivance in such corruption or inducement; (d) was sentenced, by final judgment, to imprisonment of more than six (6) years, even if he/she is pardoned; (e) engaged in drug addiction or habitual alcoholism; (f) is a lesbian or homosexual; (g) contracted a subsequent bigamous marriage, whether in the Philippines or abroad; (h) committed sexual infidelity or perversion; (i) attempted to take the life of the innocent spouse; or (j) abandoned the innocent spouse without justifiable cause for more than a year.¹⁶

Notwithstanding the existence of any of the grounds for legal separation, the petition may be denied if (a) the innocent spouse has condoned the act complained of;¹⁷ (b) the innocent spouse has consented to the commission of the act complained of;¹⁸ (c) the innocent spouse and the spouse at fault have connived in the commission of the act complained of;¹⁹ (d) both spouses have given cause for legal separation;²⁰ (e) there is collusion, i.e., the spouses have conspired with each other to obtain the decree of legal separation;²¹ or (f) the petition was filed beyond the prescriptive period, which is five (5) years from the occurrence of the cause for legal separation.²²

During the pendency of the case and should the parties fail to agree, the court shall determine who is to have custody of the children, taking into consideration the moral and material welfare of the children and their choice of parent.²³ Once a decree of legal separation is issued, the spouses may “continue”

¹³ See E.O. No. 209, as amended, arts. 55-67

¹⁴ *Id.*, arts. 45-47

¹⁵ *Id.*, arts. 35-38, 41-44.

¹⁶ *Id.*, art. 55.

¹⁷ *Id.*, art. 56.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*, art. 57.

²³ *Id.*, art. 62 in relation to art. 49.

to live separately but they cannot remarry since the marriage bonds are not severed.²⁴ Final custody of the children may be awarded to the innocent spouse unless the court determines that it is to the children's best interest that custody be awarded to the spouse at fault. Custody of children under seven (7) years of age, however, is be awarded to the mother unless the court finds a compelling reason to do otherwise.²⁵

Annulment of Marriage. Marriages that may be annulled are those which suffer from a serious defect at the time of celebration. These are classified as "voidable" marriages. Though defective at their inception, voidable marriages are treated as valid until annulled by final judgment of a court. Hence, prior to the finality of the judgment granting annulment, a voidable marriage is binding and produces legal effects. The finality of a judgment of annulment signifies that the marriage cannot produce any further legal effects. The spouses may then remarry, upon compliance with certain registration requirements.²⁶

A marriage may be annulled only upon a showing that: (a) one of the spouses was between the ages of 18 and 21 at the time the marriage was celebrated and he/she failed to secure the consent of his/her parents unless, upon reaching the age of 21 said spouse freely cohabited with the other; (b) one of the spouses was of unsound mind unless said spouse freely cohabited with the other "after coming to reason"; (c) the consent of one of the spouses was obtained through fraud²⁷ unless said spouse, despite knowledge of the fraud, freely cohabited with the other; (d) the consent of one of the spouses was obtained by force, intimidation or undue influence unless the other spouse freely cohabited with the other even after the force, intimidation or undue influence has disappeared or ceased; (e) one of the spouses is physically incapable of consummating the marriage and such incapacity continues and appears to be incurable; or (f) one of the spouses was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.²⁸ To constitute a ground for annulment of marriage, the situation or incident relied upon must have been present at the time of the celebration of the marriage although it was discovered only after the celebration of the marriage.

The complaint for annulment of a marriage should be brought within the period allowed by law. A complaint based on lack of parental consent should be filed by the spouse who was required to secure the consent of his parents but

²⁴ *Id.*, art. 63(1).

²⁵ *Id.*, art. 63(3) in relation to art. 213.²⁶ *Id.*, art. 53.

²⁷ Article 46 of the Family Code identifies the circumstances which constitute fraud as follows:

- "(1) Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;
- (1) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;
 - (2) Concealment of a sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or
 - (3) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage."

²⁸ See E.O. 209, as amended, art. 45.

did not, within five (5) years after he/she shall have attained the age of twenty-one (21).²⁹ Where one of the spouses was insane at the time the marriage was solemnized, the insane spouse may himself/herself file the complaint during a lucid interval or after he/she shall have regained sanity. The other spouse who was unaware of the insanity at the time the marriage was solemnized, or a relative of the insane spouse, may file the complaint at any time before either he/she or the insane spouse dies.³⁰ In case of fraud, the spouse who was defrauded has five (5) years from discovery of the fraud to file the complaint.³¹ If the consent of one of the spouses was obtained by force, intimidation or undue influence, the spouse whose consent was not given freely has five (5) years from the time the force, intimidation or undue influence shall have disappeared or ceased to file the complaint.³² Where one of the spouses has a continuing physical incapability for consummating the marriage or had a grave and incurable sexually transmissible disease, the other spouse may ask the court to annul the marriage within five (5) years from the time the marriage was solemnized.³³

Collusion of the spouses is a ground for the dismissal of the complaint for annulment. In addition, no judgment granting annulment may be based on the stipulation of facts or confession of judgment.³⁴ Evidence must be presented to prove the ground/s relied upon.

