

A Literal ‘Till Death Do Us Part’: The Difficulties of Severing Marital Ties in the Philippines with No Divorce and the Court’s Struggle to Ease the Journey

Florian Kim P Dayag

University of Philippines

fpcdayag@up.edu.ph

ORCID iD: 0009-0001-2755-4690

(Corresponding author)

ABSTRACT

The Philippines, aside from the city-state of the Vatican, remains the only country in the world where divorce is not allowed to sever marriage and marital ties. Current law only allows certain remedies – annulment and declaration of nullity of marriage – which take time and resources to litigate. With a growing call to legislate divorce into domestic law, the lower house of the Philippines’ bicameral congress recently passed a bill, but the upper house does not appear to be receptive to the initiative, with several members even antagonistic to the movement. The judiciary then stands in a distinct position to be proactive in resolving disputes involving marital ties, but its attitude remains subject to the composition of the courts, although more recent approaches have been liberal. The paper tackles the current situation of divorce (or lack thereof) in the Philippines and the struggles of the people and the courts to navigate the perilous journey of severing marital ties in the country.

Keywords: Marriage; Divorce; Annulment; Philippines

Received: 25 March 2025, **Accepted:** 16 June 2025, **Published:** 1 December 2025

1. Introduction

Krista Dador was married at the young age of 18, forced by her parents due to the fact that she got pregnant by her soon-to-be husband. Not long after the marriage, her husband started to physically abuse her. After two years of living together, she left. This is not an uncommon occurrence in the Philippines. According to a 2023 report from the Philippine Statistics Authority, one in five married women aged 15 to 49 experienced violence -



® (2025) 5(3) Asian Journal of Law and Policy 185–198

<https://doi.org/10.33093/ajlp.2025.11>

© Universiti Telekom Sdn Bhd. This work is licensed under the Creative Commons BY-NC-ND 4.0 International License.

Published by MMU Press. URL: <https://journals.mmuupress.com/ajlp>



physical, sexual, and emotional - from their spouses. Years later, Krista was left looking for greener pastures overseas to support her children. Her husband, who has since found a new partner, does not help them with their expenses.¹ On paper, however, they remain married. Their properties are governed by the conjugal regime under the law and are still bound by certain obligations and liabilities attached to married individuals. In the Philippines, after all, marriage is a “sacrosanct social institution”² and the “basis of human society throughout the civilized world,”³ which must be preserved and cherished.

The Philippines indeed stands at a peculiar position. Aside from the Vatican City, no other country in the world disallows divorce as a mode of severing marital ties for its general population. The issue has become a battle cry for women in abusive marriages and for activists who aspire to break free from the chokehold of conservative religious dogmas prevalent in the country. Attempts to legalise divorce have, however, been futile in the past. In May 2024, the lower house of the Philippine Congress passed a bill allowing divorce in the country. Like clockwork, religious groups have voiced their opposition to the bill. The bill is unfortunately expected to languish in the upper house—preserving the Philippines’ status as the remaining no-divorce country in the world.

2. Divorce in the Philippines

To be precise, however, it is not absolutely true that there is no divorce in the Philippines. The Code of Muslim Personal Laws of the Philippines allows marriage bonds to be legally dissolved by *talaq*, *ila*, *zihar*, *li’an*, *khul’*, *afwld*, or *faskh*. *Faskh*, or divorce by judicial decree, may be granted if, among others, the husband commits acts of unusual cruelty against the wife, or he neglects or fails to provide support for his family for at least six (6) consecutive months.⁴ The Code of Muslim Personal Laws, however, only applies to marriages between fellow Muslims or between a male Muslim and a non-Muslim female solemnized in Muslim rites.⁵

But for the rest of the Philippines, there is no divorce. This was not always the case. Pre-colonial marital systems were heavily influenced by Malay and Muslim cultures and thus allowed divorce. The wife could sever marital ties by simply returning the dowry to the

¹ Diana Mendoza, “‘I Almost Died’: Abused Filipino Women Hope Divorce Will Become Legal’ *Reuters*, 16 April 2018) <<https://www.reuters.com/article/idUSKBN1HN045/>>.

² *Domingo v Court of Appeals*, GR No 104818, 17 September 1993.

³ *Adong v Cheong Seng Gee*, GR No 18081, 3 March 1922.

⁴ Presidential Declaration No 1083, Arts 45–53.

