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The articles published in IBP Journal do not necessarily represent the views of the Board of Editors. The articles are representative of the views of the author/s alone and the author/s are responsible for the views expressed therein.

Editor's Note

Gender equality is a fundamental human right. When this right is not afforded full protection, society as a whole falters.

If half of the world is denied equal footing in developing their potentials, the future of humanity remains bleak. And altering this course is a pressing challenge, requiring sincere commitment to gender equality.

Empowered women are in a better position to promote the well-being, health, and productivity of their families and communities. Thus, women empowerment is crucial in attaining a truly just, productive and resilient society.

As such, addressing gender gaps — access to education, employment, representation, exercise of rights and opportunities — deserves to be at the forefront of national and global discourse.

In celebration of Women's Month (March), the IBP Journal pays tribute to the cause of gender equality and women empowerment by sponsoring this special edition in partnership with one of the oldest organizations of women lawyers in the Philippines. This edition takes on seven articles, all authored by women, each delving on specific topics that bear on pressing issues and challenges to gender equality in the country.

In *The Legal Impediments to Protecting the Rights of Women as Persons Deprived of Liberty,* Arlene G. Lapuz-Ureta tackles the problems of jail congestion in the country, focusing on the plight of female persons deprived of liberty, and proposing solutions to address the iniquities.

In *The Safe Spaces Act: Innovations, Features, and Issues of Operation within the Current Philippine Legal Landscape,* Dot Gancayco provides an overview of Republic Act No. 11313 ("The Safe Spaces Act"), dissecting its key provisions, their intersect with other relevant laws, and potential issues in the Act's implementation.

In *The Psychological Incapacity to Marry*, Maria Katrina C. Franco surveys jurisprudence from 1995 to 2019 relating to Article 36 of the Family Code, which enables courts to nullify marriages for psychological incapacity. Franco distills the legal reasoning behind the cases decided by the Supreme Court in the past 25 years involving the cited provision.

In *Filipinos Without Borders: The Convergence of Law, Religion, Citizenship and Marriage*, Ma. Soledad Margarita Deriquito-Mawis examines how Islam and Christianity have influenced the Philippine laws on marriage.

In *Inter-Country Adoption in the Philippines: An Evolving Process*, Fina Bernadette Dela Cuesta-Tantuico presents the various laws and regulations as well as existing challenges relating to inter-country adoption process in the Philippines.

In *Reproductive Health Care as a Basic Human Right of Filipino Women: Where are We Now?*, Joan A. De Venecia-Fabul narrates the struggles, especially of Filipino women, for the enactment of Republic Act No. 10354, otherwise known as the Reproductive Health Act. De Venecia-Fabul argues, however, that the enactment was not a complete victory, listing down various impediments towards its full and effective implementation.

In *Employment Law and the Gender Gap in the Philippines: A Starting Point for Further Study*, Easter Princess U. Castro-Ty and Maria Viola B. Vista-Villaroman review the Philippine laws providing special benefits and rights to women workers, tackling the 2020 Global Gender Gap Report 2020 by the World Economic Forum, and identifying possible directions for policymakers and regulators.

Through this sponsored special edition, the IBP Journal aims to provide a platform to amplify the voices of women in law and enliven the national discourse on gender equality as a basic human right deserving full protection.

Guest Editor's Note

The U.P. Women Lawyers' Circle, Inc. (UP WILOCI) is proud to collaborate with the IBP Journal on a special issue celebrating Women's Month (March). With articles tackling complex and pressing matters impacting women, the issue also commemorates the UP WILOCI's 75th anniversary this 2021.

Based on the 2020 Global Gender Gap Report, the Philippines appears to be doing well in terms of gender imparity, ranking 16th among 153 countries surveyed. But it also seems that the country's high ranking relates to areas where the Philippines scored well—women representation in professional, technical, and managerial posts, as well as general wage equality.

But problems remain. For example, in terms of workforce participation, the country lands closer to the bottom, placing 121st. In this issue, Viola Vista-Villaroman and Easter Castro-Ty discuss the report and provide a survey of employment benefits for women.

Women representation in more senior levels of enterprises and organizations in the Philippines is certainly something to be proud of. But this statistic most likely covers only women who have the benefit of higher education and economic opportunities. Many Filipino women do not enjoy these privileges. As for wage equality, and as observed by former COA Chairperson Grace Pulido-Tan (in a UP WILOCI webinar held on 7 March 2021), the conversation about women empowerment should no longer be principally about gender or wage gap, but on the more general imperatives of improving education, health care, employment opportunities, among others.

Some of these imperatives are not just those simply economic in nature. They include clarity on, and evolution in, rights relating to marriage, adoption and reproductive health. These topics are often described as "women's issues" even as they involve and affect men as well. But one might view the term as a short-cut to express the reality that our laws, local culture and norms, and the fact of the female physiology, can expose

women to greater vulnerabilities and burdens, and therefore necessitating more protection for women.

Fina Dela Cuesta Tantuico's article provides a clear and useful overview of the issues relating to the inter-country adoption process. Meanwhile, Joan De Venecia-Fabul's highly informative and personal piece on reproductive health care highlights the ever-growing need to protect the reproductive rights of women, and access to proper information and health care. Katrina Franco's very helpful survey of cases on psychological incapacity underscore the need (finally) for a Philippine divorce law. Sol Deriquito-Mawis' discussion is one of the most comprehensive articles on this very issue, and a great resource on the topic.

The deeply-rooted problems of harassment and misogyny—many times downplayed as just harmless behavior of men (as opposed to acts that show an essential lack of awareness/respect for human dignity) are shrugged off even by women as something that they need to live with. These problems are reflected upon in Dot Gancayco's piece on the Safe Spaces Act.

All the articles in this issue were written by members of UP WILOCI (as is this Guest Editor's Note). UP WILOCI is an organization of women lawyers from the University of the Philippines. Founded in 1946 by the late Justice Corazon Juliano-Agrava and eight of her female colleagues, UP WILCOCI is a platform for women lawyers to use their legal expertise to improve the lives of Filipinos, women and children. in particular, who were then suffering from the ravages of World War II. In 1947, the organization was mandated by then President Manuel Roxas to handle cases involving children in conflict with the law and domestic matters. The legal services of UP WILOCI paved the way for the formation of the first Court of Juvenile and Domestic Relations, as it was then known.

The organization, which counts among its members Supreme Court Justices and judges, law professors, legislators, Government officials, civil society leaders, and leading practitioners, has continued its original mission of helping the

underprivileged. Over the years, it has provided free legal aid and case assistance, and continues to actively spread legal literacy through various projects.

One of its more notable endeavors—a jail decongestion project—is the topic of one of the articles in this issue. The project was implemented in 2019 in partnership with the Commission on Human Rights under the GOJUST Programme. The project's principal goal was to decongest jails, focusing on female persons deprived of liberty in the Quezon City and Manila City jails, two of the most crowded detention facilities in the country. The author, Arlene Lapuz-Ureta, was at that time the Executive Director of UP WILOCI's Legal Aid Program. She is now UP WILOCI President.

UP WILOCI greatly appreciates the support of the Integrated Bar of the Philippines, the IBP Journal, the authors featured here (and those who assisted them), and IBP president Egon Cayosa, for this special issue of the IBP Journal. It is hoped that IBP members will find the articles useful for their legal practice, and that policymakers and readers will find positive input for the continuing task of creating better policies in the area of women's issues.

Rose Marie King-Dominguez
UP WILOCI Trustee
March 2021

The Legal Impediments to Protecting the Rights of Women as Persons Deprived of Liberty

*Arlene G. Lapuz-Ureta**

From June to December 2019, the UP Women Lawyers' Circle ("UP WILOCI") pursued a Jail Decongestion Project ("Project"), under its Legal Aid Program, of which I was the Executive Director at that time, in partnership with the Commission on Human Rights under the GOJUST Programme.[1] The Project's principal objective was to decongest the jails by securing the release of prisoners who are entitled to or qualified for release under the law, with focus on female inmates in the Quezon City and Manila City jails.

Under the law, a Person Deprived of Liberty ("PDL") refers to a detainee, inmate, or prisoner, or other person under confinement or custody in any other manner. To prevent labeling, branding or shaming by the use of these or other derogatory words, the term "prisoner" has been replaced by this new and neutral phrase "person deprived of liberty" under Article 10 of International Covenant on Civil and Political Rights ("ICCPR"), who "shall be treated with humanity and with respect for the inherent dignity of the human person."[2]

In the pursuit of the Project, UP WILOCI encountered legal and other forms of impediments to protecting the rights of

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[1] The Justice Sector Reform Programme: Governance in Justice (GOJUST) is born from the development cooperation between the European Union and the government of the Philippines, and reflects a shared vision of improved governance including the rule of law. GOJUST helps in strengthening the Philippines' formal justice system through increased efficiency, effectiveness and accountability, with the aim of ultimately contributing to inclusive growth and poverty reduction in the country. (Available at < https://gojust.org/> accessed September 19, 2020.)

[2] Section 3(u), Revised Implementing Rules and Regulations ("IRR") of Republic Act (RA) No. 10575, otherwise known as the "*The Bureau of Corrections Act of 2013*".

female PDLs, who are entitled to be released from imprisonment. This paper will analyze the various obstacles that contribute to the congestion of Philippine jails and to the violation of rights of female PDLs. It proposes possible solutions to address the barriers to obtaining justice for PDLs.

I. LEGAL FRAMEWORK ON THE RIGHTS OF PDLS

Under the Bill of Rights, Article III of the Philippine Constitution:

> "Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws".

The Philippine Constitution also prohibits cruel, degrading or inhuman punishment.[3] As early as 1902, the Philippine Supreme Court has declared that punishments are cruel when they involve torture or a lingering death.[4]

The Philippines is party to the United Nations Convention Against Torture and Other Inhuman, Cruel or Degrading Treatment or Punishment ("UNCAT"), an international human rights treaty which mandates a global prohibition on torture and other acts of cruel, inhuman, or degrading treatment or punishment and creates an instrument to monitor governments and hold them to account. The UNCAT was adopted by the UN General Assembly on 10 December 1984 and came into force on 26 June 1987.[5]

The UNCAT mandates signatory States to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. It defined torture to include "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

[3] Section 19 (1), Article III of the 1987 Constitution.
[4] Legarda v. Valdez, G.R. No. 513, February 25, 1902, 1 Phil. 146.
[5] Convention against Torture Initiative, available at <https://cti2024.org/content/docs/UNCAT%20OPCAT%20treaties_ENG.pdf>.

for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, **or for any reason based on discrimination of any kind**, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[6]

Under the Revised Penal Code, the commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital shall be considered legal grounds for detention of any person. Absent any such legal grounds, the deprivation of a person's liberty constitutes the crime of arbitrary detention.[7]

On the other hand, the law accords children in conflict with the law the following rights: "the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; xxx" and "the right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time."[8]

The Supreme Court has issued rules clearly providing that children in conflict with the law or those charged with criminal offenses shall not be detained in jail or transferred to an adult facility pending hearing or trial of the case.[9]

Furthermore, Republic Act No. 10592 or the Good Conduct Time Allowance ("GCTA") Law governs the length of one's service of sentence, which affects the entitlement of a PDL to release from jails. Said law provides:

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[6] Underscoring supplied. Under Article 1 of the Convention, torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions; <https://www.ohchr.org/> accessed 22 September 2020.
[7] Revised Penal Code, Article 124.
[8] Republic Act 9344 Juvenile Justice and Welfare Act of 2006.
[9] OCA Circular No. 97-2019 or the 2019 Revised Rule on Children in Conflict with the Law.

> "Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. Computation of preventive imprisonment for purposes of immediate release under this paragraph shall be the actual period of detention with good conduct time allowance: *Provided, however,* That if the accused is absent without justifiable cause at any stage of the trial, the court may *motu proprio* order the re-arrest of the accused: *Provided, finally,* That recidivists, habitual delinquents, escapees and persons charged with heinous crimes are excluded from the coverage of this Act. In case the maximum penalty to which the accused may be sentenced is *destierro,* he shall be released after thirty (30) days of preventive imprisonment".[10]

At present, good conduct time allowances can be granted only by the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology and/or the Warden of a provincial, district, municipal, or city jail.[11]

Recently, the Supreme Court struck down Section 4 of the Implementing Rules and Regulations of the GCTA Law providing for its prospective application and declared that the provisions for GCTA—being favorable to accused who are in prison—can apply retroactively.[12] This can pave the way for more prisoners

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[10]Section 1, GCTA Law, amending Section 29 of the Revised Penal Code.
[11] Ibid., Section 5, amending Article 99 of the Revised Penal Code.
[12] *Inmates of the New Bilibid Prison, et al. v. Sec. Leila M. De Lima, et al.; Atty. Rene A.V. Saguisag, Sr. v. Sec. Leila M. De Lima, et al.; William M. Montinola, et al. v. Sec. Leila M. De Lima, et al.;* G.R. No. 214637, *Reynaldo D. Edago, et al. v. Sec. Leila M. De Lima, et al.,* G.R. No. 212719, June 25, 2019.

to be released soonest and lead to a decongestion of Philippine jails.[13]

The miserable status of Filipino prisons—based on statistics from the Birkbeck University of London and the Institute for Criminal Policy Research's World Prison Brief—shows that as of 2018, the Philippines is home to 933 prisons with a total prison population of 188,278 inmates with prison density at 463.6%, where 75.1 percent are pre-trial detainees or remand prisoners.[14]

At present, the already highly congested Philippine jails are becoming increasingly more packed, propelling the overall prison system of the country to the top of the World Prison Brief's list of the most overcrowded incarceration systems in the world.[15] In its database, the Philippines was ranked the highest in the world in the jail occupancy rate as the Bureau of Jail Management and Penology reported that the congestion rate of their 467 jails is at 534%.[16]

Indeed, confining PDLs in cramped spaces is cruel, inhuman, ill, degrading, and tantamount to unjust punishment. Congested jails are "dangerous to health and to human life as they breed diseases, break down discipline and exacerbate tensions." Having to fight for air and space 24 hours a day makes prison, in the words of inmates, a "living death."[17]

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[13] Philippine Supreme Court < https://sc.judiciary.gov.ph/4510/> accessed December 3, 2020.
[14] 'Packed Prisons in the Philippines', *The ASEAN Post* (Manila, 3 May 2020). <https://theaseanpost.com/article/packed-prisons-philippines> accessed 23 September 2020.
[15] Aurora Almendral, 'Where 518 Inmates Sleep in Space for 170, and Gangs Hold It Together', *New York Times* (Manila, January 17, 2019) <https://www.nytimes.com/2019/01/07/world/asia/philippines-manila-jail-overcrowding.html> accessed September 23, 2020.
[16] 'COVID-19: Lessons from the Philippine Jails Show How to Fight Infectious Diseases', (Philippines, March 24, 2020) <https://www.icrc.org/en/document/philippines-amidst-covid-19-outbreak-icrc-focuses-one-most-vulnerable-places-prisons> accessed September 23, 2020.
[17] 'The Condition of Philippine Prisons and Jails' (Preda Foundation, 2020) <https://www.preda.org/2009/the-condition-of-philippine-prisons-and-jails/> accessed on September 22, 2020.

Even the Commission on Human Rights acknowledged that being jailed in the Philippines amounts to torture,[18] based on the finding of the UN's torture prevention body of prison overcrowding. The Commission is urging the government to improve independent monitoring of places of detention as part of efforts to protect people deprived of their liberty against torture and cruel, inhuman or degrading treatment.[19]

Against this backdrop, it is imperative that the continuing violation of the constitutional rights of PDLs, men and women alike, be put to a stop. The immediate decongestion of Philippine jails must be prioritized. The question remains: why is this unfortunate condition in Philippine jails not readily remedied by the immediate release from prison, at the very least, of those PDLs already legally entitled for release?

II. LEGAL AND OTHER IMPEDIMENTS TO RELEASE OF PDLS

One of the striking findings during the jail visits and legal counselling provided by UP WILOCI volunteer lawyers, was that many PDLs have already served their prison sentences and yet remain in jail. As part of the "drug war" waged by the Duterte administration, a lot of the PDLs in prison at the time of the jail visits were arrested for drug-related cases.[20] However, most of the PDLs entered immediately into plea-bargaining, confessed to lesser drug offenses and were meted by the courts six months imprisonment only and were also or in lieu thereof required to undergo drug-rehabilitation counselling.

Most of those PDLs already served the 6-month sentence and were legally entitled to release at the time UP WILOCI conducted legal counselling. However, the PDLs could not secure their release on their own because of gaps in the internal procedures under the prison system and the absence of ready and available counsel who can assist them.

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[18] (N8).
[19] Ibid.
[20] See 'Philippines Drugs War: UN Report criticises (sic) "permission to kill" (Manila, June 4, 2020) https://www.bbc.com/news/world-asia-52917560 accessed October 27, 2020.

First, we tackle the regulations and procedures in the Bureau of Jails Management and Penology ("BJMP"), which was created on July 2, 1991, under Republic Act No. 6975. The BJMP is charged with exercising supervision and control over all city and municipal jails.[21]

Under the BJMP Comprehensive Operations Manual (2015 Edition):

> "Section 31. MODES AND GUIDELINES FOR RELEASE - The following modes and guidelines shall be observed when inmates are to be released from detention:
>
> 1. ***An inmate may be released through: a. Service of sentence***; b. ***Order of the Court***; c. Parole; d. Pardon; and e. Amnesty.
>
> 2. Before an inmate is released, he/she shall be properly identified to ensure that he/she is the same person received and is subject of release. His/her marks and fingerprints shall be verified with those taken when he/she was received. Any changes or differences in his/her distinguishing marks and scars shall be investigated to ascertain his/her real identity in order to prevent the mistaken release of another person;
>
> 3. *No inmate shall be released on a mere verbal order or an order relayed via telephone**.** The release of an inmate by reason of acquittal, dismissal of case, payment of fines and/or indemnity, or filing of bond, shall take effect only upon receipt of the release order served by the court process server. The court order shall bear the full name of the inmate, the crime he/she was charged with, the criminal case number and such other details that will*

[21] Section 61, R.A. 6975.

> *enable the officer in charge to properly identify the inmate to be released*;
>
> 4. Upon proper verification from the court of the authenticity of the order, an inmate shall be released promptly and without unreasonable delay;
>
> 5. Under proper receipt, all money earned, other valuables held and entrusted by the inmate upon admission, shall be returned to him/her upon release; and;
>
> 6. The released inmate shall be issued a certification of discharge from jail by the warden or his/her authorized representative".[22]

Based on the above rules, the general rule is that PDLs cannot be released without an order from the court even if their sentence has been fully served. This is bolstered by the Revised Rules of Court which states:

> **"Section 3.** *No release or transfer except on court order or bail.* — No person under detention by legal process shall be released or transferred <u>except upon order of the court</u> or when he is admitted to bail.[23]

Second, the Bureau of Corrections ("BUCOR")—which is in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three years[24] — provides for the following rules for release of its prisoners:

> "6.9.1. Basis of release of PDL – PDL may be released from prison:
> 6.9.1.1<u>. Upon the expiration of his sentence</u>;

[22] BJMP Comprehensive Operations Manual 2015 Edition, Bureau of Jail Management and Penology, p. 25; underscoring supplied.
[23] Rule 114, Section 3, Revised Rules on Criminal Procedure; underscoring supplied.
[24] BUCOR Operating Manual, BUC-NBP-PR-OO101/05/2018.

> 6.9.1.2. By order of the court or of competent authority; or
> 6.9.1.3. After being granted parole, pardon, amnesty.
>
> 6.9.2. Who may authorize release – the following are authorized to order or approve the release of PDL:
> 6.9.2.1. The Supreme court or lower courts, in cases of acquittal or grant of bail;
> 6.9.2.2. The President of the Philippines, in cases of executive clemency or amnesty;
> 6.9.2.3. The Board of Pardons and Parole, in parole cases; and 6.9.2.4. The Director, upon the expiration of sentence of the PDL.
> 6.9.3. Approval of release by the Director – PDL shall only be released by the Superintendent with the approval of the Director."[25]

From the foregoing, only a duly-issued court order will warrant the release of PDL's with pending cases is. This is notwithstanding the BJMP and BUCOR guidelines providing that release is legally warranted upon service or expiration of their sentence, and upon authority of the Superintendent with approval of the BUCOR Director, in the case of PDLs in BUCOR prisons.

Thus, PDLs will not be automatically be released from jail upon completion of the service of their sentence or of the penalty imposed by law for the crime committed. In fact, the paralegals of the jails visited still had to write the courts about the completion of the service of sentence by the PDLs. Furthermore, UP WILOCI volunteer lawyers had to file manifestations and motions in court to bring to the attention of the court this development and formally seek release of the PDLs. Certainly, this is a glaring violation of the rights to liberty and freedom of such PDLs as they continue to be incarcerated until the courts properly decree their release. This leads to further congestion of Philippine jails.

[25] Ibid., Section 6.9; underscoring supplied.

Unfortunately, especially for those without *de parte* counsels, the PDLs remain in jail until someone finally files the needed motion in court for their release. There are rules that provide for court supervision of detainees and the monthly inspections of provincial, city and municipal jails by executive judges, but the focus is on the health and condition of detainees, condition of the jails and even the duration of detention.[26] There is no monitoring procedure prescribed in the Rules to determine who are due for release. Neither is there any requirement for the reporting of the names of those PDLs who have served their sentence to the court for appropriate action or specifically, for release.

It has been held that even if the court is considered to have lost jurisdiction to amend or alter its judgment of conviction, it retains jurisdiction over its execution of satisfaction. It is the court's prerogative to see to it that the punishment imposed is served until, by act of lawfully authorized administrative agencies of the state the convict is pardoned or paroled or, on lawful grounds, set at liberty sooner than the expiration of the sentence imposed.[27] With more reason that for those PDLs whose sentences were fully served in jail, the court must ensure that their right to liberty and release be safeguarded.

Recently, the Supreme Court set up a mechanism to decongest jails: the Task Force Katarungan at Kalayaan ("Task Force") to be created by the courts "in appropriate places" for the purpose of eliminating unnecessary detention. The Task Force is mandated to "track and keep a record of the progress of the criminal cases of all detained persons within their jurisdiction and ensure that such persons are accorded the rights and privileges" provided by law, the rules, and the guidelines established by the Supreme Court.[28]

The Task Force is composed of a Regional Trial Court (RTC) Judge as Chair, a Metropolitan or Municipal Trial Court

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[26] Rule 25, Rule 114, Revised Rules of Court.
[27] *People v. Fidel Tan*, G.R. No. L-21805, February 25, 1967.
[28] Section 15 (b) A.M. No. 12-11-2-SC Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial.

Judge as vice-chairman, and with the city or provincial prosecutor of the place or his representative and the local head of the Public Attorney's Office or his representative as members. It is mandated to advise the judges hearing their cases, when warranted, of the need for them to act on any incident or situation that adversely affects the rights of detained persons or subject them to undue or harsh treatment.[29]

These mechanisms have not been fully effective for some PDLs because the courts hearing their cases are not aware of their detention beyond the sentence imposed upon them. UP WILOCI still had to file motions in court to manifest that the sentence imposed had been fully served and to seek an order for the release of said PDLs.

III. IMPEDIMENTS RELATIVE TO RELEASE OF FEMALE PDLS WITH MENTAL ILLNESS

Some of the PDLs have mental illnesses and on account of such condition, their cases are not proceeding. The courts merely reset the hearings upon manifestation by defense counsels of the mental condition of the PDL. At present, the Rules of Court provide that any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial shall not be considered for purposes of computing the time during which trial shall commence and be held.[30] In the meantime, PDLs with mental illnesses are confined in the same jails as detention prisoners awaiting continuation of the trial of their cases.

One issue that has arisen during the implementation of the Project was the continued confinement in jail of PDLs with mental health conditions.

For persons exempt from criminal responsibility due to insanity, Article 12 of the Revised Penal Code of the Philippines

[29] Ibid, Section 15 (a).
[30]

provides that in the case of an insane person who has committed an act which the law defines as a felony (*delito*), the court shall "order his confinement in one of the hospitals or asylums established for persons thus afflicted," which he shall not be permitted to leave without first obtaining the permission of the same court."

At present, it appears that during the pendency of the trial of their cases, some of these PDLs remained in jail together with other PDLs. While some PDLs with mental issues undergo treatment for mental illnesses while in prison, the question arises as to whether these PDLs with grave mental illnesses should be released for treatment and confinement in other facilities and thereby, contribute to the decongestion of the jails.

It must be stressed that:

> "…when a judge of first instance is informed or discovers that an accused person is apparently in a present condition of insanity or imbecility, it is within his discretion to investigate the matter, and if it be found that by reason of any such affliction the accused could not, with the aid of his counsel, make a proper defense, it is the duty of the court to suspend the proceedings and commit the accused to a proper place of detention until his faculties are recovered. If, however, such investigation is considered unnecessary, and the trial proceeds, the court will acquit the accused if he be found exempt from criminal responsibility by reason of imbecility or lunacy. In such case an order for his commitment to an asylum should be made pursuant to the provisions of paragraph 2 of article 8 (1) of the Penal Code. In passing on the question of the propriety of suspending the proceedings against an accused person on the ground of present insanity, the judges should bear in mind that not every aberration of the mind or exhibition of mental deficiency is

> sufficient to justify such suspension. The test is to be found in the question whether the accused would have a fair trial, with the assistance which the law secures or give; and it is obvious that under a system of procedure like ours where every accused person has legal counsel, it is not necessary to be so particular as it used to be in England where the accused had no advocate but himself."[31]

What then are the "proper places of detention" for PDLs with mental disorders of a degree that they cannot stand trial? Indeed, in situations where the PDL's mental state is such that he or she cannot stand trial without violating due process of law, the continued postponements of the case that delays the trial and extends their detention period in the jails work to the grave prejudice of these PDLs. There is no dispute that the state can only proceed with the criminal justice process or the court proceedings if an accused is competent at each stage of the process or until he or she is restored to the necessary competence.[32]

The World Health Organization (WHO) has pointed out that prisons are the wrong place for many people in need of mental health treatment given that the emphasis of the criminal justice system is on deterrence and punishment rather than treatment and care.[33]

Hence, the critical issue that arises is whether, in order to afford protection to their rights, PDLs with mental illness that renders them incompetent to stand trial, can be temporarily released to other institutions for treatment and thereby, contribute somehow to de-clogging of the prisons. What is appalling is that the process for release to an appropriate institution or facility is fraught with legal impediments

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[31] US v. Guendia, G.R. No. L-12462, December 20, 1917; Underscoring supplied.
[32] Stephen J. Morse, 'Mental Disorder and Criminal Law' (2011) 101 (3) Journal of Criminal Law and Criminology (Symposium: Preventative Detention) 885, 892.
[33] Mental Health and Prisons (World Health Organization, <https://www.who.int/mental_health/policy/mh_in_prison.pdf> accessed December 8, 2020.

notwithstanding the recent enactment of the Mental Health Act or Republic Act No. 11036. The Philippine Mental Health Act, considered a milestone in the country's history as it provides for a rights-based mental health legislation, was passed by Congress in 2017 and signed into law on 21 June 2018.[34]

The law protects the following recognized rights of persons with mental health conditions: right to freedom from discrimination, right to protection from torture, cruel, inhumane, and degrading treatment; right to aftercare and rehabilitation; right to be adequately informed about psychosocial and clinical assessments; right to participate in the treatment plan to be implemented; right to evidence-based or informed consent; right to confidentiality; and right to counsel, among others.[35]

Certainly, keeping PDLs with mental illness in congested and jampacked prisons given their mental state amounts to torture and inhumane treatment. Several factors in many prisons that have negative effects on mental health have been identified to include, among others, overcrowding, various forms of violence, enforced solitude and inadequate health services, especially mental health services, most of which lead to increased risk of suicide in prisons, as a result oftentimes of depression.[36]

The natural course of action to take is to have such PDLs committed to a mental health facility where they can receive proper medical treatment to hasten their recovery that will enable them to stand trial so that the criminal proceedings can resume. However, the law itself or even its Implementing Rules and Regulations ("IRR") is silent about the right transfer to mental health facilities.

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[34] John Lally, Rene M. Samaniego and John Tully, Mental health legislation in the Philippines: Philippine Mental Health Act, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6646847/> accessed December 7, 2020.
[35] Section 5, R.A. 11036.
[36] Mental Health and Prisons, (supra), p. 1.

Furthermore, during the conduct of UP WILOCI's Project, another basic right of PDLs afflicted with mental disorders under the Mental Health Act that encountered problems in being amply protected is the exercise of their right to counsel. Most of the female PDLs in jail are indigent and are represented by the Public Attorney's Office or PAO. When UP WILOCI conducted jail visits and provided free legal counselling, the issue that arose is whether PDLs with mental illness can engage new counsel. During the implementation of the Project, the UP WILOCI and the CHR had to conduct a workshop on the Mental Health Act to discuss the initial problems relative to this issue. It is surprising that a debate arose on the capacity of a person with mental health disorder to decide on the hiring of his or her own counsel among the workshop attendees.

The right to counsel of PDLs with mental illness should be a non-issue. Firstly, the new law unequivocally declares the State policy of ensuring that persons affected with mental health conditions are able to exercise the full range of human rights.[37] Secondly, among the rights categorically granted to such persons is the right to legal services, through competent counsel of their own choice.[38]

Lastly, it is also a very clear provision of the new law that "all persons … shall be presumed to possess legal capacity for the purposes of this Act or any other applicable law, irrespective of the nature or effects of their mental health condition or disability."[39]

Thus, it is essential that PDLs with mental health conditions be allowed by the jail officials to engage counsel of their choice. This includes seeking proper diagnosis and treatment for their condition from mental health experts, typically psychiatrists and psychologists, who certainly play a crucial role in the successful defense in their cases.[40] It bears pointing out that with respect to criminal offenders or to PDLs with mental health conditions, the Implementing Rules and

[37] Section 2, R.A. 11036.
[38] Ibid., Section 5 (q).
[39] Ibid., Section 8.
[40] Morse (supra), pp. 906-907.

Regulations of the Mental Health Act is silent about such rights to counsel or to transfer to mental health facilities. It is worth noting the WHO recommendations for offenders, to wit:

> "Legislation can be introduced which allows for the transfer of prisoners to general hospital psychiatric facilities at all stages of the criminal proceedings (arrest, prosecution, trial, imprisonment). For people with mental disorders who have been charged with committing minor offences, the introduction of mechanisms to divert them towards mental health services before they reach prison will help to ensure that they receive the treatment they need and also contribute to reducing the prison population. The imprisonment of people with mental disorders due to lack of public mental health service alternatives should be strictly prohibited by law."[41]

CONCLUSION

More than the goal of decongesting the prisons in the country, the mission of UP WILOCI is to afford protection to the rights of female PDLs at all times. The Project has brought to fore the realities facing a lot of PDLs, males and females alike. Even though some PDLs have completed service of the sentence imposed by the courts, they remain in jail at times not only for days, but even for longer periods running into months. This is mainly because there is no court order yet for their release and they have no counsels or no access to counsels who can file the needed motion and seek the issuance of the order for their release. Alas, some are not even aware that they can be released already, all the while just wondering on what grounds they continue to be in detention.

In such cases, the right to liberty and freedom is already at stake and their continued non-release from the jails undeniably constitutes plain and simple human rights violation.

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[41] Mental Health and Prisons, (supra), p. 3; underscoring supplied.

An amendment of the current Rules of Court must be considered in order to address this problem, coupled with a proposed strengthening of the review and monitoring procedure in the BUCOR and BJMP as well as the recognition of the authority of the jail authorities to immediately implement release of PDLs who have completed service of their sentence. It is proposed that the judgments of conviction should already contain in the dispositive portion the order for immediate release of the accused upon service of the sentence imposed, unless there be other grounds for continued detention. The Rules must categorically state that no separate court order is needed in case of such complete service of sentence.

On the other hand, the authority of counsels engaged by PDLs whose mental health conditions warrant their transfer to mental health facilities must be recognized pursuant to the clear right afforded to such persons under the Mental Health Act. This can be addressed by appropriate IRR provisions specifically for offenders with mental conditions, that spell out guidelines to ensure their rights to counsel and to appropriate mental treatment, including transfer to a mental health facility as may be prescribed by mental health experts.

Lastly, to heed the WHO's call, it is imperative that an amendment of the Mental Health Act be pursued to strictly prohibit the imprisonment of people with mental disorders on account solely of lack of public mental health service alternatives. Hopefully, this will deter violations of the rights of such PDLs and at the same time, promote said law's directives of ensuring the availability of adequate mental health facilities in the country.

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The Safe Spaces Act: Innovations, Features, and Issues of Operation within the Current Philippine Legal Landscape

Dot Gancayco [*]

> *"With this law, we will reclaim our streets from sexual harassers and gender bigots and make public spaces safe for all."*
>
> - Senator Risa Hontiveros

I. INTRODUCTION

On July 15, 2019, Republic Act No. 11313, otherwise known as "the Safe Spaces Act" (SSA) was signed into law by President Duterte. The passage of the SSA has ostensibly ushered in a new era for gender-based protection in the Philippines. Not only does it provide newfound legal recognition and awareness to sexual orientation and gender identity expression (SOGIE), but it also

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establishes a mode of enforcing gender-based protection to an extent never before seen within the Philippine legal system.

This article aims to provide a bird's eye view of the SSA, with particular regard to its pertinent provisions and the implications to the current state of the Philippine legal system. It will also note potential issues that the law's implementation can trigger. This article will first address the SSA's key legislative innovations. Next, it will lay out the *safe spaces* designated by law, discussing in the process issues of spatial delineation and enforcement procedures. Lastly, the article will outline the punishable acts under the SSA as well as their imposable penalties, pointing out the possible legal controversies that may arise in the prosecution of violations of the SSA's provisions.

II. PERTINENT PROVISIONS OF THE SAFE SPACES ACT

A. Key Innovations

The first innovation by the SSA can be found in Section 3(f), which defines gender identity and/or expression as "the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions."[43] This definition further explains that a person "may have a male or female identity with physiological characteristics of the opposite sex, in which case this person is considered *transgender*."[44] It is immediately notable that the SSA is the first piece of legislation in Philippine history that not only expressly recognizes transgenders, but also accords them special legal protection.

[43] Rep. Act No. 11313 (2019), sec. 3(f).
[44] Rep. Act No. 11313 (2019), sec. 3(f). (Emphasis supplied.)

Meanwhile, under sections 4[45] and 12[46] of the SSA, homophobic[47] and transphobic[48] slurs are categorically included as offenses that constitute gender-based sexual harassment. The inclusion of these offenses likewise constitutes the first instance that Philippine legislation expressly recognizes transphobia and homophobia as: *first,* a wrong to be deterred; and *second,* a wrong that is pervasive enough to warrant criminal legislation against it.

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[45] Rep. Act No. 11313 (2019), sec. 4 provides: *Gender-Based Streets and Public Spaces Sexual Harassment.* — The crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.
Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks and parks. Acts constitutive of gender-based streets and public spaces sexual harassment are those performed in buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public markets, transportation terminals or public utility vehicles.

[46] Rep. Act No. 11313 (2019), sec. 12 provides: *Gender-Based Online Sexual Harassment.* — Gender-based online sexual harassment includes acts that use information and communications technology in terrorizing and intimidating victims through physical, psychological, and emotional threats, unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages, invasion of victim's privacy through cyberstalking and incessant messaging, uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content, any unauthorized recording and sharing of any of the victim's photos, videos, or any information online, impersonating identities of victims online or posting lies about victims to harm their reputation, or filing false abuse reports to online platforms to silence victims.|

[47] Rep. Act No. 11313 Implementing Rules and Regulations, sec. 4(i) provides: *Homophobic remarks or slurs* are any statements in whatever form or however delivered, which are indicative of fear, hatred or aversion towards persons who are perceived to be or actually identify as lesbian, gay, bisexual, queer, pansexual and such other persons of diverse sexual orientation, gender identity or expression, or towards any person perceived to or actually have experienced same-sex attraction.

[48] Rep. Act No. 11313 Implementing Rules and Regulations, sec. 4(o) provides: *Transphobic remarks or slurs* are any statements in whatever form or however delivered, that are indicative of fear, hatred or aversion towards persons whose gender identity and/or expression do not conform with their sex assigned at birth.

The treatment and recognition by this law of gender-based discrimination is a far cry from the Philippine legal system's past appreciation of individuals of non-heteronormative SOGIE. In the case of *Silverio v. Republic,*[49] for example, the reality of transgendered individuals was all but ignored when, despite the petitioner's express desire to be recognized as a female and, for this purpose, sought to legally change her name after undergoing sex reassignment surgery, was all throughout the *ponencia* nevertheless referred to as "he." While the SSA would still fail—under the ratio used by the Supreme Court in the *Silverio* case, at least—to accord the petitioner the legal remedy she sought for, the SSA's enactment, coupled with several other legal developments such as the *Falcis v. Civil Registrar General ponencia*[50] as well as the pending SOGIE Bill,[51] show an increasing awareness of and desire to protect the rights of non-heteronormative individuals.

B. The Safe Spaces

The SSA designates certain spaces as those that shall be accorded the legal protection sought to be enforced under its provisions. These *safe spaces* have been categorized into four main groups: *first,* streets and public places; *second,* online platforms; *third,* the workplace; and *finally,* educational and training institutions.

The workplace and educational or training institutions as designated safe spaces are, for the most part, the easiest to delineate. In the spatial sense, an employee or student would undoubtedly be aware of the "metes and bounds," so to speak,

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[49] *Silverio v. Republic*, G.R. No. 174689, Oct. 22, 2007.

[50] *Falcis v. Civil Registrar General*, G.R. No. 217910, Sept. 3, 2019. Although the Supreme Court, speaking through Justice Marvic Leonen, still denied the petition which sought to grant same-sex marriage, the treatment by Justice Leonen of the LGBTQIA+ community's reality is one that may be considered highly progressive in nature.

[51] Senate Bill No. 159 (18th Congress). "An Act Prohibiting Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (SOGIE) and Providing Penalties Therefor."

of their place of employment or education. Equipped with this knowledge, they would thus be given a better grasp of within which spaces they would be able to enforce the protection accorded to them by the SSA. Moreover, in the practical sense of enforcing the SSA's provisions, that an offender within the workplace or educational or training institution would most likely be an individual who is also regularly present in the place in question—perhaps a colleague or superior, or a classmate or instructor—would make the identification and prosecution of such offender much more plausible.

However, complications in both the delineation of the safe space and the enforcement of the SSA's provisions arise in the first two categories. Under the category of streets and public places, for example, the law has listed the following as falling within its purview: (a) public spaces such as alleys, roads, sidewalks and parks;[52] and (b) buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public markets, transportation terminals or public utility vehicles.[53]

With spatial delineation and the practicality of enforcement necessarily intertwined in these scenarios, it should be noted how the vastness of the area within which the law would theoretically be enforced in necessarily makes the prosecution of violations difficult, if not improbable—or at worst, impossible. For example, if a woman were to be catcalled by a stranger while walking down a dark alley, she most likely would not (and in fact, perhaps should not) stop the stranger, demand identification, document the incident in some way and then try to bring the stranger with her to the police station to report the incident. And even if the woman is able to demand that the offender stay put while she tries to call the police, that offender will most likely leave or even worse, escalate the encounter. The most likely scenario would be that she simply let the incident pass and seek immediate safety instead.

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[52] Rep. Act No. 11313 (2019), sec. 4.
[53] Rep. Act No. 11313 (2019), sec. 4.

Though possibly remedied by the obligations imposed onto both public and private actors under provisions such as Section 5,[54] for example, numerous factors such as: (1) financial constraints of the public or private establishments in question; (2) the resolve of local government units (LGUs) to efficiently and effectively enforce the SSA's provisions; and (3) safety protocols in the mandated installment of surveillance equipment and signages amidst the COVID-19 pandemic—all point to the unlikeliness of these obligations being swiftly met. These factors can prevent ample enforcement of the law.

Meanwhile, violations of the SSA committed through online platforms may occur "whether publicly or through direct and private messages."[55] One can almost immediately see how this provision must be studied vis-a-vis the constitutional right to privacy, specifically with regard to the provision's coverage of direct and private messages. While less controversial if the scenario were to be, for example, an individual pressing charges against an offender who had committed any of the SSA's punishable acts through a private message, the legal implications would be completely different and the legal issues much more convoluted should the scenario be in the nature of something like a leakage of private messages.

