

Republic of the Philippines
HOUSE OF REPRESENTATIVE
Quezon City

FIFTEENTH CONGRESS
First Regular Session

House Bill No. **1799**

Introduced by GABRIELA Women's Party
Representatives LUZVIMINDA C. ILAGAN and EMERENCIANA A. DE JESUS

EXPLANATORY NOTE

Underpinning this proposal is a commitment to the policy of the State to protect and strengthen marriage and the family as basic social institutions, to value the dignity of every human person, to guarantee full respect for human rights, and to ensure the fundamental equality before the law of women and men.

In the Filipino culture, marriage is regarded as a sacred union, and the family founded on marriage is considered as a fount of love, protection and care. Philippine society generally frowns upon and discourages marital break-ups and so provides cultural and legal safeguards to preserve marital relations. Cultural prescriptions and religious norms keep many couples together despite the breakdown of the marriage. But the cultural prescriptions for women and men differ. Women are traditionally regarded as primarily responsible for making the marriage work and are expected to sacrifice everything to preserve the marriage and the solidarity of the family. While absolute fidelity is demanded of wives, men are granted sexual license to have affairs outside marriage. Yet when the marriage fails, the woman is blamed for its failure.

Reality tells us that there are many failed, unhappy marriages across all Filipino classes. Many couples especially from the marginalized sectors, who have no access to the courts, simply end up separating without the benefit of legal processes. The sheer number of petitions that have been filed since 1988 for the declaration of the nullity of the marriage under Article 36 of the Family Code (commonly known as "annulment") shows that there are just too many couples who are desperate to get out of failed marriages.

Even when couples start out well in their marriage, political, economic and social realities take their toll on their relationship. Some are not prepared to handle the intricacies of the married life. 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. Official figures in 2009 showed that nineteen women were victims of marital violence everyday. Among the different forms of violence and abuse against women committed in 2009, wife battery ranked highest at 6,783 or 72% according to the Philippine National Police (PNP). The Department of Social Welfare and Development (DSWD) likewise recorded marital violence as highest among different forms of violence against women at 1,933. Previous reports of the PNP about three of ten perpetrators of violence against women were husbands of the victims. Husbands accounted for 28 per cent of the violence against women crimes.

Given these realities, couples must have the option to avail of remedies that will pave the way for the attainment of their full human development and self-fulfillment and the protection of their human rights. Existing laws are not enough to guarantee and protect these rights. To quote the Women's Legal Bureau, Inc., a legal resource NGO for women:

"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."

"Though both divorce and a declaration of nullity of a marriage allow the spouses to remarry, the two remedies differ in concept and basis. A declaration of nullity presupposes that the marriage is void from the beginning and the court declares its non-existence... Beyond [the] grounds specified [in the law], declaration of nullity is not possible."

"In annulment, the marriage of the parties is declared defective from the beginning, albeit it is considered valid until annulled. The defect can be used to nullify the marriage within a specified period but the same may be ignored and the marriage becomes perfectly valid after the lapse of that period, or the defect may be cured through some act. The defect relates to the time of the celebration of the marriage and has nothing to do with circumstances occurring after the marriage is celebrated. In annulment, the marriage is legally cancelled, and the man and woman are restored to their single status."

"Since August 3, 1988, couples have been given a way out of failed marriages through Article 36 of the Family Code... The remedy provided under Article 36 is declaration of nullity of the marriage. The article voids a marriage where one party is "psychologically incapacitated" to comply with the essentials of marital obligations. Consistent with the concept of void marriages (where the remedy is declaration of nullity), the law requires that the incapacity must have existed at the time of the celebration of the marriage... In practice, Article 36 has become a form of divorce, as valid marriages are declared void every day in the guise of "psychological incapacity." The innumerable Article 36 cases brought to trial courts is an indication of the elasticity of Article 36 to accommodate the needs of many couples desiring to terminate their marriages. It is proof that divorce is needed in the Philippines. Article 36 provides a remedy only for spouses who can prove "psychological incapacity". The concept certainly cannot accommodate all cases where divorce would be necessary. What we need is a divorce law that defines clearly and unequivocally the grounds and terms for terminating a marriage. That law will put an end to the creative efforts played daily in courtrooms across the country to accommodate a wide range of cases in order to prove "psychological incapacity." (Women's Legal Bureau, Inc., The Relevance of Divorce in the Philippines, 1998)

Thus, this bill seeks to introduce divorce as another option for couples in failed and irreparable marriages.