⁵ *ibid*, Art 13. Art 178, which extends the application to spouses who both converted to Islam after their marriage. It is not uncommon for non-Muslim Filipinos who are unaware of the limited application of Muslim divorce to fall prey to unscrupulous individuals, particularly in social media, who offer Muslim conversion cum divorce services in exchange for a fee. Ara Eugenio, ‘Converting to Islam falsely touted as “pathway to divorce” in Catholic-majority Philippines’ (AFP Factcheck, 14 February 2024) <<https://factcheck.afp.com/doc.afp.com.34HR798>>. The Supreme Court had been vigilant of this practice and does not hesitate to impose criminal sanctions for obtaining second marriage and using the Muslim Code to skirt the general law on marriage.

husband or his parents, plus an additional amount equal to the dowry. The husband could also ask for a separation, but he would lose half of the dowry.⁶ The Spanish occupation, built on the agenda of spreading Catholicism in the country, brought conservative Catholic values in marital laws. The *Siete Partidas* limited divorce to *quoad thorum et mutuam habitationem* or relative divorce and did not authorize *quoad vinculum* or what is commonly called absolute divorce.⁷ The divorced spouses may no longer live together or have any carnal connection with one another, but the juridical tie of marriage remains.⁸

After the Spaniards ceded the Philippines to the Americans in 1898, the *Siete Partidas* remained effective until 1917. The Philippine legislature then enacted Act No. 2710, which established absolute divorce on two grounds - concubinage on the part of the husband or adultery on the part of the wife. The Catholic church expectedly criticized the law, while advocates for liberalizing divorce believed that the law was too conservative in application.⁹ Act No. 2710 was briefly repealed during the Japanese occupation. The military government implemented Executive Order No. 141 which provided for more grounds for divorce, including an attempt on the life of one spouse by the other, repeated bodily violence by one against the other, and slander by deed or gross insult by one spouse against the other.¹⁰ After the end of the Second World War, Executive Order No. 141 was nullified, and Act No. 2710 was reinstituted.

Finally free from the control of colonizers, the new Philippine Republic sought to review and revise laws to conform with the customs, traditions, and idiosyncrasies of the Filipino people.¹¹ One of the first initiatives was the passage of the New Civil Code. Although the task of writing the code was designated to a particular Commission, the Catholic Church had tremendous influence in the drafting of the provisions on marriage, particularly on divorce. The result was thus expected. Notwithstanding calls from certain groups to retain the then-legal framework for divorce, the New Civil Code ultimately removed absolute divorce and instead introduced the concepts of annulment and legal separation.¹² Almost four decades later, the provisions of the New Civil Code on marriage were repealed by the Family Code of the Philippines.

⁶ Samuel R Wiley, 'The History of Marriage Legislation in the Philippines' (1975) 20(2) *Ateneo Law Journal* 23; Deogracias T Reyes, 'History of Divorce Legislation in the Philippines Since 1900' (1953) 1(1) *Philippine Studies* 1, 42.

⁷ *Francisco v Jason*, GR No L-39871, 30 August 1934.

⁸ *Benedicto v Dela Rama*, GR No L-1056, 8 December 1903.

⁹ *Barretto Gonzalez v Gonzalez*, GR No L-37048, 7 March 1933; Wiley (n 6).

¹⁰ *Anaban v Anaban-Alfiler*, GR No 249011, 15 March 2021.

¹¹ Wiley (n 6).

¹² *ibid.*

3. The Framework to Sever Marital Tie under the Family Code

The 1987 Constitution, adopted after the Marcos regime fell in 1986, declares marriage as an inviolable social institution and the foundation of the family.¹³ During the deliberation of the constitutional commission, a query was raised as to whether the provision implied a constitutional ban on divorce. The commission answered in the negative, although there were views that the provision effectively discouraged divorce. Ultimately, the commission left the decision whether to allow divorce in the Philippines to the legislature, under certain circumstances as it may deem fit.¹⁴ A year after the 1987 Constitution was ratified, the Family Code was enacted to govern marital and family rights in the Philippines. It provides two measures to sever the marital tie: annulment of marriage and declaration of nullity of marriage. It also contained a provision, which allows the recognition of foreign divorce decrees. Short of annulling or nullifying marriage, it carries with modification the New Civil Code provisions on legal separation.

3.1. Declaration of Absolute Nullity of Marriage

A marriage may be severed and declared an absolute nullity when it is void *ab initio*. When so declared, the marriage is considered to have never taken place. It cannot be the source of rights. It has no legal effects except those declared by law. It can never be ratified, does not prescribe, and can even be questioned even after the death of either spouse.¹⁵ Grounds for declaration of nullity, which by their very nature exist at the time of the celebration of marriage, can be categorized into five: void marriages due to lack of any of the essential requisites of marriage,¹⁶ void marriages due to psychological incapacity,¹⁷ incestuous marriages,¹⁸ marriages that are against public policy,¹⁹ and bigamous and void subsequent marriages.²⁰

3.2 Annulment

Annulment is a remedy available when the marriage is characterized as voidable under the Family Code. A voidable marriage is considered valid and produces all civil effects until it is set aside by the final judgment in an action for annulment. Thus, although annulment dissolves the special contract of marriage as if it had never been entered into, certain effects

¹³ The Constitution of the Republic of the Philippines 1987, Art XV, s 2.