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[54] Rep. Act No. 11313 (2019), sec. 5 provides: *Gender-Based Sexual Harassment in Restaurants and Cafes, Bars and Clubs, Resorts and Water Parks, Hotels and Casinos, Cinemas, Malls, Buildings and Other Privately-Owned Places Open to the Public.* — Restaurants, bars, cinemas, malls, buildings and other privately-owned places open to the public shall adopt a zero-tolerance policy against gender-based streets and public spaces sexual harassment. These establishments are obliged to provide assistance to victims of gender-based sexual harassment by coordinating with local police authorities immediately after gender-based sexual harassment is reported, making CCTV footage available when ordered by the court, and providing a safe gender-sensitive environment to encourage victims to report gender-based sexual harassment at the first instance.
All restaurants, bars, cinemas and other places of recreation shall install in their business establishments clearly-visible warning signs against gender-based public spaces sexual harassment, including the anti-sexual harassment hotline number in bold letters, and shall designate at least one (1) anti-sexual harassment officer to receive gender-based sexual harassment complaints. Security guards in these places may be deputized to apprehend perpetrators caught in *flagrante delicto* and are required to immediately coordinate with local authorities.
[55] Rep. Act No. 11313 (2019), sec. 12.

If, for example, what was involved was instead an online conversation or a "chat room" of a group of individuals making misogynistic, homophobic, transphobic, or sexist statements against a group of victims, but without those victims as actual members of the chat room, would a subsequent leakage of the online conversation give the victims an actionable case? Or would, in this case, the right to privacy of the chat room's members prevail, considering that the utterances were made with a reasonable expectation of privacy?

As for public postings, one must likewise consider whether the SSA's penal provisions should be interpreted similar to how the crime of cyber libel was analyzed in the case of *Disini v. Executive Secretary.*[56] In this case, the Supreme Court declared as void and unconstitutional section 4 (c) (4) of Republic Act No. 10175, otherwise known as the "Cybercrime Prevention Act of 2012," which imposed liability on re-posters, likers, or commentors of libelous material published online as aiders and abettors of cyber libel. Following this ruling, would the same principles apply if misogynistic, homophobic, transphobic, or sexist statements were posted online by an individual, and then later on re-posted or commented on by other individuals? Or would a repost or comment in this scenario be considered a separate instance of a misogynistic, homophobic, transphobic, or sexist statement being made?

C. Punishable Acts and Penalties

It may be useful to outline the punishable acts and imposable penalties listed under the law as follows:

[56] *Disini v. Executive Secretary*, G.R. No. 203335, Feb. 11, 2014.

Punishable Act	Imposable Penalty[57][58]
Article I: Gender-Based Streets and Public Places Sexual Harassment	
(a) Acts such as cursing, wolf-whistling, catcalling, leering and intrusive gazing, taunting, cursing, unwanted invitations, misogynistic, transphobic, homophobic, and sexist slurs, persistent unwanted comments on one's appearance, relentless requests for one's personal details such as name, contact	(1) The first offense shall be punished by a fine of One thousand pesos (P1,000.00) and community service of twelve (12) hours inclusive of attendance to a Gender Sensitivity Seminar to be conducted by the PNP in coordination with the LGU and the PCW;

[57] Rep. Act No. 11313 (2019), sec. 5 provides: *Gender-Based Sexual Harassment in Restaurants and Cafes, Bars and Clubs, Resorts and Water Parks, Hotels and Casinos, Cinemas, Malls, Buildings and Other Privately-Owned Places Open to the Public.* — Restaurants, bars, cinemas, malls, buildings and other privately-owned places open to the public shall adopt a zero-tolerance policy against gender-based streets and public spaces sexual harassment. These establishments are obliged to provide assistance to victims of gender-based sexual harassment by coordinating with local police authorities immediately after gender-based sexual harassment is reported, making CCTV footage available when ordered by the court, and providing a safe gender-sensitive environment to encourage victims to report gender-based sexual harassment at the first instance.

All restaurants, bars, cinemas and other places of recreation shall install in their business establishments clearly-visible warning signs against gender-based public spaces sexual harassment, including the anti-sexual harassment hotline number in bold letters, and shall designate at least one (1) anti-sexual harassment officer to receive gender-based sexual harassment complaints. Security guards in these places may be deputized to apprehend perpetrators caught in *flagrante delicto* and are required to immediately coordinate with local authorities.

[58] Rep. Act No. 11313 (2019), sec. 15 provides: *Qualified Gender-Based Streets, Public Spaces and Online Sexual Harassment.* — The penalty next higher in degree will be applied in the following cases:

(a) If the act takes place in a common carrier or PUV, including, but not limited to, jeepneys, taxis, tricycles, or app-based transport network vehicle services, where the perpetrator is the driver of the vehicle and the offended party is a passenger;

(b) If the offended party is a minor, a senior citizen, or a person with disability (PWD), or a breastfeeding mother nursing her child;

(c) If the offended party is diagnosed with a mental problem tending to impair consent;

(d) If the perpetrator is a member of the uniformed services, such as the PNP and the Armed Forces of the Philippines (AFP), and the act was perpetrated while the perpetrator was in uniform; and

(e) If the act takes place in the premises of a government agency offering frontline services to the public and the perpetrator is a government employee.

Punishable Act	Imposable Penalty[57][58]
and social media details or destination, the use of words, gestures or actions that ridicule on the basis of sex, gender or sexual orientation, identity and/or expression including sexist, homophobic, and transphobic statements and slurs, the persistent telling of sexual jokes, use of sexual names, comments and demands, and any statement that has made an invasion on a person's personal space or threatens the person's sense of personal safety.[59]	(2) The second offense shall be punished by *arresto menor* (6 to 10 days) or a fine of Three thousand pesos (P3,000.00); (3) The third offense shall be punished by *arresto menor* (11 to 30 days) and a fine of Ten thousand pesos (P10,000.00).[60]
(b) Acts such as making offensive body gestures at someone, and exposing private parts for the sexual gratification of the perpetrator with the effect of demeaning, harassing, threatening or intimidating the offended party including flashing of private parts, public masturbation, groping, and similar lewd sexual actions.[61]	(1) The first offense shall be punished by a fine of Ten thousand pesos (P10,000.00) and community service of twelve (12) hours inclusive of attendance to a Gender Sensitivity Seminar, to be conducted by the PNP in coordination with the LGU and the PCW; (2) The second offense shall be punished by *arresto menor* (11 to 30 days) or a fine of Fifteen thousand pesos (P15,000.00); (3) The third offense shall be punished by *arresto mayor* (1 month and 1 day to 6 months)

[59] Rep. Act No. 11313 (2019), sec. 11(a).
[60] Rep. Act No. 11313 (2019), sec. 11(a)(1-3).
[61] Rep. Act No. 11313 (2019), sec. 11(b).

Punishable Act	Imposable Penalty[57][58]
	and a fine of Twenty thousand pesos (P20,000.00).[62]
(c) For acts such as stalking, and any of the acts mentioned in Section 11 paragraphs (a) and (b), when accompanied by touching, pinching or brushing against the body of the offended person; or any touching, pinching, or brushing against the genitalia, face, arms, anus, groin, breasts, inner thighs, face, buttocks or any part of the victim's body even when not accompanied by acts mentioned in Section 11 paragraphs (a) and (b).[63]	(1) The first offense shall be punished by *arresto menor* (11 to 30 days) or a fine of Thirty thousand pesos (P30,000.00), provided that it includes attendance in a Gender Sensitivity Seminar, to be conducted by the PNP in coordination with the LGU and the PCW; (2) The second offense shall be punished by *arresto mayor* (1 month and 1 day to 6 months) or a fine of Fifty thousand pesos (P50,000.00); (3) The third offense shall be punished by *arresto mayor* in its maximum period or a fine of One hundred thousand pesos (P100,000.00).[64]
Article II: Gender-Based Online Sexual Harassment	
(a) Physical, psychological, and emotional threats, unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages; (b) Invasion of the victim's privacy through cyberstalking and incessant messaging;	The penalty of *prision correccional* in its medium period or a fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00), or both, at the discretion of the court shall be imposed upon any person found guilty of any gender-based online sexual harassment.

[62] Rep. Act No. 11313 (2019), sec. 11(b)(1-3).
[63] Rep. Act No. 11313 (2019), sec. 11(c).
[64] Rep. Act No. 11313 (2019), sec. 11(c)(1-3).

Punishable Act	Imposable Penalty[57][58]
(c) Uploading and sharing without the consent of the victim any form of media that contains photos, voice, or video with sexual content; (d) Any unauthorized recording and sharing of any of the victim's photos, videos or any information online; (e) Impersonating identities of victims online or posting lies about victims to harm their reputation; or (f) Filing false abuse reports to online platforms to silence victims.[65]	If the perpetrator is a juridical person, its license or franchise shall be automatically deemed revoked, and the person liable shall be the officers thereof, including the editor or reporter in the case of print media, and the station manager, editor and broadcaster in the case of broadcast media. An alien who commits gender-based online sexual harassment shall be subject to deportation proceedings after serving sentence and payment of fines.[66]
Article III: Gender-Based Sexual Harassment in the Workplace	
(a) An act or series of acts involving any unwelcome sexual advances, requests or demand for sexual favors or any act of sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a	

[65] Rep. Act No. 11313 (2019) Implementing Rules and Regulations, sec. 13. The IRR does not add to or alter any of the punishable acts under the law. It merely divides the corresponding provision the IRR implements (i.e. section 12) into clearer demarcations of the acts included.
[66] Rep. Act No. 11313 (2019), sec. 14.

Punishable Act	Imposable Penalty[5758]
detrimental effect on the conditions of an individual's employment or education, job performance or opportunities; (b) A conduct of sexual nature and other conduct-based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems; (c) A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient: *Provided*, That the crime of gender-based sexual harassment may also be committed between peers and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee.[67]	
Article IV: Gender-Based Sexual Harassment in Educational and Training Institutions[68]	

[67] Rep. Act No. 11313 (2019), sec. 16.

[68] A perusal of Article IV, which covers Gender-Based Sexual Harassment in Education and Training Institutes, would show that the provisions do not actually specify in clear terms the acts punishable under this Article. Section 21, the first provision under

Punishable Act	Imposable Penalty[5758]
None.	None.

Laying out the law in this manner would illustrate two apparent issues: *first,* the lack of imposable penalties to the corresponding punishable acts under gender-based sexual harassment in the workplace; and *second,* the lack of punishable acts under the category of gender-based sexual harassment in educational or training institutions. On its face, therefore, it would seem that while there are acts considered prohibited under the category of gender-based sexual harassment in the workplace, the same would not amount to a penal provision considering the absence of imposable penalties. Meanwhile, it would likewise appear that, under gender-based sexual harassment in education and training institutions, there are no acts that are criminalized at all.

Jurisprudence would hold that issues of legislation in this context are incurable by the mere issuance of implementing rules and regulations (IRR). Executive issuances—that is, the law's IRR—cannot make criminal what the law itself does not.

Despite this gap, however, all may not necessarily be lost for a victimized individual in the workplace. If read together with the SSA's progenitor—that is, Republic Act No. 7877, or "the Anti-Sexual Harassment Act of 1995 (ASHA)"—it would seem as though the same acts are more or less punished under the two laws. Section 3 of the ASHA reads as follows:

> SECTION 3. Work, Education or Training -Related, Sexual Harassment Defined. – Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person

Article IV, merely covers implementation measures to be adopted by the officer-in-charge of the school.

who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms of conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.[69]

Laid out side-by-side, the following parallels between the two provisions may be drawn:

Safe Spaces Act	**Anti-Sexual Harassment Act**
(a) An act or series of acts involving any unwelcome sexual advances, requests or demand for sexual	The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said

[69] Rep. Act No. 7877 (1995), sec. 3.

Safe Spaces Act	Anti-Sexual Harassment Act
favors or any act of sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;[70]	individual, or in granting said individual favorable compensation, terms of conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee.[71]
(b) A conduct of sexual nature and other conduct-based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems;[72]	The above acts would result in an intimidating, hostile, or offensive environment for the employee.[73]
(c) A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient: *Provided*, That the crime of gender-based sexual harassment may also be committed between peers and those committed to a superior officer by a subordinate, or to a	The above acts would result in an intimidating, hostile, or offensive environment for the employee.[75]

[70] Rep. Act No. 11313 (2019), sec. 16(a).
[71] Rep. Act No. 7877 (1995), sec. 3(a)(1).
[72] Rep. Act No. 11313 (2019), sec. 16(b).
[73] Rep. Act No. 7877 (1995), sec. 3(a)(3).
[75] Rep. Act No. 7877 (1995), sec. 3(a)(3).

Safe Spaces Act	Anti-Sexual Harassment Act
teacher by a student, or to a trainer by a trainee.[74]	

It can be gleaned, therefore, that even with the lack of the appropriate penalties imposed under the SSA, an offended party may still seek reprieve for sexual harassment under the workplace—albeit under the ASHA. The ASHA, unlike the SSA, designates specific penalties for violations of its provisions, as follows:

> SECTION 7. Penalties. – Any person who violates the provisions of this Act shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than Ten thousand pesos (P10,000) nor more than Twenty thousand pesos (P20,000), or both such fine and imprisonment at the discretion of the court.[76]

It should be qualified, however, that the likely factual frameworks for these two laws are not the same. Prosecution under the SSA should theoretically be applicable even when prohibited acts are committed by a peer of the victim. The ASHA on the other hand only punishes acts committed by virtue of the offender's position of moral ascendancy over the victim. Thus, the question would remain on how a peer or superior would prosecute another peer or a subordinate under the SSA.

As for gender-based sexual harassment in educational and training institutions, the apparent issue is remedied by circling back to section 4 of the SSA. Note how the list of public spaces enumerated by the law include "alleys, roads, sidewalks and parks […] buildings, *schools*, churches, restaurants, malls, public

[74] Rep. Act No. 11313 (2019), sec. 16(c).
[76] Rep. Act No. 7877 (1995), sec. 7.

washrooms, bars, internet shops, public markets, transportation terminals or public utility vehicles."[77] Read together as a whole, the apparent lack of punishable acts under gender-based sexual harassment in education and training institutions may be remedied by reading Article IV in conjunction with section 4 of Article I. Thus, the acts that are punished and given corresponding penalties under section 11 could be viewed as necessarily including those that are committed in schools.

This interpretation is most in line with the rule of statutory construction that provisions should be reconciled so as to effectuate the entire statute. The Supreme Court has indeed ruled as much on the same, stating that "…the cardinal rule of statutory construction [is] that, in construing different provisions of one and the same law or code, such interpretation should be favored as will reconcile or harmonize said provisions and avoid a conflict between the same."[78]

III. RECOMMENDATIONS

A. Higher First Offense Penalty Under Section 11(a)

Section 11 of the SSA provides the following:

> "Section 11. Specific Acts and Penalties for Gender-Based Sexual Harassment in Streets and Public Spaces. -The following acts are unlawful and shall be penalized as follows:
>
> (a) For acts such as cursing, wolf-whistling, catcalling, leering and intrusive gazing, taunting, pursing, unwanted invitations, misogynistic, transphobic, homophobic, and sexist slurs, persistent unwanted

[77] Rep. Act No. 11313 (2019), sec. 4. (Emphasis supplied.)
[78] Sanchez v. Rigos, G.R. No. L-25494, June 14, 1972.

> comments on one's appearance, relentless requests for one's personal details such as name, contact and social media details or destination, the use of words, gestures or actions that ridicule on the basis of sex, gender or sexual orientation, identity and/or expression including sexist, homophobic, and transphobic statements and slurs, the persistent telling of sexual jokes, use of sexual names, comments and demands, and any statement that has made an invasion on a person's personal space or threatens the person's sense of personal safety –
>
> (1) The first offense shall be punished by a fine of ***One thousand pesos (₱1,000.00)*** and community service of twelve (12) hours inclusive of attendance to a Gender Sensitivity Seminar to be conducted by the PNP in coordination with the LGU and the PCW[.]"

Section 11(a) of the SSA includes acts such as "transphobic, homophobic, and sexist slurs." Surely, the imposition of a fine of 1,000 PHP can hardly be called an effective deterrent against such a ghastly act. While records indicate that the rationale for the amount was that it be parallel to cases such as littering, it must be remembered that the purpose of the SSA is to ultimately protect and promote the dignity of all human persons. The comparison of the same to a littering offense hardly does this cause justice.

For this purpose, the author suggests that the amount of the imposable fine be increased. Not only would this act as a more effective deterrent on the part of the possible offender, but this would also encourage victims to actually file criminal cases against offenders.

B. Penalty Options Under Section 11(c)

Section 11(c) of the SSA provides the following:

> "Section 11. Specific Acts and Penalties for Gender-Based Sexual Harassment in Streets and Public Spaces. -The following acts are unlawful and shall be penalized as follows:
>
> x x x
>
> (c) For acts such as stalking, and any of the acts mentioned in Section 11 paragraphs (a) and (b), when accompanied by touching, pinching or brushing against the body of the offended person; or any touching, pinching, or brushing against the genitalia, face, arms, anus, groin, breasts, inner thighs, face, buttocks or any part of the victim's body even when not accompanied by acts mentioned in Section 11 paragraphs (a) and (b) –
>
> (1) The first offense shall be punished by *arresto menor* (11 to 30 days) **or** a fine of Thirty thousand pesos (₱30,000.00), provided that it includes attendance in a Gender Sensitivity Seminar, to be conducted by the PNP in coordination with the LGU and the PCW;
>
> (2) The second offense shall be punished by *arresto mayor* (1 month and 1 day to 6 months) **or** a fine of Fifty thousand pesos (₱50,000.00);
>
> (3) The third offense shall be punished by *arresto mayor* in its maximum period **or** a fine of One hundred thousand pesos (₱100,000.00)."

A simple reading of Section 11 in its entirety would show that it is only the acts under paragraph (c) that provide the option of only either a fine or imprisonment to be imposed. This is alarming considering that the acts punished under paragraph (c) are the most serious offenses covered by the SSA. This is so because the acts contemplate the physical touching of sensitive body parts such as the "genitalia, face, arms, anus, groin, breasts, inner thighs, face, buttocks or any part of the victim's body."

Allowing the option of only either fine or imprisonment to be imposed, instead of being in conjunction with each other as is so for the punishable acts covered by paragraphs (a) and (b), in effect, allows the perpetration of impunity by offenders who simply have the means to just pay the imposable fine. Surely, this could not be what the framers had envisioned would lead to the protection of the human dignity of victims.

As such, the author suggests that the penalties of fine **and** imprisonment under paragraph (c) be amended to read as being in conjunction with each other, rather than in the alternative.

C. Government Workplace Violations under the SSA vis-à-vis the CSC Rules

The operation of the SSA alongside the Civil Service Commission Rules (CSC Rules) when it comes to offenses committed by government employees in a government workplace is clear. The author emphasizes that the SSA must be read in conjunction with the CSC Rules, such that a criminal prosecution under the SSA may be pursued independently from an administrative investigation under the CSC Rules.

IV. CONCLUSION

With the SSA being a new law, there is as little authority to specifically guide us on how to deal with legal controversies that may arise from the enforcement of the provisions of the

SSA. Because of the statute's important innovations, policymakers, litigators, the judiciary and regulators should monitor the law's implementation and effectiveness so that its full potential can be realized. Only then can it be said that, through the inclusiveness and comprehensiveness of the SSA as well as its effective and efficient implementation, a new era for gender-based protection in the Philippines has indeed truly arrived.

* * *

The Psychological Incapacity to Marry: Key Jurisprudence and Survey of Cases from 1995 to 2019

Maria Katrina C. Franco[*]

It has been 33 years since psychological incapacity was introduced as a ground for the declaration of nullity of marriages in the Philippines under the Family Code (Executive Order No. 209, s. 1987). It is embodied in Article 36, which states that "(A) marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization."

To declare a marriage null and void means that a marriage was not legally binding. Thus, it is as if the marriage never took place at all, and had no legal effect. This is different from the concept of divorce, which, whether partial or absolute, recognizes that a marriage did in fact take place, together with all its legal effects, but that the marriage bond is subsequently dissolved[1], to wit:

> "Divorce, the legal dissolution of a lawful union for a cause arising after the marriage, are of two types: (1) absolute divorce or a *vinculo matrimonii,* which terminates the marriage, and (2) limited divorce or *a mensa et thoro,* which suspends it and leaves the bond in full

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[1] *Republic of the Philippines v. Marelyn Tanedo Manalo* (G.R. No. 221029, April 24, 2018)

> force.[9] In this jurisdiction, the following rules exist:
>
> "1. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it.
>
> "2. Consistent with Articles 15 and 17 of the New Civil Code, the marital bond between two Filipinos cannot be dissolved even by an absolute divorce obtained abroad.
>
> "3. An absolute divorce obtained abroad by a couple, who both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.
>
> "4. In mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse[2] capacitating him or her to remarry."[3]

The Philippines is known to be very conservative when it comes to marriage laws. No less than the Philippine Constitution lays down the principles that: (1) marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State;[4] that (2) the State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution;[5] and that (3) the State recognizes the Filipino family as the foundation of the nation, and that accordingly, it shall strengthen its solidarity and actively promote its total development.[6] Marriage between persons of the same gender is still not allowed under the law,[7]

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[2] Developments in jurisprudence now allow the *Filipino* spouse to obtain an absolute divorce abroad. See *Republic of the Philippines v. Marelyn Tanedo Manalo, supra*.
[3] *Ibid.*
[4] Section 2, Article XV of the 1987 Constitution.
[5] Section 12, Article II, of the 1987 Constitution.
[6] Section 1, Article XV, of the 1987 Constitution.
[7] Article 1 of the Family Code.

and currently, the Philippines, excluding the Vatican, is the only country left in the world without a law on divorce[8].

Marriage is defined by Article 1 of the Family Code as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code." The essential obligations of marriage are embodied in Article 68 of the Family Code which states that "(t)he husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support."

While there are several notable cases on psychological incapacity, two landmark cases— specifically, the cases of *Leouel Santos v. The Honorable Court of Appeals and Julia Rosario Bedia-Santos* (G.R. No. 112019, January 4, 1995), and *Republic of the Philippines v. Court of Appeals and Roridel Olaviano Molina* (G.R. No. 108763, February 13, 1997), which gave us the famous 'Molina Doctrine'—set the guidelines for determining whether there exists in one or both parties the requisite psychological incapacity that would render their marriage null and void.

It is significant to note that the Supreme Court has acknowledged that the definition of psychological incapacity is "not cast in intractable specifics." Thus, the Supreme Court has held that "judicial understanding of psychological incapacity may be informed by evolving standards, taking into account the particulars of each case, current trends in psychological and even canonical thought, and experience. It is under the auspices of the deliberate ambiguity of the framers that the Court has developed the *Molina* rules, which have been consistently applied since 1997. *Molina* has proven indubitably useful in

[8] The Last Country in the World Where Divorce is Illegal, By Tom Hundley and Anna P. Santos, January 19, 2015, https://foreignpolicy.com/2015/01/19/the-last-country-in-the-world-where-divorce-is-illegal-philippines-catholic-church/

providing a unitary framework that guides courts in adjudicating petitions for declaration of nullity under Article 36." The Supreme Court emphasized, however, that "the *Molina* guidelines are not set in stone" and that each petition, in accordance with "clear legislative intent," must be resolved on a "case-to-case perception of each situation."[9]

In *Santos v. Court of Appeals*, the Supreme Court held that to render a marriage null and void, the psychological incapacity of a party must be: firstly, so grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; secondly, have juridical antecedence or it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage;and, lastly, it must be incurable or the cure would be beyond the means of the party involved. To wit:

> "Justice Sempio-Diy cites with approval the work of Dr. Gerardo Veloso, a former Presiding Judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila (Branch 1), who opines that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.
>
> "It should be obvious, looking at all the foregoing disquisitions, including, and most importantly, the deliberations of the Family Code Revision Committee itself, that the use of the phrase "psychological

[9] Antonio v. Reyes, G.R. No. 155800, March 10, 2006

incapacity" under Article 36 of the Code has not been meant to comprehend all such possible cases of psychoses as, likewise mentioned by some ecclesiastical authorities, extremely low intelligence, immaturity, and like circumstances (cited in Fr. Artemio Baluma's "Void and Voidable Marriages in the Family Code and their Parallels in Canon Law," quoting from the Diagnostic Statistical Manual of Mental Disorder by the American Psychiatric Association; Edward Hudson's "Handbook II for Marriage Nullity Cases"). Article 36 of the Family Code cannot be taken and construed independently of, but must stand in conjunction with, existing precepts in our law on marriage. Thus correlated, "psychological incapacity" should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter intensitivity or inability to give meaning and significance to the marriage. This pschologic condition must exist at the time the marriage is celebrated. The law does not evidently envision, upon the other hand, an inability of the spouse to have sexual relations with the other. This conclusion is implicit under Article 54 of the Family Code which considers children conceived prior to the judicial declaration of nullity of the void marriage to be "legitimate."

> "The other forms of psychoses, if existing at the inception of marriage, like the state of a party being of unsound mind or concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism, merely renders the marriage contract *voidable* pursuant to Article 46, Family Code. If drug addiction, habitual alcholism, lesbianism or homosexuality should occur only during the marriage, they become mere grounds for legal separation under Article 55 of the Family Code. These provisions of the Code, however, do not necessarily preclude the possibility of these various circumstances being themselves, depending on the degree and severity of the disorder, *indicia* of psychological incapacity.
>
> 'Until further statutory and jurisprudential parameters are established, every circumstance that may have some bearing on the degree, extent, and other conditions of that incapacity must, in every case, be carefully examined and evaluated so that no precipitate and indiscriminate nullity is peremptorily decreed. The well-considered opinions of psychiatrists, psychologists, and persons with expertise in psychological disciplines might be helpful or even desirable."

In *Ma. Socorro Camacho-Reyes v. Ramon Reyes* (G.R. No. 185286, August 18, 2010), the Supreme Court held that a recommendation for therapy does not automatically imply curability. In general, recommendations for therapy are given by clinical psychologists, or even psychiatrists, to manage behavior. In Kaplan and Saddock's textbook entitled *Synopsis of Psychiatry*,[21] treatment, ranging from psychotherapy to pharmacotherapy, for all the listed kinds of personality disorders are recommended. In short, the psychologist's recommendation that the respondent should undergo therapy

does not necessarily negate the finding that respondent's psychological incapacity is incurable.

In, *Republic v. Molina*, the Supreme Court laid down more definitive guidelines in the disposition of psychological incapacity cases, to wit:

> "From their submissions and the Court's own deliberations, the following guidelines in the interpretation and application of Art. 36 of the Family Code are hereby handed down for the guidance of the bench and the bar:
>
> "(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, [11] recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.
>
> "The Family Code echoes this constitutional edict on marriage and the family and emphasizes the *permanence, inviolability* and *solidarity.*
>
> "(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical. although its

manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or physically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature explained. Expert evidence may be given qualified psychiatrist and clinical psychologists.

"(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

"(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

"(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, nor a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

"(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

"(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

"The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

In the past five years,[10] there have been no substantial deviations from the general rule. The Supreme Court has consistently upheld the rulings in *Santos* and *Molina*, and both are still good law. However, in its January 14, 2015 Resolution in the case of *Kalaw v. Fernandez,*[11]--granting a petition for declaration of nullity of the marriage, and reversing its September 19, 2011 Decision denying the same petition—the Supreme Court observed that the guidelines under *Molina* "have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection." According to the Supreme Court, this state of affairs is contrary to the legislative intent of Article 36 of the Family Code which "must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of 'less specificity' obviously to enable 'some resiliency in its application.'" Instead, the Supreme Court admonished trial courts to treat each petition on a case to case basis given that "no case would be on 'all fours' with the next one in the field of psychological incapacity as a ground for the nullity of marriage".[12]

Other notable cases include, *Chi Ming Tsoi v. Court of Appeals* (G.R. No. 119190, January 16, 1997), where the Supreme Court held that one of the essential marital obligations under the Family Code is '(t)o procreate children based on the universal principle that procreation of children through sexual cooperation is the basic end of marriage,' and that constant non-fulfillment of this obligation will finally destroy the integrity or wholeness of the marriage. [13] In that case, the senseless and protracted refusal of one of the parties to fulfill the above marital obligation was held to be equivalent to psychological incapacity. However, in the later case of *Manuel G. Almelor vs The Hon. Regional Trial Court of Las Pinas City, Branch 254 and Leonida T. Almelor* (G.R. No. 179620, August 26, 2008), the Supreme Court, in denying the petition, held that homosexuality *per se* is only a ground for legal separation. It is

[10] The years 2015 to 2020.
[11] G.R. No. 166357
[12] Kalaw v. Fernandez, G.R. No. 166357, January 14, 2015
[13] Family Law in the Philippines, 2014 ed. By: Katrina Legarda, Ma. Soledad Dequito-Mawis, and Flordeliza C. Vargas

its concealment that serves as a valid ground to annul a marriage. Concealment in this case is not simply a blanket denial, but one that is constitutive of fraud.

In *Republic v. Encelan* (G.R. No. 170022, January 9, 2013), the Supreme Court held that sexual infidelity and abandonment of the conjugal dwelling, even if true, do not necessarily constitute psychological incapacity. These are simply grounds for legal separation.[14] To constitute psychological incapacity, the unfaithfulness and abandonment must be shown as manifestations of a disordered personality that completely prevented the erring spouse from discharging the essential marital obligations.[15] No evidence on record exists to support the allegation that the respondent's infidelity and abandonment were manifestations of any psychological illness.

Initially, the Supreme Court held that proof of psychological incapacity required the testimony of an expert witness. On the need for the use of an expert witness to establish psychological incapacity, the Supreme Court in *Lucita Estrella Hernandez v. Court of Appeals and Mario C. Hernandez* (G.R. No. 126010, December 08, 1999), held that expert testimony should have been presented to establish the precise cause of private respondents psychological incapacity, if any, in order to show that it existed at the inception of the marriage, and that the burden of proof to show the nullity of the marriage rests upon petitioner.

In *Najera v. Najera* (G.R. No. 164817, July 3, 2009), the Supreme Court held that the interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts, since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people. Ideally, this great

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[14] The Family Code, Art. 55. A petition for legal separation may be filed on any of the following grounds: x x x x
(8) Sexual infidelity or perversion; x x x x
(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.
[15] iting, *Toring v. Toring*, G.R. No. 165321, August 3, 2010.

persuasive weight is *subject to the laws on evidence*. In relation thereto, Sec. 34, Rule 132 of the Rules of Evidence states that 'the court shall consider no evidence which has not been formally offered. The purpose of which the evidence is offered must be specified.' Thus, despite the Decision of the Tribunal granting the parties an annulment, the Court did not give credence to the Decision of the Tribunal when it was made on a different set of evidence of which the court had no way of ascertaining their truthfulness.

While the Court flip-flopped in the case of *Brenda B. Marcos v. Wilson G. Marcos* (G.R. No. 136490, October 19, 2000) by ruling that the personal medical or psychological examination of a respondent is not a requirement for a declaration of psychological incapacity, in *Republic of the Philippines v. Erlinda Matias Dagdag* (G.R. No. 109975, February 9, 2001), the Supreme Court affirmed its ruling in *Hernandez* that there must be compliance with the Molina Doctrine, which requires that the *root cause* of psychological incapacity must be medically or clinically identified and sufficiently proven by experts. In *Hernandez*, the Supreme Court denied the petition since no psychiatrist or medical doctor testified as to the alleged psychological incapacity of the respondent, petitioner's husband.

However, less than four year later, the Supreme Court, in *Leonil Antonio v. Marie Ivonne F. Reyes* (G.R. No. 155800, March 10, 2005), gravitated back to its ruling in *Marcos*, and held that personal examination of the subject by the physician is not required for the spouse to be declared psychologically incapacitated, considering the totality of evidence before it, and that the lies attributed to the respondent indicate a failure on the part of respondent to distinguish truth from fiction, or at least abide by the truth, and that her inveterate proclivity to telling lies and the pathologic nature of her mistruths, were revelatory of her inability to understand and perform the essential obligations of marriage. In *Republic of the Philippines v. Laila Tanyag-San Jose and Manilito San Jose* (G.R. No. 155800, March 10, 2006), the Supreme Court, citing *Leni O. Choa v. Alfonso C. Choa* (G.R. No. 143376, November 26, 2002), held that given the facts of this case, the doctor's conclusion, which was

based on information communicated to the doctor, not by the party sought to be declared psychologically incapacitated, by some other person, in this case, the other spouse, is hearsay, and "unscientific and unreliable."[16]

In the later case of *Edward Kenneth Ngo Te v. Rowena Ong Gutierrez Yu-Te*, (G.R. No. 161793, February 13, 2009), the Supreme Court held that the presentation of expert proof

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[16] As the earlier-quoted Report of Dr. Tayag shows, her conclusion about Manolito's psychological incapacity was based on the information supplied by Laila which she found to be "factual." That Laila supplied the basis of her conclusion, Dr. Tayag confirmed at the witness stand:

Q [Atty. Revilla, Jr.]: What was your conclusion, what w[ere] your findings with respect to the respondent?

A [Dr. Tayag]: Base[d] on the narration made by [Laila], which I found the narration to be factual, regarding her marital relationship with the petitioner (should have been respondent), I came up with a conclusion that respondent is psychologically incapacitated. The one which I found in him is his anti-social personality disorder because of the following overt manipulations: the presence of drug, the absence of remourse [*sic*], the constant incapacity in terms of maintaining the marital relationship, the lack of concern to his family, his self-centeredness, lack of remourse, in addition to the womanizing, respondent which clearly connotes the defiant of moral and personality disorder, he is tantamount to a person under the level, under our diagnostic criteria labeled as anti-social personality disorder, sir.

Q: So you would like to impress this Court that your findings with respect to this case were only base[d] on the information given to you by [Laila], is that correct?

A: Yes, wherein I found the narration made by [Laila] to be factual, sir. (Emphasis supplied)

Undoubtedly, the doctor's conclusion is hearsay. It is "unscientific and unreliable," so this Court declared in *Choa v. Choa*[22] where the assessment of the therein party sought to be declared psychologically incapacitated was based merely on the information communicated to the doctor by the therein respondent-spouse:

. . . [T]he assessment of petitioner by Dr. Gauzon was based merely on descriptions communicated to him by respondent. The doctor never conducted any psychological examination of her. Neither did he ever claim to have done so. In fact, his Professional Opinion began with the statement "[I]f what Alfonso Choa said about his wife Leni is true, . . ."

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Obviously, Dr. Gauzon had no personal knowledge of the facts he testified to, as these had merely been relayed to him by respondent. The former was working on pure suppositions and secondhand information fed to him by one side. Consequently, his testimony can be dismissed as unscientific and unreliable.[23] (Emphasis and underscoring supplied)

presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.[17] In this case, the Supreme Court suggested the

[17] Psychologists of the Psychological Extension Evaluation Research Services (PEERS) enumerate the segments of the psychological evaluation report for psychological incapacity as follows:

- Identifying Data: Personal Information
- Referral Question: Data coming from informants and significant others (psychologists, psychiatrists, physicians, parents, brothers, sisters, relatives, friends, etc.).
- Test Administered (Dates): List by name
- Background Information:
- Current Life Situation: Presenting complaint (personal and marital conflict), history of problem, and consequences in client's life.
- Life History Information: Childhood development, educational history, vocational history, medical history, sexual and marital history, personal goals.
- Behavior Observations: Description of client, relationship with examiner, and test related behaviors.
- Interpretation of Test Results:

Intellectual Functioning: Wechsler tests, Stanford-Binet, etc. Obtained IQ scores and specific strengths and deficits.
Cognitive Functioning: Rorschach, TAT, MMPI, etc. Perception of reality or perceptual efficiency, conceptual organization, psychological needs, conflicts, preoccupations, suspiciousness, hallucinations, or delusions.
Emotional Functioning (MMPI, Rorschach, etc.): Liability of emotions, impulse control, predominant concerns like aggression, anxiety, depression, guilt, dependency, and hostility.
Relationship Patterns (MMPI, Rorschach, TAT, etc.): Problem areas in work or school, friendships, intimate relationships, difficulties such as immaturity, irresponsibility, cooperativeness, sociability, introversion, impulsivity, aggression, dangerousness to self or others.
Defenses and compensations: Evidence of any strength, any coping mechanisms, or any useful compensation that might be helping the client maintain himself/herself.

- Integration of Test Results with Life History: Presenting a clinical picture of the client as a total person against the background of his marital discords and life circumstances. Hypotheses posed through the referral question and generated and integrated via test results and other reliable information.
- Summary, Conclusion, Diagnosis, Prognosis:
- Summary: Emphasis should be on conciseness and accuracy so that the reader can quickly find the essential information and overall impression.
- Conclusion: Integrating the material (data) into a more smoothly stated conceptualization of the client's personality and problem areas as regards root causes and characteristics as ground for nullity of marriage.
- Diagnosis: Diagnostic impression is evolved form the data obtained, formed impression of personality disorders, and classified mental disorders based on the criteria and multi axial system of the DSM IV.
- Prognosis: Predicting the behavior based on the data obtained that are relevant to the current functioning of the client, albeit under ideal conditions.

inclusion in the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages,[18] an option for the trial judge to refer the case to a court-appointed psychologist or expert for an independent assessment and evaluation of the psychological state of the parties, stating that this will assist the courts, who are no experts in the field of psychology, to arrive at an intelligent and judicious determination of the case. The rule, however, would not dispense with the parties' prerogative to present their own expert witnesses.

In *Azcueta v. Republic of the Philippines* (G.R. No. 180668, May 26, 2009), the Supreme Court reverted to its ruling in *Marcos* when it dispensed with the requirement of a personal examination by a physician or psychologist as a condition *sine qua non* for the declaration of nullity of marriage based on psychological incapacity. The Court held that what matters is whether the totality of evidence presented is adequate to sustain a finding of psychological incapacity. Consistent with the foregoing ruling, the Supreme Court in *Arabelle J. Mendoza v. Republic of the Philippines and Dominic C. Mendoza* (G.R. No. 157854, November 12, 2012) held that what is important is the presence of evidence that can adequately establish the party's psychological condition. For indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

In *Republic of the Philippines v. Quintero-Hamano* (G.R. No. 149498, May 20, 2004), the Supreme Court held that there should be no racist undertones in determining psychological incapacity in that there should be no distinction between an alien spouse and a Filipino spouse, and that it cannot be lenient

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- Recommendation: Providing a careful specific recommendation is based on the referral sources and obtained data in dealing with a particular client that may be ameliorative, remedial, or unique treatment/intervention approaches. As to psychological incapacity, specific recommendation on the nullity of marriage based on Article 36 of the Family Code and expertise and clinical judgment of the Clinical Psychologist should be given emphasis. (Ng, Apruebo & Lepiten, Legal and Clinical Bases of Psychological Incapacity, supra note 51, at 179-181.) (Cited in *Te v. Te*)

[18] A.M. No. 02-11-10-SC, effective March 15, 2003.

in the application of the rules merely because the spouse alleged to be psychologically incapacitated happens to be a foreign national. The medical and clinical rules to determine psychological incapacity were formulated on the basis of studies of human behavior in general. Hence, the norms used for determining psychological incapacity should apply to any person regardless of nationality or, in other words, regardless of race.

Resolving a motion for reconsideration, the Supreme Court, in *Lester Benjamin S. Halili v. Chona M. Santos Halili* (G.R. No. 165424, June 9, 2009), reversed its earlier ruling upholding the validity of a marriage on account of the failure of the petitioner to prove psychological incapacity based on the totality of the evidence presented. In granting the petition for declaration of nullity upon a motion for reconsideration, the Court relied on expert testimony that the petitioner was suffering from a personality disorder. The Supreme Court recognized that individuals with diagnosable personality disorders usually have long-term concerns, and thus therapy may be long-term.[19] Particularly, personality disorders are "long-standing, inflexible ways of behaving that are not so much severe mental disorders as dysfunctional styles of living. These disorders affect all areas of functioning and, beginning in childhood or adolescence, create problems for those who display them and for others."[20] The Supreme Court concluded that it was sufficiently shown, by expert testimony, that petitioner was indeed suffering from psychological incapacity that effectively rendered him unable to perform the essential obligations of marriage. Thus, the Supreme Court declared the marriage null and void,.