This bill was crafted in consultation with women lawyers and inspired by the studies and inputs of various women's groups and the experiences of spouses gathered by GABRIELA from its various chapters nationwide.

The bill seeks to introduce divorce in Philippine law with a strong sense of confidence that it will be used responsibly by Filipino couples. This confidence stems from the experiences of Filipino families that show that separation is usually the last resort of many Filipino couples whose marriage has failed. Cases of battered women also support this. Battered women invariably seek separation only after many years of trying to make the marriage work; separation only becomes imperative for them when they realize that it is necessary for their and their children's survival. Divorce could actually provide protection to battered women and their children from further violence and abuse. With the predominance of the Catholic faith in the Philippines, the fear that divorce will erode personal values on marriage appears unfounded. The experience of Italy, where the Vatican is located, and Spain, two predominantly Catholic countries which practice divorce, supports this. Those countries have a low rate of divorce. Italy registers a 7% rate while Spain registers 15%. The figures reflect the strong influence of religious beliefs and culture on individuals in deciding to terminate marital relations.

Historically, divorce had been part of our legal system. In the beginning of the 16th century, before the Spanish colonial rule, absolute divorce was widely practiced among ancestral tribes such as the Tagbanwas of Palawan, the Gadangs of Nueva Vizcaya, the Sagadans and Igorots of the Cordilleras, and the Manobos, B'laans and Moslems of the Visayas and Mindanao islands. Divorce was also available during the American period, starting from 1917 (under Act No. 2710 enacted by the Philippine Legislature), and during the Japanese occupation (under Executive Order No. 141) and after, until 1950. It was only on August 30, 1950, when the New Civil Code took effect, that divorce was disallowed under Philippine law. Only legal separation was available. The same rule was adopted by the Family Code of 1988, which replaced the provisions of the New Civil Code on marriage and the family, although the Family Code introduced the concept of "psychological incapacity" as a basis for declaring the marriage void.

In recognition of the history of divorce in the Philippines, the framers of the 1987 Philippine Constitution left the wisdom of legalizing divorce to the Congress. Thus, the 1987 Constitution does not prohibit the legalization of divorce.

This bill is respectful of and sensitive to differing religious beliefs in the Philippines. It recognizes that the plurality of religious beliefs and cultural sensibilities in the Philippines demand that different remedies for failed marriages should be made available. For this reason, the bill retains the existing remedies of legal separation, declaration of nullity of the marriage and annulment and only adds divorce as one more remedy. Couples may choose from these remedies depending on their situation, religious beliefs, cultural sensibilities, needs and emotional state. While divorce under this proposed measure severs the bonds of marriage, divorce as a remedy need not be for the purpose of re-marriage; it may be resorted to by individuals to achieve peace of mind and facilitate their pursuit of full human development. This bill also seeks to make Philippine law consistent in the way it treats religious beliefs with respect to termination of marriage. Philippine law through the Code of Muslim Personal Laws of the Philippines (Presidential Decree No. 1083 [1977]) allows divorce among Filipino Muslims, in deference to the Islamic faith which recognizes divorce. Non-Muslim Filipinos should have the same option under Philippine law, in accordance with their religious beliefs.

The bill proposes five grounds for divorce. All the five grounds are premised on the irreparable breakdown of the marriage and the total non-performance of marital obligations. Thus, the bill provides that a petition for divorce may be filed when the petitioner has been separated *de facto* (in fact) from his or her spouse for at least five years at the time of the filing of the petition and reconciliation is highly improbable, or when the petitioner has been legally separated from his or her spouse for at least two years at the time of the filing of the petition and reconciliation is highly improbable.

Not all circumstances and situations that cause the total breakdown of a marriage could be defined in this proposed measure. Thus, the bill also provides that divorce may be granted when the spouses suffer from irreconcilable differences that have caused the irreparable breakdown of the marriage. Spouses living in a state of irreparable marital conflict or discord should be given the opportunity to present their marital contrarities in court and have those differences adjudged as constituting a substantial ground to put an end to the marriage.

Another ground for divorce included in the bill is when one or both spouses are psychologically incapacitated to comply with the essential marital obligations. This provision will consequently repeal Article 36 of the Family Code. The bill seeks to include "psychological incapacity" in the grounds for divorce in the belief that the concept is consistent with the termination of marital ties rather than with a void marriage.