¹⁴ Records of the Constitutional Commission, Proceedings and Deliberations, Vol IV, 760; Vol V, 39–40.

¹⁵ *Niñal v Bayadog*, GR No 133778, 14 March 2000.

¹⁶ The Family Code of the Philippines, 1987/209 (Family Code), Art 35.

¹⁷ *ibid*, Art 36.

¹⁸ *ibid*, Art 37.

¹⁹ *ibid*, Art 38.

²⁰ *ibid*, Art 41, 52, 53.

of the marriage are not totally wiped out. For instance, children born before the court grants annulment are still treated as legitimate children of the annulled spouses.²¹

Similar to a declaration of nullity, however, the grounds for annulment must also exist at the time of the celebration of the marriage.²² Four of the six grounds are related to the element of consent, including when one of the spouses had an unsound mind or when there is fraud, force, intimidation, or undue influence in obtaining the consent of one spouse. Fraud includes habitual alcoholism, concealment of drug addiction, or homosexuality or lesbianism existing at the time of the marriage.²³ The other two grounds involve serious and incurable incapacity of one spouse to consummate the marriage, such as physical incapability or affliction of a sexually transmissible disease.

Because annulable marriages are merely voidable, they may be ratified and cured by certain actions. If, for instance, the consent of the spouse was obtained by force or intimidation, the said spouse could no longer have the marriage annulled if he or she freely cohabited with the other as husband or wife after the force or intimidation had disappeared or ceased. They are also subject to prescription. For example, in case one of the spouses was afflicted with a serious and incurable sexually transmissible disease, the other spouse must file an action for annulment within five years from the time of marriage.²⁴

3.3 Divorced Obtained Overseas

Philippine law recognizes divorces involving mixed marriages as long as they are obtained abroad according to the national law of the foreign spouse. Article 26 of the Family Code particularly provides that a divorce validly obtained overseas by a foreign spouse, which capacitates him or her to remarry, shall also capacitate the Filipino spouse to remarry. In *Republic v Manalo*, the Supreme Court clarified that Article 26 applies not just to divorce initiated by the foreign spouses, but also to those initiated by the Filipino spouse or by the spouses jointly.²⁵ This rule is perceived as “a corrective measure to address the anomaly” wherein the foreign spouse is free to marry under the laws of his or her country, while the Filipino spouse will be tied to the marriage.²⁶

Recognition of a divorce decree obtained overseas is within the ordinary jurisdiction of trial courts. In the context of an ordinary civil proceeding, the party praying to recognize the divorce decree must prove first the fact of divorce and then its conformity to the foreign law allowing it. As these matters are considered official acts of sovereign authority, procedural rules require either official publications or copies attested by the officers having legal custody of the divorce decree and the foreign law, without prejudice to the application of

²¹ *Suntay v Cojuangco-Suntay*, GR No 132524, 29 December 1998.

²² Family Code, Art 45.

²³ *ibid*, Art 46.

²⁴ *ibid*, Art 47.

²⁵ *Republic of the Philippines v Marelyn Tanedo Manalo*, GR No 221029, 24 April 2018.

²⁶ *Fujiki v Marinay*, GR No 196049, 26 June 2013.

relevant treaties to which the Philippines is a signatory.²⁷ In addition, when the document is in a foreign language, the party must submit an official translation thereof.²⁸

3.4 Legal Separation

Short of severing the marital bond, the Family Code retains the recognition of bed-and-board separation of the spouses through a decree of legal separation. One decreed, the spouses are entitled to live separately from each other, with the minor children placed in the custody of the innocent spouse. The marital property relation is also dissolved, including the disqualification of the offending spouse to inherit from the innocent spouse through intestate succession.²⁹ Since the marriage is not severed by a decree of legal separation, the spouses are not precluded from reconciling, in which case the decree of legal separation shall be set aside.³⁰

The grounds for legal separation need not exist at the time of the celebration of marriage and may arise or supervene thereafter. These include repeated physical violence or grossly abusive conduct of one spouse, attempt to corrupt or induce one to engage in prostitution, drug addiction or habitual alcoholism, lesbianism or homosexuality of the respondent, and sexual infidelity or perversion.³¹ An action for legal separation, however, is susceptible to prescription and must be filed within five (5) years from the time of the occurrence of the cause.³²

3.5 Issues With the Current Regime

Krista, or any other married Filipino citizen, for that matter, could indeed avail of the remedies under the Family Code to resolve her marital predicament. In reality, however, availing of these mechanisms, particularly the declaration of nullity of marriage and annulment to have the marriage dissolved, is easier said than done. Both remedies would require a court decree and could cost around PhP500,000 or USD8,500.³³ In context, the average minimum daily wage required by law is around PhP440 or USD7.50.³⁴ The trial could last more than a year, and even longer if the case is appealed further. Recently, A

²⁷ Rules of Court, r 132, s 24.