In *Robert F. Mallilin v. Luz G. Jamesolamin and the Republic of the Philippines* (G.R. No. 192718, February 18, 2015), the Supreme Court held that the root cause of the alleged psychological incapacity was not medically or clinically identified, and sufficiently proven during the trial. Based on the records, the petitioner failed to prove that the respondent wife's

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[19] *Te v. Te.*
[20] citing Bernstein, Penner, Clarke-Stewart and Roy, Psychology, 7th ed., 2006, pp. 613-614

disposition of not cleaning the room, preparing their meal, washing the clothes, and propensity for dating and receiving different male visitors, was grave, deeply rooted, and incurable within the parameters of jurisprudence on psychological incapacity. To be declared clinically or medically incurable is one thing; to refuse or be reluctant to perform one's duties is another. Psychological incapacity refers only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[21] Sexual infidelity or perversion and abandonment do not, by themselves, constitute grounds for declaring a marriage void based on psychological incapacity. The petitioner argued that the series of sexual indiscretion of the respondent were external manifestations of the psychological defect that she was suffering within her person, which could be considered as nymphomania or "excessive sex hunger." Other than his allegations, however, no other convincing evidence was adduced to prove that these sexual indiscretions were considered nymphomania, and that it was grave, deeply rooted, and incurable within the term of psychological incapacity embodied in Article 36.

In *Glenn Vinas v. Mary Grace Parel-Vinas* (G.R. No. 208790, January 21, 2015), the Supreme Court held that the respondent's stubborn refusal to cohabit with the petitioner was doubtlessly irresponsible, but it was never proven to be rooted in some psychological illness. Likewise, the respondent's act of living with another woman four years into the marriage cannot automatically be equated with a psychological disorder, especially when no specific evidence was shown that promiscuity was a trait already existing at the inception of marriage.

In a Resolution dated January 14, 2015, the Supreme Court, on a motion for reconsideration, reversed its often cited September 19, 2011 Decision in *Valerio E. Kalaw v. Ma. Elena Fernandez* (G.R. No. 166357), wherein it previously denied the

[21] Citing *Republic of the Philippines v. Rodolfo O. De Garcia*, G.R. No. 171557, February 12, 2014.

petition for declaration of nullity of marriage on the ground of psychological incapacity.

In its Decision, the Supreme Court disregarded the testimony of two (2) expert witnesses who both concluded that the respondent was psychologically incapacitated. Instead, the Supreme Court held that the totality of the evidence actually points to the opposite conclusion. In reversing its Decision, the Supreme Court, held, when it resolved the petitioner's motion for reconsideration, that the courts, which are concededly not endowed with expertise in the field of psychology, must of necessity rely on the opinions of experts in order to inform themselves on the matter, and thus enable themselves to arrive at an intelligent and judicious judgment. Indeed, the conditions for the malady of being grave, antecedent and incurable demand the in-depth diagnosis by experts.[22]

The Supreme Court subsequently considered it improper and unwarranted to give to such expert opinions a merely generalized consideration and treatment, least of all to dismiss their value as inadequate basis for the declaration of the nullity of the marriage. In resolving the motion for reconsideration, the petitioners' experts, whose testimonies were previously found inadequate, were, subsequently found to have sufficiently and competently described the psychological incapacity of the respondent within the standards of Article 36 of the Family Code. The Court upheld the conclusions reached by the two expert witnesses because they were largely drawn from the case records and affidavits, and should not anymore be disputed after the Regional Trial Court itself had accepted the veracity of the petitioner's factual premises.[23]

In *Nicolas S. Matudan v. Republic of the Philippines and Marilyn B. Matudan* (G.R. No. 203284, November 14, 2016), the Supreme Court denied the petition for declaration of nullity of marriage on the ground of psychological incapacity, and held that Petitioner's evidence consists mainly of his judicial affidavit and testimony; the judicial affidavits and testimonies of his

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[22] *Hernandez v. Court of Appeals*, G.R. No. 126010, December 8, 1999, 320 SCRA 76; *Republic v. Quintero-Hamano*, G.R. No. 149498, May 20, 2004, 428 SCRA 735.
[23] *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 379.4-

daughter and the clinical psychologist, and his psychological evaluation report on the psychological condition both petitioner and the respondent.

The supposed evaluation of the respondent's psychological condition was based solely on petitioner's account, since respondent did not participate in the proceedings. The psychologist's supposed expert findings regarding the respondent's psychological condition were not based on actual tests or interviews conducted upon the respondent herself, they are based on the personal accounts of petitioner. This fact gave more significance and importance to petitioner's other pieces of evidence, which could have compensated for the deficiency in the expert opinion which resulted from its being based solely on petitioner's one-sided account. But since these other pieces of evidence could not be relied upon, the psychologist's testimony and report failed as well.

In *Republic of the Philippines v. Danilo A. Pangasinan* (G.R. No. 214077, August 10, 2016), the Supreme Court likewise denied the petition for declaration of nullity of marriage on the ground of psychological incapacity, and held that it is not necessary that a physician examine the person to be declared psychologically incapacitated.

What is important is the presence of evidence that can adequately establish the party's psychological condition. If the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.[24] However, the totality of evidence must still prove the gravity, juridical antecedence and incurability of the alleged psychological incapacity.[30] In addition to the foregoing, the psychological illness and its root cause must be proven to exist from the inception of the marriage.[25]

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[24] Citing *Marcos v. Marcos, supra.*
[25] *Marable v. Marable,* G.R. No. 178741, January 17, 2011, 639 SCRA 557.

In this case, there is no such reliable and independent evidence establishing the wife's psychological condition and its associations in her early life. Aside from what the husband relayed to the clinical psychologist, no other evidence supports his claim and the psychologist's finding that the root cause of his wife's personality disorder antedated the marriage since the witnesses' testimonies covered circumstances that transpired after the marriage.

Moreover, the Psychological Evaluation Report is inadequate to establish concretely the correlation between the wife's personality and her inability to comply with her essential marital obligations. The psychologist merely made a general assessment and conclusion as to the gravity and pervasiveness of the wife's condition without sufficiently explaining how she arrived at such a conclusion. Furthermore, the records are bereft of any independent evidence nor allegation of facts pointing to the psychological incapacity of the husband. Therefore, in addition to the husband's failure to allege the complete facts showing his incapacity to comply with his essential marital obligations to his wife, he likewise failed to prove his wife's incapacity by preponderance of evidence.

In *Republic of the Philippines v. Reghis M. Romero II and Olivia Lagman Romero* (G.R. No. 209180, February 24, 2016), the Supreme Court once again denied the petition for declaration of nullity of marriage on the ground of psychological incapacity and held that the respondent's testimony shows that he was able to comply with his marital obligations which, therefore, negates the existence of a grave and serious psychological incapacity on his part. He admitted that he and his wife lived together as husband and wife under one roof for 14 years and both of them contributed in purchasing their family home.

The respondent also fulfilled his duty to support and take care of his family, as he categorically stated that he loves their children and that he was a good provider to them.[26] That he married his wife not out of love, but out of reverence for the latter's parents, does not mean that the respondent is

[26] *Id.* at *Rollo* pp. 79-80.

psychologically incapacitated in the context of Article 36 of the Family Code. Thus, while not apparent, it would seem that the Supreme Court dismissed the petition in the case on account of its appreciation of the totality of the evidence presented.

Moreover, the Obsessive Compulsive Personality Disorder (OCPD) which the respondent allegedly suffered from was not shown to have juridical antecedence. Other than the clinical psychologist's conclusion that the respondent's "behavioral disorder x x x existed even prior to the marriage or even during his adolescent years,"[27] no specific behavior or habits during his adolescent years were shown which would explain his behavior during his marriage. The psychologist simply concluded that the respondent's disorder is incurable but failed to explain how she came to such conclusion. She did not discuss the concept of OCPD, its classification, cause, symptoms, and cure, and failed to show how and to what extent the respondent exhibited this disorder in order to create a necessary inference that his condition had no definite treatment or is incurable.

The standards used by the Court in assessing the sufficiency of psychological evaluation reports may be deemed very strict, but these are proper, in view of the principle that any doubt should be resolved in favor of the validity of the marriage and the indissolubility of the marital tie.[28] Marriage is an inviolable institution protected by the State. It cannot be dissolved at the whim of the parties, especially where the pieces of evidence presented are grossly deficient to show the juridical antecedence, gravity and incurability of the condition of the party alleged to be psychologically incapacitated to assume and perform the essential marital duties.[29]

In *Maria Victoria Socorro Lontoc-Cruz v. Nilo Santos Cruz* (G.R. No. 201988, October 11, 2017), the Supreme Court once again denied the petition for declaration of nullity of marriage on the ground of psychological incapacity. The Court revisited its ruling in *Marcos,* where it ruled that the actual medical examination of the one claimed to have psychological incapacity

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[27] *Id. at Rollo*, p. 82.
[28] *Agraviador v. Amparo-Agraviador*, 652 Phil. 49, 69 (2010).
[29] *Id.*

is not a condition *sine qua non,* for what matters is the totality of evidence to sustain a finding of such psychological incapacity, and that while it behooves the Court to weigh the clinical findings of psychology experts as part of the evidence, the court's hands are nonetheless free to make its own independent factual findings.

In this case, even granting that both parties did suffer from personality disorders, the Court found that the conclusions reached by the expert witnesses do not irresistibly point to the fact that the personality disorders which plague the spouses antedated the marriage; that these personality disorders were indeed grave or serious; or that these personality disorders were incurable or permanent as to render the parties psychologically incapacitated to carry out and carry on their marital duties. What can be inferred from the totality of evidence, at most, is a case of incompatibility. For a personality disorder to be declared clinically or medically incurable or permanent is one thing; for a spouse to refuse or to be reluctant to perform his/her marital duties is another.[30]

The case of *Manuel R. Bakunawa III v. Nora Reyes Bakunawa* (G.R. No. 217993, August 09, 2017) is significant because it clarified the Supreme Court's earlier ruling that an expert witness need not personally examine the spouse sought to be declared psychologically incapacitated.

Notably, the Supreme Court held that personal examination can be dispensed with only if the totality of evidence can already prove psychological incapacity. In this case, the Supreme Court held that the totality of evidence presented by the petitioner comprising of his testimony and that of the psychiatrist, as well as the latter's psychological evaluation report, is insufficient to prove that he and the respondent are psychologically incapacitated to perform the essential obligations of marriage.

The psychiatrist's conclusion that the petitioner is afflicted with Intermittent Explosive Disorder and that

[30] *Republic v. De Gracia,* supra at 513.

respondent has Passive Aggressive Personality Disorder which render them psychologically incapacitated under Article 36 of the Family Code, is solely based on her interviews with the petitioner and the parties' eldest child, who could not be considered as a reliable witness to establish the psychological incapacity of his parents in relation to Article 36 of the Family Code, since he could not have been there at the time his parents were married.

The Court also noted that the psychiatrist did not administer any psychological tests on the petitioner despite having had the opportunity to do so. While the Court has declared that there is no requirement that the person to be declared psychologically incapacitated should be personally examined by a physician[31], much less be subjected to psychological tests, this rule finds application only if the totality of evidence presented is enough to sustain a finding of psychological incapacity.

In this case, the supposed personality disorder of the petitioner could have been established by means of psychometric and neurological tests which are objective means designed to measure specific aspects of people's intelligence, thinking, or personality.[32] With regard to the Confirmatory Decree of the National Tribunal of Appeals,[33] which affirmed the decision of the Metropolitan Tribunal of First Instance for the Archdiocese of Manila in favor of nullity of the Catholic marriage of the petitioner and respondent, the Court accords the same with great respect but does not consider the same as controlling and decisive, in line with prevailing jurisprudence.[34]

In *Yolanda E. Garlet v. Vencidor T. Garlet* (G.R. No. 193544, August 02, 2017), the Supreme Court once again denied the petition for declaration of nullity of marriage on the ground of psychological incapacity, and held that the totality of petitioner's evidence is insufficient to establish respondent's psychological incapacity. Contrary to petitioner's assertion, it

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[31] *Marcos v. Marcos, supra.*
[32] *Edward N. Lim v. Ma. Cheryl Sta. Cruz-Lim* (G.R. No. 176464, February 4, 2010)
[33] *Id. at Rollo*, pp. 132-134.
[34] *Mallilm v. Jamesolamin, supra.*

appears that respondent took on several jobs. As indicated in their child's Certificate of Live Birth, respondent's occupations were listed as a "vendor." Respondent was also in-charge of the mini-grocery store which he and petitioner put up. Most recently, respondent worked as a jeepney driver.

Petitioner's claim that respondent never plied the jeepney was contradicted by her own witness,[35] who testified that respondent sometimes plied the jeepney himself or asked somebody else to drive it for him.[36] Petitioner criticized respondent for not looking for a stable job, but did not specify what job suits respondent's qualifications. More importantly, it is settled in jurisprudence that refusal to look for a job *per se* is not indicative of a psychological defect.[37]

Habitual drunkenness, gambling and refusal to find a job, while indicative of psychological incapacity, do not, by themselves, show psychological incapacity. All these simply indicate difficulty, neglect or mere refusal to perform marital obligations that, as the cited jurisprudence holds, cannot be considered to be constitutive of psychological incapacity in the absence of proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness.

The Court already declared that sexual infidelity, by itself, is not sufficient proof that a spouse is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which makes the spouse completely unable to discharge the essential obligations of marriage.[38] That respondent delegated the care for the children to petitioner's sister, does not necessarily constitute neglect. While it is truly ideal that children be reared personally by their parents, in reality, there are various reasons which compel parents to employ the help of others, such as a relative or hired nanny, to watch after the children. In the instant case, it was actually petitioner who brought her from

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[35] *Id. at Rollo*, p. 334.
[36] TSN, June 15, 2006, p. 8.
[37] *Jocelyn M. Suazo v. Angelito Suazo and Republic of the Philippines* (G.R. No. 164493, March 10, 2010)
[38] *Jaime F. Villalon v. Ma. Corazon N. Villalon* (G.R. No. 167206, November 18, 2005)

Bicol to Manila to care for his children. Granting that she was primarily responsible for the children's care, there is no showing that a serious psychological disorder has rendered respondent incognizant of and incapacitated to perform his parental obligations to his children. There is no allegation, much less proof, that the children were deprived of their basic needs or were placed in danger by reason of respondent's neglect or irresponsibility.

In *Maria Teresa B. Tani-De la Fuente v. Rodolfo De la Fuente, Jr.* (G.R. No. 188400, March 8, 2017), the Supreme Court granted the petition for declaration of nullity of marriage on the ground of psychological incapacity, after considering expert testimony and held that the root cause of respondent's paranoid personality disorder was hereditary in nature as his own father suffered from a similar disorder. The expert witness who was a clinical psychologist stated that respondent's own psychological disorder probably started during his late childhood years and developed in his early adolescent years. He explained that respondent's psychological incapacity to perform his marital obligations was likely caused by growing up with a pathogenic parental model. The juridical antecedence of respondent's psychological incapacity was also sufficiently proven during trial.

The case of *Rachel A. Del Rosario v. Jose O. Del Rosario and Court of Appeals* (G.R. No. 222541, February 15, 2017) is, perhaps, an example of a petition where the inadequacy in the testimony of the expert witness, coupled with the insufficiency of the totality of evidence led the Supreme Court to deny the petition for declaration of nullity of marriage on the ground of psychological incapacity. The Court held that the psychological report does not explain in detail how the respondent's Antisocial Personality Disorder (APD) could be characterized as grave, deeply rooted in his childhood, and incurable within the jurisprudential parameters for establishing psychological incapacity. Particularly, the report did not discuss the concept of APD which the respondent allegedly suffers from, *i.e.,* its classification, cause, symptoms, and cure, or show how and to what extent the respondent exhibited this disorder or how and to what extent his alleged actions and behavior correlate with

his APD, sufficiently clear to conclude that his condition has no definite treatment, making it incurable within the law's conception. Neither did the report specify the reasons why and to what extent the respondent's APD is serious and grave, and how it incapacitated him to understand and comply with his marital obligations. Lastly, the report hastily concluded that the respondent had a "deprived childhood" and "poor home condition" that automatically resulted in his APD equivalent to psychological incapacity without, however, specifically identifying the history of the respondent's condition antedating the marriage, *i.e.,* specific behavior or habits during his adolescent years that could explain his behavior during the marriage.

Moreover, the psychologist did not personally assess or interview the respondent to determine, at the very least, his background that could have given her a more accurate basis for concluding that his APD is rooted in his childhood or was already existing at the inception of the marriage. Established parameters do not require that the expert witness personally examine the party alleged to be suffering from psychological incapacity provided corroborating evidence are presented sufficiently establishing the required legal parameters.[39]

Considering that her report was based solely on the petitioner's side whose bias cannot be doubted, the report and the petitioner's testimony deserved the application of a more rigid and stringent standards. In sum, the psychological assessment, even when taken together with the various testimonies, failed to show that the respondent's immaturity, irresponsibility, and infidelity rise to the level of psychological incapacity that would justify the nullification of the parties' marriage.

To reiterate and emphasize, psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of the marital obligations; it is not enough that a party prove that the other failed to meet the responsibility and

[39] *Nilda v. Navales v. Reynaldo Navales,* G.R. NO. 167523, June 27, 2008 at 844-845.

duty of a married person.[40] There must be proof of a natal or supervening disabling factor in the person - an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage - which must be linked with the manifestations of the psychological incapacity.[41]

In *Mirasol Castillo v. Republic of the Philippines and Felipe Impas* (G.R. No. 214064, February 6, 2017), the Supreme Court once again denied the petition for declaration of nullity of marriage on the ground of psychological incapacity, and held that the totality of the evidence presented failed to establish Felipe's psychological incapacity.

The clinical psychologist opined that respondent is encumbered with a personality disorder classified as Narcissistic Personality Disorder deeply ingrained in his personality structure that rendered him incapacitated to perform his marital duties and obligations. The presentation of expert proof in cases for declaration of nullity of marriage based on psychological incapacity presupposes a thorough and an in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.[42]

The probative force of the testimony of an expert does not lie in a mere statement of her theory or opinion, but rather in the assistance that she can render to the courts in showing the facts that serve as a basis for her criterion and the reasons upon which the logic of her conclusion is founded.[43] Although the psychological report expounds on the juridical antecedence, gravity and incurability of the respondent's personality disorder, it was, however, admitted that the psychologist

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[40] *Republic of the Philippines v. Nestor Galang,* G.R. No. 168335, June 6, 2011, citing *Republic of the Philippines v. Norma Cuison-Melgar,* G.R. No. 139676, March 31, 2006.
[41] *Id.*
[42] *Marable v. Marable, supra* at note 22.
[43] *Republic of the Philippines v. Court of Appeals and De Quintos, Jr.,* G.R. No. 159594, November 12, 2012.

evaluated respondent's psychological condition indirectly from the information gathered from the petitioner and her witness.

The respondent's dysfunctional family portrait which brought about his personality disorder as painted in the evaluation was based solely on the assumed truthful knowledge of petitioner. There was no independent witness knowledgeable of respondent's upbringing interviewed by the psychologist or presented before the trial court. There was no other convincing evidence asserted to establish the respondent's psychological condition and its associations in his early life.

The psychologist's testimony and psychological evaluation report do not provide evidentiary support to cure the doubtful veracity of the petitioner's one-sided assertion. The said report falls short of the required proof for the Court to rely on the same as basis to declare petitioner's marriage to respondent as void. The findings on Felipe's personality profile did not emanate from a personal interview with the subject himself. Apart from the psychologist's opinion and petitioner's allegations, no other reliable evidence was cited to prove that Felipe's sexual infidelity was a manifestation of his alleged personality disorder, which is grave, deeply rooted, and incurable. The Court was not persuaded that the natal or supervening disabling factor which effectively incapacitated him from complying with his obligation to be faithful to his wife was medically or clinically established.

In *Republic of the Philippines v. Liberato P. Mola Cruz* (G.R. No. 236629, July 23, 2018), the Supreme Court appreciated both the testimony of the expert witness and the totality of the evidence and granted the petition for declaration of nullity of marriage on the ground of psychological incapacity, and held that the psychological report confirms that the clinical psychologist personally interviewed both spouses regarding their personal and familial circumstances before and after the celebration of their marriage. Information gathered from the spouses was then verified by her with the wife's youngest sister,[44] a close relation privy to the wife's personal history

[44] *Id. at Rollo*, p. 86.

before and after she got married. The psychologist then based her psychological evaluation and conclusions on all the information she gathered. Her findings were, thus, properly anchored on a *holistic psychological evaluation* of the parties as individuals and as a married couple under a factual milieu verified with an independent informant.

The courts *a quo* properly accorded credence to the report and utilized it as an aid in determining whether Liezl is indeed psychologically incapacitated to meet essential marital functions. The totality of evidence presented by respondent in support of his petition, sufficiently established the link between his wife's actions showing her psychological incapacity to understand and perform her marital obligations and her histrionic personality disorder. The fact that the wife's disorder manifested itself through actions that occurred after the marriage was celebrated does not mean, as petitioner argues, that there is no psychological incapacity to speak of.

The Court explained that the wife's histrionic personality disorder was the cause of her inability to discharge her marital obligations to love, respect and give concern, support and fidelity to her husband. The Court also narrated how the disorder was evidenced by the wife's actions after the marriage was celebrated, starting from when she and petitioner lived together in Japan.

The gravity of her disorder is shown by appreciating the totality of her actions after she got married. The wife was unable to accommodate the fact that she was already married into the way she wanted to live her life, and essentially treated petitioner as a manipulable inconvenience that she could ignore or threaten to accede to her desires. It is clear that the wife is truly incognitive of her marital responsibilities. The disorder began when the wife was an adolescent and continued well into adulthood. It fully appreciated her psychological evaluation that revealed her unconsciousness of her disorder. Together with its rootedness in of her personality since her teens, the Court agreed with the expert findings that any medical or behavioral treatment of her disorder would prove ineffective.

It is true that sexual infidelity and abandonment are grounds for legal separation. It may be noted, however, that the courts *a quo* duly connected such aberrant acts of the wife as actual manifestations of her histrionic personality disorder.

A person with such a disorder was characterized as selfish and egotistical, and demands immediate gratification.[45] These traits were especially reflected in the wife's highly unusual acts of allowing her Japanese boyfriend to stay in the marital abode, sharing the marital bed with her Japanese boyfriend and introducing her husband as her elder brother, all done under the threat of desertion. Such blatant insensitivity and lack of regard for the sanctity of the marital bond and home cannot be expected from a married person who reasonably understand the principle and responsibilities of marriage.

In *Republic of the Philippines v. Martin Nikolai Z. Javier and Michelle K. Mercado-Javier* (G.R. No. 210518, April 18, 2018), the Supreme Court held that the totality of evidence supported the finding that the husband was psychologically incapacitated to fulfill his marital obligations and granted the petition for declaration of nullity of marriage on the ground of psychological incapacity.

In this case, the husband testified as to his own psychological incapacity. and the Supreme Court found him to be psychologically incapacitated. The Court noted that the husband was subjected several psychological tests, as a result of which, he was diagnosed with Narcissistic Personality Disorder, with tendencies toward sadism, which, the expert concluded, was rooted in the traumatic experiences he experienced during his childhood. Additionally, the diagnosis was based on personal interviews of the husband, who underwent several-or to be accurate, more than 10-counselling sessions from 2008 to 2009.

The husband also testified as to the psychological incapacity of his wife and he stated that his wife was

[45] *Id. at Rollo*, p. 89.

confrontational even before their marriage.[46] He alleged that she always challenged his opinions on what he thinks is proper, which he insisted on because he witnessed the abuse that his mother went through with his biological father.[47] He also thought that his wife was highly impressionable and easily influenced by friends, as a result of which, the petitioner alleged that the respondent acted recklessly and without consideration of his feelings.[48]

According to the clinical psychologist, his wife suffered from Narcissistic Personality Disorder as a result of childhood trauma and defective child-rearing practices.[49] This disorder was supposedly aggravated by her marriage with the petitioner, who she constantly lied to. It was also alleged in the Psychological Impression Report that the wife openly had extra-marital affairs.[50]

The basis of the findings on the psychological incapacity of the wife was the information provided by the petitioner and a close friend of the respondents, having introduced them to each other before their marriage.[51] This close friend was also allegedly a regular confidant of the respondent.[52] In this case, the Supreme Court noted that the findings of the expert witness relative to the wife are not immediately invalidated for the sole reason that the said findings were based solely on information provided by the husband and his witnesses.

Because a marriage necessarily involves only two persons, the spouse who witnessed the other spouse's behavior may "validly relay" the pattern of behavior to the psychologist.[53] However, in this case, the Court disagreed with the ruling that the wife was psychologically incapacitated**.** There were no other independent evidence establishing the root cause or juridical antecedence of the wife's alleged psychological incapacity.

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[46] *Id.* at *Rollo*, p. 37.
[47] Id. at 194-195.
[48] Id. at 37-39, 194-201.
[49] Id. at 209.
[50] Id. at 210.
[51] Id. at 47, 136-137.
[52] Id. at 136.
[53] *Camacho-Reyes v. Reyes*, *supra.*

While the Court cannot discount the first-hand observations of the husband and his witnesses, it is highly unlikely that the witnesses were able to paint the psychologist a complete picture of the respondent's family and childhood history. Without a credible source of her supposed childhood trauma, the psychologist was not equipped with enough information from which he may reasonably conclude that the respondent is suffering from a chronic and persistent disorder that is grave and incurable.

In *Abigael An Espina-Dan v. Marco Dan* (G.R. No. 209031, April 16, 2018), the Supreme Court denied the petition for declaration of nullity of marriage on the ground of psychological incapacity.

The Court found that petitioner met respondent Marco Dan, an Italian national, in a chatroom on the internet" sometime in May 2005. They soon became "chatmates" and "began exchanging letters which further drew them emotionally closer to each other" even though petitioner was in the Philippines while respondent lived in Italy. In November 2005, respondent proposed marriage. The following year, he flew in from Italy and tied the knot with petitioner on January 23, 2006. Soon after the wedding, respondent returned to Italy. Petitioner followed thereafter, or on February 23, 2006.

The couple lived together in Italy. On April 18, 2007, petitioner left respondent and flew back into the country. Petitioner admitted that before and during their marriage, respondent was working and giving money to her; that respondent was romantic, sweet, thoughtful, responsible, and caring; and that she and respondent enjoyed a harmonious relationship. This belies her claim that petitioner was psychologically unfit for marriage. As correctly observed by the trial and appellate courts, the couple simply drifted apart as a result of irreconcilable differences and basic incompatibility owing to differences in culture and upbringing, and the very short period that they spent together prior to their tying the knot.

As for respondent's claimed addiction to video games and cannabis, the trial and appellate courts are correct in their ruling that these are not an incurable condition, and petitioner has not shown that she helped her husband overcome them - as part of her marital obligation to render support and aid to respondent.

In *Republic of the Philippines v. Katrina S. Tobora Tionglico* (G.R. 218630, January 11, 2018), the Supreme Court once again denied the petition for declaration of nullity of marriage on the ground of psychological incapacity, and found that the respondent failed to sufficiently prove that her husband is psychologically incapacitated to discharge the duties expected of a husband.

The expert witness's findings that the husband is psychologically incapacitated were based solely on the wife's statements. It bears to stress that the husband, despite notice, did not participate in the proceedings below, nor was he interviewed by the psychiatrist despite being invited to do so. The Court held that the totality of evidence is clearly lacking to support the factual and legal conclusion that the marriage is void *ab initio*. No other evidence or witnesses were presented by the respondent to prove her husband's alleged psychological incapacity. Apart from the psychiatrist, the respondent did not present other witnesses to substantiate her allegations on her husband's psychological incapacity. Her testimony, therefore, is considered self-serving and had no serious evidentiary value.[54]

In *Maria Concepcion N. Singson a.k.a. Concepcion Singson v. Benjamin L. Singson* (G.R. No. 210766, January 8, 2018), the Supreme Court denied the petition for declaration of nullity of marriage on the ground of psychological incapacity and held that the evidence on record does not establish that respondent's psychological incapacity was grave and serious as defined by jurisprudential parameters since the respondent had a job, provided money for the family from the sale of his property, provided the land where the family home was built on and lived in the family home with petitioner-appellee and their children."[55]

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[54] *Id.*
[55] *Id.* at *Rollo*, p.44.

On the other hand, petitioner herself testified that respondent had a job as the latter was working at a certain point.[56] This is consistent with the information in the Clinical Summary and testimony, which were both included in petitioner's formal offer of evidence, respecting the parties' relationship history that petitioner and respondent met at the bank where petitioner was applying for a job and where respondent was employed as a credit investigator prior to their courtship and their marriage.[57]

Petitioner and respondent likewise lived together as husband and wife since their marriage on July *6,* 1974, and in the company of their four children. Petitioner did not allege any instance when respondent failed to live with them. Petitioner herself admitted, that respondent likewise brought her to the hospital during all four instances that she gave birth to their children.[58]

By contrast, petitioner did not proffer any convincing proof that respondent's mere confinement at the rehabilitation center confirmed the gravity of the latter's psychological incapacity. Neither does petitioner's bare claim that respondent is a pathological gambler, is irresponsible, and is unable to keep a job, necessarily translate into unassailable proof that respondent is psychologically incapacitated to perform the essential marital obligations. Neither can the psychologist's testimony in open court and her Clinical Summary be taken for gospel truth in regard to the charge that respondent is afflicted with utter inability to appreciate his marital obligations.

The medical basis did not specifically identify the root cause of respondent's alleged psychological incapacity. In fact, it did not point to a definite or a definitive cause, *viz.* "with his history of typhoid fever when he was younger, it is difficult to attribute the behavioral changes that he manifested in 2003 and 2006."[59] She also admitted that it was not she herself, but another psychologist who conducted the tests.[60] And this

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[56] TSN, January 25, 2010, p. 22.
[57] TSN, April 20, 2009, pp. 15-16.
[58] Id. At 9.
[59] TSN, April 20, 2009, p. 17.
[60] Id. at 22 and 62-63.

psychologist was not presented by petitioner. More than that, her testimony regarding respondent's alleged admission that he was allegedly betting *on jai alai* when he was still in high school is essentially hearsay as no witness having personal knowledge of that fact was called to the witness stand. And, although she claimed to have interviewed respondent's sister in connection therewith, the latter did testify in court.

The Court found equally bereft of merit the petitioner's claim that respondent's alleged psychological incapacity could be attributed to the latter's family or childhood, which are circumstances prior to the parties' marriage. No evidence was adduced to substantiate this fact. Neither was there basis for upholding petitioner's contention that respondent's family was "distraught" and that respondent's conduct was "dysfunctional"; again, there is no evidence to attest to this. Petitioner cannot lean upon her son's testimony that his father's psychological incapacity existed before or at the time of marriage. It has been held that the parties' child is not a very reliable witness in an Article 36 case as "he could not have been there when the spouses were married and could not have been expected to know what was happening between his parents until long after his birth."[61]

In more recent cases, such as *Rolando D. Cortez v. Luz G. Cortez* (G.R. No. 224638, April 10, 2019), the Supreme Court denied the petition for declaration of nullity of marriage on the ground of psychological incapacity and held that the petitioner failed to show that he and respondent were both psychologically incapable of knowing and performing their marital and parental obligations.

The petitioner claims that he married respondent not out of love but because he was forced to marry her in order to lift the hold departure order made by the POEA and to be able to work abroad as a seaman, hence, he is psychologically incapacitated to comply with the essential marital obligations of marriage. Such claim does not rise to the level of psychologically incapacity that would nullify his marriage. He argues that he

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[61] *Toring v. Toring, supra* at note 16.

might have neglected or refused to act in accordance with the norms imposed or expected by society or might have found difficulty in performing such acts, but his neglect, refusal or difficulty was made or committed without realizing that he has marital obligations to perform as husband to respondent.

Petitioner relies on the psychiatric evaluation report which showed the antecedence, gravity and incurability of his psychological incapacity at the time of the celebration of the marriage. The Report stated, among others, that petitioner was the youngest of 8 children of a strict father and a mother who was not into mothering; that he grew up with affectional deprivation; that feeling confused, inadequate and inclined to be dependent, he needed support from people around him, waver in his stance and adjustment when confronted by unfamiliar and difficult situations. However, the Court found that the report failed to show how petitioner's personality traits incapacitated him from complying with the essential obligations of marriage.

On the contrary, the report established that because petitioner was forced to marry respondent without love, he had no intention to do his full obligations as a husband. Mere "difficulty," "refusal," or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness.[62]

The petitioner admitted that it was only when he learned in 1994 that respondent had a child prior to their marriage in 1990 that he stopped giving support to respondent and their two children, that because of the abandonment case filed against him and the threats coming from respondent's brothers if he would stop supporting respondent and the children that he entered into a compromise agreement with respondent regarding the financial support for their children, that despite giving support, however, he refused to live with respondent. Petitioner's showing of ill-will and refusal to perform marital obligations do not amount to psychological incapacity on his part. Petitioner's claim of lack of realization that he has marital

[62] *Navales v. Navales, supra* at note 38.

obligation to perform as husband to respondent is not a consideration under Article 36 of the Family Code as what the law requires is a mental illness that leads to an inability to comply with or comprehend essential marital obligations.[63]

In *Mary Christine C. Go Yu v. Romeo A. Yu* (G.R. No. 230443, April 03, 2019), the Supreme Court once again denied the petition for declaration of nullity of marriage on the ground of psychological incapacity and held that petitioner's documentary and testimonial pieces of evidence prove that she is fully aware of, and has performed the essential obligations of a married individual.

The following instances prove such capacity: *first*, petitioner expressed concern over the decrease in their sexual activity after their wedding, that she also has needs and that, unlike her and respondent, it is normal for married couples to have a healthy sexual relationship,[64] *second*, she wanted to have a baby with respondent because she believes and understands that one of the purposes of marriage is procreation[65] and she also thought that having a baby could somehow save their marriage,[66] *third*, she made adjustments and sacrifices by giving up luxuries she had gotten used to when her husband's financial resources started to dwindle,[67] and *fourth*, she helped her husband manage their finances and run their household.[68]

Petitioner unquestionably recognizes both spouses' obligations to live together, observe mutual love, respect and fidelity, render mutual help and support, provide for the support of the family, and manage their household. The fact that she gradually became overwhelmed by feelings of disappointment or disillusionment toward her husband and their marriage is not a sufficient ground to have such marriage declared null and void. An unsatisfactory marriage is not a null and void marriage.

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[63] See *Tani-Dela Fuente v. De la Fuente, supra.*
[64] *Id. at Rollo*, Vol. I, p. 95.
[65] CA *rollo*, Vol. III, pp. 1432-1433.
[66] *Id.*
[67] *Id.* at *Rollo*, Vol. 1, p. 94; see Psychological Report, *rollo*, Vol. I, p. 117.
[68] *Id.* at 94-95.

Article 36 of the Family Code is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. Resultantly, it has always been held that mere irreconcilable differences and conflicting personalities in no wise constitute psychological incapacity.[69]

Finally, in *Republic of the Philippines v. Cheryl Pauline R. Deang* (G.R. No. 236279, March 25, 2019), the Supreme Court once again denied the petition for declaration of nullity of marriage on the ground of psychological incapacity, and held that the actuations of the spouses that allegedly indicated their incapacity to perform marital obligations were not proven to have existed prior to, or at least, at the time of the celebration of the marriage, as required by jurisprudence.[70]

The respondent's husband may have engaged in an extra-marital affair, gambled, failed to support to the respondent and their son, was irritable and aggressive, and abandoned his family, while the respondent may have married him simply in obedience to her parents' decision and had the constant need for her parents' care and support. However, these acts, by themselves, do not prove that both parties are psychologically incapacitated as these may have been simply due to jealousy, emotional immaturity, irresponsibility, or dire financial constraints.

It cannot be said that either party is suffering from a grave and serious psychological condition which rendered either of them incapable of carrying out the ordinary duties required in a marriage. The psychological report fails to show that the Anti-Social Personality Disorder (APD) and Dependent Personality

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[69] *Veronica Cabacungan Alcazar v. Rey C. Alcazar* (G.R. No. 174451, October 13, 2009), citing *Marcos v. Marcos, supra.*

[70] See *Rowena Padilla-Rumbaua v. Edward Rumbaua*, G.R. No. 166738, August 14, 2009.

Disorder (DPD) which the spouses allegedly respectively suffer were impressed with the qualities of juridical antecedence and incurability.

Apart from enumerating and characterizing the spouses' respective behavior during the marriage based only on the symptoms specified in the Diagnostic and Statistical Manual of Mental Disorders 5th Edition,[71] no specific behavior or habits during their childhood or adolescent years were shown that would explain such behavior during the marriage.

It must be emphasized that there must be proof of a natal or supervening disabling factor in the person - an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage[72] - which must be linked with the manifestations of the psychological incapacity.[73] While it is not required that the expert witness personally examine the party alleged to be suffering from psychological incapacity, corroborating evidence must be presented to sufficiently establish the required legal parameters.[74]

The findings as regards the husband were solely founded on the narrations of the wife and her sister. From these, the psychologist proceeded to diagnose the husband with APD and concluded that he "grew up in a dysfunctional family" resulting "to the development of his antisocial behaviors" which is a "chronic condition x x x embedded in his personality make up."[75] The Court was hard-pressed to accept this conclusion based solely on accounts coming from the respondent's side whose bias cannot be doubted. Aside from the fact that no discernible explanation was made anent the purported disorders' incurable nature, the psychological report ultimately

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[71] *Id. at rollo*, pp. 76-77 and 104-106.
[72] *Republic v. Galang*, *supra* at note 39.
[73] *Id.*
[74] *Navales v. Navales*, *supra* at note 63; *Toring v. Toring*, *supra* at note 16, both citing *Marcos v. Marcos*, *supra*.
[75] *Id. at Rollo*, p. 106.

fails to demonstrate the relation of these disorders to the ability of the parties to perform their essential marital obligations.

Finally, the Court stated that it can only commiserate with the parties' plight as their marriage may have failed, the remedy is not always to have it declared void *ab initio* on the ground of psychological incapacity. Article 36 of the Family Code, as amended, is not a divorce law that cuts the marital bond at the time the grounds for divorce manifest themselves[76] for a marriage, no matter how unsatisfactory, is not a null and void marriage. Thus, absent sufficient evidence establishing psychological incapacity within the context of Article 36, the Court denied the petition.

In sum, while the Supreme Court generally does not deviate from the established doctrines, it considers the totality of evidence presented, which should include the testimony of an expert witness, to provide the court with a *holistic psychological evaluation,* and decides each case according to its merits. The presentation of an expert witness alone might not be sufficient evidence to prove the invalidity of the marriage on the ground of psychological incapacity. The Court remains to be conservative in the sense that Article 36 is not meant to be used as a substitute for divorce, but shall be used to declare a marriage null and void only in the most serious of cases of psychological incapacity.

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[76] See *Republic v. Spouses Romero, supra* citing *Ma. Armida Perez-Ferraris v. Brix Ferraris* G.R. No. 162368, July 17, 2006.

Filipinos Without Borders: The Convergence of Law, Religion, Citizenship, And Marriage

Ma. Soledad Margarita Deriquito-Mawis[*]

I. THE CONVERGENCE OF RELIGION AND MORALITY ON THE LAWS OF MARRIAGE[1]

"Strong fences make good neighbors," as the saying goes. Thus, Art. II, Section 6 of the 1987 Philippine Constitution states that the separation of Church and State shall be inviolable. The idea is to separate the two institutions and, thus, avoid encroachments by one against the other over their respective exclusive jurisdictions. The demarcation line calls on the entities to "render therefore unto Caesar the things that are Caesar's and unto God the things that are God's."[2]

The separation of church and state, however, remains blurred, especially in instances where the constitutional right of freedom of religion is upheld.[3] *Accommodation* recognizes the reality that some governmental measures may not be imposed

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[1] The first part of the article is based on a published article written by the same author, assisted by Atty. Jorge Patrick A. Yasay, entitled "Morality – The Convergence of Law and Religion" which was published in the 2018 edition of the Lyceum Law Journal.

[2] Re: Letter of Tony Q.Valenciano, Holding of Religious Rituals at the Hall of Justice Byilding in Quezon Ctiy, A.M. No. 10-4-19-SC, March 7, 2017, citing Cruz, Philippine Political Law (2002), p. 68.

