

“I Dos and Don’ts”: Re-visiting the Proposal to Legalize Divorce in the Philippines*

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Marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family. Because it fulfils yearnings for security, safe haven, and connection that express our common humanity, marriage is an esteemed institution and the decision whether and who to marry is among life’s momentous acts of self-definition. It is undoubtedly for these concrete reasons, as well as for its intimately personal significance, that marriage has long been termed a “civil right.”

*–Chief Justice Margaret H. Mitchel,
Goodridge v. Department of Health (Mass.2003)*

Introduction

Marriage, as a fundamental personal right granted to men and women, bears a social function. Presumably, it gives rise to the family—the most basic unit of society and vital to civilisation’s continued existence. In the English common law tradition, a marriage was a contract based upon a voluntary private agreement by a man and a woman to become husband and wife. Today the underlying concept that marriage is a legal contract still remains but due to changes in society the legal obligations are not the same.¹ In particular, Philippine law regards

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¹ Marriage: An Overview, Legal information Institute (<http://topics.law.cornell.edu/wex/marriage>)

marriage 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.²”

The Family Code of the Philippines requires that before parties can enter into a special contract of marriage, they must have legal capacity³, and freely give their consent in the presence of the solemnizing officer. The other formalities mandated by law are as follows: (i) the solemnizing officer has the authority to solemnize the wedding; (ii) a valid marriage license; and (iii) a marriage ceremony with the appearance of the consenting parties before the solemnizing officer. By any standards, these requirements appear to be minimal. However, the same could not be said of the legal prerequisites in availing of remedies to end a “bad” marriage. Such remedies, though available in this jurisdiction, more often than not entail protracted litigation. More importantly, the grounds that may be invoked are themselves limited and are restrictively applied in case law.

In many countries, divorce is recognized as a legal remedy to dissolve a marriage. And contrary to common notions, surprisingly, divorce is not a novel concept in the Philippines. Historical records show that long before the advent of Spanish colonial rule beginning in the early 16th century, absolute divorce had been widely practiced among Philippine 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.⁴ The 1977 Presidential Decree otherwise known as the Code of Muslim Personal Laws in the Philippines permits divorce in marriages where both spouses are Muslims or where only the male is Muslim but the marriage was solemnized in accordance with Muslim Law. Some indigenous people also practice divorce.⁵ Prior to the enactment of the New Civil Code of 1950, divorce was allowed in the Philippines during the Pre-Spanish, American and Japanese periods. Divorce was later prohibited both in the

² Article 1, Family Code of the Philippines

³ The parties must be at least 18 years old and must have capacity to do acts with legal effects.

⁴ Manuel Ortega, Explanatory Note, House Bill 6993, Eleventh Congress, filed March 8, 1999.

⁵ Breaking the Ties that Bind, Gina Mission (<http://gina.ph/WIN/issues/issue27/win27c.htm>)

1950 New Civil Code and in the 1988 Family Code, but attempts were subsequently made to legalize it⁶. To this date, they remain to be attempts.

The attempts to legalize divorce were done by several lawmakers through submissions of different versions of a “divorce law” in both Houses of Congress. These are: (i) House Bill No. 6993 authored by Congressman Manuel Ortega of the 11th Congress in 1999 (ii) Senate Bill No. 782 authored by Senator Rodolfo Biazon in 1999, with a complementary bill in the Lower House as House Bill No. 878 introduced by Congresswoman Bellaflor Angara-Castillo in 2001; and (iii) House Bill No. 4016 authored by GABRIELA⁷ Representative Liza Masa of the 13th Congress in 2005.

Senate Bill No. 782 and House Bill No. 878, with the same title, are similar to House Bill No. 6993. The said Senate and House Bills add another ground for absolute divorce by showing a breakdown of the marriage due to irreconcilable marital differences and immediate breakdown of the marriage relationship. These Senate and House Bills seek to amend Articles 55 to 67 of the Family Code by providing that all the ten (10) grounds for legal separation⁸ under the Family Code will be the grounds for absolute divorce of spouses.⁹

⁶ Tess Rapossas (<http://www.alternet.org/story/74044/>, retrieved 23 March 2008)