The bill seeks to eliminate "condonation of the act" and "consent to the act" as grounds for denying a petition for legal separation and, by extension, a petition for divorce. Many spouses especially women ignore the offense because of the social and economic conditions they are in. Many women in the marginalized sectors tend to condone the offense because they are economically dependent on their spouses or because of the stigma attached to failed marriages. Some women who are perceived to be condoning the acts of their husbands actually suffer from the cycle of spousal abuse such that they have become so disempowered to address their situation.

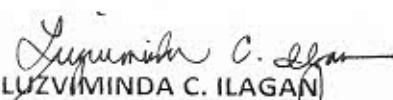
Under this proposed measure, a decree of divorce dissolves the absolute community or conjugal partnership of gains. The assets shall be equally divided between the spouses. However, this bill also proposes that in addition to his or her equal share in the assets, the spouse who is not gainfully employed shall be entitled to support until he or she finds adequate employment but the right shall only be effective for not more than one year. This provision is meant to address the economic deprivation or poverty that many women experience as a result of a marital break-up.

The bill also proposes that the custody of any minor child shall be decided by the court in accordance with the best interests of the child and their support provided in accordance with the Family Court provisions on support. Actual, moral and exemplary damages shall be awarded to the aggrieved spouse when proper in accordance with the provisions of the Civil Code on damages. The proposed measure also provides that parties shall be disqualified from inheriting from each other by intestate succession. Moreover, provisions in favor of one spouse made in the will of the other spouse shall be revoked by operation of law.

The Philippines and Malta are the only two remaining countries in the world without a divorce law. This bill is being introduced based on indications that Philippine society is ready for the legalization of divorce.

The sanctity of marriage is not based on the number of marriages existing but on the quality of marital relationships. When a marriage is no longer viable, divorce should be an option.

Thus, the approval of this bill is urgently requested.


LUZVIMINDA C. ILAGAN
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AN ACT

INTRODUCING DIVORCE IN THE PHILIPPINES, AMENDING FOR THE PURPOSE TITLE II, ARTICLES 55 TO 66 INCLUSIVE AND ARTICLE 26 OF EXECUTIVE ORDER NO. 209, AS AMENDED, OTHERWISE KNOWN AS THE FAMILY CODE OF THE PHILIPPINES, AND REPEALING ARTICLE 36 OF THE SAME CODE, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title II of Executive Order No. 209, amended, otherwise known as The Family Code of the Philippines, is hereby amended to read as follows:

**"TITLE II
LEGAL SEPARATION AND DIVORCE"**

SECTION 2. Articles 55, 56, 57, 58, 59, 60, 61, 62) 63, 64, 65 and 66 of Executive Order No. 209, as amended, otherwise known as The Family Code of the Philippines, are also hereby amended to read as follows:

"Art. 55 (A). 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 life of the petitioner; or
- (10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term "child" shall include a child by nature or by adoption.

(B) A PETITION FOR DIVORCE MAY BE FILED ON ANY OF THE FOLLOWING GROUNDS:

(1) THE PETITIONER HAS BEEN SEPARATED *DE FACTO* FROM HIS OR HER SPOUSE FOR AT LEAST FIVE YEARS AT THE TIME OF THE FILING OF THE PETITION AND RECONCILIATION IS HIGHLY IMPROBABLE;

(2) THE PETITIONER HAS BEEN LEGALLY SEPARATED FROM HIS OR HER SPOUSE FOR AT LEAST TWO YEARS AT THE TIME OF THE FILING OF THE PETITION AND RECONCILIATION IS HIGHLY IMPROBABLE;

(3) WHEN ANY OF THE GROUNDS FOR LEGAL SEPARATION UNDER PARAGRAPH (A) OF THIS ARTICLE HAS CAUSED THE IRREPARABLE BREAKDOWN OF THE MARRIAGE;

(4) WHEN ONE OR BOTH SPOUSES ARE PSYCHOLOGICALLY INCAPACITATED TO COMPLY WITH THE ESSENTIAL MARITAL OBLIGATIONS;

(5) WHEN THE SPOUSES SUFFER FROM IRRECONCILABLE DIFFERENCES THAT HAVE CAUSED THE IRREPARABLE BREAKDOWN OF THE MARRIAGE."