[3] Sec 5, Art. III of the 1987 Philippine Constitution provides "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

on a certain portion of the population because these measures contradict their religious beliefs. As long as it can be shown that the exercise of this right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment.[4]

This article will discuss how religion and morality have affected the laws on marriage, an inviolable social institution, in a way that the great divide meets in an amorphous intersection.

A. Introduction

Under the Spanish Constitution of 1876, Catholicism was the state religion and Catholics alone enjoyed the right of engaging in public ceremonies of worship.[5] Consequently, the precepts and dicta of the Catholic Church determined not only what is legal, but also what is moral.

The constitutional system the Americans introduced in the Philippines, however, changed the country's constitutional framework. The Philippine Bill of 1902 mandated the complete separation of church and state.[6] The drastic change diminished the privileged position of the Catholic Church and the recognition of the equal position of other religions. There was recognition of Christian and non-Christian and leveling off of all religions under the new sovereignty.[7] Consequently, the State may not use the teachings of a certain religion as basis of morality for it will result in granting a privileged position to that religion and thus violating the constitutional principle of separation of church and state.

According to the Supreme Court, the only possible regimes where church and state share a common interest in moral matters, among others, are agreements that regulate

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[4] Re: Letter of Tony Q.Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City
[5] *Bayan v. Ermita*, G.R. No. 169838, April 25, 2006.
[6] *US v. Balcorta*, 25 Phil. 273 (1913).
[7] *Adong v. Cheong Seng Gee*, 43 Phil. 43 (1922).

matters coming under the jurisdiction of church and state.[8] This pronouncement may seem to imply a complete separation of church and state. Thus, we are now faced with the issue of whether our courts and tribunals are precluded from using religion as basis in determining what is moral and in addressing issues of morality.

B. Separation of Church and State

There are two basic articles on religion found in the 1987 Philippine Constitution. The first is found in the Declaration of Principles and State Policies, *i.e.* Article II Section 6:

> "The separation of Church and State shall be inviolable."

The second text is Section 5 of the Bill of Rights (Article III):

> "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

Father Joaquin G. Bernas, a well-known constitutionalist, referred to the "relational concept of separation between religion and secular government"[9] in describing the twin clauses of free exercise and non-establishment. He described further:

> "The nature of the relational concept must constantly be re-examined because the terms of the relation are not immobile concepts. These terms are, on one end, the

[8] *Trinidad v. R.C Archbishop of Manila*, 63 Phil. 881 (1934).
[9] Bernas (2009), The 1987 Constitution of the Republic of the Philippines: A Commentary

> human experience expressed by the word 'religion,' and on the other, the proper actions within the domain of the state. Modern society is faced with the phenomenon of expanding government reaching out its regulatory arm to an every growing variety of areas of human action and the phenomenon of a growing articulation and acceptance of an expanding concept of religion. Hence, the two terms come into conflict more often."[10]

With this characterization of the relationship between religion and secular government, it is clear that there are areas of human life governed by religious beliefs and there are those governed by the rules laid down by the government of the State to which a person belongs.

The line separating the two, however, becomes blurred when a person would argue that his religious freedom must be upheld in a situation where his religious beliefs allow him to do certain acts despite proscription by the government (case in point: *Estrada v. Escritor*).

Pre-Escritor ruling: case in point: Estreller v. Manatad, Jr.[11]

Estreller charged Manatad, Jr., a married man, with disgraceful and immoral conduct in violation of the Civil Service Law. The respondent was a Court Interpreter whose conduct allegedly resulted in the birth of a child.

In requiring the respondent to pay an administrative fine, the Supreme Court said that respondent's conduct was certainly disgraceful. The fact that the respondent had sexual intercourse with complainant without first having courted her does not constitute a defense. Neither did the Court consider the argument that he never concealed his status of being a married man to the complainant so it was only the latter who should be

[10] Id, page 329
[11] A.M. No. P-94-1034, February 21, 1997

faulted for her own predicament. If anything, such statements reveal an infantile egotism and an unmitigated chauvinism in the man. Respondent was a married man and already a court employee at the time he had a sexual relationship with complainant.

It must be emphasized that every employee of the judiciary should be an example of integrity, uprightness and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but in his personal and private dealings with other people, to preserve the court's good name and standing.

Pre-Escritor ruling: case in point: Floria v. Sunga[12]

Several employees filed a "Manifesto" against Floria, an employee of the Court of Appeals, claiming that the latter is guilty of immorality, falsification, and misrepresentation; supposedly because she was maintaining illicit relations with a married man, and that she had made false entries in the birth certificates of her children.

The High Court found Floria liable for immorality and dishonesty (for falsifying the certificates of live birth of her children), the same being supported by substantial evidence, the quantum of proof required in administrative proceedings. Under Section 52, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty and immoral conduct are grave offenses. Immoral conduct is punished by suspension of 6 months and 1 day to 1 year; while dishonesty is punished by dismissal from the service.

However, the Court tempered justice with mercy considering the following circumstances:

1. The administrative offense of immorality took place many years ago;
2. Floria has been employed in the Court of appeals for a period of 29 years;

[12] A.M. No. CA-01-10-P, November 14, 2001

3. This is the first time that she is being found administratively liable as per available record; and
4. Her children are innocent victims. Dismissing or suspending their mother from the service is a heavy toll on them, a punishment they do not deserve.

In *Estreller* and *Floria*, the Supreme Court found conjugal cohabitation without the benefit of marriage as an immoral conduct. Thus, prior to *Escritor*, the matter of immorality was resolved on the basis of law tempered with mercy. Morality was not defined by religious precepts.

C. Law, Religion and Morality – The Meeting Point

Case in point: Estrada v. Escritor[13] *- unsettling the seemingly settled*

In 2003, the Supreme Court *en banc* promulgated its decision in the case of *Estrada v. Escritor.* The case of *Estrada v. Escritor* teaches us that under civil service laws, the distinction between public and secular morality on the one hand, and religious morality, on the other should be kept in mind because the jurisdiction of the Court extends only to public and secular morality. The case illustrates the confluence of law and religion in resolving an issue involving morality.

In *Estrada v. Escritor*, Respondent Soledad Escritor, a court interpreter and a widow, was charged with committing "disgraceful and immoral conduct" under Book V, Title I, Chapter VI, Sec. 46(b)(5) of the Revised Administrative Code.

Alejandro Estrada filed an administrative complaint requesting for an investigation of rumors that Soledad Escritor, a court interpreter, is living with a man not her husband. He filed the charge against Escritor as he believed that she is committing an immoral act that tarnishes the image of the court, thus she should not be allowed to remain employed therein as it might appear that the court condones her act.

[13] A.M. No. P-02-1651, June 22, 2006

Escritor admitted that she has been living with Luciano Quilapio, Jr. without the benefit of marriage for 20 years and that they have a son. But as a member of the religious sect known as the Jehovah's Witnesses and the Watch Tower and Bible Tract Society, their conjugal arrangement is in conformity with their religious beliefs. In fact, after ten years of living together, she executed on July 28, 1991 a "Declaration of Pledging Faithfulness," viz:

> "DECLARATION OF PLEDGING FAITHFULNESS
>
> I, Soledad S. Escritor, do hereby declare that I have accepted Luciano D. Quilapio, Jr., as my mate in marital relationship; that I have done all within my ability to obtain legal recognition of this relationship by the proper public authorities and that it is because of having been unable to do so that I therefore make this public declaration pledging faithfulness in this marital relationship.
>
> I recognize this relationship as a binding tie before 'Jehovah' God and before all persons to be held to and honored in full accord with the principles of God's Word. I will continue to seek the means to obtain legal recognition of this relationship by the civil authorities and if at any future time a change in circumstances make this possible, I promise to legalize this union.
>
> Signed this 28th day of July 1991."

Escritor's partner, Quilapio, executed a similar pledge on the same day. At the time Escritor executed her pledge, her husband was still alive but living with another woman. Quilapio was likewise married at that time, but had been separated in fact from his wife.

In fine, it was Escritor's submission that her congregation allows her conjugal arrangement with Quilapio and it does not consider it immoral.

The High Court found that insofar as the congregation is concerned, there is nothing immoral about the conjugal arrangement between respondent and her lover and they remain members in good standing in the congregation. In ruling for the respondent, the court held as follows:

> "In resolving claims involving religious freedom (1) benevolent neutrality or accommodation, whether mandatory or permissive, is the spirit, intent and framework underlying the religion clauses in our Constitution; and (2) in deciding respondent's plea of exemption based on the Free Exercise Clause (from the law with which she is administratively charged), it is the compelling state interest test, the strictest test, which must be applied."

The two schools of thought – Separationist and Accommodationist

In its decision,[14] the Supreme Court discussed the two schools of thought regarding religious freedom and the establishment clause with respect to the history and stream of jurisprudence on the subject matter. As told by the Court, the strict separationist view (also called Jeffersonian view), forwarded by Thomas Jefferson among others, considers the establishment clause as one meant to protect the state from the church – "the state's hostility towards religion allows no interaction between the two.[15]" This view holds that there must be a complete and strict separation between the church and the

[14] A.M. No. P-02-1651, August 4, 2003
[15] Grossman, J.B. and Wells, R.S., citing Gales, J. and Seaton, W., eds., The Debates and Proceedings in the Congress of the United States, Compiled from Authentic Materials (Annala), vol. 1, as mentioned in Estrada v. Escritor supra note 8

state to promote independence of the government and eliminate the influence of religious institutions, among others.

On the other hand, the Court described the accommodationist view (also referred to as benevolent neutrality) as one more considerate of social realities such that it recognizes the notion that religion has an essential function in our society. As pronounced by the Court, this view "respects the religious nature of our people and accommodates the public service to their spiritual needs."

Following the teaching of the United States Supreme Court in *Zorach v. Clauson*[16], the Court opted to sustain and integrate the accommodationist view in Philippine jurisprudence and held that there is no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen their effective scope of religious influence.

In précis, the Court upheld accommodation or benevolent neutrality for the following reasons:

1. The accommodationist interpretation is most consistent with the language of the religion clauses of the Constitution for the reason, among others, that the substantive end in view of these clauses is "the preservation of the autonomy of religious life and not just the formal process value of ensuring that government does not act on the basis of religious bias";

2. The accommodationist position best achieves the purposes of the religion clauses which is to carry out one's duties to a Supreme Being as an inalienable right;

3. The accommodationist interpretation is particularly necessary to protect adherents of minority religions from the inevitable effects of majoritarianism, which include ignorance and indifference and overt hostility to the minority; and

[16] 343 U.S. 306 (1951)

4. The accommodationist position is practical as it is a commonsensical way to deal with the various needs and beliefs of different faiths in a pluralistic nation.

In summary, despite previous cases where the Court ruled that government employees engaged in illicit relations are guilty of "disgraceful and immoral conduct" for which they may be held administratively liable, the Court tempered its ruling in the *Escritor* case solely because of the "distinguishing factor" that as a defense, respondent invokes religious freedom since her religion, the Jehovah's Witnesses, has allowed her conjugal arrangement with Quilapio based on the church's religious beliefs and practices.

As a simplistic condensation of the decision, the Court found that there is nothing disgraceful and immoral when a married woman cohabits with another man who is also married provided that their religious beliefs allow the same and that their religious sect approves of it.

The Court even tells us that:

> "[T]here is no jurisprudence in Philippine jurisdiction holding that the defense of religious freedom of a member of the Jehovah's Witnesses under the same circumstances as respondent will not prevail over the laws on adultery, concubinage or some other law. We cannot summarily conclude therefore that her conduct is likewise so "odious" and "barbaric" as to be immoral and punishable by law."

This pronouncement gives rise to far reaching consequences. May the decision of Court then be taken to mean that one's religious beliefs play a role in determining the morality of his or her conduct? Is it the pronouncement of the court that religious standards may be used as basis in determining issues of morality? Is the convergence of law and morality now to be guided by the precepts of one's religion?

What were the judicial pronouncements after *Escritor*? Was there finally a settling of the unsettling?

Case in point: Francisco v. Laurel[17]

One month after the promulgation of the 2003 *Escritor* ruling, the Supreme Court meted out suspension and warning against a court stenographer for having sexual intercourse with a lawfully married man which produced a child.

In the case of *Francisco v. Laurel,* the Supreme Court said:

> "We agree with the Investigator that respondent is liable for disgraceful and immoral conduct punishable under civil service rules as a grave offense and *xxx xxx*.
>
> That respondent does not cohabit with Prosecutor Nofuente as alleged by her is of no moment as the mere fact alone of a woman, even if single, entering into an illicit relationship with a married man and having a child with him is certainly contrary to the acceptable norms of morality by which we live. This is especially so when the persons concerned are public employees who are supposed to maintain a high standard of morality in order to live up to their role as models in society."

Case in point: Concerned Employee v. Mayor[18]

Three years after the 2003 *Estrada ruling*, an administrative case was resolved by the High Court. The said administrative case involved a court employee who gave birth to a child out of wedlock and allegedly had sexual liaisons with a married man. The Supreme Court held that the fact alone that a lady court employee had given birth to a child out of wedlock is

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[17] *Francisco v. Laurel*, A.M. No. P-03-1674, October 14, 2003
[18] A.M. No. P-02-1564, November 23, 2004

sufficient to warrant sanction for disgraceful and immoral conduct.

A similarly very important pronouncement in this case is that:

> "[A]ny judicial pronouncement that an activity constitutes "disgraceful and immoral" behavior under the contemplation of the Civil Service law must satisfy the test that such conduct is regulated on account of the concerns of public and secular morality. Such judicial declarations cannot be mere effectuations of personal bias, notably those colored by particular religious mores. Nor would the demand be satisfied by the haphazard invocation of "cultural" values, without a convincing demonstration that these cultural biases have since been recognized and given accord within the realm of public policy. The Constitution and the statutes of the land would serve as especially authoritative sources of recognition, since they are irrefutable as to what the public policy is. At the same time, the constitutional protections afforded under the Bill of Rights should be observed, to the extent that they protect behavior that may be frowned upon by the majority. (Emphasis ours)"

What appears to be confusing, however, is that in the *Mayor* case, the Court made reference to *Escritor* in ratiocinating that the morality of a conduct is to be determined based on public and secular morality instead of religious morality. It must be remembered that this is not the principal teaching in *Escritor*. Moreover, unlike in the *Escritor* case, Respondent Mayor's continued sexual liaisons with a married man after said court employee learned of her lover's marital state meted a suspension and a stern warning because:

> "The legal effect of such ignorance deserves due consideration, if only for intellectual clarity. The act of having sexual relations with a married person, or of married persons having sexual relations outside their marriage is considered "disgraceful and immoral" conduct because such manifests deliberate disregard by the actor of the marital vows protected by the Constitution and our laws. The perversion is especially egregious if committed by judicial personnel, those persons specifically tasked with the administration of justice and the laws of the land. However, the malevolent intent that normally characterizes the act is not present when the employee is unaware that his/her sexual partner is actually married. This lack of awareness may extenuate the cause for the penalty, as it did in the aforementioned Ui case.
>
> *xxx xxx xxx*
>
> Had respondent desisted from continuing her affair with Leaño after learning he was married, this would have exhibited not only prudence on her part, but also a willingness to respect a legal institution safeguarded by our laws and the Constitution. Yet her persistence in maintaining sexual relations with Leaño after that revelation instead manifests a willful subversion of the legal order, a disposition we are unwilling to condone, even if avowed in the name of love. The Court, like all well-meaning persons, has no desire to dash romantic fancies, yet in the exercise of its duty, is all too willing when necessary to raise the wall that tears Pyramus and Thisbe asunder."

This case makes it clearer that the general rule stands the same that morality remains to be a secular issue and in

exceptional cases such as in *Escritor*, its determination is affected by the invocation of religious freedom.

Case in point: Anonymous v. Radam[19]

Respondent Ma. Victoria Radam, utility worker in the Office of the Clerk of Court of the Regional Trial Court of Alaminos City in Pangasinan, was charged with immorality for getting pregnant and giving birth while she is single, not married to the father of the child.

Similar to *Escritor*, the issue in this case involves a resolution of determining what is immoral for purposes of determining administrative liability; further, the complaint against the said court employee was dismissed by the High Court. In dismissing the complaint, the Court categorically ruled that giving birth out of wedlock is not *per se* immoral under civil service laws. Thus, the Supreme Court said:

> "In *Estrada v. Escritor*, we emphasized that in determining whether the acts complained of constitute "disgraceful and immoral behavior" under civil service laws, the distinction between public and secular morality on the one hand, and religious morality, on the other should be kept in mind. The distinction between public and secular morality as expressed — albeit not exclusively — in the law, on the one hand, and religious morality, on the other, is important because the jurisdiction of the Court extends only to public and secular morality. Thus, government action, including its proscription of immorality as expressed in criminal law like adultery or concubinage, must have a secular purpose.
>
> For a particular conduct to constitute "disgraceful and immoral" behavior under civil service laws, it must be regulated on

[19] A.M. No. P-07-2333, December 19, 2007

> account of the concerns of public and secular morality. It cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on "cultural" values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws. At the same time, the constitutionally guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority."

In determining immorality that would warrant administrative liability, the Court used as basis the pronouncement in *Ui v. Atty. Bonifacio,*[20] a disbarment proceeding against a lawyer who allegedly had an illicit relationship with a married man. In both cases, the Court ruled that for a conduct to warrant disciplinary action, the same must be "grossly immoral," that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree. Thus in *Ui*, there is already a characterization of what is "grossly immoral", however it may be gleaned that such standard applies only to the high moral standard that a member of the legal profession must adhere to. Further, in *Ui*, the respondent lawyer was absolved from liability not because the Court considered the illicit relationship not immoral but because there was a finding that she immediately distanced herself from the man upon discovering his true civil status which shows her propriety and obedience to the law and morality.

Case in point: Leus v. St. Scholastica's College Westgrove[21]

The relevant doctrine in this case is simple and straightforward:

[20] ADM. CASE No. 3319, June 8, 2000
[21] G.R. No. 187226, January 28, 2015

> "Public and secular morality should determine the prevailing norms of conduct, not religious morality.
>
> In determining whether a conduct is immoral or not, the government must proscribe it when it is detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society and not because the conduct is proscribed by the beliefs of one religion or the other."

However, just like in similar cases prior to *Leus*, the Supreme Court made reference to *Escritor* despite *Escritor* being the landmark case teaching us that public and secular morality must take into account religious morality when religious freedom is invoked.

Nevertheless, in *Leus*, the Court made an important pronouncement when it said that in determining whether a conduct is immoral or not, the government must proscribe it when it is detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society and not because the conduct is proscribed by the beliefs of one religion or the other. Therefore, this case resolves that a conduct must be looked into using a "macro" perspective and considering its effect on the society, rather than looking at it in a vacuum just to accommodate the religious beliefs of some.

Of tangential importance to the present discussion but of high regard for women, in this case, the high court made a controlling pronouncement that while an employee is employed in a religious educational institution which abhors pre-marital sexual relations and pregnancy out of wedlock, such conduct cannot be considered disgraceful or immoral for they are not denounced by public and secular morality. The same may be an unusual arrangement, according to the Court, but it certainly is not disgraceful or immoral within the contemplation of the law especially since there exists no legal impediment between the woman and her lover to marry.

Post-Escritor Analysis

Why is it that in the case of *Estrada v. Escritor,* the Supreme Court dismissed the petition against the concerned court employee, and yet in *Francisco v. Laurel,*[22] as well as in *Employee v. Mayor,*[23] the concerned court employees were administratively sanctioned. Simplistically, the difference in treatment lies in the fact that in the *Escritor* case, Escritor's defense was grounded on religious freedom, while religious freedom was not invoked in the Laurel and Mayor cases.

Yet, the non-invocation of the defense of religious freedom did not stop the court from ruling that there is nothing immoral in the acts complained in the administrative case of *Anonymous v. Radam*[24] and in ruling that the dismissal in *Leus* is illegal and unwarranted.

How then can one reconcile the said rulings? How then is morality defined? The answers lies in the Resolution of the Supreme Court in *Estrada* v. *Escritor* which was promulgated three years after the main decision was promulgated. [25] In the said Resolution, the Supreme Court said:

> "(a) The public morality expressed in the law is necessarily secular for in our constitutional order, the religion clauses prohibit the state from establishing a religion, including the morality it sanctions. Thus, when the law speaks of "immorality" in the Civil Service Law or "immoral" in the Code of Professional Responsibility for lawyers, or "public morals" in the Revised Penal Code, or "morals" in the New Civil Code, or "moral character" in the Constitution, the distinction between public and secular morality on the one hand, and religious

[22] *Francisco v. Laurel*, A.M. No. P-03-1674, October 14, 2003
[23] A.M. No. P-02-1564, November 23, 2004
[24] A.M. No. P-07-2333, December 19, 2007
[25] A.M. No. P-02-165, June 22, 2006, (Formerly OCA I.P.I. No. 00-1021-P)

morality, on the other, should be kept in mind;

(b) Although the morality contemplated by laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interests;

(c) The jurisdiction of the Court extends only to public and secular morality. Whatever pronouncement the Court makes in the case at bar should be understood only in this realm where it has authority.

(d) Having distinguished between public and secular morality and religious morality, the more difficult task is determining which immoral acts under this public and secular morality fall under the phrase "disgraceful and immoral conduct" for which a government employee may be held administratively liable. Only one conduct is in question before this Court, i.e., the conjugal arrangement of a government employee whose partner is legally married to another which Philippine law and jurisprudence consider both immoral and illegal.

(e) While there is no dispute that under settled jurisprudence, respondent's conduct constitutes "disgraceful and immoral conduct," the case at bar involves the defense of religious freedom, therefore none of the cases cited by Mme. Justice Ynares-Santiago apply.[166] There is no jurisprudence in Philippine jurisdiction holding that the defense of religious freedom of a member of the Jehovah's Witnesses under the same circumstances as respondent will not prevail over the laws on adultery, concubinage or some other law. We cannot summarily conclude therefore that her conduct is likewise so

> "odious" and "barbaric" as to be immoral and punishable by law."

The pronouncement of the High Court, notwithstanding, does the state's interest, particularly its interest in upholding the marriage as an inviolable social institution, not offended or prejudiced when a woman will not be held accountable for having extra-marital relations with a married man in the name of religious freedom?

D. Customs as a source of right

In our jurisdiction, a local custom may be used as a source of right provided that it is properly established by competent evidence.[26] 'Custom' was defined as the "juridical rule which results from practice by the members of a social community, with respect to a particular state of facts, and observed with a conviction that it is juridically obligatory."[27] 'Custom' was also defined as "a rule of conduct formed by repetition of acts, uniformly observed (practiced) as a social rule, legally binding and obligatory."[28]

Our Constitution under Article XII Section 5[29] serves as confirmation of the application of customary laws as a source of right. In fact, our civil law system considers customs as a source of right.

The preliminary provisions of the Civil Code are already instructive. On waiver of rights, Article 6 reads: "Rights may be

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[26] Patriarca v. Orate, 7 Phil. 390, 395 (1907); In the Matter of the Petition for Authority to Continue Use of the Firm Name "Ozaeta, Romulo, de Leon, Mabanta and Reyes, 92 SCRA 12, July 30, 1979

[27] Tolentino, Arturo M. (1990), Commentaries and Jursiprudence on the Civil Code of the Philippines (Vol.1) with Family Code of the Philippines (first published 1960), p. 40

[28] Petition for Authority to Continue Use of the Firm Name "Sycip, Salazar, Feliciano, Hernandez & Castillo", and In the Matter of the Petition for Authority to Continue Use of the Firm Name "Ozaeta, Romulo, de Leon, Mabanta and Reyes", supra note 15, citing JBL Reyes & RC Puno, Outline of Philippine Civil Law. Fourth Ed., Vol. I, p. 7

[29] Par. 2: "The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain."

waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law." On admissibility of customs as evidence, Article 12 reads: "A custom must be proved as a fact, according to the rules of evidence." On compensation for damages, Article 21 reads: "Any person who willfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

Furthermore, it cannot be denied that our laws on easements are greatly based on, and thus made pronounced reference to, public customs.[30] There are also a number of provisions found in the Civil Code Title on Contracts[31], perhaps the most important of which is Article 1376 which categorically tells us to use public customs in filling in the gaps of an ambiguous contract.[32] Even our laws on succession,[33] sales,[34] and lease are made to stand with public customs as a pillar.[35]

Even our law on family relations gives regard to customs as forming part of the law of the land. On solemnization of marriages, Article 33 of the Family Code reads: "Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of marriage license, provided they are solemnized in accordance with their customs, rites or practices." The property relations between spouses may, in law, also be governed by local custom.[36]

E. Customs used as basis in determining morality

The obligation of our courts to decide issues of morality despite the absence of legal standards stems from its equity jurisdiction, as well as from Article 9 of the Civil Code which

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[30] Civil Code, Articles 657, 658, 675, 678, and 679
[31] Articles 1306, 1307, 1346, 1347, 1352, 1376, 1409, 1476
[32] Article 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.
[33] Article 873
[34] Articles 1476(2) and 1577
[35] Articles 1618, 1652, 1657, 1679, 1683, 1684 and 1686
[36] Family Code, Article 74(3)

reads that "No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the law." As suggested by Oyuelos,[37] and as reiterated by Tolentino, "If the law is silent or insufficient, the court should fill the deficiency by resorting to customs or general principles of law."[38]

At the risk of repetitiveness but merely to establish a point, we have customs which may serve to fill the gaps in the application of law. Thus, in the determination of moral issues where there are no straightforward standards set forth by law, why must we give way to an individual's religious beliefs and use the same as basis of morality when there are public customs, collectively shared by members of a community, which can be used as a guide stick?

Case in point: Rubi, et al. v. The Provincial Board of Mindoro[39]

At this juncture, it is important to give emphasis to the case of *Rubi, et al v. The Provincial Board of Mindoro*. Albeit not directly touching on the issue of morality and religion, this landmark case attempts to discuss the dynamics between the freedoms and constitutional guaranties of an individual *vis-a-vis* police power of the State exercised through aggressive governmental regulations.

Rubi is considered a controversial case not only because it was decided by a vote of five to four, but more importantly because it places in the limelight the significance and complexities of civil liberties, particularly those fundamental and inherent ones, including among others, religious equality.

In this case, Rubi and various other *Manguianes* in the province of Mindoro were ordered by the provincial governor of Mindoro, pursuant to Section 2154[40] of then Administrative

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[37] Oyuelos, Ricardo P., Digesto: Principio, Doctrina y Jurisprudencia, Referentes al Codigo Civil Español, Vol. VII

[38] supra note 16, p. 39

[39] G.R. No. L-14078, March 7, 1919

[40] Section 2154. With the prior approval of the Department Head, the provincial governor of any province in which non-Christian inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct

Code, to remove their residence from their native land and to relocate in a reservation located in the same province. The resolution sanctions the penalty of imprisonment for escaping from the reservation. The *Manguianes* were ordered to live in the reservation for the purpose of cultivating the lands, and purportedly to bring about their advancement in civilization. One of the *Manguianes*, escaped from the reservation but was later caught and was placed in prison. An application for habeas corpus was made on his behalf by Rubi and other *Manguianes* of the province, alleging that by virtue of the resolution of the provincial board of Mindoro creating the reservation, they had been deprived of certain liberties.

Among the issues raised in this case was the interpretation of the term "non-Christian" as found in Section 2154 of the Administrative Code, and whether its usage resulted to the unconstitutional act of discriminating between individuals on account of their religious beliefs. In brushing aside the contention of the petitioner, the Supreme Court, speaking through Justice Malcolm, in a brief manner held that the term "non-Christian" refers to natives of the Philippine Islands of a low grade of civilization and that the law is not in violation of the Constitution for it does not discriminate between individuals on account of religious differences. It was held that the term "non-Christian" was used to characterize individuals based on their geographical area and degree of civilization.

In this case, while there was invocation of religious freedom and equality, the Court still upheld the act of the government in regulating the *Manguianes* and did not accommodate them based on their religious difference. The Court was clear that the state "has both on reason and authority the right to exercise the sovereign police power in the promotion of the general welfare and the public interest."

The Supreme Court stated among other things that:

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such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board.

> "One cannot hold that the liberty of the citizen is unduly interfered with when the degree of civilization of the *Manguianes* is considered. They are restrained for their own good and the general good of the Philippines. Nor can one say that due process of law has not been followed."

Therefore, the case of *Rubi*, teaches us that the plea of religious freedom will not prosper in an issue involving balancing the validity of a government regulation and an individual's religious beliefs. In contrast, *Escritor*, which was promulgated 84 years ago, seems to hold otherwise when the Court absolved a court staff from administrative liability, sanctioned by the state, on the ground that her religious beliefs set forth a different set of moral standards.

A perusal of the Court's decision in *Rubi*, would reveal that then present-day customs were used as basis in determining public good and general welfare. While not explicit, what the Court used as standard in the determination of the *Manguianes*' low grade civilization is the modern-day customs. It referred to the customs of the *Manguianes* as "tribal" and "nomadic," in contrast to the "civilized" customs of the modern-day society. Thus, it was the degree of civilization, apparently a secular matter, which was used as standard in upholding public good.

F. Takeaways

Are the State's Interest and Religious Freedom like the rivers Rhône and Saône, two independent and distinct rivers, which meet and mix at a convergence point? Or are they like the Pacific and the Atlantic Oceans that only meet but never mix or converge?

The relationship between law, religion, and morality has grown more complex. The demarcation lines that separate these concepts are no longer distinct and separate. Thus, a number of Supreme Court decisions now have seeming religious

undertones. Religious beliefs have been considered in determining morality, provided, however, that the State's interest will not be prejudiced. These undertones are like undercurrents that have left profound influence Philippine case law.

It may be said that *Escritor* is good case law insofar as it delivers to a balance the position of men and women who, because of their religious beliefs and customs, are now being sought to be made liable for their extra-marital affairs.

At this point, it must be recalled that the decision of the Court in *Sulu Islamic Association of Masjid Lambayong v. Judge Malik* was used as the precedent in coming up with the majority decision in *Escritor* as well as separate concurring opinions thereto.[41] In *Sulu Islamic Association*, the male judge was charged of immorality for engaging in an adulterous relationship with another woman and having three children with her. The Court absolved him and ruled that it was not 'immoral' by Muslim standards for Judge Malik to marry a second time while his first marriage existed.

However, what must be noted is the stark difference that there is a totally different set of laws which govern Judge Malik being a Muslim. He is governed by the Code of Muslim Personal Laws of the Philippines[42] that allows multiple marriages by male Muslims. Thus, it is the state which sanctions the conduct. It is the state, through legislation, which provides an exception to the general and public standards of morality. This is not the case for the respondent in *Escritor*. There is no government legislation sanctioning adulterous relationships by women members of the Jehova's witnesses.

With due respect, religious beliefs should be treated as a private matter. It is for this reason the words of Justice Ynares-Santiago in her dissent in *Escritor* are instructive and insightful:

> "Respondent cannot legally justify her conduct by showing that it was morally

[41] A.M. No. MTJ-92-691, September 10, 1993
[42] Presidential Decree No. 1083

> right by the standards of the congregation to which she belongs. Her defense of freedom of religion is unavailing. Her relationship with Mr. Quilapio is illicit and immoral, both under the Revised Administrative Code and the Revised Penal Code, notwithstanding the supposed *imprimatur* given to them by their religion.
>
> The peculiar religious standards alleged to be those of the sect to which respondent belongs cannot shield her from the effects of the law. Neither can her illicit relationship be condoned on the basis of a written agreement approved by their religious community. To condone what is inherently wrong in the face of the standards set by law is to render nugatory the safeguards set to protect the civil service and, in this case, the judiciary."

II. UNCOUPLING THE COUPLE: PHILIPPINE STYLE

It is absolutely wrong to say that there is no divorce law in the Philippines. "The Muslim Code recognizes divorce in marriages between Muslims, and mixed marriages wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or the Muslim Code in any part of the Philippines. At present, this is the only law in the Philippines that allows domestic divorce."[43] But, equivalent divorce laws do not exist to protect Filipino non-Muslims.

The second part of this article will discuss the reality that religion becomes the great divide on the Philippine laws on marriage.

A. Introduction

[43] Pacasum, Sr. v. Atty. Zamoranos, G.R. No. 193719, March 21, 2017

The position of women in society is best reflected in their nations' personal status laws. Regrettably, the laws of marriage have long served to cultivate women's social and economic dependence on men, inculcating unequal gender roles, and inflicting status-harm on women as a class.[44]

As early as 1933, the Supreme Court has recognized that the hardship of the existing divorce laws in the Philippine Islands are well known to the members of the legislature. It is the duty of the courts to enforce the laws of divorce as written by legislature if they are constitutional. Courts may not declare that such laws are too strict or too liberal.[45]

Article 15 of the Civil Code states that laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad. Owing to the nationality principle embodied in this article, only Philippine nationals are covered by the policy and morality.[46] Thus, Philippine nationals are exclusively covered by the policy against absolute divorce since it is considered contrary to our concept of public police and morality.

Yet, despite almost nine decades later, the hardship brought about by the absence of divorce laws is only experienced by non-Muslim Filipino women who are married to non-Muslim Filipino men.

As will be discussed, the jurisprudential vicissitudes show that marital freedom is tilted against a Filipino citizen married to a Filipino citizen, unlike a Filipino citizen married to a foreigner and a Muslim Filipino married to a Muslim Filipino under the Muslim Code of the Philippines. Being a Filipino citizen becomes an overt form of discrimination based on nationality, which thus, calls for a new paradigm that would

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[44] Yefet, Karin Carmit. Divorce As a Substantive Gender Equality Right. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1711&context=jcl. Last seen 5 September 2020.
[45] *Barretto Gonzales v. Gonzales*, G.R. No. L-37048 March 7, 1933
[46] *Republic of the Philippines v. Manalo*, April 24, 2018, G.R. No. 221029

allow equal treatment of married couples, regardless of race and creed.

B. Brief Historical Overview of Philippine Divorce Law

The Republic of the Philippines is the "last country in the world where divorce is illegal."[47] It is "home to philandering politicians, millions of "illegitimate" children, and marital laws that make Italy look liberal."[48] Yet, to date, marriage as an institution is strongly revered in the Philippines.[49] In fact, Section 2 of Article XV of the 1987 Philippine Constitution provides:

> "Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State."

Thus, marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution which the public is keen on maintaining. Consequently, the State is mandated to protect marriage-- the foundation of the family, the foundation of the nation. The State has surrounded marriage with safeguards to maintain its purity, continuity, and permanence. The State's security and stability largely depend on it. Every member of the community seeks to prevent the happening of any condition that would shake its foundation and ultimately lead to its destruction.[50] In view thereof, marriage is an inviolable social institution that the 1987 Constitution seeks to protect from dissolution at the whim of the parties.[51]

Notwithstanding the enshrined policy of the State protecting marriage as a social institution, "[S]tatistics never lie, but lovers often do." This sad truth has unsettled many a love transformed into matrimony. Any sort of deception between the

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[47]Hundley, Tom and Santos, Ana P. "The Last Country in the World Where Divorce is Illegal". http://foreignpolicy.com/2015/01/19/the-last- country-in-the-world-where-divorce-is-illegal-philippines-catholic-church/January 19, 2015. Last viewed June 12, 2018.
[48] Ibid.
[49] ibid. citing Gultiano et al. 200
[50] *Tilar v. Tilar*, G.R. No. 214529, July 12, 2017
[51] *Republic of the Philippines v. CA*, G.R. G.R. No. 159614 December 9, 2005

spouses, no matter the gravity, is always disquieting. Deceit to the depth and breadth unveiled in the following pages, dark and irrational as in the modern *noir* tale, dims any trace of certainty on the guilty spouse's capability to fulfill the marital obligations even more.[52]

Marriage, therefore, is not always "happy ever after" in the Philippines.[53] Data from the Philippine Statistics Authority indicated that one out of five married couples in the country are physically and legally separated from one another.[54] In 2012 alone, 10,528 cases were filed for the nullity and annulment of marriages, or at least 28 cases of nullity every day.[55] This is in light of the nearly half a million weddings which happen every year, or 1,330 marriage ceremonies every day.[56]

In the case of *Garcia v. Recio,*[57] the Supreme Court distinguished the two types of divorce as to the degree of severance of the marital relation. An absolute divorce, or a divorce *a vinculo matrimonii*, terminates the marriage,[58] dissolving the marriage tie and releasing the parties wholly from their matrimonial obligations.[59] Meanwhile, a relative divorce, or a divorce *a mensa et thoro* merely suspends the tie and leaves the bond in full force.[60] A relative divorce also includes a change in the marital obligations, which includes a liquidation of the property relations between the spouses, an award of custody to the innocent spouse, a disqualification against the offending spouse from inheriting from the innocent spouse, and an entitlement for the spouses to live separately, though the law specifically mentions that the marital bond is not severed.[61] These effects, along with the other provisions on relative divorce in the Philippines, can be found in Title II of the Family Code,[62] otherwise designated as legal separation.

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[52] *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006
[53] GMA News Online. Published February 21, 2014 4:19pm . Last viewed 13 June 2019
[54] ibid. GMA News Online. Last viewed 13 June 2018.
[55] Ibid. GMA News Online. Last viewed 13 June 2018
[56] Ibid. GMA News Online. Last viewed 13 June 2018.
[57] *Garcia v. Recio*, 418 Phil. 723 (2001).
[58] *Id.*
[59] divorce a vinculum matrimonii, BLACK'S LAW DICTIONARY (10th ed. 2014).
[60] *GARCIA V. RECIO*, *supra* note 1.
[61] FAMILY CODE, Art. 63.
[62] FAMILY CODE OF THE PHILIPPINES, Executive Order No. 209 (1987).

The choice of the term legal separation over relative divorce belies an emphasis on a restrictive policy on absolute divorce,[63] one inherited from the previous family law. Currently, the Philippines has no general provision of law covering absolute divorce, a distinction shared only with Vatican City. Consequently, Philippine courts cannot grant a decree of absolute divorce, while a subsequently obtained decree of foreign marriage cannot dissolve the marital bond between two Filipino citizens, in accordance with Articles 15 and 17 of the Civil Code. However, divorce is not absolutely restricted in the Philippines. Under the Code of Muslim Personal Laws, an absolute divorce is available for marriages where both parties are Muslims or where the male party is a Muslim and the marriage is celebrated in accordance with either Muslim laws or the Code. Similarly, the Family Code provides that in a mixed marriage, should the foreign spouse obtain an absolute divorce allowing him/her to marry, the Filipino is allowed to contract a subsequent marriage. Likewise, the courts will recognize an absolute divorce between alien spouses so long as it is consonant with their national laws.

The current state of affairs is markedly different from the prevailing practice in the Philippines before the Spanish invasion. In truth, divorce was readily available as it was considered the most natural solution to difficulties between spouses,[64] and was available particularly in cases of childlessness or infidelity.[65] This affair was typically presided over by the relatives of the parties and the community elders.[66] The man usually kept the dowry, unless he was at fault for the divorce.[67] Property acquired was divided between the spouses unless it was in a venture where the other did not participate

[63] *Tenchavez v. Escaño*, et. al., 122 Phil. 752 (1965).
[64] TERESITA R. INFANTE, THE WOMAN IN EARLY PHILIPPINES AND AMONG THE CULTURAL MINORITIES (1975), p. 63.
[65] PETER C. SMITH, CHANGING PATTERNS OF NUPTIALITY (1975), p. 45.
[66] F. C. (FREDERICK CHARLES) FISHER, MONOGRAPH ON MARRIAGE AND DIVORCE IN THE PHILIPPINES. (2005), http://name.umdl.umich.edu/akm6701.0001.001 citing PEDRO CHIRINO, RELACIÓN DE LAS ISLAS FILIPINAS: THE PHILIPPINES IN 1600 (1969).
[67] FISHER, *supra* note 10.

in.[68] Children were likewise divided equally between the spouses, regardless of sex.[69]

When Spain conquered the Philippines, the Spaniards sought to alter the legal framework of divorce in conjunction with the evangelization of the locals. The Philippine conquest occurred after the Council of Trent,[70] which edicts were the basis for the law of marriage at that time, the Siete Partidas, via the royal cedula of Philip II.[71] Following Church doctrine, the Partidas stated that the bond of marriage may not be dissolved, but spouses may be separated by judgment of the church if one of the parties turn "heretic, or Jew, or Moor, or even commit adultery."[72] Spouses may also be separated if either of them would be baptized under another religious order with the other's permission.[73]

Nevertheless, the law makes clear that the divorce is merely *a mensa et thoro* and the marital bond is not dissolved.[74] While major changes in the Spanish Civil Code subsequently occurred permitting absolute divorce, these changes never made it to the Philippines save for scant provisions on the obligations of husband and wife.