⁷ The General Assembly Binding Women for Reforms, Integrity, Equality, Leadership, and Action or more popularly known as GABRIELA started from 42 when it organized in April 1984. Today GABRIELA is a center of over a hundred women organizations, institutes, desks, and programs. Its ranks include women workers, peasants, urban poor, housewives, professionals, religious and students across the country. GABRIELA is an organization that focuses on issues that affect women: the effects of militarization and women's landlessness; the International Monetary Fund-World Bank and the debt crisis; denial of women's reproductive rights and gross neglect of health care for women; violence on children, wife abuse and family life; development aid; prostitution and trafficking of women. From being a coalition of only 42 organizations in 1984, it has become a grassroots-based national alliance of 250 organizations, institutions, desks, and programs. (<http://www.gabrielaphilippines.org/index.php>)

⁸ Art. 55. A petition for legal separation may be filed on any of the following grounds: (1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner; (2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation; (3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement; (4) Final judgment sentencing the respondent to imprisonment of more than six years,

House Bill No. 4016 is the latest proposal on legalization of divorce pending before Congress.

House Bill Nos. 6993 and 4016

In particular, the most salient features of House Bill number 6993 are:

- the grounds for legal separation should include: "upon a showing that there is an irremediable breakdown of the marriage relationship due to irreconcilable marital differences that destroy the legitimate ends of the marriage relationship and prevent any reasonable expectation of reconciliation"
- an additional chapter providing for the option of absolute divorce with any of the following grounds:

(1) physical violence or abusive conduct against the other spouse, a common child, or a child of the other spouse; (2) attempt against the life of the other spouse; (3) attempt to sexually harass or rape any child; (4) contracting by the other spouse of a subsequent bigamous marriage, whether in the Philippines or abroad; (5) sexual infidelity or perversion; (6) lesbianism or homosexuality; (7) insanity, unless caused by battering; (8) abandonment by the other spouse without justifiable cause for more than five years; (9) where the foreigner spouse of a Filipino has filed for divorce abroad; (10) where the church or religious sect of either or both spouses has already allowed separation of the spouses; and (11) where the spouses have been granted a decree of legal separation for more than five years.

even if pardoned; (5) Drug addiction or habitual alcoholism of the respondent; (6) Lesbianism or homosexuality of the respondent; (7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad; (8) Sexual infidelity or perversion; (9) Attempt by the respondent against the life of the petitioner; or (10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

⁹ Position Paper, Commission on Human Rights, (http://72.14.235.104/search?q=cache:n98rJj0vIEwJ:www.chr.gov.ph/MAIN%2520PAGES/about%2520hr/position%2520papers/abthr_pos00102.htm+house+bill+878+an+gara-castillo+divorce&hl=en&ct=clnk&cd=1&gl=ph)

The bill further provides for the following: (i) the divorced spouses shall be entitled to remarry; (ii) specific rules in deciding who gets custody of minor children; (iii) the rights of the children after the divorce; (iv) and the disposition of property and assets of the spouses.¹⁰

Meanwhile, Section 2 of House Bill No. 4016 provides that a petition for divorce may be filed on the following grounds: (1) The petitioner has been separated de facto from his or her spouse for at least five years from the filing of the petition and reconciliation is highly improbable; (2) The petitioner has been legally separated from his or her spouse for at least two years and reconciliation is highly improbable; (3) When any grounds for legal separation, such as drug addiction, alcoholism or infidelity, has caused the irreparable breakdown of their marriage; (4) When one or both spouses are psychologically incapable of complying with the essential marital obligations or; and (5) When spouses suffer from irreconcilable differences that have caused the irreparable breakdown of their marriage.

Purpose of the Paper

This paper seeks to re-open the debate on the proposal for the legalization of divorce in the Philippines. For a large number of women, the inequalities and violence in marriage negate its ideals as the embodiment of love, care and safety and erode the bases upon which a marriage is founded. The marital relations facilitate the commission of violence and perpetuate their oppression.¹¹ Amidst the known reality that 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,¹² the author believes that the call for this debate is timely and urgent, as it brings to the forefront the discussion on the legal feasibility of divorce in the Philippines; and perhaps, to even answer the nagging question- is divorce necessary?