Since the marriage was valid before it was annulled, children conceived or born before the judgment annulling the marriage becomes final are considered legitimate.³⁵ During the pendency of the case and once annulment is granted, custody of the children shall be determined by the court if the spouses fail to agree on it, taking into consideration the moral and material welfare of the children and their choice of parent.³⁶

Declaration of Absolute Nullity of Marriage. A declaration of absolute nullity of marriage involves a marriage that is not merely defective but is considered null and void from the time it is celebrated. The marriage is considered as not having been contracted at all so that the participants in said marriage are free to remarry, after complying with certain requirements. Necessarily, a null and void marriage produces no legal and binding effect, with a few exceptions.

A marriage is null and void if (a) it was contracted by one who was below eighteen (18) years of age at the time of the wedding, even though the parents consented to it;³⁷ (b) it was solemnized by a person not legally authorized to do so, unless the parties who were married believed in good faith that the

²⁹ *Id.*, art. 47(1).

³⁰ *Id.*, art. 47(2).

³¹ *Id.*, art. 47(3).

³² *Id.*, art. 47(4).

³³ *Id.*, art. 47(5).

³⁴ *Id.*, art. 48.

³⁵ *Id.*, art. 54.

³⁶ *Id.*, art. 49.

³⁷ *Id.*, art. 35(1).

solemnizing officer had the necessary legal authority;³⁸ (c) it was solemnized without a marriage license, except if the marriage is exempt from the license requirement;³⁹ (d) it was contracted during the existence of another marriage;⁴⁰ (e) it was contracted through mistake of one party as to the identity of the other;⁴¹ (f) it was contracted by one whose previous marriage has been annulled or declared null and void but before compliance with the registration requirements;⁴² and (g) both parties to a subsequent marriage acted in bad faith to have the spouse of either previously declared presumptively dead.⁴³

A marriage is also null and void if (a) it is incestuous;⁴⁴ (b) it is contrary to public policy, as when contracted between certain relatives by consanguinity and affinity;⁴⁵ or (c) one or both of the contracting parties is psychologically incapacitated to perform the essential obligations in a marriage, provided that such psychological incapacity is grave, existed prior to or at the time the marriage was solemnized, and is incurable.⁴⁶

As a general rule, marriages which are declared null and void produce no legal effect whatsoever, and the children born to such marriages are considered illegitimate. The only exceptions refer to children (i) whose parents got married without first complying with the registration requirements for a previous marriage that has been declared null and void;⁴⁷ and (ii) one or both parents of whom is psychologically incapacitated to perform the essential marital obligations.⁴⁸ Where the exception applies, the children are legitimate and the rules governing custody over legitimate children shall apply. Where the exception does not apply, custody over the children belongs to the mother as she exercises sole parental authority over her illegitimate children.⁴⁹

In sum, only marriages which may be classified as voidable or null and void may be terminated, and only the spouses in such marriages may remarry. Couples whose marriage collapses for a cause attributable to the conduct or behavior of one spouse which is not indicative of psychological incapacity have to stay married to each other even if it is proven that one of them is abusive, violent, a drug addict, an alcoholic, a homosexual/lesbian, or a sexual pervert; or, that one of them has already abandoned the marriage, contracted a subsequent marriage or attempted to kill the other.

It cannot be denied that there are also marriages which fall apart due to the irreconcilable differences of the spouses. There may not be a ground for

³⁸ *Id.*, art. 35(2).

³⁹ *Id.*, art. 35(3).

⁴⁰ *Id.*, art. 35(4).

⁴¹ *Id.*, art. 35(5).

⁴² *Id.*, art. 35(6) in relation to arts. 53 and 52.

⁴³ *Id.*, art. 44.

⁴⁴ *Id.*, art. 37.

⁴⁵ *Id.*, art. 38.

⁴⁶ *Id.*, art. 36.⁴⁷ *Id.*, art. 165.

⁴⁸ *Id.*, art. 54.

⁴⁹ *Id.*, art. 176.

legal separation and yet, both find it impossible to continue living together even after going through marriage counseling. The present law gives them no adequate relief.

