

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

NINETEENTH CONGRESS
First Regular Session

House Bill No. 3598



INTRODUCED BY REPRESENTATIVES RALPH WENDEL P. TULFO
AND JOCELYN P. TULFO

EXPLANATORY NOTE

No less than the Constitution prescribes the duty to ensure the equality of women and men under Philippine law, specifically Section 1, Article III of the 1987 Constitution which guarantees that no person shall be denied equal protection of laws and Section 14, Article II, of the 1987 Constitution which mandates that the State shall ensure the fundamental equality of women and men before the law.

The Supreme Court has repeatedly interpreted that "[t]his does not only mean that the Philippines shall not countenance nor lend legal recognition and approbation to measures that discriminate on the basis of one's being male or female. It imposes an obligation to actively engage in securing the fundamental equality of men and women."¹

Similarly, in the spirit of gender equality, the State should recognize the existence of lesbian, gay, bisexual, transgender ("LGBT") relationships. In fact, many countries around the world have legalized LGBT marriages. While gender equality should be promoted and celebrated, it should not extend to immunity from criminal prosecution for any sexual relations, regardless of gender, insofar as they violate the sanctity of lawful marriages under the law.

Act No. 3815, as amended, otherwise known as The Revised Penal Code ("RPC"), which came into effect on January 1, 1932, defines and punishes the crimes of Adultery and Concubinage. Adultery is committed by a married *woman* who shall have sexual intercourse with a man not her husband. On the other hand, concubinage is committed by the married *man* by (a) keeping a mistress in the conjugal dwelling; (b) having sexual intercourse under scandalous circumstances with a woman not his wife; or (c) cohabiting with her in any other place. However, as it stands, it is apparent that there exists a gender-based discrimination within these laws. Moreover, it fails to capture the ambit of other inherently immoral activities which could likewise offend the sanctity of lawful marriages.

First, the principal offender in Adultery is a married woman, while the principal offender in Concubinage is a married man. On the other hand, if a married man engages in sexual intercourse with another woman or man, the crime of Adultery is not committed. Likewise, if a married woman engages in sexual intercourse or activity with another woman, the crime of Adultery is likewise not committed. Similarly, if a married man commits the acts defined under Concubinage with another man or if a married woman commits the acts defined under

¹ *Saudi Arabian Airlines (Saudia) v. Rebesencio*, G.R. No. 198587, January 14, 2015.

Concubinage, there is no crime. In all of the above scenarios, there exist gender-based qualifications which may violate and destroy the sanctity of marriages, but seemingly escape the ambit of the law.

Second, under our current laws, a married woman is only guilty of Adultery once she engages in sexual intercourse or has carnal knowledge with a man not her husband, while any other sexual activity is not covered. This fails to capture other kinds of sexual activity which could likewise destroy and violate the sanctity of lawful marriages.

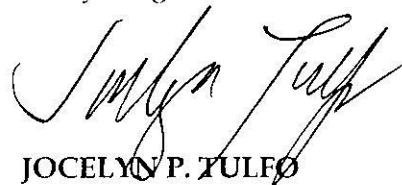
Finally, while the acts constituting Concubinage are more egregious and the burden of proving the same is more difficult compared to Adultery, the penalty for Adultery is notably higher. In line with this, there is sufficient reason for the State to increase the penalty for persons convicted of Concubinage.

Under our present criminal laws, there is apparent discrimination not only against women, but even men, which is in blatant contravention of our State's policy and obligation under international law to ensure the fundamental equality of women and men before the law. In view of the foregoing, there is a long-awaited and urgent need to amend the law in order to rectify the near century-old gender-based discrimination, to ensure gender equality for all persons and uphold the sanctity of marriages.

In view of the foregoing, the urgent passing of this bill is earnestly sought.



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1 AN ACT PROMOTING GENDER EQUALITY AND UPHOLDING THE SANCTITY OF
2 MARRIAGE, THEREBY AMENDING FOR THIS PURPOSE TITLE ELEVEN, CHAPTER
3 ONE, ARTICLES 333 AND 334 OF ACT NO. 3815, OTHERWISE KNOWN AS THE
4 REVISED PENAL CODE, AS AMENDED

5 *Be It enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

6
7 **SECTION 1.** Title Eleven, Chapter One, Article 333 of the Revised Penal Code, as amended,
8 is hereby amended to read as follows:
9

10 Article 333. Who are guilty of adultery. - Adultery is committed by:

11
12 (a) ANY married PERSON who shall have sexual intercourse with ANOTHER
13 PERSON not HIS/HER SPOUSE and by the OTHER PERSON who has carnal
14 knowledge of HIM/HER knowing HIM/HER to be married, even if the marriage
15 be subsequently declared void;
16

17 (b) ANY MARRIED MAN WHO SHALL COMMIT A SEXUAL ACT BY
18 INSERTING HIS PENIS INTO ANOTHER PERSON'S ORAL OR ANAL ORIFICE
19 AND BY THE OTHER PERSON WHO SHALL COMMIT A SEXUAL ACT WITH
20 HIM KNOWING HIM TO BE MARRIED, EVEN IF THE MARRIAGE BE
21 SUBSEQUENTLY DECLARED VOID; AND
22

23 (c) ANY MARRIED PERSON WHO SHALL COMMIT AN ACT BY USING ANY
24 BODY PART, INSTRUMENT OR OBJECT, IN A SEXUAL MANNER, WITH
25 ANOTHER PERSON AND BY THE OTHER PERSON WHO SHALL COMMIT A
26 SEXUAL ACT WITH HIM/HER KNOWING HIM/HER TO BE MARRIED, EVEN
27 IF THE MARRIAGE BE SUBSEQUENTLY DECLARED VOID.
28

29 xxx xxx xxx

30
31 **SEC. 2.** Title Eleven, Chapter One, Article 334 of the Revised Penal Code, as amended, is
32 hereby amended to read as follows:
33

1 Article 334. *Concubinage*. - Any SPOUSE who shall keep a mistress OR
2 PARAMOUR in the conjugal dwelling, or shall have sexual intercourse, under
3 scandalous circumstances, with a PERSON who is not HIS/HER SPOUSE, or shall
4 cohabit with HIM/HER in any other place, shall be punished by PRISION MAYOR
5 in its minimum and medium periods.

6
7 The concubine OR PARAMOUR KNOWING HIM/HER TO BE MARRIED shall
8 suffer the penalty of PRISION MAYOR IN ITS MINIMUM AND MEDIUM
9 PERIODS.

10
11
12 **SEC. 3. *Separability Clause*.** - If, for any reason, any provision of this Act is declared to be
13 unconstitutional or invalid, the other sections or provisions hereof which are not affected
14 thereby shall continue to be in full force or effect.

15
16 **SEC. 4. *Repealing Clause*.** - All laws, decrees, orders, rules and regulations, or parts thereof
17 which are inconsistent with or contrary to the provisions of this Act are hereby repealed,
18 amended, or modified accordingly.

19
20 **SEC. 5. *Effectivity*.** - This Act shall take effect fifteen (15) days after its publication in the Official
21 Gazette or in at least two (2) national newspapers of general circulation.

22
23 Approved,