Spain ceded the Philippines to the United States, during which, despite then President McKinley's letter decreeing a separation of Church and State and the article in the Treaty of Paris securing Filipinos' free exercise of religion, a new law with provisions on absolute divorce was not immediately discussed.[75] Then, the Philippine legislature eventually passed Act No. 2710 allowing for divorce on the grounds of adultery or concubinage

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[68] *Id.*, citing EMMA HELEN BLAIR & JAMES ALEXANDER ROBERTSON, THE PHILIPPINE ISLANDS, 1493-1898 (1629)
[69] FISHER, *citing* CHIRINO, *supra* note 10.
[70] Marya Svetlana T. Camacho, *Marriage in the Philippines After the Council of Trent (Seventeenth to Eighteenth Centuries)*, 2019 RG 153–162 (2019).
[71] FISHER, *supra* note 10, p. 15; Benedicto v. de la Rama, 3 Phil. 34 (1903).
[72] Deogracias T Reyes, *History of Divorce Legislation in the Philippines since 1900* 1 *Philippine Studies* 42 (1953) p.43.
[73] *Id.*
[74] *Id.*
[75] *Id.*

committed by the wife or husband, respectively.[76] This brought on a strong reaction from the Catholic population, but the most they were able to do was to prevent the liberalization of the grounds for divorce.[77] While advocates for divorce similarly attempted to relax the requirements of the divorce law, their attempts were unsuccessful.[78]

Under the Japanese occupation, a new set of laws were brought into effect, including Executive Order No. 141, which increased the grounds of absolute divorce from two to 11.[79] The number of divorces reportedly tripled from 200 to 600 under this liberalized divorce law.[80] After the Philippines was liberated, however, General Douglas MacArthur proclaimed that any laws other than that of the Commonwealth were null and void and without legal effect in any areas freed from enemy occupation.[81] Thus, the more stringent Act No. 2710 was reenacted.

The implantation of the Christian ideal of marriage among the indigenous population was one of the most enduring achievements of the Spanish religious.[82] This fact was most apparent during the drafting of the Civil Code. The original draft contained provisions on both absolute and relative divorce, but President Manuel Roxas urged the Code Commission to abstain from liberalizing the provisions on absolute divorce, fearing a division among the people, to which the Commission complied.[83] But, the Catholic sentiment against absolute divorce was so strong that the House finally opted to excised absolute divorce from the Civil Code instead of retaining the previous provisions, replacing the title on divorce with a title on legal separation.[84]

The lone provision left in the corpus of Philippine law allowing for absolute divorce after the passage of the new Code

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[76] *Valdez v. Tuazon*, 40 Phil. 943 (1920); Samuel R. Wiley, *The History of Marriage Legislation in the Philippines*, 20 ATENEO L.J. 23–45 (1975).
[77] Wiley, *supra* note 20.
[78] *Id.*
[79] *Id.*
[80] Reyes, *supra* note 16.
[81] *Id.*; Wiley, *supra* note 20.
[82] Camacho, *supra* note 14.
[83] Reyes, *supra* note 16.
[84] *Id.*

was Republic Act ("R.A.") No. 394, which allowed divorce among Muslims in non-Christian provinces for a period of 20 years.[85] It lapsed on June 14, 1969.[86] To remedy the situation, President Ferdinand Marcos issued Presidential Decree ("P.D.") No. 793 on September 4, 1975, allowing divorces among Muslims in non-Christian provinces to be recognized and governed according to Muslim customs and decrees.[87] In order to avoid the complex legal problems arising from the gap between the expiry of R.A. No. 394 and the enactment of P.D. No. 793, the latter was made to retroact to June 19, 1969.[88] The provisions on divorce among Muslims, together with other provisions on Muslim marriage, were later codified in the Code of Muslim Personal Laws, which was enacted in 1977.

The Civil Code would eventually be superseded by the current Family Code. While the Family Law Committee originally thought of including a provision on a no-fault divorce between spouses after a number of years of separation, the new formulation of the definition of marriage agreed upon by the Family Law Committee and the Civil Code Revision Committee made them reconsider this proposal.[89] The Committees also considered the traditional Christian concept of marriage as a permanent, inviolable, and indissoluble institution together with the prospect of strong opposition from the Catholic Church and the Filipino Catholic majority.[90] The current provisions on divorce are based on grounds available in Canon Law, both to provide an acceptable alternative to divorce and to solve an issue with church annulments being on grounds not recognized by secular civil law.[91]

Even in the absence of a general absolute divorce law today, there has been a trend of growth in the number and

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[85] Republic Act No. 394 - An Act Authorizing for a Period of Twenty Years Divorce Among Moslems Residing in Non-Christian Provinces in Accordance with Moslem Customs and Practices (1949).
[86] Malang v. Moson, et. al., 393 Phil. 41 (2000).
[87] Presidential Decree No. 793 - Providing for Recognition of Muslim Divorce (1975).
[88] *Id.*
[89] Santos v. Court of Appeals, 310 Phil. 21 (1995) (Romero, concurring).
[90] *Id.*
[91] *Id.*

proportion of Filipinos who are either divorced or separated.[92] From 1960 to 2010, the proportion of men and women classified as divorced or separated has nearly tripled (0.32 to 0.92 percent for men and 0.57 to 1.58 percent for women) and the absolute number has increased more than tenfold (28,988 to 330,253 for men and 52,187 to 565,802 for women).[93] In 2017, the number of women ages 15-49 interviewed for the National Demographic and Health Survey who reported that they were either divorced or separated was at 3.2%, compared to 1.8% in 1993. Similarly, the Office of the Solicitor General reported on the number of annulment and nullity cases filed for the last 10 years: from a low of 1094 in 2008, the number of cases reached a peak of 11,286 in 2015 before settling to 8,112 nullity and annulment cases in 2017.

The Filipinos' opinion on divorce has recently become more favorable. According to the most recent available Social Weather Stations (SWS) survey on the matter of divorce, a total of 53% of Filipinos support divorce for irreconcilably separated couples; a 10% increase from the first time the SWS first surveyed the question in 2005.[94] The net agreement score back in 2005 was a neutral -2 (43% agreeing, 45% disagreeing) compared to a net agreement score of 21 (53% agreeing, 31% disagreeing) in the 2017 survey.[95] The SWS characterized the net agreement scores as neutral, growing to moderately strong support in 2011, then to very strong support in 2015, before leveling off at moderately strong support in 2017[96].

In 2018, the Philippine House of Representatives approved on third reading House Bill 7303, otherwise known as "An Act Instituting Absolute Divorce in the Philippines and for Other Purposes." Its principal author, Albay Rep. Edcel Lagman, likened divorce to a "merciful interment for irremediably dead

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[92] Jeofrey Abalos, *Divorce and separation in the Philippines: Trends and correlates*, 36 DEMRES 1515–1548 (2017).
[93] *Id.*
[94] Social Weather Stations | Fourth Quarter 2017 Social Weather Survey: 53% of Filipino adults agree to legalize divorce for irreconcilably separated couples, , https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20180309165548 (last visited Jun 9, 2020).
[95] *Id.*
[96] *Id.*

marriage."[97] He further said, "[W]hen a marriage totally breaks down and reconciliation is nil, it is also the duty of the State to afford relief to the spouses in irreconcilable conflict relations and bail them out and their children from the tempest of incessant discord."

The approval of House Bill 7303 created such an uproar especially among those who strongly believe that, "[W]hat God has joined together let no man put asunder, and so much hope for those who are longing to break free from a trapped abusive relationship. Much have been said about divorce being "anti-marriage and anti-family"[98] or that divorce is a "liberating experience."[99] But has anyone wondered whether divorce is a means by which a woman can protect and advance her rights and interests?

a. Religion, Divorce laws and Women's Rights

John Oxley said:

> "Divorce laws have been intimately bound with the rights of women, and their evolution mirrors the changing role of women in society. Whilst law reform has often been reactive – lurching from injustice to injustice – it can also be transformational. Divorce laws have changed from women effectively being a chattel of their husband to being an autonomous part of a marital partnership, afforded great protection by law.[100]"

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[97] ABS News. Divorce, a burial of 'totally broken marriages': Lagman. February 25,2018, http://news.abs-cbn.com/news/02/25/18/divorce-a-burial-of-totally-broken-marriages-lagman. Last viewed 13 June 2018.

[98] Arcangel, Xianne. CBCP: Divorce bill "anti-marriage, anti-family". CNN Phillippines, February 23, 2018. http://cnnphilippines.com/news/2018/02/23/cbcp-divorce-bill.html. Last viewed 12 June 2018.

[99] Divorce as a Liberating Experience. http://www.streetdirectory.com/etoday/divorce-as-a-liberating-experience-wlpwjj.html. Last viewed 12 June 2018.

[100] Oxley, John. Divorce and women's rights: a history. https://vardags.com/family-law/divorce-and-womens-rights-a-history. Last viewed. 12 June 2018.

Yet, by and large, history shows that the society's openness to divorce, in general, and women's acceptance of it as a social norm, is intrinsically intertwined with the prevailing religious belief in one's society, and not so much on the realization of women's rights.

Thus, the ancients were relatively liberal in their approach to divorce. The Roman state had little involvement in such matters and separations were resolved in private by extended families. From the second century before Christ, women were free to invoke divorces and could renounce the marriage at will. Financially, a divorced woman would be provided for by keeping the dowry paid upon marriage regardless of who invoked the divorce.

This liberal attitude did not survive the advent of Christianity, which placed the indissolubility of marriage at the core of its beliefs. Divorce was limited to occasions of grave offence by around the third century and generally prohibited in Western Europe by the end of the early medieval period. Civil courts lost their power to adjudicate matrimonial cases and canon law was paramount. The Roman Catholic Church also maintained that, upon marriage, husband and wife became one person in law, with the wife's legal existence being suspended for its duration."[101]

b. Divorce: The Philippine Story

The evolution of Philippine divorce laws is not so different from its European counterpart. In his article *"Divorce and Separation in the Philippines: Trends and Correlates,"* Jeofrey Abalos said:

> "Aside from the Vatican City, the Philippines is the only country in the world where divorce is not legal, although the practice has a long history in the Philippines setting (xxx). Indeed, the

[101] Ibid. Oxley, John.

prevalence of divorce among Filipinos was pointed to as one of the obstacles to Spanish efforts to introduce the Catholic sacrament of matrimony to the Philippines (xxx). During the precolonial period, divorce was practiced by some ancestral tribes in the Philippines – particularly among the Tagbanwans of Palawan, the Gadangs of Nueva Viscaya, the Sagadans and Igorots of the Cordilleras, and the Manobos, B'laans, and Moslems of the Visayas and Mindanao islands (xxx). During this period, economic sanctions were imposed on the spouse who caused the separation, or, in the absence of a clear cause, on the spouse who initiated the divorce or separation (xxx). For example, when a husband separated from his wife because she had had an adulterous relationship, the wife was required to pay a fine, in addition to returning the dowry. However, the dowry was not returned in cases where the wife left her husband due to the latter's fault (xxx).

During the Spanish colonization of the Philippines and following the introduction of Christianity, divorce was prohibited and only legal separation was allowed (xxx). Divorce was again permitted during the American period (1898–1943, 1945– 1946) through Act No. 2710, but the grounds were limited to adultery by the wife and concubinage on the part of the husband (xxx). These grounds were briefly expanded during the Japanese occupation (1941–1945) with the promulgation of a new divorce law, Executive Order No.141, but this was repealed when the Commonwealth Government under the Americans was established in 1944, and Act No. 2710 was reinstated (xxx). Six years later, Act No. 2710 was itself repealed with the introduction of the Civil Code of the Philippines on 30 August 1950

> (xxx). Under the Civil Code only legal separation was allowed. The Family Code of the Philippines (Executive Order No. 209) took effect on 3 August 1988, and it replaced the Civil Code's provisions on marriage and the family (Fenix-Villavicencio and David 2000). Under the Family Code, divorce is not allowed in the Philippines, except for Filipinos who are married to foreigners and seek divorce in another country and Filipino Muslims who are governed by the Code of Muslim Personal Laws of the Philippines (xxx). The Family Code, however, provides three measures that allow spouses to seek relief from a marriage: a) legal separation, b) annulment of marriage, and c) declaration of nullity of marriage (xxx). Legal separation allows the couple to live separately but restrains them from remarrying because the prior marriage still legally exists (xxx). xxx xxx xxx (xxx). A declaration of nullity of marriage presupposes that the marriage was not only defective but also null and void at the time it was celebrated. The marriage is considered not to have been contracted and the spouses can remarry after fulfilling certain requirements (xxx). xxx xxx xxx (xxx). Finally, in annulment the marriage is declared to have been defective at the time of celebration, but is considered valid until the time it is annulled (xxx). xxx xxx xxx (xxx).[102]"

It is apparent from the foregoing, that "religion, spirituality, and a belief in God influence"[103] play a major role in

[102] Abalos, Jeofrey. Divorce and separation in the Philippines: Trends and correlates. 2017. https://www.demographicresearch.org/volumes/vol36/50/3650.pdf#search=%22divorce%20philippines%22. Last seen 12 June 2018

[103] Harris, Steven. How Faith Influences Divorce Decisions. Institute for Family Studies. March 13, 2017. https://ifstudies.org/blog/how-faith-influences-divorce-decisions. Last seen 12 June 2018.

the acceptance of divorce laws as a norm, and in the "the divorce decision-making process."[104]

c. The dilemma of divorce, religious beliefs and women's rights

The Catholic marital promise to be together "for better or for worse… in sickness and in health… 'till death do us part" moves a female spouse confronted with the realities of a difficult marriage to almost always say that, "Staying married is the right thing to do."[105]

Under Philippine laws, death is the only means to validly terminate a marriage. Petitions for declaration of nullity of marriage and annulment of marriage are, strictly speaking, are not means to terminate a valid marriage. They are legal processes through which a court judicially recognizes the existence of grounds at the celebration of the marriage that would either render a marriage void *ab initio* or voidable. In other words, under the present laws, no marriage can be terminated on grounds that existed only at the time of the marriage.

Studies show that Filipino couples rarely resort to petitions for nullity or annulment because of the costly and lengthy court proceedings and the lack of any guarantee that they will be granted.[106] In fact, the Supreme Court acknowledged that annulment would be a long and tedious process[107] These factors have led some groups, particularly women's groups, to file a series of divorce bills in the Philippine Congress.[108]

Advocates of divorce law in the Philippines argue that divorce will liberate women from the bondage of marital violence and will promote the well-being not only of spouses but

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[104] Ibid. Harris, Steven.
[105] Ibid., Harris, Stevens.
[106] Abalos, J.
[107] *Republic of the Philippines v. Orbecido III*, G.R. No. 154380 October 5, 2005
[108] Ibid. Abalos, J.

also of children from broken marriages.[109] Some argue that once divorce is legalized and has been accepted in the Philippines, the stigma associated with being the 'second' family or *'anak sa labas'* (an illegitimate child) will be eliminated.[110]

March 19, 2018 marked a monumental day for advocates of divorce. In a vote of 134-57, the House of Representatives approved on third and final reading House Bill 7303 or "An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines."

The Bill itself provides, in its Guiding Principles, that "the option of absolute divorce is a pro-women legislation because, in most cases, it is the wife who is entitled to a divorce as a liberation from an abusive relationship and to help her regain dignity and self-esteem." The grounds for absolute divorce include the grounds for legal separation and annulment of marriage under the Family Code, de facto separation for at least five years, legal separation by judicial decree for at least two years, psychological incapacity, gender reassignment surgery, irreconcilable differences, and joint petition of spouses.

As in the past, the bill has been met with very strong opposition. Cebu Rep. Raul Del Mar chided the claim of pro-divorce solons that the proposal allows only "limited" grounds for seeking divorce.[111] Meanwhile, Bukidnon Rep. Manuel Zubiri said the divorce measure will make the bond of family even worse, instead of protecting it at all cost.[112] In rejecting the measure, Davao del Sur Rep. Mercedes Cagas, also lamented that the measure was approved despite its threat to the family.[113]

The arguments of the past have once more been resurrected. "The Roman Catholic Church and those against any divorce bill believe that "divorce is unconstitutional, that it is anathema to Filipino culture, that it is immoral, that it will

[109] ibid. Abalos, J.
[110]
[111] Rosario, Ben. Manila Bulletin, House approves divorce bill on 3rd and final reading. March 21, 2018. https://news.mb.com.ph/2018/03/21/house-approves-absolute-divorce-bill-on-3rd-and-final-reading/ Last viewed 14 June 2018.
[112] Ibid., Manila Bulletin.
[113] Ibid., Manila Bulletin.

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…"[114] The Catholic Church argues that divorce is unnecessary in the Philippines because there are already provisions in the Family Code to end an unsatisfactory marriage.[115]

One cannot deny that of the Catholic Church's influence on the state of our laws on marriage. In fact, in the landmark case of *Republic v. Court of Appeals and Molina,*[116] the Supreme Court even said:

> Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally – subject to our law on evidence– what is decreed as [canonically] invalid should be decreed civilly void x x x. (Emphasis supplied)

d. Citizenship: The Pathway to Divorce Philippine Style

In the case of *Tenchavez v. Escaño,*[117] the Supreme Court did not recognize the divorce decree of a Filipina woman obtained against her Filipino husband. The unshackling of the marital vows was met with disapprobation, thus:

> "xxx xxxx. At the time the divorce decree was issued, Vicenta Escaño, like her husband, was

[114] Ibid, Abalos, J.
[115] Abalos, J. ibid. citations omitted.
[116] G.R. No. 108763 February 13, 1997
[117] G.R. No. L-19671, November 29, 1965

still a Filipino citizen. She was then subject to Philippine law, and Article 15 of the Civil Code of the Philippines (Rep. Act No. 386), already in force at the time, expressly provided:

> Laws relating to family rights and duties or to the status, condition and legal capacity of persons are binding upon the citizens of the Philippines, even though living abroad.

The Civil Code of the Philippines, now in force, does not admit absolute divorce, *quo ad vinculo matrimonii*; and in fact does not even use that term, to further emphasize its restrictive policy on the matter, in contrast to the preceding legislation that admitted absolute divorce on grounds of adultery of the wife or concubinage of the husband (Act 2710). Instead of divorce, the present Civil Code only provides for *legal separation* (Title IV, Book 1, Arts. 97 to 108), and, even in that case, it expressly prescribes that "the marriage bonds shall not be severed" (Art. 106, subpar. 1).

For the Philippine courts to recognize and give recognition or effect to a foreign decree of absolute divorce between Filipino citizens could be a patent violation of the declared public policy of the state, especially in view of the third paragraph of Article 17 of the Civil Code that prescribes the following:

> Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, policy and good customs, shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

> Even more, the grant of effectivity in this jurisdiction to such foreign divorce decrees would, in effect, give rise to an irritating and scandalous discrimination in favor of wealthy citizens, to the detriment of those members of our polity whose means do not permit them to sojourn abroad and obtain absolute divorces outside the Philippines."

While our courts do not recognize divorce decrees obtained by a Filipino against his Filipino spouse, case law prior to the effectivity of the Family Code[118] shows that, in cases of mixed marriage divorce decrees obtained by the foreigner spouse, our courts recognized the effects of the divorce decrees.

Cases in Point: Van Dorn v. Romillo[119]

Petitioner Alice Van Dorn is a citizen of the Philippines while private respondent Richard Upton is a citizen of the United States. In 1972, they were married in Hongkong and thereafter established their residence in the Philippines. In 1982, parties were divorced in Nevada, United States. Alice has re-married also in Nevada, this time to Theodore Van Dorn.

After the divorce decree was obtained, Richard filed suit against Alicia asking the court to order the latter to render an accounting of that business owned by Alicia, and that Richard be declared with right to manage the conjugal property.

In ruling that Richard does not have the right to demand an accounting of the business owned by Alice and manage the same, the Supreme Court said:

> "There can be no question as to the validity of that Nevada divorce in any of the States of the United States. The decree is binding on private respondent as an American citizen. For instance, private respondent cannot sue petitioner, *as her husband*, in

[118] The Family Code took effect on 3 August 1988.
[119] G.R. No. L-68470 October 8, 1985

any State of the Union. What he is contending in this case is that the divorce is not valid and binding in this jurisdiction, the same being contrary to local law and public policy.

It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public police and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. xxx xxx.

xxx xxx xxx.

Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. As he is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, *et. seq.* of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in

her own country if the ends of justice are to be served."

Cases in Point: Pilapil v. Somera-Ibay[120]

In 1979, Imelda, a Filipino citizen, and Erich Ekkehard Geiling, a German national, were married in Germany. In 1986, upon the instance of Erich, the German local court promulgated a decree of divorce on the ground of failure of marriage of the spouses.

More than five months after the issuance of the divorce decree, Erich filed two complaints for adultery before the City Fiscal of Manila alleging that, while still married to him, Imelda had an affair with a certain William Chia as early as 1982 and with yet another man named Jesus Chua sometime in 1983. Criminal informations were thereafter filed.

Before the High Court Imelda challenged the denial of the motion to quash in both criminal.

The Court thereafter ruled that since Erich had obtained a valid divorce in his country, the Federal Republic of Germany, said divorce and its legal effects may be recognized in the Philippines insofar as private respondent is concerned in view of the nationality principle in our civil law on the matter of status of persons. Thus, following the ruling in *Van Dorn v. Romillo, Jr., et al.,* Erich being no longer the husband of Imelda, had no legal standing to commence the adultery case under the imposture that he was the offended spouse at the time he filed suit.

e. Naturalization and Foreign Citizen: A Gateway to Marital Freedom

The naturalization of one or the Filipino spouses is a material fact that may affect the court's recognition of divorce decrees. Thus, the *Tenchavez* ruling while still good case law

[120] G.R. No. 80116 June 30, 1989

should not be applied robotically. For some, a change in one's citizenship becomes the gateway to marital freedom.

Case in Point: Quita v. CA[121]

In 1941, Fe and Arturo, both Filipinos, were married in the Philippines... In 1954, she obtained a final judgment of divorce. Three (3) weeks thereafter, she married a certain Felix in the same locality but their relationship also ended in a divorce. Still in the U.S.A., she married for the third time, to a certain Wernimont.

In 1972, Arturo died. He left no will. A petition for issuance of letters of administration concerning the estate of Arturo was filed. Blandina Padlan, claiming to be the surviving spouse of Arturo Padlan, and their six children opposed the petition. They submitted, among others, the final judgment of divorce between Fe and Arturo. Later Ruperto T. Padlan, claiming to be the sole surviving brother of the deceased Arturo, intervened.

Fe moved for the immediate declaration of heirs of the decedent and the distribution of his estate.

The trial court invoking *Tenchavez v. Escaño* held, among others, that "a foreign divorce between Filipino citizens sought and decreed after the effectivity of the present Civil Code (Rep. Act 386) was not entitled to recognition as valid in this jurisdiction," disregarded the divorce between Feand Arturo. Consequently, it expressed the view that their marriage subsisted until the death of Arturo in 1972.

The Supreme Court ruled that the right of the six Padlan children are compulsory heirs of the decedent because there are proofs that they have been duly acknowledged by him and Fe herself even recognizes them as heirs of Arturo Padlan.

But is Fe a compulsory heir? The Supreme Court noted that:

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[121] G.R. No. 124862. December 22, 1998

"xxx xxx xxx in her comment to petitioner's motion private respondent raised, among others, the issue as to whether petitioner was still entitled to inherit from the decedent considering that she had secured a divorce in the U.S.A. and in fact had twice remarried. She also invoked the above quoted procedural rule. To this, petitioner replied that Arturo was a Filipino and as such remained legally married to her in spite of the divorce they obtained. Reading between the lines, the implication is that petitioner was no longer a Filipino citizen at the time of her divorce from Arturo. This should have prompted the trial court to conduct a hearing to establish her citizenship. The purpose of a hearing is to ascertain the truth of the matters in issue with the aid of documentary and testimonial evidence as well as the arguments of the parties either supporting or opposing the evidence. Instead, the lower court perfunctorily settled her claim in her favor by merely applying the ruling in *Tenchavez v. Escaño.*

xxx xxx xxx. We deduce that the finding on their citizenship pertained solely to the time of their marriage as the trial court was not supplied with a basis to determine petitioner's citizenship at the time of their divorce. The doubt persisted as to whether she was *still* a Filipino citizen when their divorce was decreed. The trial court must have overlooked the materiality of this aspect. Once proved that she was no longer a Filipino citizen at the time of their divorce, *Van Dorn* would become applicable and petitioner could very well lose her right to inherit from Arturo.

Respondent again raised in her appeal the issue on petitioner's citizenship; it did not merit enlightenment however from

petitioner. In the present proceeding, petitioner's citizenship is brought anew to the fore by private respondent. She even furnishes the Court with the transcript of stenographic notes taken on 5 May 1995 during the hearing for the reconstitution of the original of a certain transfer certificate title as well as the issuance of new owner's duplicate copy thereof before another trial court. When asked whether she was an American citizen petitioner answered that she was since 1954. Significantly, the decree of divorce of petitioner and Arturo was obtained in the same year. Petitioner however did not bother to file a reply memorandum to erase the uncertainty about her citizenship at the time of their divorce, a factual issue requiring hearings to be conducted by the trial court. Consequently, respondent appellate court did not err in ordering the case returned to the trial court for further proceedings.

We emphasize however that the question to be determined by the trial court should be limited only to the right of petitioner to inherit from Arturo as his surviving spouse. Private respondent's claim to heirship was already resolved by the trial court. She and Arturo were married on 22 April 1947 while the prior marriage of petitioner and Arturo was subsisting thereby resulting in a bigamous marriage considered void from the beginning under Arts. 80 and 83 of the Civil Code. Consequently, she is not a surviving spouse that can inherit from him as this status presupposes a legitimate relationship. (underscoring ours.)"

Case in point: Republic of the Philippines v. Orbecido III[122]

[122] G.R. No. 154380 October 5, 2005

In 1986, Cipriano's wife, Lady Myros, left for the United States bringing along their son. A few years later, Cipriano discovered that his wife had been naturalized as an American citizen. In 2000, Cipriano learned from his son that his wife had obtained a divorce decree and then married a certain Innocent Stanley.

Cipriano thereafter filed with the trial court a petition for authority to remarry invoking Paragraph 2 of Article 26 of the Family Code. No opposition was filed. Finding merit in the petition, the court granted the same. The Republic, herein petitioner, through the Office of the Solicitor General (OSG), sought reconsideration but it was denied.

Before the Supreme Court, the OSG contends that Paragraph 2 of Article 26 of the Family Code is not applicable to the instant case because it only applies to a valid mixed marriage; that is, a marriage celebrated between a Filipino citizen and an alien. The proper remedy, according to the OSG, is to file a petition for annulment or for legal separation. Furthermore, the OSG argues there is no law that governs respondent's situation. The OSG posits that this is a matter of legislation and not of judicial determination.

The Supreme Court, taking into consideration the legislative intent and applying the rule of reason, held that Paragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. Where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may therefore be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent.

In view of the foregoing, the Supreme Court stated the twin elements for the application of Paragraph 2 of Article 26 as follows:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and

2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.

The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.

In this case, when Cipriano's wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between her and Cipriano. As fate would have it, the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry. Clearly, the twin requisites for the application of Paragraph 2 of Article 26 are both present in this case. Thus Cipriano, the "divorced" Filipino spouse, should be allowed to remarry.

While the Supreme Court was unanimous in holding that paragraph 2 of Article 26 of the Family Code should be interpreted to allow a Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry, the petition was granted because there is no sufficient evidence submitted and on record to declare, based on respondent's bare allegations that his wife, who was naturalized as an American citizen, had obtained a divorce decree and had remarried an American, that respondent is now capacitated to remarry. Such declaration could only be made properly upon respondent's submission of the evidence in his favor. Specifically, before a foreign divorce decree can be recognized by our own courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. Such foreign law must also be proved as our courts cannot take judicial notice of foreign laws. Like any

other fact, such laws must be alleged and proved. Furthermore, respondent must also show that the divorce decree allows his former wife to remarry as specifically required in Article 26. Otherwise, there would be no evidence sufficient to declare that he is capacitated to enter into another marriage.

Case in point: Republic of the Philippines v. Manalo[123]

In her *Amended Petition* which she captioned as petition for cancellation of Entry of Marriage in the Civil Registry of San Juan and a recognition and enforcement of foreign judgment, Marelyn Tanedo Manalo, a Filipino citizen, alleged, among others, that: (a) she was previously married in the Philippines to a Japanese national; (b) a case for divorce was filed by Manalo in Japan; (c) a divorce decree was rendered by the Japanese Court.

The trial court denied the petition for lack of merit. In ruling that the divorce obtained by Manalo in Japan should not be recognized, it opined that, based on Article 15 of the New Civil Code, the Philippine law "does not afford Filipinos the right to file for a divorce whether they are in the country or living abroad, if they are married to Filipinos or to foreigners, or if they celebrated their marriage in the Philippines or in another country and that unless Filipinos are naturalized as citizens of another country, Philippine laws shall have control over issues related to Filipinos' family rights and duties, together with the determination of their condition and legal capacity to enter into contracts and civil relations, including marriages. The Court Appeals reversed, however, the trial court's decision.

The Supreme Court, in affirming the appellate court's decision, ratiocinated as follows:

> "xxx xxx. When this Court recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, it should not stop short in a likewise

[123] April 24, 2018, G.R. No. 221029

acknowledging that one of the usual and necessary consequences of absolute divorce is the right to remarry. Indeed, there is no longer a mutual obligation to live together and observe fidelity. When the marriage tie is severed and ceased to exist, the civil status and the domestic relation of the former spouses change as both of them are freed

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Paragraph 2 of Artilce 26 speaks of "*a divorce x x x validly obtained abroad by the alien spouse capacitating him or her to remarry.*" Based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding. The Court is bound by the words of the statute; neither can We put words in the mouth of lawmakers. The legislature is presumed to know the meaning of the words to have used words advisely and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum,* or from the words if a statute there should be departure."

Assuming, for the sake of argument, that the word "*obtained*" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. Law have ends to achieve, and

statutes should be so construed as not to defeat but to carry out such ends and purposes. As held in *League of Cities of the Phils. et al. v. COMELEC et. al.:*

The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law control its letter.

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure is free to marry under the laws of his or her countr.[42] Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstances as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on a Filipinos whose marital ties to their alien spouses are severed by operations of their alien spouses are

> severed by operation on the latter's national law.
>
> Conveniently invoking the nationality principle is erroneous. Such principle, found under Article 15 of the City Code, is not an absolute and unbending rule. In fact, the mere existence of Paragraph 2 of Article 26 is a testament that the State may provide for an exception thereto. Moreover, blind adherence to the nationality principle must be disallowed if it would cause unjust discrimination and oppression to certain classes of individuals whose rights are equally protected by law. The courts have the duty to enforce the laws of divorce as written by the Legislature only if they are constitutional."

Case in point: Morisono v. Morisono[124]

Luzviminda, a Filipina, married Ryoji Morisono (Ryoji), a Japanese in Quezon City in 2009. Their tumultuous marriage made the couple submit a "Divorce by Agreement" before the City Hall of Mizuho-Ku, Nagoya City, Japan, which was eventually approved and duly recorded in Japan. She thereafter filed a petition for recognition of the foreign divorce decree obtained by her and Ryoji before the RTC so that she could cancel the surname of her former husband in her passport and for her to be able to marry again.

In reversing the RTC's decision denying Luzviminda's petition, the Supreme Court ruled as follows:

> "The rules on divorce prevailing in this jurisdiction can be summed up as follows: *first,* Philippine laws do not provide for absolute divorce, and hence, the courts cannot grant the

[124] G.R. No. 226013, July 02, 2018

same; *second,* consistent with Articles 15[11]and 17[12] of the Civil Code, the marital bond between two (2) Filipino citizens cannot be dissolved even by an absolute divorce obtained abroad; *third,* an absolute divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws; and *fourth,* in mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry.[13]

The fourth rule, which has been invoked by Luzviminda in this case, is encapsulated in Article 26 (2) of the Family Code which reads:

> Article 26. x x x
>
> Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise. have capacity to remarry under Philippine law.

This provision confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. It authorizes our courts to adopt the effects of a foreign divorce decree precisely because the Philippines does not allow divorce. Philippine courts cannot try the case on the merits because it is tantamount to trying a divorce case. Under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a

spouse of foreign nationality, but the legal effects thereof, *e.g.,* on custody, care and support of the children or property relations of the spouses, must still be determined by our courts. The rationale for this rule is to avoid the absurd situation of a Filipino as still being married to his or her alien spouse, although the latter is no longer married to the former because he or she had obtained a divorce abroad that is recognized by his or her national law. Xxx xxx xxx.

xxx xxx xxx.

Thus, pursuant to *Manalo,* foreign divorce decrees obtained to nullify marriages between a Filipino and an alien citizen may already be recognized in this jurisdiction, regardless of who between the spouses initiated the divorce; provided, of course, that the party petitioning for the recognition of such foreign divorce decree – presumably the Filipino citizen – must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.

In this case, a plain reading of the RTC ruling shows that the denial of Luzviminda's petition to have her foreign divorce decree recognized in this jurisdiction was anchored on the sole ground that she admittedly initiated the divorce proceedings which she, as a Filipino citizen, was not allowed to do. In light of the doctrine laid down in *Manalo,* such ground relied upon by the RTC had been rendered nugatory. However, the Court cannot just order the grant of Luzviminda's petition for recognition of the foreign divorce decree, as Luzviminda has yet to prove the fact of her. "Divorce by Agreement" obtained, in Nagoya City, Japan and its conformity with prevailing Japanese

> laws on divorce. Notably, the RTC did not rule on such issues. Since these are questions which require an examination of various factual matters, a remand to the court a *quo* is warranted."

f. Religion as a means of marital freedom

It is incorrect to say that there is no divorce law in the Philippines. There is a divorce law that benefits Filipino Muslims.[125] Notably, however, the law specifically provides that the provision of the law on marriage and divorce shall apply when both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.[126] It was expressly provided that in case of marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the Civil Code of the Philippines shall apply.[127]

Divorce, under the Muslim Code of the Philippines, is the formal dissolution of the marriage bond in accordance with this Code to be granted only after the exhaustion of all possible means of reconciliation between the spouses. It may be effected by:

a. Repudiation of the wife by the husband (talaq);
b. Vow of continence by the husband (ila);
c. Injurious assanilation of the wife by the husband (zihar);
d. Acts of imprecation (li'an);
e. Redemption by the wife (khul');

[125] Sections 45 to 57, Presidential Decree No. 1083
[126] Section 13 (2), Title II, Chapter 1
[127] Section 13 (3), Title II, Chapter 1

Case in point: Atty. Zamaranos v. People of the Philippines[128]

Zamoranos was a Roman Catholic who converted to Islam on April 28, 1982. She married Jesus de Guzman in Islamic rites on May 3, 1982 and then married him again in civil rites before the RTC QC. *In* 1983 Zamoranos and de Guzman obtained a divorce by talaq, confirmed by the Sharia Circuit District Court, 1st Circuit, 3rd District, which issued a decree of divorce on June 18, 1992. In 1989 – Zamoranos married Samson Pacasum under Islamic rites. They renewed their marriage vows before the RTC Iligan City on Dec. 28, 1992. Zamoranos and Pacasum *de facto* separated and the couple had a bitter battle for custody of the children.

In 2004, upon the instance of Pacasum, a criminal complaint for bigamy was filed against Zomaranos. The Office of the City Prosecutor issued a resolution finding *prima facie* evidence to hold Zamoranos liabile for bigamy. On reconsideration, the City Prosecutor issued a resolution granting the motion for reconsideration and dismissing the charge of bigamy against Zamoranos. Pacasum's motion for reconsideration was denied. The DOJ, however, reversed the City Prosecutor.

An information was filed against Zamoranos before the RTC Iligan City Branch 6 for bigamy.

Meanwhile, Pacasum's Petition for Declaration of Void Marriage was dismissed by, the RTC Iligan City, Br. 6 for lack of jurisdiction. The RTC opined that the second marriage between the two is merely ceremonial and does not alter the validity of the first marriage under the Code of Muslim Personal Laws. The same is true with Pacasum and Zamoranos' second marriage. As Zamoranos and de Guzman are Muslims, matters related to their marriages and divorces shall be governed by the Muslim Code and divorce proceedings shall be within the exclusive original jurisdiction of the Sharia Circuit Court.

[128] G.R. No. 193902/193908/194075 | June 1, 2011

On Pacasum's motion, the RTC Iligan City Branch 6 issued an order reinstating the criminal case for bigamy against Zamoranos. Zamoranos filed a Motion to Quah the Information arguing that The RTC Branch 6 has no jurisdiction over her person over the offense. The decision in the civil case categorically declared her and Pacasum as Muslims, resulting in the mootness of the criminal case and the inapplicability of the RPC provision on bigamy to her marriage to Pacasum.

The RTC Branch 6 should have taken cognizance of the categorical declaration of the RTC Branch 2 that Zamoranos is a Muslim whose first marriage to another Muslim was valid under Islamic law and that their divorce validly severed their marriage ties. Since Zamoranos is a Muslim who married another Muslim under Islamic Rites, the nature, consequences and incidents of the marriage are governed by PD 1083. The Supreme Court, in relying on Muslim experts, said that one of the effects of irrevocable talaq, as well as other kinds of divorce, refers to severance of matrimonial bond, entitling one to remarry.

Zamoranos' divorce, as confirmed by an ustadz and Judge of the ShCC was valid and entitled her to remarry Pacasun in 1989. Consequently, the RTC Iligan City Branch 6 was without jurisdiction to try Zamoranos for the crime of bigamy.

Case in point: Pacasum vs Zamoranos[129]

Premised on the intrinsically the same factual circumstances in the *Zamaranos v. Republic of the Philippines case,* the Supreme Court in the case at bar ruled that the Muslim Code recognizes divorces in marriages between Muslims and mixed marriages wherein only the male party is a Muslim and the marriage is solemnized according to Muslim law or the Muslim Code in any part of the Philippines. At present, this is the only law in the Philippines that allows domestic divorce. The High Court recognized that the marriage of the parties was dissolved in accordance with the Muslim Code in Zamoranos v. People. The parties are bound by the previous ruling i.e. Zamoranos' divorce was valid which enabled her to contract the

[129] G.R. No. 193719, March 21, 2017

marriage with Pacasum. The complaint for immorality due to alleged bigamy has therefore no leg to stand on.

III. CONCLUSION

> "The choice to stay in or leave a marriage is not for this Court, or the State, to make. The choice is given to the partners, with the Constitution providing that "[t]he right of spouses to found a family in accordance with their religious convictions and demands of responsible parenthood[.]" Counterintuitively, the State protects marriages if it allows those found to have psychological illnesses that render them incapable of complying with their marital obligations to leave the marriage. To force partners to stay in a loveless marriage, or a spouseless marriage as in this case, only erodes the foundation of the family."[130]

From the foregoing discussions, the choice to stay in or leave a marriage is choice that can be exercised by (a) a Filipino who is married to foreigner, (b) a Filipino who became a naturalized citizen of a country with divorce laws or (c) Filipino Muslims whose marriage whose marriage was solemnized in accordance with the Muslim Code. As far as a non-Muslim Filipino is concerned or couples who are both Filipinos, divorce is never an option to choose from because—

> "A Filipino who is married to another Filipino is not similarly situated with a Filipino who is married to a foreign citizen. There are real, material and substantial differences between them. *Ergo*, they should not be treated alike, both as to rights conferred and liabilities imposed. Without a doubt, there are political, economic cultural, and religious

[130] Dissenting opinion of J, Leonen in *G.R. No. 203284, November 14, 2016*

> dissimilarities as well as varying legal systems and procedures, all too unfamiliar, that a Filipino national who is married to an alien spouse has to contend with. More importantly, while a divorce decree obtained abroad by a Filipino against another Filipino is null and void, a divorce decree obtained by an alien against his her Filipino spouse is recognized if made in accordance with the national law of the foreigner."[131]

Why would a non-Muslim Filipino people be treated differently from a Muslim Filipino when both of them are locked in a loveless and cruel marriage? Is it fair, just and equitable for a man or woman to be trapped in a marriage defined by tradition, by religion or by the observance of the nationality law? Must religion and the nationality law define his or her happiness? As aptly said:

> "Statistics never lie, but lovers often do, quipped a sage. This sad truth has unsettled many a love transformed into matrimony. Any sort of deception between spouses, no matter the gravity, is always disquieting. Deceit to the depth and breadth unveiled in the following pages, dark and irrational as in the modern *noir* tale, dims any trace of certitude on the guilty spouse's capability to fulfill the marital obligations even more."[132]

If indeed divorce is unconstitutional, how come Filipino Muslim wives or husbands, under the Muslim Code, have the right to seek a divorce, and yet non-Muslim Filipinas are not allowed to do so under the Family Code? Are the teachings of Islam more gender sensitive that the precepts of Christianity?