"Art. 56. The petition for legal separation **OR DIVORCE** shall be denied on any of the following grounds:

[(1) When the aggrieved party has condoned the offense or act complained of;

(2)Where the aggrieved party has consented to the commission of the offense or act complained of;]

[(3)] **[1] Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation **OR DIVORCE**;**

[(4) Where both parties have given ground for legal separation;]

[(5)] (2) Where there is collusion between the parties to obtain the decree of legal separation **OR DIVORCE**; [or

(6) Where the action is barred by prescription.]"

"Art. 57. [An action for legal separation shall be filed within five years from the time of the occurrence of the cause.] **AN ACTION FOR LEGAL SEPARATION OR DIVORCE MAY BE FILED AT ANY TIME.**"

"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. **THE SAME RULE SHALL APPLY TO AN ACTION FOR DIVORCE BASED ON ARTICLE 55 (B), NUMBERS 3 AND 5 OF THIS CODE. THIS RULE SHALL NOT APPLY WHERE THE ACTION FOR LEGAL SEPARATION OR DIVORCE INVOLVES ACTS OF VIOLENCE AGAINST WOMEN AND THEIR CHILDREN UNDER REPUBLIC ACT NO. 9262. IN A SUCH CASE, SECTION 19 OF THE REPUBLIC ACT NO. 9262 SHALL APPLY**".

"Art. 59. No legal separation **OR DIVORCE** may be decreed unless the Court has taken steps towards the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable."

"Art. 60. No decree of legal separation **OR DIVORCE** shall be based upon a stipulation of facts or a confession of judgment.

"Art. 59. No legal separation **OR DIVORCE** may be decreed unless the Court has taken steps towards the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable."

"Art. 60. No decree of legal separation **OR DIVORCE** shall be based upon a stipulation of facts or a confession of judgment.

In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed."

"Art. 61. After the filing of the petition for legal separation **OR DIVORCE**, the spouses shall be entitled to live separately from each other.

In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed."

"Art. 61. After the filing of the petition for legal separation **OR DIVORCE**, the spouses shall be entitled to live separately from each other.

The court, in the absence of a written agreement between the spouses, shall designate either of them or a third person to administer the absolute community or conjugal partnership property. The administrator appointed by the court shall have the same powers and duties as those of a guardian under the Rules of Court."

"Art. 62. During the pendency of the action for legal separation **OR DIVORCE**, the provisions of Article 49 shall likewise apply to the support of the spouses and the custody and support of their common children."

"Art. 63 **(A)**. The decree of legal separation shall have the following effects:

(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated **AND THE ASSETS SHALL BE EQUALLY DIVIDED BETWEEN THE SPOUSES** but the offending spouse shall [have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2)] **PAY TO THE INNOCENT SPOUSE ACTUAL, MORAL AND EXEMPLARY DAMAGES IN ACCORDANCE WITH THE PROVISIONS OF THE CIVIL CODE ON DAMAGES;**

(3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; [and]

(4) **THE INNOCENT SPOUSE AND THE CHILDREN SHALL BE ENTITLED TO SUPPORT IN ACCORDANCE WITH THE PROVISIONS OF THIS CODE;**

(5) **THE CHILDREN SHALL BE ENTITLED TO THEIR PRESUMPTIVE LEGITIME WHICH SHALL BE COMPUTED AS OF THE DATE OF THE FINAL JUDGMENT OF THE COURT; AND**

[(4)] (6) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law.

(B) THE DECREE OF DIVORCE SHALL HAVE THE FOLLOWING EFFECTS:

(1) **THE MARRIAGE BONDS SHALL BE SEVERED;**

(2) **THE ABSOLUTE COMMUNITY OR THE CONJUGAL PARTNERSHIP OF GAINS SHALL BE DISSOLVED AND LIQUIDATED AND THE ASSETS SHALL BE DIVIDED EQUALLY BETWEEN THE SPOUSES. IN THE PARTITION OF THE ASSETS, THE PRESUMPTIVE LEGITIME OF THE COMMON CHILDREN, COMPUTED AS OF THE DATE OF THE FINAL JUDGMENT OF THE COURT, SHALL BE DELIVERED TO THEM. THE PARTITION AND DISTRIBUTION OF THE PROPERTIES OF THE SPOUSES AND THE DELIVERY OF THE CHILDREN'S PRESUMPTIVE LEGITIME SHALL BE RECORDED IN THE APPROPRIATE CIVIL REGISTRY AND REGISTRIES OF PROPERTY, OTHERWISE THE SAME SHALL NOT AFFECT THIRD PERSONS.**