²⁸ *Republic v Kikuchi*, GR No 243646, 22 June 2022.

²⁹ Family Code, Art 63.

³⁰ *ibid*, Art 66.

³¹ *ibid*, Art 55.

³² *ibid*, Art 57.

³³ 'How Much Does It Cost to Get an Annulment in the Philippines?' (*GMA News Online*, 1 July 2017) <<https://www.gmanetwork.com/news/lifestyle/familyandrelationships/616462/how-much-does-it-cost-to-get-an-annulment-in-the-philippines/story/>>.

³⁴ Zacarian Sarao, 'PH Daily Wage Too Low to Meet Family Living Wage, Says Ibon Foundation' *Philippine Daily Inquirer* (Manila, 10 April 2024) <<https://newsinfo.inquirer.net/1928520/ph-daily-wage-too-low-to-meet-family-living-wage-says-ibon-foundation-2>>.

famous Filipino actress had her marriage with the son of a politician nullified by the Supreme Court after 13 years of filing.³⁵ Success is also not guaranteed. The Supreme Court noted that from 1987 to 2021, it only granted 11 petitions for nullity of marriage on the grounds of psychological incapacity.³⁶

The low success rate of dissolution proceedings is due in large part to the fact that there are limited grounds for a marriage to be nullified, which grounds must have existed at the time of marriage. Physical violence, for instance, is not a valid ground to cut marital ties, unless it is rooted in the spouse's psychological incapacity existing at the time of the celebration of the marriage.³⁷ This sets the Philippine framework apart from divorce, which ends marriage for reasons that may have arisen after the celebration of marriage.³⁸ Due to the limited and restrictive grounds of marital dissolution, the concept of psychological incapacity has been the battleground of recent litigations because, unlike the other grounds whose bounds are well-defined by the Family Code, it was formulated to be an open-ended concept that could aid the court in liberally interpreting the strict no-divorce policy of the Family Code.

4. Making Sense of Psychological Incapacity

No concept in Philippine marriage law has been the subject of legal debate and discussion more than the concept of psychological incapacity under Article 36 of the Family Code. With absolute divorce out of the table, the inclusion of Article 36 was conceived as an alternative to provide a more liberal remedy to sever marital ties.³⁹ To appease possible dissent from religious conservatives, Article 36 was patterned from Canon No. 1095 of the New Code of Canon Law adopted by the Roman Catholic church in 1983.⁴⁰ As passed, Article 36 reads as follows:

“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, shall likewise be void even if such incapacity becomes manifest only after its solemnization.”

Nowhere in the Family Code can the definition of psychological incapacity be found. But this is intentional on the part of the committee that drafted the Family Code. The

³⁵ Hannah Mallorca, ‘Jodi Sta. Maria and Pampi Lacson’s Marriage Annulled After 13-Year Wait’ *Philippine Daily Inquirer* (Manila, 9 June 2024) <<https://entertainment.inquirer.net/560630/jodi-sta-maria-pampi-lacsons-marriage-annulled-after-13-years>>.

³⁶ *ibid.*

³⁷ *Tan-Andal v Andal*, GR No 196359, 11 May 2021, 5–8.

³⁸ *ibid.*

³⁹ A former member of the Senate even claimed that Article 36 has become a divorce provision in disguise. Senate Bill No 1321, 14th Congress (2007). But this comparison is more fiction than not. Definitions and Indications of Psychological Incapacity 14th Congress Bill (2007)

⁴⁰ Jose Ramon R IV Pascual, ‘Understanding the Nature of Psychological Incapacity’ (1997) 72 *Philippine Law Journal* 139.

committee feared that defining psychological incapacity, or even giving examples thereof, would limit the applicability of the provision. Instead, the absence of definition would give judges the discretion and authority to interpret the term on a “case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect.”⁴¹

Due to this deference, one can argue that the judicial system facilitated the conservative approach adopted in Article 36 proceedings for more than twenty years, which started in the 1995 case of *Santos v Court of Appeals*.⁴² Justice Jose V. Vitug, writing for the majority, characterized psychological incapacity as “no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage” and that it refers only to “the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.” Taking from the work of a former judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila, the three-prong standard of gravity, juridical antecedent, and incurability was formally adopted by the Supreme Court.⁴³