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[131] *Republic of the Philippines v. Manalo*, G.R. No. 221029, April 24, 2018
[132] *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006

The author does not seek to simply champion the cause of the pro-divorce advocates, but wishes to stress that a non-Muslim Filipino's rights to live and love must be protected and recognized. It is the author's faith in the Christian's value of love and commitment and belief in the maturity of the Filipino citizens that compel her to seek a paradigm shift in our outlook towards the law on divorce.

The author's Catholic faith and rights as a human being, is at this point, one in heart and soul. Yet, one must keep an open mind in understanding the intersect of religion, citizenship, divorce, and the uncoupling thereof, since:

> "[T]he Constitution itself does not establish the parameters of state protection to marriage as a social institution and the foundation of the family. It remains the province of the legislature to define all legal aspects of marriage and prescribe the strategy and the modalities to protect it, based on whatever socio-political influences it deems proper, and subject of course to the qualification that such legislative enactment itself adheres to the Constitution and the Bill of Rights. This being the case, it also falls on the legislature to put into operation the constitutional provisions that protect marriage and the family.xxx xxx xxx."[133]

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[133] *Kalaw v. Fernandez*, G.R. No. 166357, January 14, 2015, citing Antonio v. Reyes, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 379.

Inter–Country Adoption in the Philippines: An Evolving Process

*Fina Bernadette Dela Cuesta – Tantuico**

When one speaks of inter-country adoption in the Philippine setting, one refers to the process of adopting a Filipino child from the Philippines, by a *foreigner or a Filipino citizen permanently residing abroad,* with the supervised trial custody and decree of adoption issued outside the Philippines. [1]

The Hague Adoption Convention—concluded in 1993, and to which the Philippines is a State party—is the legal framework for inter-country adoption in the Philippines.[2] Central to the theme of the Convention is the principle of subsidiarity, as enunciated in the Convention's Preamble—that is, that the State party should, as a matter of priority, take the appropriate measures "to ensure that the child remains in the care of his or her family of origin." Thus, inter-country adoption should only be resorted to if a suitable family cannot be found

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[1] See Sec.3, Rep. Act 8043 (1995), Inter-Country Adoption Act, which defines inter-country adoption as "the socio-legal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued outside the Philippines."

[2] Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, (1993) at https://www.hcch.net/en/instruments/conventions/full-text/?cid=69, [1 September 2020]; The Philippines ratified the Convention on 2 July 1996. It was entered into force on 1 November 1996.
See also: https://www.hcch.net/en/instruments/conventions/status-table/?cid=69 [7 September 2020]. When used in this article, the term "Hague Adoption Convention" pertains to the Hague Convention on the Protection and Co-operation in Respect of Inter-Country Adoption.

in the child's State of origin. It should be made only in the best interests of the child "with respect for his or her fundamental rights as recognized in international law," bearing in mind that the underlying purpose for the inter-country adoption process is to "prevent the abduction, the sale of, or traffic in children."[3]

Under Article 4 of the Hague Adoption Convention, inter-country adoption shall take place only if the competent authorities of the State of origin: (i) have established that the child is adoptable, (ii) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an inter-country adoption is in the child's best interests; (iii) have ensured that the persons, institutions and authorities whose consent is necessary for adoption, have been counseled as may be necessary and duly informed of the effects of their consent, in particular, whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin; (iv) have ensured that such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing, and that the consents have not been induced by payment or compensation of any kind and have not been withdrawn and the consent of the mother, where required, has been given only after the birth of the child.[4]

With respect to the child, the competent authorities are to ensure that, having regard to the age and degree of maturity of the child, (i) he or she has been counseled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required, (ii) consideration has been given to the child's wishes and options, (iii) the child's consent to the adoption, when required, has been given freely, in the required legal form and expressed or evidence in writing and (iv) such consent has not been induced by payment or compensation of any kind.[5]

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[3] *See supra,* Art. 1 or at https://www.hcch.net/en/instruments/conventions/full-text/?cid=69, (1 September 2020).
[4] *Id.*
[5] *Id.*

With respect to the prospective adoptive parents (PAPS), Article 5 of the Hague Adoption Convention states that the competent authorities of the receiving state must have (i) determined that the prospective adoptive parents are eligible and suited to adopt; (ii) have ensured that the prospective adoptive parents have been counseled as may be necessary and (iii) have determined that the child is or will be authorized to enter and reside permanently in that State.

The Hague Convention mandates the designation by each Contracting State of a Central Authority to discharge the duties that are imposed by the Convention, foremost of which is the duty to cooperate with other Central Authorities in the inter-country adoption process. They shall take measures to provide information as to the laws of their States concerning adoption, keep one another informed about the operation of the Convention, take all appropriate measures to prevent improper financial or other gain in connection with an adoption, facilitate and expedite adoption proceedings, promote adoption counseling and post-adoption services, provide evaluation reports and reply to justified requests from other Central Authorities."[6] In the Philippines, the Inter-Country Adoption Board (ICAB), functions as the Central Authority mandated by the Convention. It performs a crucial role in the whole inter-country adoption process.[7]

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[6] *Id.*

[7] See Sec. 4, Rep Act 8043. "The Inter-Country Adoption Board was created to act as the central authority in matters relating to inter-country adoption. It shall act as the policy-making body for purposes of carrying out the provisions of this Act, in consultation with and coordination with the Department, the different child-care and placement agencies, adoptive agencies, as well as non-governmental organizations engaged in child-care and placement activities. As such, it shall: a) Protect the Filipino child from abuse, exploitation, trafficking and /or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child; b) Collect, maintain, and preserve confidential information about the child and the adoptive parents; c) Monitor, follow up, and facilitate completion of adoption of the child through authorized and accredited agency; d) Prevent improper financial or other gain in connection with an adoption and deter improper practices contrary to this Act; e) Promote the development of adoption services including post-legal adoption; f) License and accredit child-caring/placement agencies and collaborate with them in the placement of Filipino children; g) Accredit and authorize foreign adoption agency in the placement of Filipino children in their own country; and h) Cancel the license to operate and blacklist the child- caring and placement agency or

This short paper is intended as a primer on the various laws and regulations that relate to the inter-country adoption process in the Philippines. The problems that have arisen since the various laws were enacted, as well as the measures that have been undertaken to rectify such problems, if any, will likewise be discussed and identified.

I. PHILIPPINE LAWS, RULES AND REGULATIONS ON INTER-COUNTRY ADOPTION

Currently, there are four basic laws on adoption. All four are intertwined, whether the adoption is domestic or inter-country. These are, in order of enactment: (i) Republic Act (R.A.) 8043 (Inter-Country Adoption Act, approved, 7 June 1995); (ii) R.A.8552 (Domestic Adoption Act, approved 25 February 1998); (iii) R.A. 9523 (An Act Requiring Certification of the Department of Social Welfare and Development (DSWD) to Declare A 'Child Legally Available for Adoption' As a Prerequisite for Adoption Proceedings, approved 12 March 2009), and (iv) R. A. 11222 (An Act Allowing the Rectification of Simulated Birth Records and Prescribing Administrative Adoption for that Purpose), approved most recently by the 17th Congress of the Philippines on February 21, 2019.

R.A. 9523 (the "CDCLAA Law") amended certain provisions of R. A. 8552, R.A. 8043, and Presidential Decree (P.D.) 603 (or the Child Youth Welfare Code). It made mandatory the issuance by the DSWD of a certification declaring a child as legally available for adoption in both the inter-country and domestic adoption process. As will be discussed, this certification by the DSWD through an administrative process now takes the place of what used to be a court process with respect to the declaration of a child as abandoned or neglected.

R.A. 11222 aims to rectify simulated births where simulation was made for the best interest of the child, and to

adoptive agency involved from the accreditation list of the Board upon a finding of violation of any provision under this Act."

fix the status and filiation of a child whose birth was simulated by giving the child the benefits of adoption. The law grants amnesty and exempts from criminal, civil and administrative liability those who simulated the birth record of the child prior to February 2019. It provides an administrative adoption proceeding for the child who has been living with the persons who simulated his or her birth record for at least three years prior to February 2019.

There are also various Supreme Court issuances on inter-country and domestic adoption that have come into play in the Philippine adoption process. These are: (i) A.M. No. 02-6-02 -SC, Rule on Adoption (2 August 2002); (ii) Office of the Court Administrator (OCA) Circular No. 10-2014,Requirements of the Law on Adoption Cases, and (iii) Office of the Court Administrator (OCA) Circular No. 213-2017 (Re: Proposed Guidelines and Clarification in the Interpretations and Application of Pertinent Provisions of Republic Act No. 8552 (Domestic Adoption Act of 1998), Republic Act No. 8043 (Inter-Country Adoption Act of 1995), Republic Act No. 9523 and Administrative Matter No. 02-6-02-SC.)[8]

II. THE INTER-COUNTRY ADOPTION PROCESS

A. Principle of Subsidiarity in Philippine adoption laws

[8] Have the provisions in the Family Code on Adoption been repealed? Title VII, Articles 183-192 of the Family Code pertain to Adoption. Professors Legarda, Mawis and Vargas, opine that notwithstanding the Domestic Adoption Act of 1998, Articles 189 and 190 of the Family Code are still effective:

> "The Domestic Adoption Act of 1998 provides in its Repealing Clause that *'Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.'* It did not specifically repeal provisions of the Family Code and Presidential Decree 603 which provided for succession involving adopted children. The new adoption law does not contain similar provisions as Articles 189 to 190 of the Family Code and Article 39 of Presidential Decree No. 603." [Katrina Legarda, Soledad Mawis and Flordeliza C. Vargas, Family Law (Children), Vol. III, p.70.]

As earlier stated, inter-country adoption can be resorted to only if all efforts for domestic adoption have been exhausted and are unsuccessful. The principle of subsidiarity enshrined in the Hague Adoption Convention is contained in both R.A. 8043 and R.A. 8552. R.A. 8043 provides that, as a policy, "efforts shall be exerted to place the child with an adoptive family in the Philippines" and [that] only if such child cannot be adopted by qualified Filipino citizens or aliens, may inter-country adoption be considered when the same shall prove beneficial to the child's best interests.[9] The same law mandates that the Inter-country Adoption Board (ICAB) must have guidelines to ensure that steps are taken to place the child in the Philippines before the child is placed for inter-country adoption.[10] It also provides that no child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted locally.[11]

Similarly, R. A. 8552 declares it to be the policy of the State "to encourage domestic adoption so as to preserve the child's identity and culture in his/her native land, and only when this is not available shall inter-country adoption be considered as a last resort." [12]

B. The Filipino Child as Adoptee in Inter-country Adoption

Under R.A. 8043, any Filipino child below 15 years of age, who is voluntarily or involuntarily committed to the DSWD as

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[9] Rep. Act 8043, Sec 2, Art I.

[10] Rep. Act 8043, Sec.7. See also Section 32 of the Implementing Rules and Regulations (IRR) of Rep. Act 8043 which provides that the DSWD's endorsement of a child for inter-country adoption must contain a certification that all possibilities for adoption of the child in the Philippines have been exhausted and that inter-country adoption is in the best interest of the child.

[11] "Sec. 11. Family Selection/Matching. - No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted locally. The clearance as issued by the Board, with the copy of the minutes of the meetings, shall form part of the records of the child to be adopted. When the Board is ready to transmit the Placement Authority to the authorized and accredited inter-country adoption agency and all the travel documents of the child are ready, the adoptive parents, or any of them, shall personally fetch the child in the Philippines."

[12] Rep. Act 8552, Sec 2 (c) (vi).

dependent, abandoned or neglected may be the subject of inter-country adoption.[13] Under that law, the child is referred to as a "legally - free child," defined in Section 3(f) as "a child who has been voluntarily or involuntarily committed to the Department, in accordance with the Child and Youth Welfare Code." According to Section 8 of R. A. 8043, "only a legally -free child may be the subject of inter-country adoption."

With the enactment of the CDCLAA Law in 2009, the term "child" was made to refer to "a person below eighteen (18) years of age or a person over eighteen (18) years of age but is unable to fully take care of himself/herself or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of physical or mental disability or condition." This law repealed Section 3(f) of R.A. 8043. Thus, the term "legally-free child' is no longer used to refer to the "child." Instead, the new law requires that in any adoption proceeding, whether domestic or inter-country, the submission of a Certification from the DSWD declaring a child legally available for adoption is mandatory and without which the adoption cannot proceed, with respect to surrendered, abandoned, neglected, and dependent children, who are subject for adoption.[14] The CDCLAA law also repealed Chapter 1 of Titles VII and VIII of P.D. 603. The repeal has the effect of removing the judicial process in the determination of whether a child is dependent, abandoned, or neglected, and thereafter ordered to be committed to the care and custody of the DSWD or any duly licensed child placement agency or individual. [15] The CDCLAA law, therefore, provides for an administrative process, in lieu of the judicial process, for the commitment of the child to a child-caring institution such as the DSWD:

> "**Section 8. Certification.** The certification that a child is legally available for adoption

[13] See Section 26, IRR, Rep Act 8043.
[14] See Article 1, Section 4 of the Implementing Rules and Regulations of Republic Act No. 9523. A Certification Declaring a Child Legally Available for Adoption is not required in court adoption proceedings involving the following: (i) Adoption of an illegitimate child by any of his/her biological parent (ii) Adoption of a child by his/her step-parent and (iii) Adoption of a child by a relative within the fourth (4^{th}) degree of consanguinity or affinity.
[15] See Article 142- 49 of Pres. Decree 603 [The Child and Youth Welfare Code].

> shall be issued by the DSWD in lieu of a judicial order, thus making the entire process administrative in nature.
>
> This certification shall be, for all intents and purposes, the primary evidence that the child is legally available in a domestic adoption proceeding, as provided in Republic Act No. 8552 and in inter-country adoption proceeding, as provided in Republic Act No. 8043."

The DSWD is the "competent authority" within the framework of the Hague Convention. It is the entity that determines whether the "surrendered, abandoned, neglected and dependent child" is suited for adoption, be it domestic or inter-country.

Under the CDCLAA law, there are two ways by which a child is committed to the DSWD – voluntary or involuntary. A voluntarily committed or surrendered child is a child whose parent or legal guardian knowingly and willingly relinquishes parental authority in writing through a notarized Deed of Voluntary Commitment to the DSWD or any duly licensed or accredited child placement or child-caring agency or institution. On the other hand, an involuntarily committed child is one who the DSWD finds to be abandoned or neglected and is committed to the care and custody of the DSWD centers or to a licensed or accredited Child Caring or Placing Agency or individual.

The CDCLAA law defines an "abandoned child" as "a child who has no proper parental care or guardianship, or whose parents have deserted him/her for a period of at least three continuous months, including a foundling," while a "neglected child" is a child whose basic needs have been deliberately unattended within a period of three continuous months. Neglect may be physical (such as when a child is malnourished, ill-clad and without proper shelter) or emotional (such as when the child is maltreated, raped, seduced, exploited, made to work under conditions not conducive to good health or made to beg in the streets, or when exposed to moral danger, gambling, prostitution or vice." A dependent child is "one who is without

parent, guardian or custodian, or one whose parents, guardians or other custodian, for good cause desires to be relieved of his/her care and custody; and is dependent upon the public for support."[16]

A child committed to the DSWD who may be available for inter-country adoption shall be endorsed by the DSWD to the ICAB. The endorsement shall contain a certification by the Department that all possibilities for adoption of the child in the Philippines have been exhausted and that inter-country adoption is in the best interests of the child.[17]

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[16] See Article II, Section 5, IRR, Rep. Act 9523. Before a "Certificate Declaring a Child as Legally Available for Adoption" is issued by the DSWD, the following have to be submitted with the Petition to Declare an abandoned, neglected or dependent child as legally available for adoption, which shall be in the form of an affidavit , subscribed and sworn to before a notary public:

(i) For involuntarily committed child: 1. Social Case Study Report executed by a licensed social worker of the DSWD, local government unit, licensed or accredited child – caring or child - placing agency or institution charged with the custody of the child. 2. Proof of efforts made to locate the parent(s) or any known relatives of the child. The following shall be considered sufficient proof of efforts to locate parent(s) or any known relatives of the child. 3. Written certification from a local or national radio or television station that the case was aired on three (3) different dates; 4. Publication in one (1) newspaper of general circulation; 5. Police report or barangay certification from the locality where the child was found or a certified copy of tracing report issued by the Philippine National Red Cross (PNRC) National Headquarters(NHQ), Social Services Division or Local Chapters which states that despite due diligence, the child's parent(s) or known relative(s) could not be found; and 6. One (1) returned registered mail to the last known address of the parent(s) or known relative(s), 7. Birth certificate, if available, and 8. Most recent photograph of the child and photograph upon abandonment or admission to the agency or institution.

(ii) In the case of a voluntarily committed child, the application for "Certification Declaring a Child Legally Available for Adoption" (CDCLAA) must be filed within three (3) months after the signing of the Deed of Voluntary Commitment. The basis of the issuance of the certification is the notarized Deed of Voluntary Commitment supported with Social Case Study Report, birth certificate, photograph upon admission to the agency and a most recent photograph of the child. In the case of a foundling, the Certificate of Foundling (in lieu of the Birth Certificate) shall be registered with and issued by the local civil registrar of the municipality/city where the child was found upon the submission.

[17] The following documents are required to be attached to the endorsement:

(i) Child Study and Updated Report (if CSR had been prepared more than six (6) months ago) prepared by the social worker of the DSWD or NGO Child Caring/Child Placing Agency at the time of matching

C. The Alien or Filipino Citizen as Adopter

Any *foreign national* or *Filipino citizen permanently residing abroad* who has the qualifications and none of the disqualifications may file an Application if he/she is: a) at least 27 years of age and is at least 16 years older than the child to be adopted at the time of the filing of the application, unless the applicant is the parent by nature of the child to be adopted or is the spouse of such parent by nature; b) has the capacity to act and assume all the rights and responsibilities incidental to parental authority under his/her national law; c) has undergone appropriate counseling from an accredited counselor in his/her country; d) has not been convicted of a crime involving moral turpitude; e) is eligible to adopt under his/her national law; f) can provide the proper care and support and give the necessary moral values and example to the child and, in the proper case, to all his/her other children; g) comes from a country with whom the Philippines has diplomatic relations, whose government maintains a foreign adoption agency and whose laws allow adoption; and h) files jointly with his/her spouse, if any, who shall have the same qualifications and none of the disqualifications to adopt as prescribed above. [18]

In order for the inter-country adoption process to begin, the prospective adoptive parents (PAPS) must submit their

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shall include information about the child's identity, upbringing, and ethnic, religious and cultural backgrounds, social environment, family history, medical history and special needs;

(ii) Security Paper (SECPA) of the Birth or Foundling Certificate;

(iii) Certified True Copy of the Decree of Abandonment together with the Certificate of Finality for such judgment or the Notarized Deed of Voluntary Commitment executed after the birth of the child;

(iv) Certified True Copy of the Death Certificate of the child's birthparent/s, if applicable; . Updated medical evaluation and history of the biological family, if available,

(v) Psychological evaluation for children above five (5) years old or as may be deemed necessary by the ICPC; Child's own written consent to adoption, if he/she is ten (10) years or older, witnessed by a social worker of the Child Caring/Placing Agency and after proper counseling; and

(vi) Most recent whole body size picture of the child (taken within six (6) months upon submission of documents). If applicable, any physical impairment of the child should be visible in the picture.

[18] Rep. Act 8043, Sec 27

application to the Inter-Country Adoption Board (ICAB), through the Central Authority or an accredited Foreign Adoption Agency (FAA) in the country where they reside. [19]

D. Matching and Placement

After all the required documents are submitted, the matching of the child with the applicant will be carried out during a matching conference by the Inter-Country Placement Committee (ICPC) together with the head or social worker of the agency or the Secretariat social worker of the ICAB.

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[19] See Section 10, Rep. Act 8043; Sec. 30, IRR of Rep. Act 8043. The PAPs are required to submit the following documents:

1. Application Form. An application form prescribed by the Board which includes the following shall be accomplished by the husband and wife:
   (i)Undertaking under oath signed by the applicants
   (ii)Information and Personal Data of the Applicants
2. Home Study Report to be prepared by the Central Authority or an ICAB accredited Foreign Adoption Agency.
3. Supporting Documents. The supporting documents to be attached to the Application shall consist of the following:
   (i) Birth Certificates of the Applicants and, in cases of relative adoption, such relevant documents that establish the relationship between the applicant claiming relationship to the child to be adopted;
   (ii) Marriage Contract of the applicants, and in the proper case, Decree of Divorce of all the previous marriages of both spouses;
4. Written consent to the adoption in the form of a sworn statement by the biological and/or adopted children of the applicants who are ten (10) years of age or over;
5. Physical and medical evaluation by a duly licensed physician;
6. Psychological evaluation by a psychologist;
7. Latest income tax return or other documents showing the financial capability of the applicant;
8. Clearances issued by the Police Department or other proper government agency of the place where the applicants reside;
9. Character reference from the local church/minister, the applicant's employer and a member of the immediate community who have known the applicant(s) for at least five (5) years; and
10. A Certification from the appropriate government agency that the applicant is qualified to adopt under his/her national law and that the child to be adopted is allowed to enter the country for trial custody and reside permanently in the said place once adopted;
11. Recent postcard size pictures of the applicant, their immediate family members and their home; and
12. Self-Report Questionnaire (required when the Psychological Evaluation is inadequate).

The action of the ICPC shall be endorsed to the Board for approval. If approved, a notice of matching shall be sent to the concerned Central Authority or foreign adoption agency.[20] Thereafter, the applicants shall notify the Central Authority or Foreign Adoption Agency in writing of their decision on the matching proposal within 15 working days from receipt of said proposal. If the matching is accepted by the applicants, then the ICAB shall issue the Placement Authority, a copy of which shall be transmitted to the Department of Foreign Affairs and to the Central Authority or FAA.[21]

E. Preparation and Departure

After the issuance of the Placement Authority and prior to the departure, the child "shall be prepared for his/her placement by the concerned Child Caring/Placing Agency to minimize the anxiety and trauma due to separation from the persons with whom the child may have formed attachments. Further, the preparation shall ensure that the child is physically able and emotionally ready to travel and to form new relationships."[22]

The child must be personally fetched from the Philippines by the adoptive parents or any one of them, not later than 20 working days after notice of issuance of the visa of the child for travel to the country where the applicant resides. The applicant "shall stay in the country with the child for at least five days to allow bonding to occur between and among them."[23]

Should the child not be fetched by the applicants within the said period, a letter-explanation from the CA or FAA must be submitted. The unauthorized failure of the applicant/s to

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[20] The notice of matching must include the following documents: a) Child Study Report and Updated Report (if CSR had been prepared more than six (6) months prior to submission; b) Updated medical evaluation of the child and psychological evaluation, if applicable; c). Most recent whole body size picture of the child (taken within six (6) months upon submission of documents); and d) Itemized pre-adoptive placement costs.
[21] Rep. Act 8043, IRR, Sec. 34, 35 36, 37.
[22] Rep. Act 8043, IRR, Sec 41.
[23] Rep. Act 8043, Sec. 42,

fetch the child within said period may result in the cancellation of the Placement Authority. Trial custody shall start upon physical transfer of the child to the applicant who, as custodian, shall exercise substitute parental authority over the person of the child. The Central Authority and/or the FAA of the State to which the child has been transferred shall "supervise and monitor the placement of the child with the applicants, maintaining communication with the applicants from the time the child leaves the Philippines up to the time adoption is finalized. The FAA shall be responsible for the pre-adoptive placement, care and family counseling of the child for at least six months from his/her arrival in the residence of the applicant/s, when applicable. During the pre-adoptive placement, the FAA shall furnish the Board with quarterly reports on the child's health, psycho-social adjustment, and relationship with the applicant/s. The report shall also include updated information regarding the applicants' personal circumstances, if any. The Board shall furnish the child's CCA a copy of the reports." [24]

F. Affidavit of Consent to the Adoption/Final Decree of Adoption

If a satisfactory pre-adoptive relationship is formed between the applicant/s and the child, the Board shall transmit an Affidavit of Consent to the Adoption executed by the Department to the Central Authority and/or the FAA within 15 days after receipt of the last post placement report. [25]

The Central Authority and/or the FAA shall ensure that the applicant/s file the appropriate petition for the adoption of the child to the proper court or tribunal or agency in accordance with their national law.[26]

A copy of the final Decree of Adoption or its equivalent, including the Certificate of Citizenship/Naturalization, whenever applicable, shall be transmitted by the Central

[24] Rep Act 8043, Sec. 43, 44 and 45.
[25] Rep. Act 8043, Sec. 50.
[26] Rep Act 8043, Sec. 51.

Authority and/or the FAA to the Board within one month after its issuance. The Board shall require the recording of the final judgment in the appropriate Philippine Civil Registry. [27]

III. PROBLEM AREAS IN THE IMPLEMENTATION OF INTER-COUNTRY ADOPTION LAWS

A. Inter-country adoption and the Regional Trial Courts

There is much confusion regarding the jurisdiction of Regional Trial Courts with respect to inter-country adoption. For one, the law or regulation itself gives the Regional Trial Court jurisdiction in cases of inter-country adoption. Section 10 of R.A. 8043 provides the applicant adopter (who may be an alien or a Filipino citizen permanently residing abroad, provided he or she meets the criteria in Section 9 of R.A. 8043) with the option of choosing where to file the application, thus:

> " Sec. 10. Where to File Application.- *An application to adopt a Filipino child shall be filed either with the Philippine Regional Trial Court having jurisdiction over the child, or with the Board,* through an intermediate agency, whether governmental or an authorized and accredited agency, in the country of the prospective adoptive parents, which application shall be in accordance with the requirements as set forth in the implementing rules and regulations to be promulgated by the Board.
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> * * *
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> *The Rules of Court shall apply in cases of adoption by judicial proceedings."*

[27] Rep. Act 8043, Sec. 52.

Sections 26 to 32 of *A.M. No. 02-6-02-SC (Rule on Adoption)*, promulgated by the Supreme Court in August of 2002, provide:

> "**Section 26. Applicability.** The following sections apply to inter-country adoption of Filipino children by foreign nationals and Filipino citizens permanently residing abroad.
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> * * *
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> **Section 28. Where to File Petition.** – A verified petition to adopt a Filipino child may be filed by a foreign national or Filipino citizen permanently residing abroad with *the Family Court having jurisdiction over the place where the child resides or may be found.*
> *It may be filed directly with the Inter-Country Adoption Board.*
>
> **Section 29. Who may be adopted** – Only a child legally available for domestic adoption may be the subject of inter-country adoption.
>
> **Section 30. Contents of Petition.**— The petitioner must allege:
>
> a) his age and the age of the child to be adopted, showing that he is at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted at the time of application, unless the petitioner is the parent by nature of the child to be adopted or the spouse of such parent, in which case the age difference does not apply;
>
> b) if married, the name of the spouse who must be joined as co-petitioner except when the adoptee is a legitimate child of his spouse;

c) that he has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his country;

d) that he has not been convicted of a crime involving moral turpitude;

e) that he is eligible to adopt under his national law;

f) that he can provide the proper care and support and instill the necessary moral values and example to all his children, including the child to be adopted;

g) that he agrees to uphold the basic rights of the child, as embodied under Philippine laws and the U. N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of Republic Act No. 8043;

h) *that he comes from a country with which the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption of a Filipino child is allowed under his national laws; and*

i) that he possesses all the qualifications and none of the disqualifications provided in this Rule, in Republic Act No. 8043 and in all other applicable Philippine laws.

Section 31. ***Annexes.***— The petition for adoption shall contain the following annexes written and officially translated in English:

a) Birth certificate of petitioner;

b) Marriage contract, if married, and, if applicable, the divorce decree, or judgment dissolving the marriage;

c) Sworn statement of consent of petitioner's biological or adopted children above ten (10) years of age;

d) Physical, medical and psychological evaluation of the petitioner certified by a duly licensed physician and psychologist;

e) Income tax returns or any authentic document showing the current financial capability of the petitioner;

f) Police clearance of petitioner issued within six (6) months before the filing of the petitioner;

g) Character reference from the local church/minister, the petitioner's employer and a member of the immediate community who have known the petitioner for at least five (5) years;

h) Full body postcard-size pictures of the petitioner and his immediate family taken at least six (6) months before the filing of the petition.

Section 32. ***Duty of Court.***— *The court, after finding that the petition is sufficient in form and substance and a proper case for inter-country adoption, shall immediately transmit the petition to the Inter-Country Adoption Board for appropriate action.*

From the foregoing, it may be noted that all that the trial court is supposed to do is to determine whether the petition is sufficient in form and substance and a proper case for inter-country adoption, after which, it should immediately transmit the petition to the ICAB for appropriate action.[28] It is submitted

[28] Under Section 30 of the Amended Implementing Rules and Regulations on Intercountry Adoption (IRR), dated 13 March 2007, the application shall be filed with the Board through the Central Authority or accredited Foreign Adoption Agency (FAA) in the country where the applicant resides. The rule specifies that for foreigners who file a petition for adoption with the court under the Domestic Adoption Act of 1998, shall transmit the petition to the ICAB Board for appropriate action should it find that the petition is a proper case for inter-country adoption.

that the proviso for the filing of the petition with the regional trial court is a useless option since the petition can be filed directly with the ICAB. Due to the nature of its responsibilities, the ICAB would be more in a position to determine whether the petition and documents submitted comply with the requirements for inter-country adoption. A filing with the court will merely delay the proceeding.

That said, however, Atty. Bernadette Abejo, Executive Director of the Inter-Country Adoption Board (ICAB) posits that the jurisdiction of domestic courts cannot entirely be removed from the process as this is the only venue for adoption of children between the ages 15 to 18 years:

> "Notwithstanding the confusion caused, jurisdiction of the domestic courts on adoptions by foreign nationals cannot be removed due to a gap in the RA 8043 or the Intercountry Adoption Law which allows the Intercountry Adoption Board jurisdiction only for children below fifteen (15) years of age. The gap leaves children between the ages 15 to 18 years who are eligible to be adopted without any venue within which to process documentation for their placement with their permanent families." [29]

Indeed, the repealing clause of R.A. 9523 provides for the express repeal *only of Section 3(f) of R.A. 8043*, which defines a "legally free child", the effect of which is the transformation of the process of declaring a child as legally available for adoption, from a judicial, to an administrative process. Thus, the term "child" which is defined in Section 3 (b) of R.A. 8043 as "a person below fifteen (15) years of age" remains and is, therefore, the age cut-off for children who are matched for inter-country adoption by ICAB. On the other hand, as earlier pointed out, R.A. 9523 defines "child" as " a person below

[29] Abejo, Bernadette *"Distinctive Characteristics of the Philippine Inter-country Adoption Process"* (A Paper read during the 4th HCCH Asia Pacific Conference, 26 October 2011, Manila Mandarin Hotel.)

eighteen (18) years of age or a person over eighteen (18) years of age is unable to fully take care of himself/herself or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of physical or mental disability or condition." Thus, the ICAB by law has no jurisdiction to include potential adoptees who are fifteen 15 to 18 years of age in the inter-country adoption process.

The regional trial courts have that jurisdiction under the present state of R.A. 8043, the pertinent law. The current state of the law complicates the matter further because, unlike the ICAB, the regional trial courts do not have a system in place to perform the functions that the ICAB has in relation to the inter-country adoption process such as matching a child with a prospective adoptive parent or facilitating communication with the central authorities of the country of the prospective adoptive parent. [30] Inevitably, the court would still have to refer the case to the ICAB. This would again become a rigmarole of sorts which can only delay the whole process.

B. Domestic Adoption by a foreigner and the Regional Trial Courts

A foreigner may file a petition for adoption under R.A. 8552, which allows aliens to adopt a Filipino child, provided they have been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption, and maintains such residence until the adoption decree is entered. Thus, Section 7 (b) of the said law provides:

> 'SEC.7. *Who May Adopt.*–The following may adopt:
>
> * * *
>
> (b) *Any alien possessing the same qualifications as above stated for Filipino*

[30]Matching is defined in the law as "the judicious pairing of the applicant and the child to promote a mutually satisfying parent-child relationship." Matching is done by ICAB's Inter-Country Adoption Placement Committee (ICPC) which by law is composed of 2 teams, with each team having a panel of consultants: a child psychiatrist or psychologist, a medical doctor, a lawyer, a registered social worker and a representative of a non-governmental organization engaged in child welfare. See Article V, Section 12, IRR, Rep. Act 8043.

> *nationals: Provided, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered*, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/ her adopted son/daughter: *Provided, further*, *That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:*
>
> *(i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or*
>
> *(ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or*
>
> *(iii)one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse;"*

In a sense, it may be said that the adoption by the foreigner, in this regard, is an "inter-country adoption" through the Domestic Adoption Act. Over the years, since the enactment of the law, this situation has created a host of problems considering that it involves the interplay between a domestic court and a foreign jurisdiction. The requirements of the law itself involve the participation of the applicant's government since the foreigner applicant is supposed to obtain certain certifications and documents from the diplomatic or consular offices of the foreigner's country.

Atty. Abejo describes the "operational challenge" caused by the dual jurisdiction in the processing of international adoptions, thus:

> Prior to the enactment of Republic Act 9523, the dual jurisdiction to process international adoptions created a situation which allowed former Filipino's or those having dual citizenship to file domestic petitions for adoption without the approval/intervention of the receiving countries central authority. Prospective adoptive parents were able to file and secure a decrees of adoption by omitting to declare that the prospective adoptive parents are nationals of another country and habitually reside in said country and that the child, is to be brought to their habitual residence.
>
> *The children declared by courts as adopted to these parents are put in a situation where they cannot claim the guarantee to enter the country of their parents' habitual residence for failure to conform to the standards set by the '93 convention. They belatedly learn from the embassies of the countries of their habitual residences that compliance with the '93 convention requirements must be met to be issued immediate entry visas for their children. In such cases, the families have to comply with the regular immigration policies which generally require the parents to live in the country of origin for a year or more before an application for a visa may be lodged. Many of the adoptive parents are unable to comply with the residency requirement hence adopted children are left in the country by their adoptive parents in the care of temporary guardians."*[31]

[31] Abejo, *supra.* note 22.

The problem described above has already been brought to the attention of the Supreme Court and, in response, a stop-gap measure in the form of OCA Circular No. 10-2014 was issued on January 20, 2014. The said Circular enjoined all judges to strictly observe the mandate of Republic Act Nos. 9523, 8552 and 8043. Thus, the OCA Circular states:

> "Secretary Soliman further reported that *there have been cases wherein prospective adoptive parents residing abroad filed the petition for adoption in Philippine courts under Republic Act No. 8552, "An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and for Other Purposes," otherwise known as the "Domestic Adoption Act of 1998", instead of filing the petition under Republic Act No. 8043, "An Act Establishing the Rules to Govern Inter-Country Adoption of Filipino Children and for Other Purposes," otherwise known as the "Inter-Country Adoption Act of 1995" which provides that "(a)n alien or a Filipino citizen permanently residing abroad may file an application for inter-country adoption of a Filipino child xxx" (Article III, Sec. 9).*
>
> The practice of filing petitions for adoption under the Domestic Adoption Act is discouraged by the DSWD as there may be unanticipated situations that may prevent the prospective adopted parents from bringing the adopted child to the country where they reside. This would be inimical to the well-being and best interest of the child. *To address the concerns of the DSWD and for the best interest and welfare of all the children to be adopted, as judges of family courts, you are all enjoined to STRICTLY OBSERVE the mandate of Republic Act Nos. 9523, 8552, and 8043, and other related laws and issuances when handling adoption cases before your respective courts."*

This was later followed by OCA Circular No. 213-2017 appending Resolution No. 02-2017 of the Supreme Court Committee on Family Courts and Juvenile Concerns (CFCJC) approved on 14 July 2017.[32] The resolution clarified previous guidelines on the documentation required in adoption proceedings.

The *first g*uideline enjoined strict compliance with R.A. 9523, as a prerequisite for adoption proceedings involving abandoned, surrendered, or neglected children. The Certification Declaring the Child Legally Available for Adoption (CDCLAA) from the DSWD was to be considered primary evidence in a domestic adoption proceeding, including the adoption of surrendered, abandoned, neglected and dependent children. Exempted from the CDCLAA requirement are proceedings involving the (i) adoption of an illegitimate child by any of his/her biological parent; (ii) adoption of a child by his/her step-parent and (iii) adoption of a child by a relative within the fourth (4th) degree of consanguinity or affinity.[33] The penalty imposed by Section 10 of R.A. No. 9523 was emphasized therein. [34]

Under the *second* guideline, courts were mandated not to dismiss a petition for adoption filed without a Case Study

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[32] Resolution No. 02-2017 is entitled "Proposed Guidelines and Clarification in the Interpretation and Application of Pertinent Provisions of Republic Act No. 8552 (Domestic Adoption Act of 1998), Republic Act No. 8043 (The Inter-country Adoption Act of 1995), Republic Act. No. 9523 (An Act Requiring Certification of the DSWD to Declare a '*Child Legally Available for Adoption*' As a Prerequisite for Adoption Proceedings), and Administrative Matter No. 02-6-02-SC (Rule on Adoption), as to the Required Documents in Adoption."

[33] See Section 4, Article I, IRR, Rep. Act 9523.

[34] SECTION 10. Penalty. — The penalty of One hundred thousand pesos (P100,000.00) to Two hundred thousand pesos (P200,000.00) shall be imposed on any person, institution, or agency who shall place a child for adoption without the certification that the child is legally available for adoption issued by the DSWD. Any agency or institution found violating any provision of this Act shall have its license to operate revoked without prejudice to the criminal prosecution of its officers and employees. Violation of any provision of this Act shall subject the government official or employee concerned to appropriate administrative, civil and/or criminal sanctions, including suspension and/or dismissal from the government service and forfeiture of benefits.

Report (CSR) and a Home Study Report (HSR). Courts were instead required to follow Section 12(5), Rule on Adoption, and order the concerned social worker to prepare and submit directly and only to the court the required reports before hearing.

The *third* guideline requires that, in a case where the adopter is an alien or residing abroad and qualified to adopt under RA No. 8552, the Home Study Report (HSR) must be prepared by a foreign adoption agency duly accredited by the ICAB, as directed by Section 11, Rule on Adoption. Furthermore, the HSR must show the alien's legal capacity to adopt and that his/her government allows the adoptee to enter his/her country as his/her adopted child.

The *fourth* and last guideline reiterated the requirement under Section 7 (b) of R.A. No. 8552: that if an alien petitioner falls under any of the exceptions, only the residency requirement and certification as to the legal capacity to adopt may be waived. The certification that the alien's government allows the adoptee to enter the alien's country as the alien's adopted child shall not be waived and must be submitted to the court. [35] According to the Circular, the purpose of this guideline is to avoid the situation in the past where despite the grant to alien petitioners of their petition for adoption filed under the Domestic Adoption Act of 1998, the adopted child was not

[35] SEC.7. *Who May Adopt*.–The following may adopt: (b) Any alien possessing the same qualifications as above stated for Filipino nationals: *Provided*, That his/her country has diplomatic relations with the Republic of the Philippines, that *he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered,* that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/ her adopted son/daughter: *Provided, further*, *That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following: (i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or (ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or (iii)one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse.*

allowed to enter the alien's country. To address this, the courts were reminded to require the alien petitioner to submit the certification that his or her government allows the adopted child to enter the alien's country. The submission of this certification cannot be waived.

Indeed, the problems relating to the adoption by an alien of a Filipino child under the Domestic Adoption law have been brought to fore mainly because of the experience had by alien petitioners whose governments disallowed the entry of the adopted child in the alien's country. Despite the law's requirement of the certification as above described, there have been instances when the submission of the same was waived by the courts.