¹⁰ Veronica Villavicencio, *Our Right to Self-determination: Pilipina's position on the issue of divorce and abortion*, December 2000

¹¹ Explanatory Note, House Bill 4016, *An Act Introducing Divorce in the Philippines*, Introduced by GABRIELA Representative Liza Maza

¹² Kristine Alave, *Interview of Representative Liza Masa, PDI*, 10 February 2008 (<http://newsinfo.inquirer.net/breakingnews/nation/view/20080210-117984/OSG-alarmed-by-rising-marriage-annulment-cases>)

A culture of marital violence- an open secret

In the Philippines, the number of battered wives and maltreated children has increased over the last couple of years. The Philippine National Police has reported that from the year 1996 to 2004, the number of cases of violence against women rose from 1,100 to 7,204, a seven-fold increase¹³. In the same year, the Philippine Information Agency cited that the National Capital Region reported the second highest number of cases of violence against women, 669 in total, and that 340 of these, or 50.8%, are cases of wife battery.¹⁴ Based on the 2001 records of the Women's and Children's Desk of the national police, of the reported complaints of violence, majority were cases of physical injuries/wife battering (55.1%), followed by rape (10.1%), and acts of lasciviousness (6.9%). And, while no local data on recidivism is available, it is estimated that 90 percent of men arrested for domestic abuse are repeat offenders.¹⁵

The data gathered may not even reflect the true situation, as the authors believe that there are more battered women- often silenced by fear and social pressure- who have not reported their case to the concerned agencies. The violence brought into the relationship affects not only the battered spouse but also the children. To bring up children in such an environment is not conducive to a viable and healthy family life. Such environment breeds violence in future generations and perpetuate the cycle of battery. Studies have shown that children who are reared in an environment of violence become psychologically affected¹⁶.

¹³ From CEDAW's 36th Session (http://engenderights.org/files/CEDAW_36TH_SESSION_talking_points_v4.doc)

¹⁴ Available at:
<http://209.85.175.104/search?q=cache:MN6EK6ksGMJ:www.pia.gov.ph/pubs/vaw.pdf+National+Bureau+of+Investigation,+spousal+abuse&hl=tl&ct=clnk&cd=2&gl=ph>,
retrieved 25 March 2008

¹⁵ Recognition, then Remorse: Breaking the Cycle of Violence,
(<http://72.14.235.104/search?q=cache:d9sE7jGcUOIJ:www.pcco.org.ph/pcco3/downloadables%255Ccfbook%255CArchive%255Ccfstory25071905.pdf+spousal+abuse&hl=en&ct=clnk&cd=12&gl=ph>)

¹⁶ Patricia Little, et al., The Effects of Spousal Abuse on Children: Awareness for Correctional Educators,
http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=EJ567084&ERICExtSearch_SearchType_0=no&accno=EJ567084, retrieved 25 March 2008

The urgency of the proposal is thus reflected in these statistics. The numbers show that more women are being abused by their spouses while an increasing number of children find themselves in a situation of violence and conflict in the family. Set against a backdrop of inadequate remedies that may prevent or stop such conflict and violence in the home, the scrutiny of a possible divorce law in the Philippines should be a rationale exercise rather than a moral judgment.

A look into Philippine laws and jurisprudence

The Philippine case of *Amor-Catalan vs. CA* defined divorce as the legal dissolution of a lawful union for a cause arising after marriage.¹⁷ Divorce, often a remedy available in western countries such as the United States and a number of European countries, is not available in the Philippines. In this jurisdiction, particularly under the Family Code, the available procedures for the dissolution of marriage are: declaration of nullity of marriage and annulment.

Article 35 of the Family Code states that: The following marriages shall be void from the beginning: (1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians; (2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so; (3) Those solemnized without license, except those covered the preceding Chapter; (4) Those bigamous or polygamous marriages not failing under Article 41; (5) Those contracted through mistake of one contracting party as to the identity of the other; and (6) Those subsequent marriages that are void under Article 53.¹⁸

Void marriages shall also include the following: (i) Under Article 36 of the Family Code 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,

¹⁷ 514 SCRA 607

¹⁸ Former spouses who have obtained a judgment of annulment or absolute nullity of marriage must have the instrument of the distribution of their properties and the delivery of their children's presumptive legitime recorded in the civil registry and the registries of property. Otherwise, any subsequent marriage by either to another party shall be considered null and void. (Article Nos. 52 and 53, Family Code of the Philippines)

shall likewise be void even if such incapacity becomes manifest only after its solemnization; (ii) Under Article 37 (as amended by Executive Order 227) of the Family Code which involves incestuous marriages; and (iii) Under Article 38 of the Family Code which are void marriages by reason of public policy, and those contracted under Article 41¹⁹ of the Family Code.