Divorce in the Philippines

One need not be a psychiatrist or a psychologist to recognize the threat that lies in the continued exposure of children to a parent's abuse, violence, drug addiction, alcoholism, sexual perversion, criminal activities, abandonment, as well as the frequent fights of both parents due to irreconcilable differences. Such an exposure distorts the children's understanding of marriage and family. It corrupts their values involving human dignity; the sanctity of family life; and, their moral, spiritual, intellectual and social well-being.⁵⁰

Presidential Decree No. 603, as amended, entitled "The Child and Youth Welfare Code," provides that children are entitled to the following rights, among others:

- (a) To a wholesome family life that will provide them with love, care and understanding, guidance and counseling, and moral and material security;⁵¹
- (b) To be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of their character;⁵² and
- (c) To protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to their physical, emotional, social and moral development.⁵³

P.D. 603 also imposes upon children the following responsibilities, *inter alia*:

- (a) To strive to lead upright and virtuous lives in accordance with the tenets of their religion, the teachings of their elders and mentors, and the bidding of a clean conscience;⁵⁴
- (b) To love, respect and obey their parents, and cooperate with them in the strengthening of the family;⁵⁵ and
- (c) To endeavor to keep the family harmonious and united.⁵⁶

Where there exists a ground for legal separation other than abandonment and the innocent spouse chooses to stay with the spouse at fault since the

⁵⁰ See Article II, Section 11.

⁵¹ *Id.*, sec. 3(2).

⁵² *Id.*, sec. 3(5).

⁵³ *Id.*, sec. 3(8).

⁵⁴ *Id.*, sec. 4(1).

⁵⁵ *Id.*, sec. 4(2).

⁵⁶ *Id.*, sec. 4(3).

marriage cannot be legally terminated, the children's exposure to the abuse, violence, drug addiction, criminal activities, homosexuality, lesbianism, or sexual perversion goes unchecked. Continued exposure to the malevolent or socially unacceptable behavior leaves the children with corrupt role models. The children grow up believing that marriage is a license to inflict pain on one's spouse and/or children; that it is good to take prohibited drugs or regulated drugs without prescription; that committing crimes constitutes respectable behavior; that homosexuality or lesbianism is to be emulated; and, sexual perversion is normal behavior.

Similarly, when parents suffering from irreconcilable differences choose to stay together, they subject their children to their constant fighting and word war with each other. They despise each other and display for the other and the unkind, cruel and spiteful words each hurls against the other disillusion their children about marriage. Their children grow up believing that marriage is akin to imprisonment, or worse, hell, and that it is to be avoided at all cost.

When the spouses of a failed marriage choose to live apart, or when one is abandoned by the other, the children of the separated spouses are nevertheless exposed to defective role models. Separated spouses eventually find new partners, have illicit relationships, live with their new partners as husband and wife but without the benefit of marriage, and start new families. This behavior gives the children the impression that it is morally right for a married individual to have and maintain an illicit relationship and to live with his/her illicit partner, even without the benefit of marriage. Thus, despite the separation, the children grow up with a distorted concept of marriage and family, with their parents representing defective role models. When these children become adults, they tend to emulate their parents' behavior.

Furthermore, when children are born of the illicit relationship, an upsetting distinction arises between them and the legitimate children of one or both of their parents. Through no fault of their own, the painful stigma of illegitimacy attaches to the children of the illicit relationship. They often find themselves being discriminated against and treated as inferior members of the family.

Hence, the future for the rights of children, legitimate or illegitimate, of spouses who stay together despite the existence of a ground for legal separation other than abandonment as well as of separated spouses looks equally grim. These children are deprived of their rights to (a) a wholesome family life,⁵⁷ (b) be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of their character,⁵⁸ and (c) protection against improper influences and other conditions or circumstances prejudicial to their physical, emotional, social and moral development.⁵⁹ It also becomes extremely difficult for them to (a) strive to lead upright and virtuous lives in accordance with the tenets of their religion, the teachings of their elders and mentors, and the

⁵⁷ *Id.*, sec. 3(2).

⁵⁸ *Id.*, sec. 3(5).

⁵⁹ *Id.*, sec. 3(8).

bidding of a clean conscience;⁶⁰ (b) love, respect and obey their parents, and cooperate with them in the strengthening of the family;⁶¹ and (c) endeavor to keep the family harmonious and united.⁶²

How, then, can divorce better protect the rights of children and encourage their development as responsible family members?

Divorce is generally understood as the dissolution of a marriage. By its nature, divorce is not restricted by any prescriptive period. It may be filed at any time after the cause or ground therefor becomes manifest. Neither can entitlement to it be lost when the innocent spouse has condoned the act complained of or when both spouses are at fault.

Unlike legal separation, it effectively severs the marital bonds and allows the divorced spouses to remarry. Unlike annulment of a marriage, it does not require that the solemnization of the marriage be suffering from any serious defect. Unlike declaration of nullity of a marriage, it does not require the absence of any essential requisite of a marriage or that one of the spouses be clinically diagnosed as having a personality disorder that renders him psychologically incapacitated to perform the essential marital obligations. Divorce presupposes that the marriage was validly solemnized and entered into by the parties. It nevertheless recognizes that people are not infallible and that they can make disastrous mistakes. Divorce therefore affords spouses of a failed marriage a second chance.