After two years, the Supreme Court was again presented with an opportunity to calibrate the bounds of psychological incapacity. In *Republic v Court of Appeals & Molina*⁴⁴ penned by Justice Artemio V. Panganiban, the Supreme Court elaborated that incapacity under Article 36 “must be psychological—not physical, although its manifestations and/or symptoms may be physical” and must be medically or clinically identified and sufficiently proven by experts. Because of this requirement, psychologists and psychiatrists became almost indispensable in Article 36 proceedings, forced to assign some personality disorder and pathologize the supposedly psychologically incapacitated spouse.⁴⁵

As to the requisite of gravity, the court held that a spouse must be “mentally or physically ill to such an extent that the person could not have known the [marriage] obligations he [or she] was assuming, or, knowing them, could not have given valid assumption thereof.” Juridical antecedent, meanwhile, requires the incapacity to exist at the time of the celebration of the marriage, that is, when the parties exchange their “I do’s.” The incapacity must have attached at such moment, or prior thereto, although the manifestation thereof need not be perceivable at such time. Finally, the psychological incapacity must be medically or clinically permanent or incurable, whether absolute or relative only in regard to the other spouse.

⁴¹ *Salita v Magtolis*, GR No 106429, 13 June 1994.

⁴² *Leouel Santos v The Honorable Court of Appeals and Julia Rosario Bedia-Santos*, GR No 112019, 4 January 1995.

⁴³ Justice Teodoro R Padilla dissented and criticized the Supreme Court’s approach as possible antithetical to the liberalization intended by Article 36. He deemed that while Art 36 was not “a sanction for absolute divorce”, he insisted that its interpretation should not be constricted “to non-recognition of its evident purpose”.

⁴⁴ *Republic of the Philippines v Court of Appeals and Roridel Olaviano Molina*, GR No 108763, 13 February 1997.

⁴⁵ *Andal* (n 37).

The *Molina* doctrine has then become the gold standard in analysing psychological incapacity in Article 36 proceedings, although it has been criticized as strict and contrary to the purpose of Article 36. In 2009, after having only granted one case in a span of 12 years, the Supreme Court acknowledged that the doctrine has “become a strait-jacket, forcing all sizes to fit and be bound by it” and “has unnecessarily imposed a perspective by which psychological incapacity should be viewed, [that is] totally inconsistent with the way the concept was formulated.” The court, however, refused to abandon and modify the *Molina* doctrine and merely instructed trial courts to consider “other perspectives” in disposing of Article 36 cases.⁴⁶ The court, again in 2015, again rebuked the *Molina* doctrine for having turned out to be rigid, such that its “application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection.”⁴⁷ In another case in 2017, it added that *Molina’s* effect is “the perversion of the family unit, the very institution that our laws are meant to protect.”⁴⁸

It was only in 2021 did the Supreme Court revisited the *Molina* doctrine in *Tan-Andal v Andal*.⁴⁹ The court started by recognizing that characterizing psychological incapacity as similar to “mental incapacity” and “personality disorders” went against the intent behind Article 36. By abandoning this characterization, opinions of psychologists and experts, including the need to label a person as having a diagnosed mental disorder, are no longer required. Instead, it suffices that there is proof of the durable or enduring aspects of a spouse’s personality⁵⁰ which manifests itself through clear acts of dysfunctionality that undermine the family and make it impossible for him or her to understand and comply with essential marital obligations. This can be proven by witnesses who have been present in the lives of the spouses before they contracted marriage.

The court accordingly modified the three-prong requirement. Gravity requires that the incapacity be a serious or dangerous illness caused by a “genuinely serious psychic cause.” Juridical antecedent remains the same, although proof thereof may now consist of testimonies describing the environment where the supposedly incapacitated spouse lived that may have led to a particular behaviour, such as growing up with domestic violence or trauma. Incurability no longer refers to medical but legal incurability. The incapacity only needs to be so enduring and persistent and contemplates a situation where the spouses’ respective personality structures are so “incompatible and antagonistic that the only result of the union would be the inevitable and irreparable breakdown of the marriage.” An esteemed family law expert lauded the relaxation of the rules as it dislodged the *Molina* doctrine from its status as the “privileged interpretation of a legal text.”⁵¹

⁴⁶ *Ngo-Te v Yu-Te*, GR No 161793, 13 February 2009.

⁴⁷ *Kalaw v Fernandez*, GR No 166357, 14 January 2015.

⁴⁸ *Tani-De La Fuente v De La Fuente*, GR No 188400, 8 March 2017.

⁴⁹ *Andal* (n 37).

⁵⁰ Which the court referred to as ‘personality structure’.