Declaration of Nullity of Marriage is a remedy available in void marriages- those which are not valid from its inception. This means that any of the essential or formal requisites of marriage is absent²⁰. Voidable marriages on the other hand are those, which may be dissolved thru annulment under Article 45. Annulment may be granted under the following circumstances: (1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife; (2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife; (3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely

¹⁹ Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

²⁰ Art. 2. No marriage shall be valid, unless these essential requisites are present: (1) Legal capacity of the contracting parties who must be a male and a female; and (2) Consent freely given in the presence of the solemnizing officer.

Art. 3. The formal requisites of marriage are: (1) Authority of the solemnizing officer; (2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

cohabited with the other as husband and wife; (4) That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife; (5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or (6) That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.

Since the grounds for annulment and declaration of nullity are exclusive, battery not being one of them, a battered wife cannot resort to these remedies when confronted by violence in the marriage. And while it is true that the remedies of a declaration of nullity and annulment allow the parties to remarry, it must be noted that the grounds claimed must have existed prior to or at the time of the celebration of marriage but only became manifest after the celebration thereof.

Such is the difficulty faced by a woman seeking the dissolution of her marriage. For how can one prove that the defects she claims existed on or before the celebration of the marriage? The evidentiary matters in this case tend to be prohibitive and almost detrimental to a fault.

On the other hand, legal separation, which essentially deals mostly with the legal effects on the property regime of the parties, recognizes grounds that need not have historical precedence; that is, the defects need only exist after the celebration of the marriage. However, legal separation does not allow the parties to contract a subsequent marriage. The significance of re-marriage will be discussed at length in another part of this paper.

Legal Separation and Battery

Article 55 of the Family Code provides that a petition for legal separation may be filed on any of the following grounds: (1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner; (2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation; (3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement; (4) Final judgment sentencing the respondent to imprisonment of more than six

years, even if pardoned; (5) Drug addiction or habitual alcoholism of the respondent; (6) Lesbianism or homosexuality of the respondent; (7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad; (8) Sexual infidelity or perversion; (9) Attempt by the respondent against the life of the petitioner; or (10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

Meanwhile, under Administrative Matter No. 02-11-11 SC, on the Proposed Rules for Legal Separation, dated 15 March 2003, a petition for legal separation may be filed only by the husband or the wife, as the case may be, within five years from the time of the occurrence of any of the aforesaid grounds. By inference, it appears then that five years is a prescriptive period that may lapse.

In comparison, House Bill 4016, under Art 58 thereof, proposes that:

“Art. 58. An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition. Xxx This Rules shall not apply where the action for legal separation or divorce involves acts of violence against women and their children under RA 9262²¹. In such a case, section 19 of RA 9262 shall apply.”

Clearly, battery as a ground for dissolving a marriage should be seen as *sui generis*. Life and limb are at stake. While the Philippine constitution mandates that the family should be protected, so does the organic law consider self-determination a primordial right.

A short note on the definition of self-determination and relevance to marital violence

The right to self-determination, a fundamental principle of human rights law, is an individual and collective right to "freely determine . . . political status and [to] freely pursue . . . economic, social and cultural development." The International Court of Justice refers to the right to self-determination as a right held by people rather than a right held by governments alone. The right to self-determination is indisputably a norm

²¹ An Act Defining Violence Against Women and their Children, 8 March 2004.

of jus cogens. *Jus cogens* norms are the highest rules of international law and they must be strictly obeyed at all times. Both the International Court of Justice and the Inter-American Commission on Human Rights of the Organization of American States have ruled on cases in a way that supports the view that the principle of self-determination also has the legal status of *erga omnes*. The term "*erga omnes*" means "flowing to all." Accordingly, *ergas omnes* obligations of a State are owed to the international community as a whole: when a principle achieves the status of *erga omnes* the rest of the international community is under a mandatory duty to respect it in all circumstances in their relations with each other²²

Beyond being recognized as a *jus cogens* and achieving the status of an *ergas omnes* obligation of a State, the right to self-determination may be said to be an inherent right, and thus must be enjoyed by all. A Filipina woman should thus be allowed to freely pursue her economic, social and cultural development. This includes her right to choose to stay or get out of a violent and/or bad marriage.