Divorce and the right to remarry would give parents a chance to become better role models for their children. If they find new partners and remarry, the relationship need not be illicit. Remarriage would give a parent the chance to show his/her children that marriage need not be a painful experience; it can be an experience worth living.

This second chance that divorce extends to the spouses of a failed marriage is as important to the spouses themselves as it is to their children. Allowing the spouses-parents to remarry would afford the children a chance to become part of a real family, one that is loving, caring and understanding. It would be a family that these children can legally and rightfully claim to be their own. Allowing the spouses of a failed marriage to remarry would therefore provide the children a bona fide chance to enjoy a wholesome family life, to grow up in an atmosphere of morality and rectitude, and to protection against improper influences.

With improved role models, the children would be better able to distinguish right from wrong. With a loving and caring family behind them, the children would stand a better chance of choosing right over wrong, withstanding improper influences, and striving to lead upright and virtuous lives. They could also learn how to love, respect and obey their parents, cooperate with them in the strengthening of the family, and try to keep the family harmonious and

⁶⁰ *Id.*, sec. 4(1).

⁶¹ *Id.*, sec. 4(2).

⁶² *Id.*, sec. 4(3).

united.⁶³ This second chance could thus give the children a genuine opportunity to leave their painful past behind and move towards becoming a responsible family member.

True, divorce may be abused by unscrupulous individuals but it is the submission of this paper that the solution lies not in withholding divorce as a legal remedy but in putting in place the appropriate safeguards. The grounds on which divorce may be granted may be limited to preclude a “no-fault” divorce. A divorce based on the mere agreement of the parties or on trivial grounds may therefore be excluded. In addition, the law may provide that, despite the existence of a ground, divorce may be denied where it is shown that the parties connived or conspired with each other to make it appear that a ground for divorce exists when in fact there is none.

The proposed divorce law, House Bill No. 4016, has already capsulized these concepts in recommending that Articles 55 and 56 of the Family Code be amended to read as follows:⁶⁴

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

xxx

xxx

xxx

(B) A petition for divorce may be filed on any of the following grounds:

- (1) The petitioner has been separated de facto from his or her spouse for at least five years at the time of the filing of the petition and reconciliation is highly improbable;
- (2) The petitioner has been legally separated from his or her spouse for at least two years at the time of the filing of the petition and reconciliation is highly improbable;
- (3) When any of the grounds for legal separation under paragraph (A) of this article has caused the irreparable breakdown of the marriage;
- (4) When one or both spouses are psychologically incapacitated to comply with the essential marital obligations;
- (5) When the spouses suffer from irreconcilable differences that have caused the irreparable breakdown of the marriage.

Art. 56. The petition for legal separation or divorce shall be denied on any of the following grounds:

⁶³ *Id.*, sec. 4(3).

⁶⁴ See Section 2, House Bill 4016.

- (1) Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation or divorce; or
- (2) Where there is collusion between the parties to obtain the decree of legal separation or divorce.”

The foregoing discussion shows that (a) divorce promotes rather than contravenes public policies on the sanctity of family life, dignity of every human being, protection of the youth’s moral, spiritual, intellectual and social well-being, and the fundamental equality of men and women, as embodied in the Constitution; (b) divorce is already part of our culture, as reflected in the practices of the indigenous peoples and the Muslim Filipinos; (c) it does not destroy a family but merely provides relief for the victims of an already broken family by giving them hope and a genuine chance to be part of a real family; (d) it enables spouses of a failed marriage to avoid illicit relationships by allowing them to remarry; (e) custody battles result from the spouses’ decision to live apart, with or without legal imprimatur; and, (f) with the proper safeguards, divorce cannot easily be abused.

Conclusion

An essential aspect of Filipino culture is the desire to keep the Filipino family intact. However, this demands the personal commitment of family members to stay together as a family. The commitment, to carry any meaning at all, has to be willingly entered into and willingly maintained. It is lost when spouses stay together because they are left with no other choice. It is similarly lost when spouses live separately with their own respectively illegitimate families. Without the requisite commitment, there is no point in maintaining the marriage. The marriage would be nothing but a farce, a charade and a mockery of that social institution which we hold most dear.

Perhaps, it was for the foregoing reason that divorce was an acceptable remedy for spouses of failed marriages in pre-colonial Philippines. Perhaps, even without the benefit of formal education, the inhabitants of pre-colonial Philippines recognized the folly of forcing spouses to stay together against their will. Perhaps, they understood what a family truly is better than we do now.