⁵¹ Amparita D Sta Maria, ‘Tan-Andal v Andal: The Deconstruction and Diminishing of the Molina Guidelines’ (2021) 66 *Ateneo Law Journal* 82.

In three years' time, the Supreme Court has granted more petitions for the nullity of marriage under Article 36 than it had for the past three decades post-*Tan-Andal*.⁵² The judiciary is taking some much-needed steps, as opposed to the seemingly stagnant stance of the executive and the legislative branches. This at least opens a small window of opportunity for Filipinos trapped in unfruitful and abusive marriages. However, more still needs to be done.

5. The Struggle Persists

The easing of Article 36 in *Tan-Andal* is a much welcome development, but uncovers the still pervasive struggle in severing marital ties. In fact, *Tan-Andal* is now used by opponents to justify the rejection of the divorce bill. Some argue that the public should let *Tan-Andal* take its course in the lower courts first before taking a more drastic measure through a divorce law.⁵³ One can even argue that the Supreme Court can go further in liberalizing Article 36, either by requiring a lower degree of proof in establishing the three standards or even completely untying Article 36 from its ties to canon law and establishing an even more liberal Article 36 regime. This would inevitably increase the success rate of Article 36 petitions across the country. Yet, this would also lead to the perception that Article 36 is being weaponized as an alternative to divorce – an indirect subversion of the Family Code. This is the very same concern in the 1990s that led to the formation of the *Molina* doctrine. Despite *stare decisis*, which requires the court to adhere to precedents in making their decisions, one cannot predict how the Supreme Court would react to another pre-*Molina* dilemma. There is nothing stopping the Supreme Court as an institution from recalibrating its previous decisions and rendering another stricter standard to appease the public. The people would then be left with a potential cyclical quandary that would be wholly dependent on the judicial leaning or philosophy of the incumbent Justices of the Supreme Court at a particular period of time.

In the end, the judicial system can only do so much. The Supreme Court has previously acknowledged that it is “unfortunate that legislation from the past appears to be more progressive than current enactments.”⁵⁴ However, it is still bound by the limits of the statute it is interpreting or applying to a particular case. It has not shown any inclination that it is prepared to declare the provisions of the Family Code as unconstitutional, instead remaining steadfast that all legal aspects of marriage, including the strategy and the

⁵² In 2021 alone after *Tan-Andal*, seven cases were granted. *Quilpan v Quilpan*, GR No 248254, 14 July 2021; *Moteyalto-Laylo v Ymbang*, GR No 240802, 29 September 2021; *Estella v Perez*, GR No 249250, 29 September 2021; *Halog v Halog*, GR No 231695, 6 October 2021; *De Silva v De Silva*, GR No 219709, 17 November 2021; *Republic v Yeban*, GR No 219709, 17 November 2021; *Maristela-Cuan v Cuan*, GR No 248518, 7 December 2021.

⁵³ Stephen L Monsanto, ‘Lawmakers Should Take a Long, Hard Look at the Family Code Before Considering a Divorce Law’ *Philippine Daily Inquirer* (Manila, 9 October 2023) <<https://opinion.inquirer.net/166984/lawmakers-should-take-a-long-hard-look-at-the-family-code-before-considering-a-divorce-law>>.

⁵⁴ *Racho v Tanaka*, GR No 199515, 25 June 2018.

modalities to protect it, be left to the legislature.⁵⁵ This leaves the ball entirely in the hands of the Philippine Congress.

On 22 May 2024, the House of Representatives, the lower house of Congress, passed on third reading House Bill No. 9349 or the proposed Absolute Divorce Act. The bill seeks to restore judicial decrees of divorce in the Philippines. It is prefaced with a declaration that, as a matter of policy, the State shall give “spouses in irremediably failed marriages” an opportunity to secure an absolute divorce “as an alternative mode for the dissolution of an irreparably broken or dysfunctional marriage.”⁵⁶ It proposes measures that could address several dilemmas of the current framework, the most apparent of which is the expansion of the grounds of dissolution to those that exist even after the celebration of the marriage.⁵⁷ For instance, grounds for legal separation are grounds for divorce as well. Psychological incapacity and grounds for annulment may exist at the time of marriage or supervene after its celebration. Some grounds in the Family Code are also expanded. Physical violence, present in the Code, is made a subset of the concept of domestic or marital abuse, which includes various kinds of violence, *e.g.*, psychological, emotional, sexual violence, and even economic violence. The bill also introduces new concepts in relation to post-marriage causes, such as irreconcilable differences, which the bill defined as the “substantial incompatibility of the spouses due to their intransigence or fault by holding on to divergent and divisive behaviour resulting in the total breakdown of their marriage which could not be repaired despite earnest efforts to reconcile.”⁵⁸