In a Paper titled Violence Against Women in India written by KN Tiwari, Director of Disha Social Organization²³, she explains:

Violence is perpetrated on women both inside and outside her home. Domestic violence comprises all acts of intimidation and aggression which forces a woman to seek redressal by breaking the silence imposed on her by a patriarchal culture. This operational definition of domestic violence, however, does not include the culturally

²² Karen Parker, Understanding Self-determination: The Basics, August 2000 (<http://130.94.183.89/parker/selfdet.html>)

²³ Disha Social Organisation is a voluntary organisation based in Saharanpur district of Uttar Pradesh and is active in rural areas of Saharanpur district and Dehradun, Uttarkashi and Tehri Garhwal district of Uttaranchal. During its 18 years existence, it has assiduously worked towards wiping tears of women who become victim of violence of all sorts. It may be noted here that Saharanpur (and Western Uttar Pradesh in which the district falls) is notorious for violence against women because of its unique socio-cultural setting. (http://www.dishain.org/reports/violence_against_women_in_india.pdf)

sanctioned forms of violence (such as, unequal access to the household resources or other restrictions), unless challenged by the women or others on her behalf. Minimally construed as the physical, mental, emotional and sexual abuse of a woman in her intimate relationship, such violence in the Indian context includes intimidating acts by the members (both men and women) of her marital family. Often condoned by culture, such systemic violence enforces gender inequality by curtailing a woman's freedom and right to self-determination. In turn, the climate for violence is created by the prevailing disparities (on the basis of his/her gender) in an individual's entitlements to the family and community resources. Here the focus on marital violence is not to negate the existence of gender violence or inequalities in parental home.

The object of any law, one would think, is to protect the weak. In this case, the battered woman (and the children, if any) deserves protection more than any consideration of moral or religious beliefs.

And why then should cutting-off of marital ties be a paramount relief under the above circumstances? The issue of marital violence is not a simple one. It has deep rooted nuances that defy reason and judgment. One might ask, why would a battered woman continue to stay with an abusive husband? Such question is one for psychology books and no answer is offered here. Rather, it should be recognized that battery is a complex issue and perhaps giving the battered woman that right to sever the marital ties against her abuser, may just be the empowerment she needs to fully recover from the debilitating effects of marital violence. This paper submits that divorce- a real divorce- is an empowering tool.

Real divorce in that it is a fast remedy, not subject to protracted litigation but only to such rules as to allow a reasonable mind to believe that the grounds claimed- be it marital violence or such other ground as may be allowed by a future law- do exist (e.g. medical records and police reports that reflect the abuse committed by the husband); and real in that it is available equally to both the rich and the poor (i.e. no requirement of residency in the place where the petition for divorce is filed, like in annulment where rich people find a "friendly" court and reside in that place for a time just to satisfy the rules; or no requirement of

psychological tests whereby rich people get the services of the best doctors to give credence to their claims that there is psychological incapacity as required in an annulment proceedings). Evidently, as Philippine law now stands, a petition for annulment is too costly and has even become an income indicator- you can have it if you can afford it.

Indeed, the GABRIELA proposal seeks to complement the existing law on violence against women and children and to strengthen the policy of the State to protect women and children. While the battered spouse may avail of a protective order under existing laws, such protection may be rendered useless where the battered spouse is more than likely to return to her abusive husband. A counseling center may obviate such possibility, as where the battered spouse may be informed of her options under the law- not the least of them, divorce.

A Comparison of the Proposal to Western Divorce Laws

In the United States, the grounds for divorce in each state may range from broad, over-arching grounds such as irreconcilable differences in California,²⁴ to specific grounds such as adultery, and cruel and inhuman treatment in New York²⁵. Ireland, a predominantly Catholic nation, also provides for divorce on the condition that no reconciliation can be had between the spouses. Curiously, no specific grounds were cited, only that the spouses must have lived separately for at least four years²⁶. In England and Wales, the sole ground for divorce is the irretrievable breakdown of marriage.²⁷

²⁴ Secs. 2310-2313, California Code (http://www.divorcesource.com/CA/CODE/2310_2313.html)

²⁵ Consolidated Laws of New York - Domestic Relations Laws - Article 13 - Sections: 230 and 231 (<http://www.divorce-laws.us/new-york-divorce-laws.html>)

²⁶ The 1996 Irish Divorce Act (<http://indigo.ie/~kwood/1996act.htm>)