(3) **IN ADDITION TO HIS OR HER EQUAL SHARE IN THE ASSETS OF THE ABSOLUTE COMMUNITY OR THE CONJUGAL PARTNERSHIP, THE SPOUSE WHO IS NOT GAINFULLY EMPLOYED SHALL BE ENTITLED TO SUPPORT FROM THE OTHER SPOUSE UNTIL HE OR SHE FINDS ADEQUATE EMPLOYMENT, PROVIDED, HOWEVER, THAT THE SUPPORT SHALL ONLY BE FOR ONE YEAR FROM THE FINALITY OF THE DECREE OF DIVORCE, AND PROVIDED FURTHER THAT THE RIGHT TO SUPPORT SHALL BE SUBJECT TO THE PROVISIONS OF ARTICLE 201 OF THIS CODE.**

(4) ACTUAL, MORAL AND EXEMPLARY DAMAGES SHALL BE AWARDED TO THE AGGRIEVED SPOUSE IN ACCORDANCE WITH THE PROVISIONS OF THE CIVIL CODE ON DAMAGES;

(5) THE CUSTODY OF ANY MINOR CHILD SHALL BE DECIDED BY THE COURT IN ACCORDANCE WITH THE BEST INTERESTS OF THE CHILD, SUBJECT TO THE PROVISIONS OF ARTICLE 213 OF THIS CODE;

(6) THE CHILDREN SHALL BE ENTITLED TO SUPPORT IN ACCORDANCE WITH THE PROVISIONS OF THIS CODE;

(7) CHILDREN CONCEIVED OR BORN BEFORE THE DECREE OF DIVORCE HAS BECOME FINAL AND EXECUTORY SHALL BE CONSIDERED LEGITIMATE; AND

(8) THE PARTIES SHALL BE DISQUALIFIED FROM INHERITING FROM EACH OTHER BY INTESTATE SUCCESSION. MOREOVER, PROVISIONS IN FAVOR OF ONE SPOUSE MADE IN THE WILL OF THE OTHER SPOUSE SHALL BE REVOKED BY OPERATION OF LAW.

"Art. 64. After the finality of the decree of legal separation **OR DIVORCE**, the innocent spouse **IN THE CASE OF LEGAL SEPARATION OR IN THE CASE OF DIVORCE UNDER ARTICLE 55 (B) NUMBERS 3 AND 5** may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable. The revocation of the donations shall be recorded in the registries of property in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries or property shall be respected. The revocation of or change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the [insured] **INSURER**.

The action to revoke the donation under this Article must be brought within five (5) years from the time the decree of legal separation **OR DIVORCE** has become final."

"Art. 65. If the spouses **WHO HAVE BEEN LEGALLY SEPARATED** should reconcile, a corresponding joint manifestation under oath duly signed by them shall be filed with the court in the same proceeding for legal separation."

"Art. 66. The reconciliation referred to in the preceding Article shall have the following consequences:

(1) The legal separation proceedings, if still pending, shall thereby be terminated at whatever stage; and

(2) The final decree of legal separation shall be set aside, but the separation of property [and any forfeiture of the share of the guilty spouse already effected] shall subsist, unless the spouses agree to revive their former property regime.

The court's order containing the foregoing shall be recorded in the proper civil registries."

SEC. 3. Article 26 of the Family Code is hereby amended to read as follows:

"Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), [36], 37 and 38.

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. **A DECREE OF DIVORCE VALIDLY OBTAINED BY A FILIPINO CITIZEN ABROAD SHALL BE VALID IN THIS COUNTRY ONLY AFTER A DETERMINATION BY A PHILIPPINE COURT THAT THE SAME IS BASED ON A GROUND FALLING UNDER ARTICLE 55 (B) OF THIS CODE."**

SEC. 4. Article 36 of the Family Code is hereby repealed.

SEC. 5. *Repealing Clause.* - The provisions of any law, executive order, presidential decree or any other issuance inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 6. *Separability Clause.* - If any part or provision of this Act is declared invalid, all other provisions not affected thereby shall remain valid.

SEC. 7. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,