Aside from expanding the grounds for severing marital ties, House Bill No. 9349 also eases the dissolution process. The bill allows divorce proceedings to be summary in nature if justified by circumstances, such as when the spouses have been, as a matter of fact, separated for at least five (5) years. If any of the recognized conditions are present, the petitioning spouse has the option not to be assisted by counsel. The court may also allow presentation of evidence *ex parte*, and any decision it renders shall be immediately final and executory.⁵⁹ The financial burden may also be lessened. If the petitioning spouse has properties not exceeding PhP2.5 million, he or she may apply to be a court-assisted petitioner. If so declared, a *counsel de officio* may be appointed by the court to represent the petitioner. The court may also waive the payment of filing fees and other costs of litigation, and assign the necessary social workers, psychologists, and psychiatrists to assist the petitioner in the proceedings.⁶⁰ In case the petitioner chooses his or her own counsel, the bill

⁵⁵ *Andal* (n 37). This appears to be the current judicial philosophy of the Supreme Court on marriage and related laws in the Philippines. *Falcis III v Civil Registrar-General*, GR No 217910, 3 September 2019.

⁵⁶ Reinstating Absolute Divorce as an Alternative Mode For The Dissolution of Marriage 19th Congress Bill (2024), s 2.

⁵⁷ *ibid*, s 5.

⁵⁸ *ibid*, s 4(n).

⁵⁹ *ibid*, s 11.

⁶⁰ *ibid*, s 4(k), 9(c).

prescribes that the fees to be paid shall not exceed Php50,000, although they can agree on a rate higher than that prescribed.⁶¹

House Bill No. 9349 contains adequate protections to address possible abuse. Foremost is the requirement of a judicial decree. As a rule, only courts can grant a divorce decree, except for marriages nullified by the proper matrimonial tribunal of a recognized religious sect or denomination which only requires registration with the Civil Registry Office. Divorce proceedings are thus still adversarial in nature. A divorce decree cannot be based on a stipulation of facts or a confession of judgment. The State is also involved in every step of the proceedings. Public prosecutors are mandated to conduct investigations to ensure that no collusion exists between the spouses. Outside of the judicial system, HB No. 9349 recommends the creation of a Congressional Oversight Committee, which shall monitor the implementation by the courts and conduct a review every 5 years to address any issues that may arise therefrom.

After hurdling the lower house by a narrow margin,⁶² House Bill No. 9349 was transmitted to the Senate, the upper house of Congress, for appropriate action. There are already pending bills in the Senate that serve as the counterpart of House Bill No. 9349. The Senate, however, appears to be the campaign's toughest ground. One senator has already manifested his intention to let the bill languish in the Senate chamber.⁶³ The former Senate president opposed the measure because he is "pro-family and pro-life,"⁶⁴ while the current Senate President, who himself had his previous marriage annulled, stated that his negative stance towards divorce will not be affected by the public's support for the enactment of a divorce law.⁶⁵ One senator even made a statement that she was not in favour of divorce because she has "a very happy family life."⁶⁶ Even if the bill passes both the lower and upper house of Congress, it still needs the signature of the President. Although President Ferdinand Marcos, Jr. has shown openness to divorce law during his campaign in 2022,⁶⁷ the

⁶¹ *ibid*, s 27.

⁶² The bill passed with 131 affirmative votes, 109 negative votes; and 20 abstentions. <<https://www.congress.gov.ph/press/details.php?pressid=13081>>.

⁶³ "'Pwede Namang Tulugan": Jinggoy, Senate's Top 2 Official, to Sit On Divorce Bill' (*Politiko*, 7 June 2024) <<https://politiko.com.ph/2024/06/07/pwede-namang-tulugan-jinggoy-senates-top-2-official-to-sit-on-divorce-bill/headlines/>>.

⁶⁴ Bonz Magsambol, 'Where Do Senators Stand on Divorce Bill?' *Rappler* (Manila, 28 May 2024) <<https://www.rappler.com/philippines/where-do-senators-stand-divorce-bill/>>.

⁶⁵ RG Gruz, 'Senators Favor Affordable, Accessible Annulment Over Divorce Bill-Villanueva' *ABS-CBN News* (3 June 2024) <<https://news.abs-cbn.com/news/2024/6/3/senators-favor-affordable-accessible-annulment-over-divorce-bill-villanueva-1526>>.

⁶⁶ RG Cruz, "'I Have a Very Happy Family Life": Cynthia Villar Rejects Divorce Bill' *ABS-CBN News* (Manila, 29 May 2024) <<https://news.abs-cbn.com/news/2024/5/29/i-have-a-very-happy-family-life-cynthia-villar-rejects-divorce-bill-1244>>.

⁶⁷ Kristine Joy Patag, 'Marcos Open to Divorce, "But Don't Make It Easy"' *PhilStar Global* (Manila, 19 March 2022) <<https://www.philstar.com/headlines/2022/03/19/2168525/marcos-open-divorce-but-dont-make-it-easy>>.

enactment of a divorce law was not among his priority measures for the current congressional session.⁶⁸

The lack of action and the nonchalant attitude of several members of the Senate may appear outrageous considering that in the most recent survey conducted by a research institution this year, 50% of Filipinos support divorce for “irreconcilably separated couples,” with a national net agreement score of +19.⁶⁹ But that is how the chips are falling at the moment.

There is one option available for the Filipino people in the absence of positive action from their elected representatives. The Philippine Constitution requires Congress to provide for a system of initiative and referendum for the people to directly propose and enact laws. To be able to do this, however, a petition signed by at least 10% of the total number of registered voters, of which every legislative district must be represented by at least 3% of the registered voters thereof, must be registered.⁷⁰ In 1987, the Philippine Initiative and Referendum Act was passed to give effect to the mandate. If resorted to today, it would mean gathering the signatures of more than 9 million Filipinos, which may prove to be a daunting task without local machinery to facilitate the activity. This could explain why, almost 40 years after, this mechanism has not been exercised by the Filipinos yet, despite its potential to address the limits that persist in the structure and operation of the Philippines’ representative democracy.

6. Conclusion

The institution of marriage has played a critical role in the development of human society. It served as a means of forging alliances with other families, used to preserve property rights within a filial line, to become a union between individuals who, bound by mutual love, intend to build a family together. Thus, it is the State’s interest to protect and preserve marital and family life. But no marriage is perfect. Human frailty and fallibility are inevitable. What was once enveloped in affection may thereafter be cloaked in vice, resentment, and abuse. On the bright side, the spouses could very well resolve their differences and return to their previous state of marital bliss. For such cases, the State should provide avenues to promote resolution and reconciliation. But some marriages are beyond repair.

The Philippine government, particularly the executive and legislative branches, should recognize the need for more progressive, accessible, and efficient mechanisms to address the prevailing dilemma of marital dissolution in the country. The two elected branches should

⁶⁸ Dwight de Leon, ‘Divorce, SOGIE Still Excluded From Marcos’ Updated List of Priority Measures’ *Rappler* (25 June 2024) <<https://www.rappler.com/philippines/marcos-updates-list-priority-measures-ledac-divorce-sogie-bills-excluded-june-2024/>>.

⁶⁹ ‘Support for Legalizing Divorce Strongest in NCR, Weakest in Mindanao–SWS Survey’ *Rappler* (Manila, 1 June 2024) <<https://www.rappler.com/philippines/legalization-divorce-survey-social-weather-stations-march-2024/>>.

⁷⁰ The Constitution of the Republic of the Philippines 1987, Art VI, s 32.

not consign to the judiciary the ultimate responsibility for addressing the issue, as its authority in policymaking is extremely limited and negative in nature. The growing number of Filipinos who support reinstituting divorce should serve as a trigger for members of Congress and the Senate, as representatives of the people, to listen to their constituents and disregard biases rooted in religious dogma. Pandering to religious groups and denominations while sacrificing the welfare of the general population runs counter to their mandate. Compromise may be reached by removing certain often contentious grounds for divorce—if only to appease and gain the support of more conservative blocs in the legislative branch. A small step is better than no step at all. Once enacted into law, amending the grounds for divorce can be the next step.

The President could enhance the effort by ensuring that the passage of a divorce law is among the government's top priorities in the foreseeable future. Social issues involving marriage and family life have not been a particularly urgent concern in recent years. Express recognition on the part of the executive branch of the need to amend or revise the Family Code to accommodate divorce would send a strong signal to the lawmakers to give attention to the issue and expedite legislation. At the same time, the Filipino people must remain vigilant and steadfast in their clamour to institutionalize divorce for all, not just for Muslim Filipinos. The Philippines is not devoid of the history of Filipinos ensuring that their voices are heard. They should consistently call for change and be at the forefront of the movement.

Ultimately, the sanctity of marriage should not be equated with the prohibition or unlikelihood of severing the marital tie. The constitutional protection of the sanctity of marriage implies the state's interest in defending against marriages that are unprepared or unqualified to promote family life as well. Forcing spouses to stay in a marriage that is no longer viable, to their own and their children's prejudice, destroys more foundation of the family than it protects it.

Acknowledgement

The author wishes to acknowledge the individuals who helped in proofreading the earlier draft of the papers. The author also extends his appreciation to the inputs provided by the British Academy and the University of Birmingham.

Funding Information

The research for this paper was not funded. ♦