A situation such as this cannot be remedied by simply reminding the judges to follow the law. The problematic situation is caused mainly by the refusal of some foreign governments to issue the certifications required. This is a sad reality which most practitioners in this field are aware of. The cooperation of the alien government is sorely wanting in this regard. Based on experience, the usual reply of the consulates concerned is that their respective governments do not issue such certifications.

IV. CONCLUSION AND RECOMMENDATION

Prior to the enactment of R.A. 8552, Article 184 of the Family Code disallowed an alien from adopting Filipino children except (i) a former Filipino citizen who seeks to adopt a relative by consanguinity; (ii) one who seeks to adopt the legitimate child of his or her Filipino spouse; or (iii) one who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter. The last paragraph of Article 184 provides that aliens who are not included in the exceptions may adopt Filipino

children in accordance with the rules on intercountry adoption as may be provided by law.[36]

With the enactment of R.A. 8552, aliens who have resided in the Philippines for at least three years were made qualified to adopt in the Philippines. It is submitted that, considering the problems earlier identified with respect to aliens who use the proceedings under R.A. 8552, there is a need to revisit R.A. 8552 and consider bringing back the old rule – that aliens residing in the Philippines who wish to adopt a Filipino child do so through inter-country adoption proceedings under R.A. 8043. Since its inception in 1995, inter-country adoption proceedings in the Philippines have become well-established. A spirit of cooperation among the Central Authorities of various jurisdictions as mandated by the Hague Convention has become the norm rather than the exception. From 1995 to 2018, the ICAB has received 10,491 applications for adoption from foreign jurisdictions. Out of this number, 9,523 have been approved and 8,158 Filipino adoptees have been matched with foreign families.[37] Indeed, it can be said that the system created for inter-country adoption by the Hague Convention through an administrative process has had tangible gains. Though not a perfect system, it has at least proven to be a more practical procedure than if it were otherwise.

* * *

[36] "Art. 184. The following persons may not adopt: (1) The guardian with respect to the ward prior to the approval of the final accounts rendered upon the termination of their guardianship relation; (2) Any person who has been convicted of a crime involving moral turpitude; (3) An alien except: a) A former Filipino citizen who seeks to adopt a relative by consanguinity; b) One who seeks to adopt the legitimate child of his or her Filipino spouse; or c) One who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter. *Aliens not included in the foregoing exceptions may adopt Filipino children in accordance with the rules on intercountry adoption as may be provided by law."*

[37] See Statistical Data on Inter-Country Adoption Program, CY 1995-June 30, 2018 at https://www.icab.gov.ph
(September 14, 2020).

Reproductive Health Care as a Basic Human Right of Filipino Women: Where Are We Now?

Joan A. De Venecia-Fabul[*]

> "When a woman can plan her family, she can plan her life. She can pursue more education, seek and keep better jobs, and contribute more to her family and her country with the benefits carrying over well into the future."
>
> – *Klaus Beck, former United Nations Population Fund (UNFPA) country representative to the Philippines*

I recall being on maternity leave in early 2013 when my then boss and mentor at SyCip Salazar Hernandez & Gatmaitan, Atty. Em Lombos, sent me a message asking if I was interested to be an intervenor in the petitions filed by several religious groups in the Supreme Court to assail the constitutionality of Republic Act No. 10354, or the Responsible Parenthood and Reproductive Health Act of 2012 (the "RH Law"). At the time, the ink had barely dried on President Benigno Aquino III's signature, having just signed the RH Law a couple of months prior, in late December 2012. I was a first-time mother, a Catholic, and had just finished a paper on the state of sexual and reproductive health rights in the Philippines as part of the requirements for

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my LL.M. abroad, so I was deeply invested in this issue and was one of those who celebrated the passage of the much-needed social measure. With Atty. Lombos as my counsel, I said yes without hesitation.

As a women's rights advocate, I have long believed that no other area of human rights is more intuitively, inextricably linked to womanhood than sexual and reproductive rights. Irrespective of traditions, social class, religious beliefs, or cultural background, the capacity to conceive and give birth is, at bottom, the biological function of a woman. So too, the bearing and rearing of children have the most direct and immediate effect on a woman's physical, mental, and emotional health, as well as financial well-being. Viewed in this light, it is clear that women stand to benefit most from, and conversely, be most disproportionately impacted by, governmental policies and laws relating to reproductive rights. This is why it always struck me as a disservice to women when debates on access to reproductive health services were framed in the early days as a mere "population control" issue. To my mind, a rights-based approach anchored on the Philippines' adherence to international women's rights treaties and respect for women's autonomy and agency was the best way to push any social legislation benefiting women forward.

Of course, on paper, the Philippines is a human rights champion. It is a party to all major human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[1], the Convention on the Rights of the Child (CRC)[2], the International Covenant on Civil and Political Rights (ICCPR)[3], and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[4]. These

[1] CEDAW, adopted 8 December 1979, G.A. Res. 34/180, U.N. GAOR 34th Sess., Supp. No. 46 U.N. Doc. A/34/36 (1980), (*entered into force* 3 September 1981), *reprinted in* 19 I.L.M. 33 (1980).
[2] CRC, adopted 20 November 1989, G.A. Res. 44/25, U.N. GAOR 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989), (*entered into force* 2 September 1990), *reprinted in* 28, I.L.M. 1448 (1989).
[3] ICCPR, adopted 16 December 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 March 1976).
[4] ICESCR, adopted 16 December 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 January 1976).

instruments affirm women's rights to life,[5] health,[6] non-discrimination,[7] and comprehensive information about their sexual and reproductive health.[8] Moreover, the Philippines is a secular republic that adheres to the principle of separation of Church and State.[9] But a powerful Church and "pro-life" lobby have, for more than decade prior to the RH Law's passage, successfully stymied multi-sectoral efforts to provide Filipino women access to free family planning services to help them plan and space their pregnancies, resulting to high fertility rates, unwanted and teenage pregnancy rates, low contraceptive prevalence rates, high maternal mortality rates, and illegal abortions.

Thus, in 2008, four years prior to the RH Law's passage, the statistics showed that majority of the children born in the Philippines resulted from a high level of unintended pregnancies, from mothers who were among the Philippines' poorest women. At the time, out of the estimated 3.4 million Filipino women who became pregnant, 54% did not want to have a child so soon or at all.[10] Moreover, women from the poorest fifth of the population had nearly three times as many births as those in the wealthiest fifth.[11] Also, more than two-thirds of unintended pregnancies occurred among the women not using any contraceptive methods.[12] Traditional method users

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[5] ICCPR, supra note 3, art. 6(1); CRC, supra note 2, art. 6(1).
[6] CEDAW, supra note 1, arts. 12(1), 12(2) and 14(2)(b); CRC, supra note 2, art. 24, ICESCR, supra note 4, art. 12.
[7] CEDAW, supra note 1, art. 2; CRC, supra note 2, art. 2; ICCPR, supra note 2, arts. 3 and 26; ICESCR, supra note 4, art. 2(2).
[8] CEDAW, supra note 1, arts. 10(h) and 16(e); CRC, supra note 2, art. 13 and 28; ICESCR, supra note 4, art. 13.
[9] CONST. (1987), art. III, §5 (Phil.).
[10] Darroch JE et al., *Meeting Women's Contraceptive Needs in the Philippines,* IN BRIEF: GUTTMACHER INSTITUTE, 2009, No. 1, at p.3, available at http://www.guttmacher.org/pubs/2009/04/15/IB_MWCNP.pdf. The Guttmacher Institute is a non-profit organization based in the United States that researches reproductive health policy.
[11] *Id.,* at p.3.
[12] Modern methods used in the Philippines include female and male sterilization, IUD, contraceptive injection, oral contraceptive pills, condoms and modern natural family planning (NFP) methods. Modern NFP includes the mucus or Billings Ovulation, Standard Days, symptothermal, basal body temperature and lactational amenorrhea methods. Traditional methods include mainly withdrawal and periodic abstinence methods other than modern NFP.

accounted for almost one-quarter of unintended pregnancies.[13] That the high levels of unintended pregnancies were directly correlated to lack of access to or use of contraception is shown by the fact that in 2008, there was only a 51% contraceptive prevalence rate in the Philippines with only 36% using modern methods.[14]

Closely linked to these data was the reality that maternal and infant mortality rates in the Philippines were unacceptably high, especially among disadvantaged women—those who are poor, live in rural areas or have little education. Thus, as of 2005, an estimated 230 Filipino women died from pregnancy-related causes for every 100,000 live births (compared with 110 in Thailand, 62 in Malaysia and 14 in Singapore).[15] In 2008 alone, births and miscarriages resulted in about 3,700 women's deaths. Some 1,600 of these women had not wanted to become pregnant.[16] And because abortion was (is) illegal in the Philippines, most of these procedures were clandestine, and many were carried out in unsafe circumstances.[17]

In addition, pregnancy-related deaths and hospitalizations kept women out of the workforce and away from their families, which had countless other effects on their well-being. Annually, Filipino women lose 311,000 productive years of their lives due to conditions related to pregnancy and birth, greater than the annual loss among Filipino men and women from traffic accidents or diabetes.[18]

It came as no surprise then that in 2008, a survey by the polling firm Social Weather Stations (SWS) found that 76% of adult Filipinos wanted family planning education in the public

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[13] Darroch, supra note 10, at p.5.
[14] United Nations Population Fund (UNFPA), *Reaching Common Ground: Culture, Gender and Human Rights*, UNFPA STATE OF THE WORLD POPULATION, 2008, at p. 87, available at http://www.unfpa.org/swp/2008/presskit/docs/en-swop08-report.pdf.
[15] World Health Organization (WHO), UNICEF, UNFPA, and The World Bank, *Maternal Mortality in 2005: Estimates Developed by WHO, UNICEF, UNFPA and the World Bank*, WHO , 2007, at p.26, available at http://www.who.int/whosis/mme_2005.pdf.
[16] Darroch, supra note 10, at p.2.
[17] Singh S et al., *Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences,* GUTTMACHER INSTITUTE, 2006, at p.4, available at http://www.guttmacher.org/pubs/2006/08/08/PhilippinesUPIA.pdf.
[18] Darroch, supra note 10, at p.2.

schools, and 71% favored the passage of an RH bill. Support for the bill was an overwhelming 84% among those previously aware of it, and 59% among those who became aware of it on account of the survey. Interestingly, support for both family planning education and for passage of the RH bill was very high among both Catholics and non-Catholics. Regularity of church-going, and trust in the Catholic Church, had no effect on support for the RH bill. Support for family planning education and for passage of the RH bill was very high among both men and women, whether single or married, in all areas of the country, and among all socioeconomic classes.[19] Later surveys by the SWS in big cities and provinces reflected the same support for family planning and the RH bill.[20]

So, given the dire and increasingly alarming situation, and the overwhelming public clamor for affordable reproductive health care and sex education, why did it take so long to pass an RH law in the Philippines?

I. FIRST BATTLEGROUND: CONGRESS

The first bill proposing to fund the universal distribution of safe and modern contraceptives to Filipino women, free access to RH services in government hospitals, and age-appropriate sex education in public schools was filed way back in 1999, in the 11th Congress, under the sponsorship of Rep. Cielo Krisel Lagman-Luistro, daughter of RH advocate Rep. Edcel Lagman.[21] This bill was shelved, however, and though it was refiled in the 12th Congress by Rep. Bellaflor Angara-Castillo, it only gained traction in the 14th Congress where it was finally debated in

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[19] SWS Media Release, *Third Quarter 2008 Social Weather Survey: 76% Want Family Planning Education in Public Schools; 71% Favor Passage of the Reproductive Health Bill,* SOCIAL WEATHER STATIONS, Oct. 16, 2008, available at https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20151217135705.

[20] SWS Media Releases for Cebu, Bohol and Paranaque City, *Cebu Survey on Health: Men and women of reproductive age in Cebu support family planning and RH Bill,* Sept. 23, 2009; *Reproductive Health Bill is also Popular in Bohol,* July 13, 2009 and *Survey on Health: Parañaque City favors family planning and RH*, Mar. 5, 2009; respectively, SOCIAL WEATHER STATIONS, available at http://www.sws.org.ph/.

[21] House Bill No. 8110, or the "Integrated Population and Development Act of 1999".

plenary session in the House, and with Edcel Lagman, Iloilo Rep. Janette Garin, and Akbayan Rep. Risa Hontiveros taking the cudgels for the RH bill.[22] Proxies of the Catholic Church hierarchy in the House of Representatives, as expected, began their assault of the measure, upon the premise that contraceptives like condoms, injectibles, and birth control pills designed to prevent pregnancies are abortifacients, *i.e.,* inducing abortion, so that their free distribution to the populace goes against Section 12, Article II of the 1987 Constitution, which says: "Section 12. The State… shall equally protect the life of the mother and the life of the unborn from conception."

The battle between science and religion continued in the 15th Congress. With the House divided because of the powerful Church lobby and the much-feared "Catholic vote," the atmosphere in the House plenary sessions became highly charged, often antagonistic. It eventually took a pro-RH House leadership, headed by then Speaker Feliciano Belmonte, and a pro-RH President, Aquino, to get the measure moving, with President Aquino certifying the bill as urgent in the 11th hour, and with his Liberal Party allies rallying the votes. Meanwhile, in the Senate, the RH bill faced stiff opposition from two Senate leaders, Senate President Juan Ponce Enrile and Majority Leader Vicente Sotto III. But after the RH bill passed in the House on 2nd reading, the hurdles in the Senate fell away, paving the way for the law's passage right before the campaign period for the next presidential elections was to start.

A. The RH Law

In a nutshell, the RH Law guarantees the following: (1) access to services on reproductive health and family planning, with due regard to the informed choice of individuals and couples who will accept these services, (2) maternal health care services, including skilled birth attendance and facility-based deliveries, (3) reproductive health and sexuality education for the youth, and (4) regular funding for the law's full

[22] Carmela Fonbuena, *RH Law, the Long and Rough Road*, RAPPLER, Nov. 30, 2012, at https://rappler.com/newsbreak/rh-law-the-long-and-rough-road

implementation.[23] The law outlines several measures to ensure that the poor and marginalized sectors of the society are given prime importance in the delivery of RH information and services. For one, the National Drug Formulary now lists hormonal contraceptives, intrauterine devices, injectables, and other safe, legal, non-abortifacient, and effective family planning products and supplies as essential medicines. This means that these products and supplies shall be included in the regular purchase of essential medicines and supplies of all national hospitals (Sec. 9, RH Law) and can now be made easily available to the general public.[24]

More importantly, the law has defined a multidimensional approach in the implementation of RH programs especially in relation to achieving the objective of poverty reduction. It mandates the DOH to implement RH programs prioritizing full access of poor and marginalized women as identified through the National Household Targeting System for Poverty Reduction (NHTS-PR) and other government measures of identifying marginalization to RH care, services, products, and programs. (Sec. 11, RH Law) Catering to remote and marginalized communities, the RH Law provides both the national and local government the mandate to make Mobile Health Care Services (MHCS) available to each provincial, city, municipal, and district hospital in the form of a van or other means of transportation

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[23] Philippine Legislators' Committee on Population and Development Foundation, Inc., *A Primer on the Reproductive Health Law*, Mar. 2013, available at http://www.plcpd.org.ph/wp-content/uploads/2014/08/A-primer-on-the-Reproductive-Health-Law.pdf (hereinafter, the "PRIMER") --
"THE ELEMENTS OF REPRODUCTIVE HEALTH (Sec. 4, RA 10354) 1) Family planning information and services which shall include as a first priority making women of reproductive age fully aware of their respective cycles to make them aware of when fertilization is highly probable, as well as highly improbable; 2) Maternal, infant and child health and nutrition, including breastfeeding; 3) Proscription of abortion and management of abortion complications; 4) Adolescent and youth reproductive health guidance and counseling; 5) Prevention, treatment and management of reproductive tract infections (RTI), HIV and AIDS and other sexually transmittable infections (STI); 6) Elimination of violence against women and children and other forms of sexual and gender-based violence; 7) Education and counseling on sexuality and reproductive health; 8) Treatment of breast and reproductive tract cancers and other gynecological conditions and disorders; 9) Male responsibility and involvement and men's reproductive health; 10) Prevention, treatment and management of infertility and sexual dysfunction; 11) Reproductive health education for the adolescents; and 12) Mental health aspect of reproductive health care."
[24] PRIMER, supra note 24, at p. 13.

appropriate to its terrain. (Sec. 11, RH Law) Operated by skilled health providers and adequately equipped with a wide range of health care materials and information dissemination devices and equipment, the MCHS will fill in the gap in the RH information and services needed in remote communities particularly catering to the poor and needy. (Sec. 11, RH Law) In addition and most importantly, the RH Law confirms in Section 17 its focus on delivering *pro-bono* services for indigent women.[25]

As expected, the RH Law had its critics. Pro-choice advocates lamented the RH Law's continued ban on abortion. And the Catholic Church remained unhappy with the law despite the abortion ban, seeing it as the "beginning of a tsunami of anti-family, anti-life legislation" like divorce, abortion and euthanasia or mercy killing,[26] and vowing continued opposition to its implementation.

II. NEXT BATTLEGROUND: SUPREME COURT

A. Round 1: Imbong v. Ochoa

After losing the numbers game in Congress, the critics of the RH Law next turned their attention to the Supreme Court, and wasted no time in filing 14 petitions, later consolidated in the case titled *Imbong v. Ochoa*[27] and docketed as G.R. No. 204819, to challenge the law on constitutional grounds. RH Law champions were immediately dealt a setback – the petitioners successfully secured on March 19, 2013 a status quo ante order

[25] PRIMER, supra note 24, at pp. 14-15.
[26] Philip C. Tubeza, *Church won't stop opposing RH law*, INQUIRER.NET, Jan. 18, 2013, at https://newsinfo.inquirer.net/342809/church-wont-stop-opposing-rh-law
[27] The first petition was filed by lawyer Jo Imbong who called the RH law "illegal" because it "mocks the nation's Filipino culture – noble and lofty in its values and holdings on life, motherhood, and family life." Named as respondents in this case are senior government officials involved in implementing the RH law — Executive Secretary Pacquito Ochoa Jr, Budget Secretary Florencio Abad, Education Secretary Armin Luistro, Health Secretary Enrique Ona, and Interior Secretary Mar Roxas. *See* RH Law showdown Moves to SC, Carmela Fonbuena, https://rappler.com/nation/reproductive-health-law-showdown-supreme-court

(SQAO) stopping the implementation of the RH Law for 120 days, which was supposed to take effect on March 30, 2013.

As intervenors for the respondents, we had a chance to exchange notes and discuss legal strategies with the Office of the Solicitor General (OSG), then led by now retired Supreme Court Justice Francis Jardeleza, then Assistant Solicitor General (later, Solicitor General) and my law school professor Florin Hilbay, and RH Law sponsors in the 15th Congress, Lagman and Senator Pia Cayetano, and various NGOs such as EngendeRights led by Atty. Clara Rita Padilla, and were given a front row seat to the oral arguments held on July 9, 2013. As a young aspiring litigator, it was an experience of a lifetime to have been an active participant in a landmark case alongside legal luminaries. It was also interesting to see another mentor in SyCipLaw, Atty. Chito Liban, who was to become godfather in my wedding, argue for the other side. At the oral arguments, I remember being unable to suppress my reaction upon hearing former Senator Kit Tatad argue before the Supreme Court *en banc* that the RH Law is tantamount to genocide,[28] because genocide is purportedly "any act that prevents birth," which the RH Law espouses.

Atty. Maria Concepcion Noche, one of the petitioners, articulated the petitioners' principal objection to the RH Law, i.e., that artificial contraceptives cause abortion and therefore violate the right to life of the unborn. She said: "[a] fertilized ovum is alive. It has life. This is a vital sign of life. Fertilized ovum is human. There is human life on conception." In our intervention, however, we argued that any discussions of "fertilized ovum" is misplaced, since in the first place, modern contraceptives prevent fertilization from occurring. Simply put, the science is clear that there is yet no life, conceptually or in actuality, that can potentially be harmed by modern contraceptives. In addition, we argued that the petitioners challenging the RH Law did not actually represent the views of most Catholics or Filipinos but only of the ultraconservative minority faction of the Catholic church, and while they claimed to raise legal challenges, they were actually raising religious

[28] Tetch Torres-Tupas, *Tatad: RH law is genocide*, INQUIRER.NET, July 9, 2013, at https://newsinfo.inquirer.net/441563/tatad-rh-law-is-genocide

objections to the law. Worse, their claim that there is supposed to be a natural law that prohibits sex without a procreative intent does not even reflect a Christian doctrine but a pagan belief borrowed from the Greek stoics. We said in our intervention:

> [The petitioners] are a religious minority who, having first lost the battle for hearts and minds within the Catholic Church and then the social policy debate at the legislature, now seek to misuse the judicial process to assail an unimpeachable constitutional measure so they may yet impose their intolerant minority views on an entire country that does not share their beliefs.
>
> To make matters worse, the beliefs that animate their challenge to a critically urgent social program are based on a gross misconception borrowed from primitive pagan Stoics that would reduce the rich fabric of man's love to the base biological rhythms of beasts. Such beliefs, even when disguised as legal objections, can never pass for valid constitutional challenges in a republican democracy where the substantive due process guarantee requires all government action, including judicial reviews, to be based on reality and reason.

We also argued that *Humanae Vitae*, which petitioners touted as their ultimate basis for their objection to the RH Law, was issued by Pope Paul VI against the recommendation of his own Pontifical Commission on Population, Family and Births which, by an overwhelming two-thirds vote, said that the Catholic Church was wrong to ban, and should allow, modern contraception because there is no doctrinal, medical, social, or other reason to prohibit it and because the rhythm method had proved to be not just unreliable but extremely dehumanizing and damaging to Christian marriages. We cited Gary Wills, one of the most respected writers on religion today, whose book,

"Papal Sin: Structures of Deceit,"[29] describes in riveting detail how the Pontifical Commission on Population, Family and Births came up with its recommendation:

> [T]he commission members – good Catholics all, chosen for their loyalty to the church – look[ed] honestly at the "natural law" arguments against contraception and [saw], with a shock, what flimsy reasoning they had accepted. Sex is for procreation, yes – but all the time, at each and every act? Eating is for subsistence. But any food or drink beyond that necessary for sheer subsistence is not considered mortally sinful. In fact, to reduce to that animal compulsion would deny symbolic and spiritual meanings in shared meals – the birthday party, the champagne victory dinner, the wine at Cana, the Eucharist itself. Integrity of the act? Is it sinful to be nourished intravenously when that is called for? Does that violate the integrity of the eating act? The more assembled members looked at the inherited "wisdom" of the church, the more they saw the questionable roots from which it grew – the fear and hatred of sex, the feeling that pleasure in it is a biological bribe to guarantee the race's perpetuation, that any use of pleasure beyond that purpose is shameful. This was not a view derived from scripture or from Christ, but from Seneca and Augustine.

After the oral arguments, we got more bad news: the Supreme Court decided to extend its SQAO indefinitely, thereby blocking the implementation of the RH Law for at least another year. At that point, I was worried that the RH Law would be struck down *in toto.*

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[29] (New York: Image, 2001). Wills' other books include Saint Augustine's Childhood, Saint Augustine's Memory, Saint Augustine's Sin, "Negro President": Jefferson and the Slave Power, Why I Am a Catholic, and Lincoln at Gettysburg, which won the Pulitzer Prize.

Less than a year later, however, on April 8, 2014, the Supreme Court, speaking through Justice Jose Catral Mendoza, upheld the constitutionality of the RH Law, even as it struck down some of its and its IRR's provisions. After stating that the Constitution bans abortion and abortifacients, the Court held that "[i]n general, [it] does not find the RH Law as unconstitutional insofar as it seeks to provide access to medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive health care services, methods, devices, and supplies. The RH Law does not sanction the taking away of life. It does not allow abortion in any shape or form. It only seeks to enhance the population control program of the government by providing information and making non-abortifacient contraceptives more readily available to the public, especially to the poor…" The Court also went on to state that: "[m]ajority of the members of the Court are of the position that the question of when life begins is a scientific, medical issue. That shouldn't be decided at this stage, without proper hearing, evidence. In the case at bench, it is not within the province of the Court to determine whether the use of contraceptives or one's participation in the support of modem reproductive health measures is moral from a religious standpoint or whether the same is right or wrong according to one's dogma or belief. For the Court has declared that matters dealing with "faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church... are unquestionably ecclesiastical matters which are outside the province of the civil courts."

As regards the eight offending provisions that the Court struck down as unconstitutional, Dean Tony La Viña made the following excellent summary:[30]

> Below are the eight provisions of the RH law which were declared unconstitutional and why the Court struck them down.

[30]Tony La Viña, *Jurisprudence of conscientious objection*, MANILA STANDARD, Apr. 15, 2014, at https://manilastandardtoday.com/opinion/columns/eagle-eyes-by-tony-la-vina/145297/jurisprudence-of-conscientious-objection.html

Section 7, only insofar as it: (a) requires private health facilities, non-maternity specialty hospitals, and hospitals owned by religious groups to refer patients not in an emergency or life-threatening situation to another health facility which is conveniently accessible (b) provides access to family planning and RH services to minors who have been pregnant or had a miscarriage without parental consent.

The rest of Section 7, however, which provides access to family planning, was upheld by the Court, notably this line: "All accredited public health facilities shall provide a full range of modern family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children." This is decisively pro-RH.

The Court was of the view that the obligation to refer [to another medical practitioner] imposed by the RH law [on medical practitioners who, on religious grounds, refuse to implement the law] violates religious belief and conviction of a conscientious objector. Once the medical practitioner, against his will, refers a patient, his conscience is immediately burdened as he is compelled to perform an act against his beliefs. The option of referral is a false compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive.

Section 23-A-1, which punishes RH providers, regardless of their religious belief, who fail or refuse to disseminate information regarding RH services and programs, and Section 23-A-3, insofar as it punishes an RH provider who fails to refer

any non-life-threatening case to another RH provider, were also struck down because in the dissemination of information regarding programs and services and in the performance of reproductive health procedures, religious beliefs must be respected.

Section 23-A-2-i, which allows a married individual not in a life-threatening case to access RH procedures without the consent of the spouse, was declared unconstitutional. The Court said that reproductive health procedures should require the mutual consent and decision between the husband and the wife as they affect issues intimately related to the founding of the family. While as a general rule I support spousal consent, where spousal abuse is present, the decision of the spouse undergoing the procedure must prevail.

Section 23-B, insofar as it punishes any public officer who refuses to support RH programs, and Section 17, which mandates a 40-hour pro bono service by private and nongovernment RH service providers, including gynecologists and obstetricians, as a prerequisite for PhilHealth accreditation, were struck down. Conscientious objectors are exempted from these provisions as long as their religious beliefs and convictions do not allow them to render reproductive health service, *pro bono* or otherwise.

Section 3.01-A and J of the RH law Implementing Rules and Regulations (IRR), which defines abortifacients as "primarily" inducing abortion instead of simply inducing abortion, were declared unconstitutional. The qualifier "primarily" contravenes section 4(a) of the RH Law and violates Section 12, Article II of the

> Constitution, which recognizes the sanctity of family life.[31] Incidentally, only Justice Marvic Leonen dissented on this particular issue.
>
> Section 23-A-2-ii, which prohibits RH service providers from refusing to perform legal and medically-safe reproductive health procedures on minors in non-life-threatening situations without parental consent, was also declared unconstitutional. The Court ruled that by effectively limiting the requirement of parental consent to "only in elective surgical procedures," it denies the parents their right of parental authority in cases where what is involved are "non-surgical procedures."

Then Chief Justice Meilou Sereno and Justice Marvic Leonen dissented from the majority opinion declaring the foregoing provisions unconstitutional. Immediately striking in CJ Sereno's dissent was her decision to use the Filipino language, a move that I personally saw as her speaking directly to the millions of Filipino women who stood to gain the most from the RH Law's implementation. Particularly on the right to family life, she said:

> *"Walang anumang nakasulat sa RH law na nagaalis sa mag-asawa nang kanilang karapatang bumuo ng pamilya. Sa katunayan, tinitiyak nito na ang mga maralita na nagnanais magkaroon ng anak ay makikinabang sa mga payo, kagamitan at nararapat na procedures para matulungan silang maglihi at maparami ang mga anak. Walang anumang nakasulat sa batas*

[31] In this connection, the Court changed the wording of Sec. 9 of the RH Law to reflect the legislative intent, thus: "Any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is ~~not to~~ cannot be used as an abortifacient."

> *na nagpapahintulot sa pamahalaan na manghimasok sa pagpapasiya "[that] belongs exclusively to, and {is] shared by, both spouses as one cohesive unit as they chart their own destiny." Walang anumang nakasulat sa RH Law na humahadlang sa pagsali ng asawa sa pagtimbang ng mga pagpipiliang modern family planning methods, at pagpapasiya kung ano ang pinakamabuti para sa kanyang asawa.*
>
> *Sa pamamagitan ng pagpapahalaga sa pangunahing pasiya ng asawang sasailalim sa reproductive health procedure, pinaiigting lamang ng RH Law ang pangangalaga sa pangunahing karapatan ng bawat tao na magpasiya ukol sa kanyang sariling katawan. Sa pamamagitan din nito, naglalatag ang RH Law ng proteksiyon para sa mga medical professionals laban sa mga asunto at panliligalig bunga ng pagkuwestiyon o paghamon kung bakit nila isinagawa ang reproductive health procedure sa kabila ng kawalan ng pahintulot ng asawa."*

In the case of Justice Leonen, he was persuaded by our argument in our intervention that procreation is not the sole goal of every conjugal act, and even the Catholic Church is divided on this issue, negating the claim that the use of contraceptives goes against established Catholic dogma:

> "With respect to the Catholic faith, the comment–in–intervention of De Venecia, et al. included a history on the Catholic Church's changing and inconsistent position regarding contraceptives, and the notion that every conjugal act must be for a procreative purpose.

The intervenors asserted that the notion denouncing sex without procreative intent cannot be found in the old or new testament.

xxx

Intervenors even alleged that as early as 1999, "nearly 80% of Catholics believed that a person could be a good Catholic without obeying the church hierarchy's teaching on birth control." They, therefore, put in issue whether the views of petitioners who are Catholics represent only a very small minority within the church.

We cannot make any judicial determination to declare the Catholic Church's position on contraceptives and sex. This is not the forum to do so and there is no present controversy—no contraceptive and no individual that has come concretely affected by the law.

This court must avoid entering into unnecessary entanglements with religion. We are apt to do this when, without proof, we assume the beliefs of one sect or group within a church as definitive of their religion. We must not assume at the outset that there might be homogeneity of belief and practice; otherwise, we contribute to the State's endorsement of various forms of fundamentalism.

It is evident from the account quoted above giving the historical context of the contraceptives controversy that the Catholic church may have several perspectives and positions on the matter. If this is so, then any declaration of unconstitutionality on the basis of the perceived weaknesses in the way

> conscientious objectors are accommodated is premature."

With the Supreme Court's April 2014 decision finding the RH Law constitutional, and its permanent lifting of the SQAO, we thought that all roadblocks to the law's implementation were finally gone.

We were wrong.

B. Round 2: ALFI v. Garin

On May 28, 2014, barely two (2) months after the promulgation of the Supreme Court's decision in *Imbong*, some of the petitioners in *Imbong* wrote a letter addressed to the FDA, inquiring about the steps that the agency might have taken to carry out the decision of the Court. In reply to this letter, the OSG assured them that both the DOH and the FDA were taking steps to comply with the decision of the Court and that it would inform them of any developments.

Controversy began in September 2014, when the letter-writers chanced upon the FDA's Notice inviting Marketing Authorization Holders (*MAH*) of fifty (50) contraceptive drugs to apply for re-evaluation/re-certification of their contraceptive products and directed "all concerned to give their written comments to said applications on or before October 8, 2014."

Believing that the contraceptives enumerated in the Notice fell within the definition of "abortifacient" under Section 4(a) of the RH Law because of their "secondary mechanism of action which induces abortion or destruction of the fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb", the Alliance For the Family Foundation, Philippines (ALFI) through *Imbong* petitioner Atty. Noche, filed its preliminary opposition to all 50 applications with the FDA. The same opposition also questioned some 27 other contraceptive drugs and devices that had existing FDA registrations that were not subjects of any application for re-evaluation/re-certification.

Meanwhile, the FDA issued two (2) certificates of product registration for the hormonal contraceptives, "Implanon" and "Implanon NXT", which are progestin sub-dermal implants (PSIs) that can stop ovulation for three (3) years.

This prompted ALFI to file another petition with the Supreme Court, this time docketed as G.R. No. 217872, to stop the government's purchase, sale, distribution, and administration of artificial contraceptives – as well as their registration or re-certification with the FDA. It was obvious to us that this strategy was designed precisely to stymie the implementation of the RH Law that the Supreme Court has already declared to be constitutional, albeit through another route, i.e., challenging each and every FDA-approved contraceptive as "abortifacient".

In a turn for the worse, the Supreme Court's 2nd Division was moved by the ALFI petitioners to impose, in June 2015, a temporary restraining order (TRO) specifically on the distribution of Implanon and Implanon NXT, at least until the FDA certifies that they are not abortifacients. As these PSIs can prevent pregnancies up to 3 years, Likhaan director and co-founder Dr. Junice Melgar said in an interview that the TRO was "totally unexpected," especially since implants are a popular choice among the women they serve in the poorest districts of Manila. Notably too, the TRO "[came] on the heels of a report from the United Nations Committee on the Elimination of Discrimination Against Women which found the Philippines accountable for tolerating ordinances by the city of Manila that "gravely" and "systematically" violated women's rights."[32]

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[32] Jee Y. Geronimo, ***Supreme Court Stops Sale, Distribution of Implants,*** RAPPLER, June 30, 2015, at https://rappler.com/nation/sc-stops-distribution-sale-implants
See: https://www.escr-net.org/caselaw/2015/committee-elimination-discrimination-against-women-cedaw-inquiry-concerning-philippines for the CEDAW ruling dated 22 April 2015:
"In 1991, the Philippines delegated responsibility for "people's health and safety" to the local level. In exercise of this power, an executive order 003 ("EO 003") was issued in Manila, in 2000 which declared that the city would take an "affirmative stand on pro-life issues". In response to a joint submission from NGOs in 2008, the UN Committee on Elimination of Discrimination against Women (Committee) conducted

The DOH, through the OSG, asked the Supreme Court to lift the TRO because the restraint would result in the depleted supply of contraceptive drugs and devices in both accredited public health facilities and in the commercial market and that government funds will go to waste because huge quantities of Implanon and Implanon NXT will expire and yet will still be in government warehouses. But the Court was unpersuaded, holding in its Decision dated August 24, 2016 that "[t]o lift the TRO at this time would be to grant a motion for execution before a trial." It added that "[n]othing in this resolution, however, should be construed as restraining or stopping the FDA from carrying on its mandate and duty to test, analyze, scrutinize, and inspect drugs and devices. What are being enjoined are the grant of certifications/re-certifications of contraceptive drugs without affording the petitioners due process, and the distribution and administration of the questioned contraceptive drugs and devices including Implanon and Implanon NXT until they are determined to be safe and non-abortifacient." Thus, the Supreme Court said in its Resolution dated April 26, 2017: "[a]fter compliance with due process and upon the promulgation of the [FDA], the [TRO] would be deemed lifted if the questioned drugs and devices are found not abortifacients."

Given these developments, all eyes were on the FDA to certify that Implanon and Implanon NXT are safe and non-

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an inquiry into alleged human rights violations resulting from the enforcement of EO 003.

The Committee found that EO 003, in practice, resulted in a systematic denial of affordable access to modern methods of contraception and related information and services. This, in turn, led to unplanned pregnancies, unsafe abortions, unnecessary and preventable maternal deaths and increased exposure of women to HIV/AIDS. The Committee observed that the lives and health of thousands of women were put at risk and that the impact of the order particularly harmed disadvantaged groups of women, including poor women and adolescent girls, as well as women in abusive relationships. It was noted that impact of EO 003 was compounded by the funding ban on modern contraception in Manila's executive order 030.

The Committee concluded that the Philippine government is accountable for grave and systematic violations of women's rights under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), especially their rights to health [Art 12] and family planning [Art. 16 (1)(e); Art. 10 (h)]. Although the aforementioned orders were issued by the City of Manila, the Committee emphasized that delegation of power does not in any way negate or reduce the direct responsibility of the State party to fulfil its obligation to ensure the rights of all women in its jurisdiction. The Philippines clearly failed to meet this obligation."

abortifacient. And, several months later, in November 2017, the FDA released the results of its re-certification process of all the contraceptives challenged in *ALFI* as abortifacients. It said: "[p]er the FDA's Resolutions dated 10 November 2017 (on the applications for recertification filed by the Market Authorization Holders [MAHs] with opposition filed by [ALFI], the foregoing contraceptive products have been determined to be non-abortifacient."[33] By this action by the FDA, the TRO was deemed lifted.

III. FINAL AND CONTINUING BATTLEGROUND: CONGRESSIONAL FUNDING FOR THE RH LAW

With two Supreme Court cases filed to thwart the implementation of the RH Law now resolved with finality, and the TRO on PSIs lifted, one would think that the RH Law would now be fully operationalized. Sadly, it is, to this day, hounded by issues on insufficient funding due to deliberate efforts to block appropriations for it.

In 2016, we were dismayed to learn that a surreptitious bicameral conference committee maneuver succeeded in removing the budget allocated for DOH's purchase of contraceptives. Funding for the law was part of the 2016 General Appropriations bill, but Rep. Lagman said that a "huge" part of it was deleted by Sen. Tito Sotto. He added that the P1 billion cut "represents about 86 percent of the appropriation."[34] Senator Pia Cayetano, for her part, put the blame squarely on Senate finance committee chairman Senator Loren Legarda. Budget Secretary Florencio Abad also categorically said that the fund was "deducted in the Senate."[35]

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[33] Mara Cepeda, *Implanon contraceptive implants do not induce abortion – FDA*, RAPPLER, Dec. 12, 2017, at https://rappler.com/nation/implanon-contraceptive-implants-non-abortifacients-fda

[34] CNN Philippines Staff, *RH law author: P1B budget cut affects marginalized sector,* CNN PHILIPPINES, Jan. 12, 2016, at https://cnnphilippines.com/news/2016/01/12/reproductive-health-law-author-budget-cut.html

[35] Jee Y. Geronimo, *RH budget cut exposes problematic lawmaking in PH,* RAPPLER, Jan. 21, 2016, at https://rappler.com/newsbreak/in-depth/reproductive-health-budget-cut-lawmaking

In 2017, with new President Rodrigo Duterte vowing full support for the RH Law, we were hopeful that things would start looking up for the law's implementation. In a welcome move, he issued in January 2017 Executive Order No. 12 to "intensify and accelerate the implementation of critical actions necessary to attain and sustain 'zero unmet needs for modern family planning' for all poor households by 2018…within the context of the [reproductive health] law."[36] The EO carried a provision assuring it of funding, and allowing the Department of Budget and Management to realign and augment appropriations therefor, as necessary.

Unfortunately, budget cuts for RH Law funding continued in 2018.[37] In their report to the CEDAW in 2018,[38] NGOs led by the Center for Reproductive Rights lamented the Philippines' continuing failure to address the reproductive health needs of Filipino women—disproportionately impacting the poor and uneducated among them—despite the passage of the RH Law six years prior:

> "The key findings of the [Philippines'] latest National Demographic and Health Survey (NDHS) highlight the disproportionate impact of restricted access to contraceptive information and services on women and girls who are younger and unmarried. The 2017 NDHS indicates that, despite the enactment of the [RH Law], the contraceptive prevalence rate among currently married women has stagnated between 2013 (55%) and 2017 (54%) and unmet need for family planning

[36] Jee Y. Geronimo, *Duterte signs EO ensuring support for family planning*, RAPPLER, Jan. 11, 2017, at https://rappler.com/nation/duterte-signs-eo-family-planning-reproductive-health-law

[37] DJ Yap, *Pernia, Diokno grilled on RH budget*, INQUIRER.NET, Aug. 2, 2017, at https://newsinfo.inquirer.net/919547/pernia-diokno-grilled-on-rh-budget

[38] Letter to the CEDAW Secretariat from Catholics for Reproductive Health, et al., *Re: Supplementary information on the Philippines on the implementation of para. 40 of the Concluding Observations issued by the Committee during its 64th session*, Aug. 3, 2018, available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT_CEDAW_NGS_PHL_31639_E.pdf

only minimally decreased from 17.5% (2013)39 to 16.7% (2017). Younger married women aged 15-19 still experience the highest rate of unmet need among all age groups (28% versus 13%-18%) and lowest percentage of demand satisfied (56% versus 68%-82%).

