

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3844

Introduced by: **HONORABLE TEDDY BRAWNER BAGUILAT**

EXPLANATORY NOTE

The role of women in nation-building is recognized in Article II, Section 14 of the Philippine Constitution which makes it the duty of the State to "ensure the fundamental equality before the law of women and men."

The implementing rules and regulations (IRR) of Republic Act 9710 or The Magna Carta of Women (MCW) requires the State to take steps to review and, when necessary amend or repeal existing laws that are discriminatory to women within three years from the effectivity of the Act.

The MCW defines "**Discrimination Against Women**" as *"any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. It includes any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges. A measure or practice of general application is discrimination against women if it fails to provide for mechanisms to offset or address sex or gender-based disadvantages or limitations of women, as a result of which women are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges; or women, more than men, are shown to have suffered the greater adverse effects of those measures or practices. Provided, finally, That discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion shall be considered discrimination against women under this Act."*

It also defines violence against women (VAW) as *"any act of gender-based violence that results in, or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty,*

whether occurring in public or in private life."

This is consistent with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of which the Philippines is a signatory. The Convention explicitly regarded the commission of discriminatory acts against women as an international issue that needed immediate attention and action.

In 1992, the CEDAW Committee passed General Recommendation No. 19 which states that *"gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention."* The Declaration on the Elimination of Violence against Women, adopted in 1993, prescribed the steps that each Member State should take to eliminate all forms of gender-based violence. Its preamble states that that *"violence against women constitutes a violation of the fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedom."* The Declaration requires States Parties to *"condemn violence against women" and "pursue by all appropriate means and without delay a policy of elimination of violence against women."*

In response, the Philippine Government enacted the Anti-Violence Against Women and Their Children Act of 2004 "to protect the family and its members, particularly women and children from violence and threats to their personal safety and security." This law also provides a comprehensive definition of "violence against women and their children" as *"any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in **physical, sexual, psychological harm or suffering, or economic abuse** including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty."*

Since men and women are equal before the law, the fact that they are married, should not restrict the rights of women and lower her status as second only to her spouse. These concepts of "equality" and "non-discrimination" are exemplified in the Family Code provisions that give joint parental authority over the person and property of legitimate children to both parents and joint right and responsibility to the spouses to own and administer their properties as well as support the family. However, **equality becomes merely illusory when the law is explicitly partial to the father's or husband's decision to give or withhold consent on questions regarding the parental authority over the person and property of their common children, administration of properties jointly owned by the spouses.** The real test in decision-making is the ability to make good and intelligent decisions on matters that affect the family. Yet, several provisions in the Family Code use the proxy standard of sex, presuming that all husbands are more intelligent, wiser, and possess better judgment than their wives. Also, consistent with the MCW and the Anti-VAWC Act, an act of violence should be sufficient to provide a ground for legal separation. The basis

for legal separation should consider not the number of times violence was perpetrated, but also the severity of the violence committed towards the spouse.

Provisions that treat women and men differently or give preference to the rights and decisions of men over women violates the equal protection clause and discriminates against women. Recognizing the Philippine government's responsibility to address these policy gaps, the immediate passage of this bill is earnestly sought.



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AN ACT
AMENDING DISCRIMINATORY PROVISIONS OF E.O. 209 OTHERWISE
KNOWN AS THE FAMILY CODE OF THE PHILIPPINES, IN ACCORDANCE WITH
THE MAGNA CARTA OF WOMEN

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

SECTION 1. The following provisions of Executive Order No. 209, otherwise known as the Family Code of the Philippines, are hereby amended to read as follows:

A. PARENTAL CONSENT IN MARRIAGE

Article 14. In case either or both of the contracting parties, not having been emancipated by a previous marriage, are between the ages of eighteen and twenty-one, they shall, in addition to the requirements of the preceding articles, exhibit to the local civil registrar the consent to their marriage of their **[father, mother, surviving parent or] EITHER THEIR FATHER OR MOTHER**, guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be manifested in writing by the interested party, who personally appears before the proper local civil registrar, or in the form of an affidavit made in the presence of two witnesses and attested before any official authorized by law to administer oaths. The personal manifestation shall be recorded in both applications for marriage license, and the affidavit, if one is executed instead, shall be attached to said applications. (61a)

B. LEGAL SEPARATION

Article 55. A petition for legal separation may be filed on any of the following

grounds:

- (1) **ANY ACT OR A SERIES OF ACTS CONSTITUTING SERIOUS AND/OR [R]epeated physical OR SEXUAL VIOLENCE, PSYCHOLOGICAL HARM OR SUFFERING, ECONOMIC ABUSE** 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.

C. OWNERSHIP, ADMINISTRATION, ENJOYMENT AND DISPOSITION OF THE COMMUNITY PROPERTY

Article 96. The administration and enjoyment of the community property shall belong to both spouses jointly. **IN CASE AN URGENT DECISION IS NECESSARY IN ORDER TO RESPOND TO A FAMILY CRISIS, EITHER SPOUSE MAY MAKE THE DECISION, SUBJECT TO RECOURSE TO THE COURT BY THE OTHER SPOUSE FOR PROPER REMEDY, WHICH MUST BE AVAILED OF WITHIN FIVE YEARS FROM THE DATE OF THE CONTRACT IMPLEMENTING SUCH DECISION. [In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.]**

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (206a)

D. ADMINISTRATION OF THE CONJUGAL PARTNERSHIP PROPERTY

Article. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. **IN CASE AN URGENT DECISION IS NECESSARY IN ORDER TO RESPOND TO A FAMILY CRISIS, EITHER SPOUSE MAY MAKE THE DECISION, SUBJECT TO RECOURSE TO THE COURT BY THE OTHER SPOUSE FOR PROPER REMEDY, WHICH MUST BE AVAILED OF WITHIN FIVE YEARS FROM THE DATE OF THE CONTRACT IMPLEMENTING SUCH DECISION. [In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.]**

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (165a)

E. PARENTAL AUTHORITY OVER THE PERSON OF THE CHILD

Article 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the **DECISION OF THE PARENT WHO IS THE PRIMARY CARETAKER OF THE CHILD [father's decision]** shall prevail, unless there is a judicial order to the contrary.

Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority. (311a)

F. PARENTAL AUTHORITY OVER THE PROPERTY OF THE CHILD

Article 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. **THE CONSENT OF BOTH PARENTS IS NECESSARY IN MAKING ALL DECISIONS [In case of disagreement, the father's decision shall prevail,]** unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds

P50, 000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten *per centum* (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely suppletory except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply. (320a)

SEC. 2. Separability Clause. - If any part or provision of this Act is held invalid or unconstitutional, other provisions not affected thereby shall remain in force and effect.

SEC. 3. Repealing Clause. All other laws, decrees, orders, issuances, rules and regulations which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 4. Effectivity. - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,