²⁷ Under the Matrimonial Causes Act of 1973, in order to show that the marriage has broken down irretrievably it is necessary to produce evidence of one or more marital faults. There are five faults as follows: (i) that the other spouse has committed adultery and that the applicant finds it intolerable to live with him or her; (ii) unreasonable behaviour, which means that the other spouse has behaved in such a way that the applicant cannot reasonably be expected to continue to live with him or her; (iii) desertion, which means that the other spouse has left the applicant for a period of two years before the time of the application for divorce; (iv) separation of the parties for a period of two years before the application for divorce (with the consent of the other spouse); (v) separation for a period of five years before the

In Spain, where the Philippines inherited Catholicism, divorce is recognized. Obtaining a divorce in Spain is not dependent on any cause. Spouses need only wait 3 months from the time of the celebration of the marriage before either spouse may file for divorce, with the exception that there is no need to wait for 3 months when there is an evidence of risk for the life, physical integrity, freedom, moral integrity or sexual indemnity for the spouse that is the plaintiff in the divorce case or for the children of both spouses or of one of them.²⁸

Violence against women under international law- domestic abuse and relevance to cutting legal ties

The United Nations, of which the Philippines is a member, promotes the duty of each and every state to protect women against domestic and other forms of violence. The UN Treaty on Women, signed in 2002, recognizes the rights of women and seeks to ensure that signatory states enact and enforce laws consistent with this treaty.

Bonita C. Meyersfeld, in her paper titled *Re-conceptualizing Domestic Violence in International Law*, says:

An emerging principle in international human rights law is that violence against women is a human rights violation. In the wake of this fledgling jurisprudence, it is possible to identify two specific manifestations of criminalized gender-based harm: namely, mass rape as a war crime or crime against humanity and female genital mutilation as a human rights violation. These crimes jettisoned violence against women into the international legal discourse, paving the way for the criminalization of other forms of harm. I propose that there is a third category of violence against women that should also receive international attention simply because it is one of the most basic and fundamental rights of women that is being

application for divorce (without the consent of the other spouse). (http://ec.europa.eu/civiljustice/divorce/divorce_eng_en.htm#1)

²⁸ Law 15/2005 (http://ec.europa.eu/civiljustice/divorce/divorce_spa_en.htm#1)

violated. This is the right to be safe from extreme forms of domestic violence, or what I call private torture.²⁹

Beyond the moral ramifications of divorce and the ethics of whether one avails of such remedy or not, is the deeper issue of domestic violence. Philippine laws allow for an abused woman to be legally separated from her abuser. Nonetheless, the psychology of being legally bound to one's abuser is beyond legal or moral issues. It is not even an issue of desiring to re-marry (opponents of a divorce law are wont to say that the spouses just want the easy way out) on the part of the abused wife or that divorce will somehow propagate the notion that people will now take marriage lightly. In the first place, with or without divorce, Filipinos do file petitions for annulment or declaration of nullity of marriage.³⁰ The severance of legal ties will allow the abused spouse to henceforth take care of her affairs, and that of the children, if any, and give her an opportunity for a peaceful existence, without being subjected to private torture.

Due to the severity, the isolation, and the discrimination inherent in private torture, this form of violence against women is an international issue and one that should generate the application of the Convention against Torture, continues Meyersfeld.

Philippine legislators have tried to be responsive to issues of domestic violence through the enactment of RA 9262 otherwise known as the Anti-Violence against Women and their Children Act of 2004. It is a big step. But this law is not enough. Women must be freed from the mental torture that binds them to their abuser through the legal ties of marriage.

²⁹ <http://www.albanylawreview.org/archives/67/2/ReconceptualizingDomesticViolenceinInternationalLaw.pdf>

³⁰ 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) (<http://72.14.235.104/search?q=cache:G5kgArH6evcJ:attyatwork.com/%3Fp%3D358%26cp%3D1+Senate+Bill+No.+782+Biazon&hl=en&ct=clnk&cd=9&gl=ph>)

Rules of Evidence

a) *Evidentiary matters*

The remedies of declaration of nullity and annulment require that the grounds for nullity or annulment exist prior to or at the time of the celebration of the marriage, and not only during the subsistence of the marriage. The remedy of legal separation, while allowing for grounds that came about only after the celebration of the marriage, does not however cut-off the legal ties between the spouses. It is in this respect that there appears to be inadequacy in the remedies provided by existing laws.

b) *Procedural matters*

This paper hopes to put focus on procedural aspects when availing of legal remedies to sever legal ties where there is spousal abuse. GABRIELA was in the forefront in pushing for the passage of RA 9262 and their recent proposal for a divorce law will complement RA 9262. Under present laws, even availing of protective order- as an initiatory recourse- may be a time consuming and resource-depleting process.

RA 9262 does provide for the means by which a protective order may be obtained. Some data shows that there are women who have availed of the remedies of a Barangay Protective Order (BPO)³¹ and eventually a temporary/Permanent Protection Order from the courts. However, more needs to be done to inform women of their rights when they are being abused by their husbands. As it turns out, women who have the resources to have counsel are the only ones who can often protect themselves through these protective orders.

As has been said, the problem of domestic abuse is complex. The consequences of abuse in a family may range from educational and behavioral problems in children, to inability of both the perpetrator and the victim of the abuse to function competently at work, to difficulties in

³¹ Barangay Protection Orders (BPOs) refer to the protection order issued by the *Punong Barangay, or in his absence, by the Barangay Kagawad*, ordering the perpetrator to desist from committing acts of violence against his spouse and/or child, if any. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an *ex parte* BPO, the *Punong Barangay or Barangay Kagawad* shall personally serve a copy of the same on the respondent, or direct any barangay official to effect personal service. (Sec. 14, RA 9262)

obtaining medical and counseling treatment for physical and emotional injuries caused by abuse. Of course, the ultimate consequence of abuse may be death. It is clear that the law does not hold an exclusive position in either the response to, or the prevention of, domestic abuse. However, it is equally clear that many victims of domestic abuse will reasonably turn to the law for protection. When that occurs, the law should be effective and efficient in its response, and should seek with the greatest sensitivity possible to extend protection to victims and to create and enforce barriers to the continuation of domestic abuse. While the law alone cannot provide a comprehensive solution to the problem of domestic abuse, the law should, nonetheless, be vigilant in ensuring that its substance and procedures are well tailored to the needs of those suffering in abusive households.³²

c) *Contracting another marriage*

At the onset, the necessity to re-marry may not be as glaring. However, it is proposed that the abused spouse should be given the option, even the “legal and moral badge”, to re-marry as the final act that sever all moral, emotional and psychological ties from her former “bondage”. If the right to contract marriage may be considered a civil right, so should the right to be released from a bad one, more so an abusive one, and be able to re-marry if one so desires, be considered a civil right.

³² Domestic Abuse: Toward an Effective Legal Response, Atlanta Law Reform Institute, June 1995 (<http://www.law.ualberta.ca/alri/docs/rfd015.pdf>)

Conclusion

The Philippines and Malta are the only two remaining countries in the world without a divorce law.³³ We do not know about Malta, but does the Philippines know something that other developed and middle income countries know nothing about? Short of being flippant, clearly, Philippine laws have not developed alongside international standards. And the remedies that the country does have do not answer the pressing need of battered women.

The 2003 Philippine National Police report shows that out of 8,011 reported cases of violence, 53.6% were committed by husbands on their wives³⁴. The Department of Social Welfare and Development also reported that 25% of the women who sought help from this institution were for cases of physical abuse, maltreatment and battering.³⁵

As aptly noted by the GABRIELA, in the explanatory note of House Bill 4016:

Given these realities, couples must have the option to avail of remedies that will pave the way for the attainment of their full development and self-fulfillment and the protection of their human rights. Existing laws are not enough to address this need. The present laws relating to separation of couples and termination of marriage are inadequate to respond to the myriad causes of failed marriages. Particularly, the remedies of declaration of nullity and annulment do not cover the problems that occur during the existence of marriage. Legal separation, on the other hand, while covering problems during marriage, does not put an end to marriage.

On a final note, the severance of legal ties and the option to remarry may just be the final step that the abused spouse needs to finally move on and start her life anew. To quote a portion of the explanatory note of House Bill 6993:

³³ Explanatory Note, House Bill 4016, Thirteenth Congress; GABRIELA by Representative Liza Largoza-Maza

³⁴ *Supra*. GABRIELA represented by Liza Lagroza-Maza.

³⁵ *Ibid*.

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.³⁶

If a marriage fails to fulfill one's "yearnings for security, safe haven, and connection" and rather becomes a private torture for the woman, should it not be considered her civil right to be freed from such private torture?

³⁶ Allowing Absolute Divorce in the Philippines, 18 April 2008
(<http://72.14.235.104/search?q=cache:G5kgArH6evcJ:attyatwork.com/%3Fp%3D358%26cp%3D1+Senate+Bill+No.+782+Biazon&hl=en&ct=clnk&cd=9&gl=ph>)