Compared to currently married women, unmarried and sexually active women have a substantially higher unmet need for family planning (49% versus 17%). The state party's crucial role in addressing the high unmet need is reflected in the increasing number of contraceptive users who rely on the public sector as a source for modern contraceptives—from 47.2% in 2013 to 55.6% in 2017.

The high unmet need for contraceptives among adolescents who must secure parental consent to access them has resulted in an increasing rate of adolescent pregnancies in the country, exposing many young girls to avoidable pregnancy-related risks and harms. According to the Commission on Population, births among adolescent mothers aged 10-19 increased a fivefold from 203,653 births in 2011 to 1,040,211 in 2015. Comparing the 2013 and 2017 NDHS, the highest rate of adolescents who have begun childbearing is still reflected among those that belong to the lowest wealth quintile and educational background. The 2017 NDHS findings reflected that 15% of adolescents belonging to the lowest wealth quintile have begun childbearing compared to 3% who belong to the highest wealth quintile; and 32% of adolescents who have attained only a grade 1-6 level of education have already begun childbearing compared to 0.4% of adolescents with a college education." (Underscoring supplied)

In 2019, Sen. Tito Sotto continued to be a thorn in the side of RH Law advocates, as he made several attempts to de-fund the law, one contraceptive at a time, on account of their being allegedly abortifacient, contrary to the science and despite FDA approval. Thus, he recommended that procurement of PSIs be stopped, citing research that contradicts the ruling of the FDA that these are non-abortifacient,[39] thereby hijacking the P225M budget specifically allocated to buy 300,000 implants.[40] The Commission on Population and Development (PopCom) decried the move, and, speaking through its Executive Director Juan Antonio Perez III, said: ""[t]he action of the Senate President is regrettable, since there is no scientific basis for its removal. The FDA has not declared it as contrary to the provisions of the [RH Law]. Likewise, there is no new evidence that PSIs are abortifacients."[41]

Now that we are in the middle of the COVID-19 crisis that has locked down couples in their homes for several months, the effect of Sen. Sotto's defunding the purchase of PSIs is potentially catastrophic. Very worrisome is the report from Northern Mindanao, stating that the scrapping of the budget for implants will most likely cause a huge spike in unwanted pregnancies in the coming months. Northern Mindanao has about 613,836 women of reproductive age, and the DOH has apportioned to it only 800 pieces of PSI for this year, the lowest allocation among the regions. PopCom said that their stock of

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[39] Michelle Abad, *Sotto calls for halt in implant contraceptive funding for 2020*, RAPPLER, Dec. 19, 2019, at https://rappler.com/nation/sotto-calls-halt-implant-contraceptive-funding-2020

[40] Ana P. Santos, *Sotto attempt to remove fund for contraceptives is reproductive coercion*, RAPPLER, Dec. 13, 2019, at https://rappler.com/voices/thought-leaders/dash-of-sas-sotto-attempt-remove-funding-contraceptive-implants-reproductive-coercion: "The World Health Organization (WHO) has implants on the Model List of Essential Medicines. This is a list of medications that are considered effective, safe and most important to meet the health needs of a country. The list is referenced by countries worldwide to guide them in the development of their own local list of essential medicine. The DOH also recommends implants as a "beneficial and convenient manner of birth spacing" and clarifies that it does not cause abortion."

[41] Commission on Population and Development, *POPCOM laments Senator Sotto's order to strike out DOH's 2020 budget for implants,* POPCOM WEBSITE, http://popcom.gov.ph/popcom-laments-senator-sottos-order-to-strike-out-dohs-2020-budget-for-implants/

the PSIs is only good for two to three months, or until June 2020.[42]

Already, the UNFPA has come out with a study showing that "[o]ngoing lockdowns and major disruptions to health services during the COVID-19 pandemic could result in seven million unintended pregnancies in the coming months. [It] estimates that the number of women unable to access family planning or facing unintended pregnancies, gender-based violence and other harmful practices, could "skyrocket" by millions due to the crisis", attributable to the disruption of global supply chains for contraceptives and the closure of health centers that could provide free contraceptive supplies to the indigent sector.[43]

A July 2020 report from Al Jazeera shows that the Philippines is already suffering the consequences of the extended lockdown in terms of a surge in unwanted pregnancies:

> "In the Philippines, experts say the lockdown means more than 5 million women in the Philippines are likely to find their reproductive health services disrupted.More than 1.8 million unplanned pregnancies were already expected this year, and the University of the Philippines Population Institute (UPPI) and the UNFPA are predicting a coronavirus baby boom with an additional 751,000 unintended pregnancies if community quarantine measures continue until the end of the year.
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> "This would be the highest number of births in the country since 2012," said Juan Antonio Perez III, executive director of the [PopCom]. According to PopCom data, the number of births that year was 1.79 million and has been slowly declining as family planning services became more widely available.

[42] Jigger J. Jerusalem, *Cut in DOH budget affects access to reproductive health services*, INQUIRER.NET, Mar. 21, 2020, available at https://newsinfo.inquirer.net/1245992/cut-in-doh-budget-affects-access-to-reproductive-health-services#ixzz6UjpCV5Tc

[43] UN News, *COVID-19 could lead to millions of unintended pregnancies, new UN-backed data reveals*, Apr. 28, 2020, UNITED NATIONS NEWS WEBSITE, at https://news.un.org/en/story/2020/04/1062742

> But the lockdown is reversing the situation.
> PopCom says government health centres have seen a 50-percent drop in people using their services since March, mostly due to lack of public transport, limited clinical staff and reduced clinic hours."[44]

Meanwhile, the woeful plight of poor pregnant Filipino women and their babies was recently brought in sharp focus when healthcare workers from Dr. Jose Fabella Memorial Hospital, a tertiary government maternity hospital in Manila, staged a silent protest on August 3, 2020 to shine a light to the problems besetting the already overburdened institution due to the COVID-19 crisis, [45] with the virus easily spreading in the cramped wards, infecting patients and their newborns, and the hospital staff.

And our young girls are in increasingly perilous straits, suffering from the effects of having children too early, when they are themselves children. PopCom disclosed at the Senate finance committee hearing on September 18, 2020 that more minors are getting pregnant in the Philippines, pointing to data that show that at least 40 to 50 children aged 10 to 14, give birth every week.[46] Every week! That this is damning proof of the rising incidence of statutory rape in our country is a topic for another paper; this, at the very least, underscores the urgent need to empower our minor girls on their sexuality by removing parental consent and other barriers for them to access family planning and reproductive health services.

For women's rights and reproductive health advocates in the Philippines, the work is far from done. Stopgap measures—like the DOH's launching this April 2020 of *Family Planning on Wheels*, a program where health workers visit various

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[44] Ana P. Santos, *Philippines faces baby boom after lockdown hits family planning,* AL JAZEERA, July 14, 2020, at https://www.aljazeera.com/news/2020/07/philippines-faces-baby-boom-lockdown-hits-family-planning-200714063035071.html

[45] Michelle Abad, *Mothers, health workers call for help in coronavirus-hit Fabella Hospital*, RAPPLER, Aug. 8, 2020, at https://rappler.com/newsbreak/in-depth/mothers-health-workers-call-for-help-coronavirus-hit-fabella-hospital

[46] Vanne Elaine Terrazola, *More minors getting pregnant…*, MANILA BULLETIN, September 18, 2020, https://mb.com.ph/2020/09/18/more-minors-getting-pregnant-40-to-50-adolescents-give-birth-every-week-popcom/

communities and hand out three months' supply of their preferred birth control,[47]== can help, at least in the short-term, reduce the unmet need for contraceptives in poor urban and rural communities. But the ever-present threat of defunding crucial RH Law components – as was seen every year in Congress since 2016 – is to my mind the biggest obstacle to the law's full implementation. In the last two years of the Duterte administration, it is my hope that the President's political will is used to ensure that every centavo needed to provide free and safe sexual and reproductive health care to Filipino women and girls is faithfully reflected in the budget and actually used for their intended recipients, with the DOH and LGUs strictly monitoring strict compliance with the RH Law.

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[47] Santos, *supra* note 45, at 17.

Employment Law and the Gender Gap in the Philippines: A Starting Point for Further Study

*Easter Princess U. Castro-Ty, Maria Viola B. Vista-Villaroman**

I. INTRODUCTION

In 2015, the Philippines, together with other United Nation member-states, affirmed its commitment to achieve sustainable development goals.[1] These goals include achieving gender equality in all aspects of life.

In the workplace setting, and at least from a policy perspective, the Philippines has taken significant steps towards realizing gender equality and empowerment of women. For example, several laws and measures have been passed and implemented by the Philippine government that grant special benefits and protections to women in the workplace.

Thus, apart from continuing implementation, or improvement in enforcement, is the work on equality for women workers done? To determine if this development goal is being met, the current status of the female labor force in the Philippines should be examined.

In the recently published Global Gender Gap Report 2020 ("Gender Gap Report") by the World Economic Forum, the

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[1] The United Nation's Transforming our world: the 2030 Agenda for Sustainable Development available at https://sustainabledevelopment.un.org/post2015/transformingourworld last accessed on October 11, 2020 at 7:45p.m.

Philippines is reported as having achieved a decent overall score, ranking 16th among the 153 countries covered by the study, in terms of its performance in bridging the gender gap. However, a closer look at the Philippine scorecard will show that its performance with respect to bridging the gap of labor force participation rate between men and women has remained quite poor,[2] ranking 121st in this area out of 153 countries.[3]

The data of the Philippine Statistics Authority's ("PSA") shows that the labor participation rate of women as compared with men appears to have stalled for the past decade.[4] In 2016, only 49.6% of the total women population form part of the labor force (compared to the labor force participation rate of 76.9% of men). In 2020, the gap has grown wider with the labor force participation rate of women at 47.6% (compared to the labor force participation rate of 74.8% of men).

The authors are not aware of any study that has been made to try to identify why the Philippine legal framework, with its declared aims that favor gender equality and gender-sensitive proscriptions, does not necessarily translate into better labor force participation. It would also be important to look into the overall findings of the report – which relate to global experience, rather than the Philippine situation – and determine if the relatively high placing of the Philippines can in fact be linked to gender sensitive local laws.

This article does not present such a study but seeks only to (i) provide a brief survey of the principal Philippine laws that provide special benefits and rights to women workers, (ii) note the findings of the Gender Gap Report and related information

[2] This refers to the proportion of a country's working-age population (15–64) female population that engages actively in the labor market, either by working or looking for work (*i.e.,* ratio of the number of women participating in the labor force to total labor force). Labor force data does not take into account workers employed abroad.
[3] World Economic Forum's Global Gender Gap Report of 2020 available at http:// reports.weforum.org/global-gender-gap-report-2020/dataexplorer last accessed on October 11, 2020 at 12:23 a.m.
[4] Philippine Statistics Authority's Fact Sheet on Men and Women from 2018-2020 available at https://psa.gov.ph/content/psa-issues-updates-women-and-men-philippines-5 last accessed on October 11, 2020 at 8:56p.m.

and share comments on those findings, and (iii) discuss some possible directions for study by policymakers and regulators.

II. WOMEN SPECIAL RIGHTS AND PROTECTIONS IN THE WORKPLACE

A. 1987 Constitution

Women are granted several protections under Philippine labor laws. The 1987 Constitution provides that the State "recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men"[5] and "shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."[6]

These constitutional guarantees are carried out in various laws that aim to ensure the equality of women with men, while still acknowledging that women are differently situated from men and that they have needs and capabilities specific to them.

B. Labor Code and Other Special Laws

Presidential Decree No. 442, or the Labor Code of the Philippines ("Labor Code"), and other special laws grant women employees exclusive benefits and accord them certain protections. On the other hand, certain special laws grant benefits that are exclusive to men or women, or grant benefits that may be availed of by both male and female employees.

One of the most noteworthy benefits granted exclusively to women under Philippine law is the maternity leave benefit provided by Republic Act No. 11210, or the Expanded Maternity Leave Law and Republic Act No. 11199, otherwise known as the

[5] Article II, Section 14.
[6] Article XIII, Section 14.

Social Security Act of 2018. Women are now generally entitled to 105 days of paid maternity leave, with an option to extend for an additional thirty 30 days without pay.[7] If the woman employee is a solo parent, the maternity leave benefit is 120 days. This benefit is available for women employees in both the public and private sectors. It is granted in every instance of pregnancy, miscarriage, or emergency termination of pregnancy, regardless of frequency. However, in cases of miscarriage or emergency termination, only 60 days of maternity leave is granted.[8]

Another type of leave credit is granted to women by Republic Act No. 9710, or the Magna Carta of Women. This law entitles a woman employee who has undergone surgery caused by gynecological disorders to a special leave benefit of two months following her surgery, with full pay based on her gross monthly compensation.[9]

Republic Act No. 9262, or the Anti-Violence against Women and Their Children Act of 2004 ("Anti-VAWC Law"), grants women who are victims of violence up to 10 days paid leave, which may be extended as specified in a protection order.[10]

Male employees are similarly entitled to paternity leave under Philippine law. Republic Act No. 8187, or the Paternity Leave Act of 1996, grants every married male employee in the private and public sectors to a paternity leave of seven days with full pay for the first four deliveries of the legitimate spouse with whom he is cohabiting.[11] In addition, under the Expanded Maternity Leave Act, a woman employee may allocate up to seven days of her maternity leave credits to the child's father, whether or not he is her legitimate spouse.[12] The law further allows the allocation of such credits to an alternate caregiver, who may be a relative within the fourth degree of consanguinity

[7] Section 3, Republic Act No 11210.
[8] *Ibid.*
[9] Section 18, Republic Act No. 9710.
[10] Section 43, Republic Act No. 9262.
[11] Section 2, Republic Act No. 8187.
[12] Section 6, Republic Act No. 11210.

or the current partner of the female worker sharing the same household, in case of the death, absence or incapacity of the child's father.[13]

Under Republic Act No. 8972, or the Solo Parents' Welfare Act of 2000, any solo parent, whether male or female, is entitled to an additional leave privilege of seven working days every year.[14] Employers are also expected to offer flexible work schedules to solo parents, provided that these do not affect individual and company productivity.[15]

Adoptive parents are likewise entitled to all of the foregoing benefits. Republic Act No. 8552, or the Domestic Adoption Act, provides that adoptive parents enjoy all the benefits to which biological parents are entitled from the date the adopted child is placed in their care, provided that the adoptee is below seven years old.[16]

There are special protections accorded to women in the workplace. Discrimination against women employees is prohibited by various laws. Under the Labor Code, discrimination against a female employee with respect to terms and conditions of employment solely on account of her sex is unlawful.[17] Discrimination includes payment of a lesser compensation to a female employee as against a male employee for work of equal value, as well as favoring a male employee over a female employee with respect to promotion and opportunities solely on account of their sexes.[18]

The Labor Code also prohibits stipulations against marriage. It is deemed unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge,

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[13] *Ibid.*
[14] Section 8, Republic Act No. 8972.
[15] Section 6, Republic Act No. 8972.
[16] Section 12, Republic Act No. 8553
[17] Article 133, Labor Code.
[18] *Ibid.*

discriminate or otherwise prejudice a woman employee merely by reason of her marriage.[19]

The Labor Code further enumerates the following acts as unlawful on the part of an employer: (1) to deny any woman employee the benefits provided therein or to discharge any woman employee, for the purpose of preventing the woman from enjoying any of the benefits; (2) to discharge any woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy; and (3) to discharge or refuse the admission of a woman employee upon her return to work for fear that she may again be pregnant.[20]

Special laws likewise provide protections against acts of gender discrimination. The Magna Carta of Women expressly provides that discrimination against women is prohibited, and entities who commit discrimination shall be subject to the sanctions provided thereunder.[21] Republic Act No. 10354, or the Responsible Parenthood and Reproductive Health Act, prohibits employees from suggesting, requiring, unduly influencing, or causing any applicant or employee to submit herself to sterilization, to use any modern methods of family planning, or not to use such methods as a condition for employment, continued employment, promotion, or the provision of employment benefits.[22] Further, pregnancy or the number of children shall not be a ground for non-hiring or termination of employment.[23] The Anti-VAWC Law states that an employer who prejudices a person for assisting a co-employee who is a victim shall be liable for discrimination.[24] The Solo Parents' Welfare Act provides that no employer shall discriminate against any solo parent employee with respect to terms and conditions of employment on account of such parent's status.[25]

The recently-enacted Republic Act No. 11313, or the Safe Spaces Act, now defines and prohibits gender-based sexual

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[19] Article 134, Labor Code.
[20] Article 135, Labor Code.
[21] Section 35, Republic Act No. 9710.
[22] Section 23(c), Republic Act No. 10354.
[23] *Ibid.*
[24] Section 43, Republic Act No. 9262.
[25] Section 7, Republic Act No. 8972.

harassment in different contexts, including the workplace. Employers now have the duty to prevent, deter, or punish the performance of acts of gender-based sexual harassment in the workplace.[26] Employees and co-workers also have the duties of refraining from committing acts of gender-based sexual harassment and discouraging the conduct of such acts, among others.[27]

Republic Act No. 10151 had the effect of repealing the provision of the Labor Code that prevented women from engaging in night work. Women are now allowed to engage in night work in the same capacity as their male counterparts. However, measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work, before and after childbirth, for a period of at least 16 weeks, as well as for additional periods as may be necessary for the health of the mother or the child.[28]

Republic Act No. 10028, or the Expanded Breastfeeding Promotion Act of 2009, amended Republic Act No. 7600, or the Rooming-In and Breastfeeding Act of 1992. All health and non-health facilities, establishments, and institutions are mandated to establish lactation stations.[29] Further, they are required to provide nursing employees with break intervals to breastfeed or express milk, in addition to their regular time off for meals.[30] Such time shall be counted as compensable hours worked.[31]

The financial burden of granting the benefits provided by the laws discussed above is generally borne by the employers. The only exception appears to be the maternity leave under the Expanded Maternity Leave Law, which is partly borne by the government (although of course, the Social Security System (SSS) sources its funds from contributions of both employers and employees). It states that the SSS shall reimburse the employer

[26] Section 17, Republic Act No. 11313.
[27] Section 18, Republic Act No 11313.
[28] Section 158, Republic Act No. 10151.
[29] Section 11, Republic Act No. 10028.
[30] Section 12, Republic Act No. 10028.
[31] *Ibid.*

one hundred percent (100%) of the amount of maternity benefits advanced to the female worker by the employer.[32] However, employers are responsible for the payment of the salary differential between the actual cash benefits received from the SSS by the female workers and their average weekly or regular wages, for the entire duration of the maternity leave, subject to certain exceptions.[33]

The Rooming-In and Breastfeeding Act specifically provides that expenses shall be borne by the employer, but such expenses are deductible up to double the amount from the employer's gross income for purposes of taxation.[34] This may be a good model to adopt for other laws which mandate the establishment of facilities and structures for women, as it would encourage the cooperation of employers and promote the full implementation of these laws.

To help enforce these laws, penalties are imposed for certain violations or non-compliance therewith. The Labor Code attaches criminal liability to the commission of acts of discrimination and other violations of said law,[35] which are punishable with a fine of not less than PhP1,000 but not more than PhP10,000, or imprisonment of not less than three months but not more than three years, or both such fine and imprisonment at the discretion of the court.[36] If committed by a corporation, trust, firm, partnership, association or any other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership, association or entity.[37]

The Anti-VAWC Law adopts the penal provisions of the Labor Code. An employer who prejudices the right to leave credits provided to women under said law shall be subject to the same penalties in the preceding paragraph.

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[32] Section 5(a)(4), Republic Act No. 11210.
[33] Section 5(c), Republic Act No. 11210.
[34] Section 6, Republic Act No. 10028.
[35] Article 133, Presidential Decree No. 447.
[36] Article 288, Presidential Decree No. 447.
[37] Article 289, Presidential Decree No. 447.

Violations of the Magna Carta of Women by private entities entail the payment of damages.[38]

The Responsible Parenthood and Reproductive Health Act penalizes any violation thereof with imprisonment ranging from one month to six months, or a fine of PhP10,000 to PhP100,000, or both such fine and imprisonment at the discretion of the competent court.

The Expanded Maternity Leave Act states that an employer who fails or refuses to comply with the provisions of such law shall be punished by a fine of not less than PhP20,000 but not more than PhP200,000, or imprisonment of not less than six years and one day, but not more than 12 years, or both.[39] If the act or omission is committed by an association, partnership, corporation, or any other institution, its managing head, directors, or partners shall be held liable.[40] Moreover, failure on the part of any association, partnership, corporation, or private enterprise to comply with the provisions of the law shall be a ground for non-renewal of business permits.[41] Lastly, if a female worker should give birth, suffer a miscarriage, or undergo an emergency termination of pregnancy without the required contributions having been remitted for her by her employer to the SSS, or without the SSS having been previously notified by the employer of the pregnancy, the employer shall pay to the SSS damages equivalent to the benefits which the female employee would have otherwise been entitled to.[42]

The Safe Spaces Act penalizes employers who commit acts of gender-based sexual harassment.[43] They may be held liable for the non-implementation of their duties under the law,[44] with a penalty of a fine not less than PhP5,000 but not more than PhP10,000. Employers may also be held liable for not taking action on reported acts of gender-based sexual harassment.[45] In

[38] Section 41, Republic Act No. 9710.
[39] Section 18, Republic Act No. 11210.
[40] *Ibid.*
[41] *Ibid.*
[42] Section 5(a)(5), Republic Act No. 11210.
[43] Section 19, Republic Act No. 11313.
[44] Ibid.
[45] Ibid.

this case, the penalty attached is a fine not less than PhP10,000 but not more than PhP15,000.

III. WOMEN STATISTICS IN EMPLOYMENT PARTICIPATION

A. 2020 Fact Sheet on Men & Women from Philippine Statistics Authority

In 2020, the PSA estimated the total population in the Philippines to have ballooned to around 108.7 million, of which 54.9 million are men and 53.8 million are women.[46] Of the total population, the working age population (those who are 15 years old and over) is estimated to be around 72.8 million, of which around 36.5 million are men and around 36.2 million are women.[47] Of the total working age population, only 61.7% or around 44.9 million were in the labor force (either employed or unemployed).[48] The rest who are deemed economically inactive include housewives, students, persons with disability, and retirees.

Interestingly, while the total working age population in the Philippines is almost equally represented by both gender, women participation in the labor force is much lower at 47.6% compared to men at 74.8%.[49] This means that more men are part of the labor force than women and that majority of the working age population that are not part of the labor force or those that are economically inactive are women. However, of the women and men that are part of the labor force, the

[46] PSA's Updated Population Projections based on 2015 POPCEN released on October 4, 2019 available at https://psa.gov.ph/statistics/census/projected-population last accessed on October 10, 2020 at 9:40p.m.

[47] PSA's Labor Force Survey as of January 2020 released on August 7, 2020 available at https://psa.gov.ph/content/employment-situation-january-2020-0 last accessed on October 10, 2020 at 9:40p.m.

[48] Labor force participation refers to the population 15 years old and over who contribute to the production of goods and services in the country. It comprises both the employed and unemployed.

[49] PSA's Factsheet on Women and Men in the Philippines from 2018-2020 (Reference No.: 2020 – 052) issued on March 5, 2020 available at http://www.psa.gov.ph/gender-stat last accessed on October 10, 2020 at 10:04p.m

unemployment rate of men is a little bit higher at 5.1%,[50] compared to that of women which is only at 4.9%.[51]

The most common occupation for women is service and sales workers (at 30.3%) followed by managers (11.7%) and clerical support workers (10.3%). Meanwhile, for men it is elementary occupations (at 29.7%) followed by skilled agricultural, forestry, and fishing workers (15.5%) and plant and machine operators (12%).[52] The major industry division where most women are employed are in wholesale and retail, repair of motor vehicles and motorcycles, and personal and household goods. Meanwhile, the major industry division where most men are employed are in agriculture, hunting and forestry. In addition, it appears that women are still largely expected to help more in the family business without pay because the proportion of unpaid family workers in terms of percentage is much higher for women at 8.9% compared to men at only 3.%.[53]

The lower participation rate of women in the labor force could not have been caused by difference in the access to education because based on the distribution of the population six years old and over by highest educational attainment, women have equal or even better access to education with men, with around 13.4% of total women population having graduated from college, while only around 9.4% of the total men population have attained the same level.[54]

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[50] *Unemployment Rate refers to the* proportion of unemployed persons to the total labor force. *"Unemployed"* consists of persons in the labor force who are reported as (1) without work; and (2) currently available for work; and (3) seeking work or not seeking work because of the belief that no work is available, or awaiting results of previous job application, or because of temporary illness or disability, bad weather or waiting for rehire or job recall.

[51] PSA's Factsheet on Women and Men in the Philippines from 2018-2020 (Reference No.: 2020 – 052) issued on March 5, 2020 available at http://www.psa.gov.ph/gender-stat last accessed on October 10, 2020 at 10:04p.m.

[52] PSA's Labor Force Survey – January 2020 released on August 7, 2020 available at https://psa.gov.ph/content/employment-situation-january-2020-0 last accessed on October 10, 2020 at 9:40p.m.

[53] "*Unpaid family workers*" refer to family members who work without pay in a farm or business operated by the family.

[54] The two second highest education attainment of the rest of the population are elementary education (19.4 % of total women population, and 23.3% of total men population have completed elementary education) and junior high school (22.2% of total women population and 21.2% of men total population have completed junior high school).

B. World Economic Forum Global Gender Gap Report

As earlier noted, the Gender Gap Report ranked the Philippines 16th among the 153 countries surveyed by the World Economic Forum using its own global gender gap index with a total score of 0.781 (with 0.00 representing imparity and a perfect score of 1.00 representing parity).[55]

Thus, if the ultimate goal is to achieve overall parity at 1.00, a score of 0.781 implies that the Philippines has made significant advancements in the promotion of gender equality in the four fundamental areas considered by the World Economic Forum in their study. These areas are (i) economic participation, (ii) educational attainment, (iii) health and survival and (iv) political empowerment. In other words, according to the Gender Gap Report, the Philippines has closed 78% of its overall gender gap. As such, the country placed second among all countries in East Asia and Pacific next only to New Zealand, which ranks first in the region. Furthermore, the Philippines has the 'best rank' (or the most gender-neutral) among its Southeast Asian neighbors, the far second is Lao People's Democratic Republic, which ranks 43rd overall.

Of the four fundamental areas considered by the Gender Gap Report, the most relevant to the discussion on employment-related issues may be the Philippine's performance in the Economic Participation and Opportunity dimension. This subindex looks at the following indicators: (a) participation gap (looks at the difference between women and men in labor force participation rates);[56] (b) renumeration gap (captured through a hard data indicator or the ratio of estimated female-to-male earned income and a qualitative indicator gathered through the

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[55] World Economic Forum's Global Gender Gap Report of 2020 available at http:// reports.weforum.org/global-gender-gap-report-2020/dataexplorer last accessed on October 11, 2020 art 12:23 a.m.

[56] Labor force participation rate % refers to the proportion of a country's working-age population (15–64) female population that engages actively in the labor market, either by working or looking for work. (*i.e.,* ratio of the number of women participating in the labor force to total labor force). Labor force data doesn't take into account workers employed abroad.

World Economic Forum's annual Executive Opinion Survey on the topic of wage equality for similar work);[57] and (c) advancement gap (captured through two hard data statistics on the ratio of women to men among legislators, senior officials and managers, and the ratio of women to men among technical and professional workers).[58]

On the Economic Participation and Opportunity category, the Philippines ranks 14th of 153 countries with a score of 0.792 (with 0.00 representing imparity and a perfect score of 1.00 representing parity). The table below shows the Philippines' Score Card on Economic Participation and Opportunity overall and a breakdown of its performance in the four indicators:

Indicators	**Rank**	**Score**
Economic Participation and Opportunity	**14**	**0.792**
Labor force participation rate (%)	121	0.626
Wage equality for similar work (1-7 best)	5	0.812
Estimated earned income ($1,000)[59]	58	0.658
Legislators, senior officials and managers (%)	1	1.000

[57] This score is based on the World Economic Forum's Executive Opinion Survey (EOS) for the years 2018-2018 where the survey participants were asked to respond to the survey question, "In your country, for similar work, to what extent are wages for women equal to those of men?" (1 = not at all, significantly below those of men; 7 = fully, equal to those of men).

[58] World Economic Forum's Global Gender Gap Report of 2020 (at pages 45 to 47) available at http://
reports.weforum.org/global-gender-gap-report-2020/dataexplorer last accessed on October 11, 2020 art 12:23 a.m.

[59] The estimated female earned income is a proxy to command by women over a country's economic resources. For
each country, it is computed using female and male shares of the economically active population, the ratio of the female to male wages (both indicators are sourced from the International Labor Organization), gross domestic product valued at constant 2011 international dollars (IMF), and female and male shares of population (World Bank). The methodology used to compute this indicator is adapted from the methodology developed by the United
Nations Development Programme's Human Development Report Office for computing the Gender Development Index (UNDP, 2018, page 6). Female and male wage measures used in the computation of the gender wage ratio correspond to the mean nominal monthly earnings of female and male employees, respectively. In the absence of wage data, a gender wage ratio of 0.75 is used in the computation of the wage bill. The ILO's measure of earning corresponds to the mean of monthly earnings of all employees in nominal terms.

Indicators	Rank	Score
Professional and technical workers (%)	1	1.000

Based on the foregoing, while overall, the Philippines ranks well on Economic Participation and Opportunity, it is performing most poorly (among the four indicators) in addressing the labor force participation gap. As mentioned, the Philippines currently ranks 121 of all the 153 countries in this area. Of the total women population, only 47.7% are part of the labor force or are economically active compared to the labor participation rate of men, which is much higher at around 76.2%.

This poor performance in the participation gap area is also reflected in the financial disparities between men and women in the Philippines. While the Philippines ranks well in the 'wage equality for similar work' (perceived wage equality of men and women) at fifth out of 153 countries, it is performing poorly at bridging the income gap between men and women (the ratio of the total wage and non-wage income of women to that of men). This means that the Philippines has reached significant progress in ensuring that women in similar positions (for seniority and skill levels) are not paid less than their male counterparts with a score of 81.2 (with less than 20% of the wage gap to be bridged). However, in terms of bridging the income gap (ratio of the total wage and non-wage income of women to that of men), the Philippines still has a long way to go, having achieved only a score of 65.8%. This means that over 34.2% of the income gap will still need to be bridged.

Notwithstanding the Philippines' poor performance in the labor force participation rate and estimated earned income areas, it still managed to finish with a high rating in the Economic Participation and Opportunity dimension with a score of almost 80% mostly because of the finding that the Philippines has successfully bridged the gap in terms of women participation in senior and leadership roles and professional and technical professions. In the Philippines, women have outnumbered men in senior and leadership roles, as well as in

professional and technical professions.[60] There are only four countries in the world including the Philippines that have achieved this feat.[61]

What might be a basic takeaway from these findings? It appears that women are at par or even better when it comes to occupying senior or leadership roles, and in this area, there seems to be no issue on the "wage equality for similar work" aspect. This seems to indicate that the female workforce has issues where seniority and skill level requirements are lower – typically where women employees could be said to have less power, and where management may potentially be more sensitive to costs of hiring women.

Of course, one possible aspect that the report may not have considered in determining labor participation, is that women may be "employed" but in more informal sectors – as domestics, as "helpers" to relatives, or in home enterprises. But this type of labor situation has issues of their own.

C. Barriers in Women Participation in the Workplace

The Gender Gap Report offers a brief explanation on the high income disparities between men and women as a global phenomenon (though not specifically in the Philippine context). According to the Gender Gap Report, this may be due partially to the following factors: (a) women encounter challenges to get to more senior roles and/or to be employed in high-reward segments of the economy; (b) women are less likely than men to obtain revenues from non-employment activities (*i.e.,* from financial investment, entrepreneurship) where financial gains are substantially higher;[62] and (c) the disproportionate burden of

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[60] World Economic Forum's Global Gender Gap Report of 2020 (at page 32) available at http://
reports.weforum.org/global-gender-gap-report-2020/dataexplorer last accessed on October 11, 2020 art 12:23 a.m.

[61] *Ibid.*

[62] In the Philippine context, a cultural factor that may help explain the income gap is that culturally women are still largely expected to help more in the family business without pay because as shown by the PSA data the proportion of unpaid family

household and care responsibilities that women continue to carry compared to men almost everywhere.[63]

Further, the Gender Gap Report found that the dedication of women to household and care activities is not only due to overall standards of living because even in advanced economies such as Japan, the share of time that women spend on to household and care activities is more than four times that of men. The Gender Gap Report also found that across advanced and developing countries, there is a negative relationship between women's relative amount of time they spend on unpaid domestic work and economic participation and opportunity gender gaps.[64] This finding suggests that in addition to ongoing cultural and social transformations that require a long time to occur, policies that offer cost- and time-effective solutions to house care needs (such as daycares within a company) or change the incentives for men and women to rebalance the burden of household and care duties (such as paternity leave or gender-neutral parental leave) are likely to have a significant impact on women's career opportunities.

What about the Philippines? The usual 'suspects' such as access to education (or to highest educational attainment), general literacy, and health and survival gender gaps may not have caused the 'gap.' Available data shows that, in the Philippines, women do have equal if not better access to education to men. A significantly larger figure representing women is enrolled in secondary education (71% of women compared to 60% of men) and tertiary education (57% of women versus 43% of men).[65] Literacy is almost universal with rates above 98% for both men and women.[66] Also, in terms of health and survival gender gaps, the Gender Gap Report has found that

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workers in terms of percentage is much higher for women at 8.9% compared to men at only 3.%.

[63] World Economic Forum's Global Gender Gap Report of 2020 (at pages 10 to 11) available at http://reports.weforum.org/global-gender-gap-report-2020/dataexplorer last accessed on October 11, 2020 art 12:23 a.m.

[64] *Ibid.*

[65] *Ibid.*

[66] *Ibid.*

women can expect to live in good health five years longer than men.[67]

On October 2, 2019, the National Economic and Development Authority ("NEDA") released the results of its commissioned study titled "*Determinants of Female Labor Force Participation in the Philippines*" ("NEDA's Study") to help identify the significant factors and explain the low participation of women in the labor force.[68] The NEDA study likewise proposed policy reforms that would help counter stereotyped gender norms and discrimination in the workplace.

Of the several factors affecting female labor participation rate, the NEDA study found that it is marriage and maternal/childbearing role of women that serve as the key reasons for women withdrawing from the labor market. The men's labor force participation rate has been consistently higher than that of women across ages but the widest gap has been observed in the women's childbearing ages of 20 to 39 years old. This indicates a higher likelihood of women to withdraw from the labor force in their peak childbearing age of 25 to 29 years old for marriage, childbirth and childrearing (this disruption is observed only for women and not for men).[69] Thus, it may be said that patriarchal family structures and stereotyped gender roles continue to play a big factor in reducing women's employment rate by eight to 13 percentage points. The lower labor force participation of currently married women and those with very young children, reflects the operation of stereotypical norms that expect women to stay at home to care for the spouse and children while the men participate in the labor market to provide for household needs.[70]

The cultural norm is not changed if women do not believe that workplaces can provide an environment that will enable them to support the family structure and set of duties as they

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[67] *Ibid.*
[68] NEDA's commissioned study on the Determinants of Female Labor Force Participation in the Philippines available at http://www.neda.gov.ph/new-neda-study-identifies-reasons-behind-filipino-womens-low-labor-participation-rate/ last accessed on October 11, 2020 at 9:09p.m.
[69] NEDA's Study at page 16.
[70] NEDA's Study at page 20.

see it. Thus, laws such as those that enacted the 105-Day Expanded Maternity Leave Law are important. This law allows women workers to earn their full pay while they are on maternity leave (which has also been further increased from 60 or 75 days depending on the circumstances of birth to 105 days), whereas previously they only received the minimal cash benefit that is paid out from the insurance program managed by the SSS.[71]

The limited availability of more affordable and trusted child care services has also been cited by the NEDA Study as further reason for mothers choosing to withdraw from the labor force to take care of their children.[72]

In relation to this, the study also found that the high cost of commuting to work and heavy traffic—which reduces real wages and increases the cost of travel time to work—also discourages participation in the labor force, especially for mothers who are burdened with the high cost of childrearing and thereby raising their reservation wages and the value of mother's time at home.[73]

Taking into account the foregoing factors, access to reasonable daycare services and allowing work from home arrangements may further help encourage women to participate in the labor market.

In this connection, the passing of the Telecommuting Act, which permits employers and their employees to adopt telecommuting arrangements (such as work from home arrangements) that may allow both men and women to equally participate in the labor market and at the same time share in the burden of caring for their families appears to be a step in the

[71] Republic Act No. 11210 titled "*105-Day Expanded Maternity Leave Law*" passed into law on February 20, 2019 available at https://www.officialgazette.gov.ph/downloads/2019/02feb/20190220-RA-11210-RRD.pdf last accessed on October 11, 2020 at 9:57p.m.
[72] NEDA's Study at page 21.
[73] NEDA's Study at page 22.

right direction. Thus, the NEDA Study cites the need to strengthen the enforcement of the Telecommuting Act.[74]

We note, however, that as currently enacted, the Telecommuting Act does not have teeth as the adoption of telecommuting arrangements is on a voluntary basis among employers and employees. There is also no financial incentive under the law to encourage employers to offer this arrangement to their staff.

IV. SOME COMMENTS

The NEDA Study provides useful input, but viewing the issues of women in the workplace, particularly labor participation, as principally creations of cultural norms or a lack of infrastructure that makes employment more convenient, may prevent a deeper drill into the problem.

While women may withdraw from the labor force to concentrate on the family, those from low to middle income families will likely be incentivized to continue or resume working. And as much as cultural norms would encourage such individuals to be responsible for children and the household, to some extent, the same norms enable them to rely on extended family to help mind younger children while they are at work.

Another aspect that must be closely studied is women participation in informal employment – as domestic helpers, workers in home industry, or even as people who "work" for relatives. This phenomenon, has its own issues, but it cannot be ignored in trying to form a correct profile of women's place in work in the Philippines.

Apart from needing to continue to study the matter of barriers, policymakers may want to continue looking into providing (i) gender-neutral benefits to both men and women

[74] Republic Act No. 11165 titled "Telecommuting Act" available at https://www.officialgazette.gov.ph/2018/12/20/republic-act-no-11165/ last accessed on October 11, 2020 at 9:57p.m.

who have household responsibilities and (ii) government subsidy and/or incentives to employers that provide special women benefits and gender-neutral benefits.

Notably, Philippine laws currently provide more special benefits to women as compared to men and providing a gender-neutral benefit (such as parental leave and access to reasonable day care services in the workplace for both men and women) may be initially counter-intuitive. However, if traditional household stereotypes are indeed a barrier to women participation in the labor force, providing gender-neutral benefits may help give each household more flexibility in sharing the responsibility for household care and ultimately aid in removing the barrier.

Further, policymakers should keep in mind that some of the special benefits for women may cost a significant amount of money to implement. As noted above, the government's approach has been to generally make the private sector shoulder the cost of these benefits. Admittedly, there is insufficient data to establish if the special protections that are meant to encourage women to participate in the labor force have indirectly worked as a deterrent to hiring women for local employers. Nonetheless, there may be a need to determine if the government's approach of just passing on the cost of implementing these measures to the private sector has helped create, on a long-term basis, the right conditions for women workers to participate in the labor workforce.

It may be counter-productive if the measures that the government have put in place result in discouraging employers to hire more women in the workplace because of the costs associated to women employment. Government subsidy and/or tax incentives may help counter this. In this connection, we recommend that future studies on proposed measures to help bridge the participation gap to be accompanied with a study on who should effectively bear such cost (as the cost may be borne by the government, shared by the government and the private sector, or borne solely by the private sector). The Philippines will accelerate progress across all the targets if both the government and the private sector will work hand-in-hand towards ensuring

that women—the half of humanity— have equal participation in the labor force. The government should invest in closing the gender gap and not merely rely on the private sector to spend for these measures. The government that invests towards increasing women participation in the workplace is investing in a just, equitable, and socially inclusive future for all.

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