

Allowing Absolute Divorce in the Philippines

Divorce is a controversial topic, except that it's often discussed with hushed voices. Many are just waiting for the right opportunity to end their respective marriages, and the reasons are diverse — physical abuse (against the spouse and/or the children), sexual infidelity, irreconcilable differences and conflicting personalities, gross irresponsibility, loss (and transfer) of affection, among others. Unfortunately, these grounds are not enough to sever the marital bond through annulment. In lieu of divorce, married persons resort to annulment and according to the Office of the Solicitor General (OSG), there is an alarming increase in the number of annulment cases in the Philippines. The number of annulment cases filed in courts, which never breached the 7,000-mark prior to 2006, rose to 7,138 (2006) and 7,753 (2007).

Existing Philippine Laws regarding Divorce

Philippine laws do not provide for absolute divorce, but divorce was available in certain periods in Philippine history. Divorce was allowed under the Divorce Law of 1917 (Act No. 2710) and during the Japanese occupation, pursuant to Executive Order No. 141 (1943). As the law stands today, however, a marriage between two Filipinos cannot be dissolved even by a divorce obtained abroad. In mixed marriages involving a Filipino and a foreigner (or former Filipinos), Article 26 of the Family Code allows the former to contract a subsequent marriage in case the divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry.

It is not really accurate to say that there is absolutely no divorce in the Philippines. Under Presidential Decree No. 1083, also known as the “Code of Muslim Personal Laws of the Philippines,” divorce is allowed in certain instances, but this law applies only when both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law in any part of the Philippines. For the rest of Filipinos, therefore, divorce is not available.

Efforts to Legalize Divorce in the Philippines

In 2005, party-list representative Liza Masa of Gabriela filed a divorce bill. According to Rep. Masa, the annulment process has been expensive for most Filipinos and has not been responsive to the needs of women, particularly those suffering from marital abuse.” In 2001, similar bills were filed in the Senate (Bill No. 782), introduced by Senator Rodolfo G. Biazon, and House of Representatives (Bill No. 878), introduced by Honorable Bellaflor J. Angara-Castillo. In 1999, Representative Manuel C. Ortega filed House Bill No. 6993, seeking for the legalization of divorce. The highlights of the explanatory note of House Bill No. 6993, in support for divorce, are:

Not all marriages succeed as a permanent union. An increasing number of married individuals find themselves subjected by their marriage partners to physical violence, grossly abusive conduct and other acts of or offenses that — rather than promote blissful, harmonious conjugal and family life — impair, debase or destroy the legitimate ends of the marriage relationship. The bill seeks to give spouses which are shackled by an irretrievably broken marriage the freedom to remarry and possibly succeed in attaining a stable and fulfilling family life.

Divorce is not a novel legal right. The Family Code sanctions relative divorce (*a mensa et thoro*). Legal separation is a recognized remedy for victims of failed marriages. Our civil laws on marriage justify and allow the separation of married individuals but does not confer them the legal right or remedy to extricate themselves from the ordeal of a broken marriage.

Divorce is not exclusive to contemporary times. Before the Spanish colonial rule in the early 16th century, absolute divorce had been widely practiced among our ancestral tribes — the Tagbanwas of Palawan, the Gadang of Nueva Vizcaya, the Sagada and Igorot of the Cordilleras, the Manobo, Bila-an and Moslems of Visayas and Mindanao islands, to name a few.

There were prior divorce laws. In 1917, Act 2710 allowed divorce on the grounds of adultery on the part of the wife and concubinage on the part of the husband. During the Japanese Occupation, a new law on absolute divorce, E.O. No. 141, was promulgated providing for ten grounds for divorce. These laws are no longer in effect.

Based on the increasing number of failed marriages which confines many of our citizens to a perpetual state of marital limbo, it has become morally and socially acceptable for many Filipinos to grant spouses of broken marriages the legal right to remarry. The present grounds for legal separation which are recognized in our society as justifiable bases for relative divorce should be re-enacted as lawful grounds for absolute divorce. In addition, it is recommended that “irreconcilable marital differences” be included in our present civil laws as a justifiable cause for absolute divorce because not all circumstances and situations that vitiate the institution of marriage could be specifically categorized and defined by our lawmakers. Spouses living in a state of irreparable marital conflict or discord should be given the opportunity to present their marital contrarities before the courts and have such differences adjudged as substantial grounds to dissolve or sever the legal bond of marriage.

In addition to these reasons, there are criticisms that the existing laws on annulment are anti-poor, as the high cost needed to pursue a case for annulment prevents the poor from securing one. This, however, is the very reason cited by those who oppose divorce — the high cost is intended to discourage the people from trifling with marriage. Allowing divorce would seriously weaken the institution of marriage. Anyone could decide to get married without thinking twice because they can get out of the marriage easily with divorce. If the current increase of annulment cases is alarming, imagine how the allowance of divorce would greatly increase the figure. Other arguments against the legalization of divorce are contained in the Position Paper of the Commission on Human Rights (CHR) against these bills. The highlights are:

1. The proposal to legalize absolute divorce with the right to remarry violates relevant international instruments on human rights, particularly Article 16(3) of the United Nation Declaration of Human Rights.

2. The innocent spouse and the children in most cases may suffer economic difficulties. Aside from being abandoned by the guilty spouse, the innocent spouse and children, in most cases, will suffer untold economic difficulties. The divorced spouses who will remarry will have to maintain another family of their own.

3. The human rights of the innocent spouse is violated. The guilty spouse in the divorce case is allowed to abandon or neglect his obligation to provide company and care of the innocent spouse and the children, thus violating Article 68 of the Family Code which reads: “The husband and wife are obliged to live together, observe mutual love, respect and fidelity and render mutual help and support.”

4. Irrespective of any religious beliefs, divorce of spouses with right to remarry constitutes a grave offense against a natural law. Divorce is unnatural and immoral as it causes disorder in the family and society. Because of its contagious effect in society, it becomes a plague on society. A divorce invites another divorce. The innocent spouse who has not contravened any law is unlawfully deserted.

5. Absolute divorce is destructive of the family as a social institution mandated under the Constitution. One of the basic policies of the State, as declared in the principles of the Philippine Constitution reads: “The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the young for civic inefficiency and the development of moral character shall receive the support of the government.”(Article 11, Section 12) The relevant constitutional provisions will have to be amended before the divorce bills will be enacted into law.

6. Absolute divorce violates the concept of marriage, a permanent union of man and woman. The Family Code defines marriage as a permanent union of man and woman (Art. 1). The Civil Code also provides for the presumption of the solidarity of the family and the indissolubility of marriage bonds (Art. 220).

Absolute divorce destroys the very concept of family as an inviolable social institution. The purpose of the proponents of the Senate and House Bills that it will give an opportunity for spouses to separate from an intolerable spouse and by entering into a new marriage is not altogether an assurance that the new marriage will be a happy and permanent one. The experience in countries where divorces are allowed and easily obtained, such as the United States, is that people divorces have experienced multiple divorces and have remarried several times in their selfish desire to get rid of unwanted spouses by intentionally creating the cause of the divorce.