

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

House Bill No. 3761

Introduced by **Rep. Pablo P. Garcia**

EXPLANATORY NOTE

There are proposals from many quarters to substitute the crime of adultery with marital infidelity. Such proposals stem from the debate on the difference in the treatment of adultery under Article 333 and concubinage under Article 334 of the Revised Penal Code. Said provisions in the Revised Penal Code are being criticized to being bias in favor of the husband considering that given the set of elements that make up the act of concubinage, it is almost impossible for an aggrieved wife to obtain a conviction. On the other hand, restrictions on the wife are so stringent that it creates the impression that infidelity is an ill only women can be afflicted of.

The Philippine Commission on Women describes marital infidelity as a major marital or family stressor among Filipino married couples. It concludes that marital infidelity in the Philippines is a male phenomenon citing various studies showing that 36% of married men engage in extra marital sex compared to 2% of married women. However, it also cites various surveys that a large majority of the Filipinos disapprove of extramarital relations. Hence, the Philippine Commission on Women, together with the other women's rights advocates contend that the country is duty-bound to implement the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), specifically the UN CEDAW Committee's Concluding Comments, which among others, urges the government to review existing policies with the aim of removing discriminatory provisions in national legislation by substituting adultery and concubinage with marital infidelity.

Infidelity, however, is defined as "a breach of good faith" that applies in a number of contexts. In the context involving a close relationship, such as marriage, infidelity is referred to as cheating, which is "any violation of the mutually agreed-upon rules or boundaries of a relationship". It does not require sexual behavior to qualify as infidelity. Hence, marital infidelity, which is interchangeably used with adultery, should not be misconstrued only as sexual infidelity among married couples.

Adultery, also called philandery, is a form of extramarital sex whose definition seems to differ in nearly every legal system around the world. However, the common theme is sexual relations outside of marriage, in one form or another, or when one spouse deserts the other for a third person. It is viewed by the law in many jurisdictions

as an offense injurious to public morals and a mistreatment of the marriage relationship. This is also in synch with the seventh command provided for in the Decalogue, or the Ten Commandments, as contained in the Book of Exodus: "Thou shall not commit adultery". It is a moral imperative addressed both to men and women.

Adultery is sexual infidelity to one's legal spouse and is provided by Executive Order No. 209, otherwise known as the Family Code of the Philippines, as amended, as one of the grounds for legal separation. It is commonly referred only to sex between a woman who is married and a person other than her spouse. In some legal systems, if a married person has sexual intercourse with a person who is not his spouse, both parties commit the crime of adultery and penalized with felony.

In order to remove the gender bias observed in the provisions of the Revised Penal Code and to synchronize the provisions of existing laws in the country, this bill seeks to maintain the crime of adultery instead of creating another crime. It also proposes to repeal from the Revised Penal Code the crime of concubinage and make adultery a crime that can be committed by any legally married person who shall have carnal knowledge of a person not his or her spouse.

This bill further suggests that the crime of adultery be imposed on the person with whom the guilty spouse has had carnal knowledge, provided that this person knew of the legal status of the guilty spouse even if the latter's marriage is subsequently declared void. It also recommends that both offending parties to the crime of adultery be meted with same gravity of penalty.

In view of the foregoing, immediate approval of this bill is earnestly recommended.



PABLO P. GARCIA

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AN ACT
AMENDING REPUBLIC ACT NUMBERED THREE THOUSAND EIGHT HUNDRED
FIFTEEN, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE
OF THE PHILIPPINES, AND FOR OTHER PURPOSES

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

SECTION 1. Article 333, Chapter One, Title Eleven, Book II of Republic Act No. 3815, otherwise known as the Revised Penal Code, as amended, is hereby amended to read as follows:

"Art. 333. *Who are guilty of adultery.* – Adultery is committed by any LEGALLY married [woman] PERSON who shall have sexual intercourse with [a man] ANOTHER PERSON not HIS OR her [husband] LEGAL SPOUSE, and by the [man] PERSON who has carnal knowledge of HIM OR her, knowing HIM OR her to be LEGALLY married, even if the marriage be subsequently declared void.

"Adultery shall be punished by *prision correccional* in its medium and maximum periods.

"If the person guilty of adultery committed this offense while being abandoned without justification by the offended LEGAL spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed."

SECTION 2. Article 334 (Concubinage), Chapter One, Title Eleven, Book II of Republic Act No. 3815, as amended, is hereby repealed.

SECTION 3. The succeeding Articles of the Revised Penal Code, are hereby subsequently renumbered accordingly.

SECTION 4. The first two paragraphs of Article 344 of the Revised Penal Code, are hereby amended to read as follows:

"Art. 344. Prosecution of the crimes of adultery, [concubinage,] seduction, abduction, rape and acts of lasciviousness.- The crimes of adultery [and concubinage] shall not be prosecuted except upon a complaint filed by the offended spouse.

"The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he OR SHE shall have consented or pardoned the offenders[.], NOR, IN ANY CASE, IF HE OR SHE IS LIKEWISE GUILTY OF ADULTERY, NOR, IN ANY CASE, IF HE OR SHE SHALL HAVE ABANDONED THE GUILTY SPOUSE WITHOUT JUST CAUSE FOR MORE THAN ONE YEAR.

"XXXXX"

SECTION 5. Any law or parts thereof inconsistent with any provision of this Act shall be deemed repealed or modified as the case may be.

SECTION 6. This Act shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved,