WOMEN IN FAMILY LAW

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The concern for women is not new with the United Nations, through whose Commission on the Status of Women the search for the promotion of women's lot the world over never ends. One of the milestones of the Commission in its task was the drafting of the Declaration on the Elimination of Discrimination Against Women which took all of three years to discuss and complete, and another year to be debated upon and finally adopted unanimously by the General Assembly on 7 November 1967. For very selfish reasons, I am particularly happy to note the extremely enthusiastic reception that the International Women's Year is getting from my compatriots. For I was privileged to sit for three consecutive years in one of the committees that drafted the Declaration, which we at the Commission felt was "the Charter" for women. I am, indeed, proud and happy that to all indications we are, at long last, ready to affirm the principles to which the Commission and the General Assembly have committed all peaceloving peoples in this significant document: "Their faith in fundamental rights, in the dignity and worth of the human person and in the equal rights of men"; that "discrimination against women, denying or limiting as it does their equality of rights and men, is fundamentally unjust and constitutes an offense against human dignity."[1]

It is in this spirit, rather than in the spirit of any belligerent "liberation movement" that I invite my listeners to examine with me certain aspects of the status of our women under our family law and determine, if we can, where we can strengthen the dignity of woman as a human being, not only for her own sake, but for the sake of the whole Philippine society.

Even before the advant of the International Women's Year, much had already been said, in content, language and style far superior to what I can ever hope to conjure, about the Filipino woman in family law. Lest I bore you with tiresome repetitions, I shall endeavor to gloss over, very quickly, those areas that have, to my best knowledge, already been hashed and re-hashed until nothing new can be added, and then essay, perhaps, to lead you on to some more challenging pastures where all of us can chew the cuds of deep and serious thinking, that at the end of this short and by no means comprehensive talk, some conclusions might be arrived at which could serve as basis for recommendation for revision of existing laws.

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[1]U.N. Declaration on the Elimination of Discrimination Against Women, art. 1.

In approaching the subject of Philippine family law it is always helpful to remember the fundamental constitutional principle upon which it is based, and that is that the family is an institution "which public policy cherishes and protects"[2] so that whatever we do, we should keep intact marriage and family, we should strengthen them, as basic social institutions.[3] A second criterion necessary to keep in mind in this analysis is the existence of traditional and hence deeply-rooted concepts of the women's role in homemaking. We all know how the old Civil Code was revised precisely to make the Spanish-inspired provisions more conformable to long established social mores. Dean Irene Cortes' very erudite and scholarly treatise on women's rights in the 1973 Constitution[4] reflects these changes, especially in citizenship, parental authority, family relations particularly in property rights, legal separation and family planning.

But any study would be incomplete and inadequate if *vis-a-vis* the consideration of tradition, there would be no attention given to the newer concepts of family life, particularly the departure from the old and cruel concept of the Roman *patria potestas* where the father's authority over the family was absolute, and the advent, instead, of the principle enunciated in the Declaration of Elimination of Discrimination Against Women that in all family disputes, disagreements and/or mutual decisions "in all cases the interest of the children shall be paramount."[5] And quite as important to take into consideration is the changing role of the woman from a fulltime housekeeper to part-time member of the economy's labor force.

These pointers in mind, allow me first of all to summarize what has already been covered in the round-table conference held at the Population Center some two months ago on the very same subject assigned to us for this morning's dissertation. One of the background papers found in your folders sets the following topics considered:

(1) raising the age of consent to marry to 18 for both males and females;

(2) amending Article 110 of the Civil Code which gives to the husband the sole prerogative to choose the family residence in such a way as to make this a matter for both husband and wife to determine, with the "best interest of the family" as deciding factor;

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[2]CONST., art. III, sec. 4.
[3]*Id.*
[4]Women's Rights under the 1973 Constituton, *supra*.
[5]U.N. Declaration on the Elimination of Discrimination Against Women, Art. 10, par. (1), sub-par. (d).

(3) deleting the provision of law (Article 114, Civil Code) prohibiting the wife from acquiring any property by gratuitous title, except from her ascendants, descendants, parents-in-law, and collateral relatives within the fourth degree, since there is no such prohibition imposed on the husband;

(4) revising the provisions of law (Article 165-168, Civil Code) in regard to the administration of the conjugal partnership so as not to vest it automatically in the husband, when in actuality the Filipino woman has proven her equal capacity for administration;

(5) re-examining the import of the legal dictate (Article 111, Civil Code) that "the husband is responsible for the support of the wife and the rest of the family, and (Article 115, Civil Code) that "the wife manages the affairs of the household...";

(6) revising the legal requirement (Article 84, Civil Code) of waiting 300 days before a widow can be issued a license to a new marriage, when an issuance of a medical certificate to the effect that the applicant is not pregnant would be sufficient precaution to avoid confusion in paternity;

(7) amending the existing provision of law withdrawing from a widow who remarries parental authority over her children, for no such inhibition exists for the widower;*

(8) the problems of citizenship encountered by the Filipino woman who marries an alien which have partly been solved by the new Constitution, but which have not fully been met.[6]

(9) the inadequacy of our existing laws on annulment, divorce and legal separtion under the present-day conditions.[7]

We shall attempt to take over from where the discussants at the Population Center left off, and to add a few footnotes, as it were.

Under Article 111 of the Civil Code which states "the husband is responsible for the support of the wife and the rest of the family"[8] the wife is immediately placed at a lower level than her "provider" husband. For women who are engaged in gainful pursuits, like the factory-worker, the salaried employee, and the professional, it is easy to argue that they literally contribute to the support of the family, and therefore, they should

*EDITOR'S NOTE: Article 17 of the Children and Youth Welfare Code, otherwise known as Pres. Decree No. 603 which took effect on June 10, 1975 gives the surviving spouse the right to exercise parental authority.

[6]Torrevillas-Suarez, THE LAW, *What is Good for Men Should be Good for Women*, 4 PHIL. PANORAMA, 6-7 (February 2, 1975).

[7]CIVIL CODE, arts. 85-91, 97-198.

[8]CIVIL CODE, art. 111.

be accorded the same footing as the husband as "providers" of the home. But what about the bulk of the women in our country, the women in the agricultural rural areas, whose sole role is the maintenance of the house and the small farm; those subsistence farm workers who toil from morning to night as housewives and whose contribution to the national economy despite the crucial role they play in food production, is not recognized nor measured by the economist and the national planner? It is reported that:

> "Recent studies on time-budgeting have confirmed the fact that the married working woman works more hours than the working man, the single working woman or the housewife, who spends an average of 20 to 22 hours at home each day. Male assistance remains peripheral and women, whether employed or unemployed, continue to shoulder almost all of the burden of the housework and daily care of the children."[9]

The dignity of the "mere housewife" could be raised to equality with the gainfully occupied if the law were to stipulate the peso equivalent of her hours spent on household chores, so that at the end of the month she could be considered as having contributed so many pesos' worth of effort and labor to the family coffers. Better still, it could be established by law that she is entitled to a family allowance[10] at a certain rate per household hour spent. Thus, her role as full-time housewife would become valuable and hence be as respected as her husband's job; her present classification of "protected and dependent" rectified; and her present status as "unpaid family worker"[11] more equitably identified.

The exigencies of modern living have steadily created growing imbalances in the heretofore socially accepted and law-precepted places in the home. Take for example the concept that the husband is the "head" and "provider" of the family and the wife takes care of the "management" of the home. With the widening of woman's activities outside the home, both economically, socially and politically, her tasks have been multiplied no end so that it becomes more and more difficult for her to perform her household chores without the assistance of the husband. Just as the new Civil Code has imposed upon both parents the judicious exercise of parental authority over the children, it could likewise lay administration of the conjugal property, the management of the affairs of the house, and the maintenance of the family *jointly* in the hands of the spouses. Thus would the law provide for a real partnership between the spouses, *in obligations as well as in privileges,* share and share alike, in the true concept of equality.

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[9]The Situation and Status of Women Today: Some Essential Facts, U.N. OPI/CESI Note IWY/15 December 1974.

[10]*Ibid.*

[11]*Ibid.*

It is, perhaps, in the realm of annulment, divorce and legal separation where the disparities between the law and modern situations are most glaring and where tradition, mores and reality are not quite attuned with one another.

The law under our present system, recognizes void and voidable marriages, does not sanction absolute divorce (*a vinculo matrimonii*), but provides for relative divorce (*a mensa et thoro*) or legal separation. Marriages void *ab initio* are the following:

> "ART. 80. The following marriages shall be void from the beginning:
>
> (1) Those contracted under the ages of sixteen and fourteen years by the male and female respectively, even with the consent of the parents;
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> (2) Those solemnized by any person not legally authorized to perform marriages;
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> (3) Those solemnized without a marriage license, save marriages of exceptional character;
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> (4) Bigamous or polygamous marriages not falling under article 83, number 2;
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> (5) Incestuous marriages mentioned in article 81;
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> (6) Those where one or both contracting parties have been found guilty of the killing of the spouse of either of them;
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> (7) Those between stepbrothers and stepsisters and other marriages specified in article 82."[12]
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> Incestuous marriages are those contracted:
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> (1) Between ascendants and descendants of any degree;
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> (2) Between brothers and sisters, whether of the full or half blood;
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> (3) Between collateral relatives by blood within the fourth civil degree."[13]
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> Other marriages declared void by the law are:
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> (1) Between stepfathers and stepdaughters, and stepmothers and stepsons;
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> (2) Between the adopting father or mother and the adopted, between the latter and the surviving spouse of the former, and between the former and the surviving spouse of the latter;
>
> (3) Between the legitimate of the adopter and the adopted."[14]

The important features of void marriages are:

(1) they are void because they do not comply with one of the requisites of validity, or because they are against morals, customs and/or public policy:

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[12]CIVIL CODE, art. 50.
[13]CIVIL CODE, art. 81.
[14]CIVIL CODE, art. 85.

(2) these kinds of marriages *cannot* be ratified; and

(3) no judicial decree is necessary to establish their invalidity.[15]

For purposes of this conference, it is not necessary to dwell on the ertswhile conflict in the thinking of the Supreme Court on whether or not a person who has contracted a void marriage needs a judicial declaration of nullity before he can contract another marriage. It is now well established in our jurisprudence that no such declaration is necessary.[16]

It is only in voidable marriages that a judicial pronouncement is necessary, and it is so because of the very nature of the marriage. Unless one of the parties seeks and obtains a declaration of nullity, the marriage will subsist. The grounds that render a marriage voidable are the following:

> "ART. 85. A marriage may be annulled for any of the following causes, existing at the time of the marriage:
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> (1) That the party in whose behalf it is sought to have the marriage annulled was between the ages of sixteen and twenty years, if male, or between the ages of fourteen and eighteen years, if female, and the marriage was solemnized without the consent of the parent, guardian or person having authority over the party, unless after attaining the ages of twenty or eighteen years, as the case may be, such party freely cohabited with the other and both lived together as husband and wife;
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> (2) In a subsequent marriage under article 83, number 2, that the former husband or wife believed to be dead was in fact living and the marriage with such former husband or wife was then in force;
>
> (3) That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife;
>
> (4) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as her husband or his wife, as the case may be;
>
> (5) That the consent of either party was obtained by force or intimidation, unless the violence or threat having disappeared, such party afterwards freely cohabited with the other as her husband or his wife, as the case may be;
>
> (6) That either party was, at the time of marriage physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable."[17]

The fraud mentioned in par. 4 of the article just quoted consists of any of the following circumstances:

> "Art. 86. Any of the following circumstances shall constitute fraud referred to in a number 4 of the preceding article:

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[15]People v. Aragon, G.R. No. L-10016, February 28, 1957, 100 Phil. 1033 (1957), 53 O.G. 3749 (June 30, 1957).

[16]People v. Mendoza, G.R. No. L-5877, September 28, 1954, 95 Phil. 845 (1954), 50 O.G. 4767 (Oct., 1954); People v. Cota, C.A.-G.R. No. 7974, August 28, 1941, 40 O. G. 3145 (Oct., 1941); People v. Aragon, *supra*, note 15.

[17]CIVIL CODE, art. 85.

(1) Misrepresentation as to identity of one of the contracting parties;

(2) Non-disclosure of the previous conviction of the other party of a crime involving moral turpitude, and the penalty imposed was imprisonment for two years or more;

(3) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband.

No other misrepresentation or deceit as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage."[18]

Note that the law[19] sets time limits within which actions for annulment of voidable marriages may be commenced, and circumstantial conditions which occur after the celebration of the marriage which will bar a suit for annulment. I refer to the "unlesses" in the above-quoted article 85.

As to legal separation, I do not think it is necessary to state here the distinction in legal effects between annulment and legal separation, as you all well know that legal separation merely covers the physical oneness of the spouses, but not the marriage bond, thus creating the very anomalous and all too often morally pernicious situations which unhappily, compound instead of remedy, the problems of the broken family.

But for a better understanding of the discussion that will follow, please permit me to enumerate the grounds for legal separation:

(1) Adultery on the part of the wife and concubinage on the part of the husband as defined in the Penal Code; or

(2) An attempt by one spouse against the life of the other.[20]

It is immediately apparent that in the grounds alone, there is already a marked discrimination against the woman: for a separation prayed for by the husband, proof of only one contact by the wife with a man not her husband, will be sufficient to grant the separation.[21] In order for the wife to be entitled to a separation, however, the relations complained of must have been had "under scandalous circumstances", the husband must have *kept* (the word connotes a certain length of time, not merely one contact) the mistress in the conjugal dwelling, or he must have cohabited (again a period longer than just *one* sexual act) with her in any in any other place.[22]

As stated earlier, the moral implications brought about by the legal fiction that in separation the marriage persists, not to speak about the extreme difficulty of proving the grounds for concubinage, call for a re-

[18]CIVIL CODE, art. 86.
[19]CIVIL CODE, art. 87.
[20]CIVIL CODE, art. 97.
[21]CIVIL CODE, art. 333.
[22]CIVIL CODE, art. 334.

examination of the law. Mainly because of existing trends in most parts of the world, the most popular remedial suggestion bruited about is to introduce the system of absolute divorce in the country. But because of the predominantly Catholic composition of the country, the tenets of which faith strictly forbid the severance of "what God has put together" the proposal has been encountering vexing reactions here at home, despite the acceptance of the institution in Italy, a country closely identified with the Holy See and more recently, of a similar acceptance in Brazil, another predominantly Catholic country.[23]

I wonder whether this body could not, here and in future seminars and/or group discussions, give serious consideration to the possibilities that are suggested by no less than the very authority which many of our compatriots cite when they oppose liberalized divorce laws — the Church. Confronted with the idiosyncracies and stresses of modern living, which in their turn effect in no mean manner the relations between husband and wife, the universal Church has devised an ingenious method whereby, while maintaining the dogma of the indissolubility of marriage, it is at the same time facing realistically the demands of contemporary situations.

The Church starts with the proposition that a marriage *validly* contracted, *i.e.*, without any of the defects that could vitiate it, can *never* be either annulled or severed. From this absolute principle it goes on to the next equally absolute principle — that a marriage that was contracted by parties who were suffering from defects which disqualified them from entering into the married state, is no marriage at all, and no *supervening* factor or factors which could occur during the union will ever make it valid by operation of time as provided in law — unless upon the cessation of invalidating elements in the parties and/or in extrinsic circumstances, the contractants renew consent or the law-giver personally endows it with validity. In other words, the Church does not recognize *voidable* marriages. There are only two kinds of marriages in the church: *valid* and *void ab initio*. So that a party who goes to the Church courts for annulment is really only asking for a written and judicial pronouncement of the fact that there was no marriage in the first place. And because of the tenet that a void marriage is void for all time, there is no time limit to applying for a declaration of annulment. To my mind, these bases of the concept of marriage in the Church make much more simple the procedures dealing with its annulment.

The Ecclesiastical Tribunal has several branches, one of which is the office of the annulment court. This is a panel of three judges which could be headed by the bishop of the diocese personally. The mem-

[23]Bulletin Today, February 25, 1975.

bers are usually ecclesiastics but there is no prohibition against laymen sitting as such. In Italy and Spain, civil lawyers case plead in the Church marriage courts. One of the members of the panel is the hearing officer, and the other is called the research judge, who drafts the decision after the hearing officer's report has been discussed by the panel. The decision is signed by all three judges. The parties, of course, are entitled to appear and be assisted by counsel. The Church is represented by the "defender of the (marriage) bond" whose duty it is to try, as much as possible, to save the marriage. Formerly, the decision of the panel was appealable to Rome. However, considering the expense and time spent in such a procedure, it has been revised so that now the decisions of the diocese of Manila are reviewed by the archdiocese of Cebu, and vice-versa. Then there is the notary who takes note of, and certifies to the acts taken in the court.

The grounds for annulment of the Church could be classified into:

(1) the legal objective factors, and

(2) the subjective factors.

The first are divided into:

(a) those established by law, otherwise known as the "diriment" or "invalidative" factors such as underage, consanguinity, etc.; and

(b) those which have to do with the *canonical* form of the marriage, *i.e.*, whether the ministering official was really a priest, whether the ceremonies held were according to the Catholic rites, etc.

The subjective factors are classified into:

1. *defects of knowledge* — where one or both of the contracting parties were ignorant of the nature of the marriage or of the essential properties thereof as taught by the Church. Where, for example, the groom went into marriage with a reservation at the back of his mind that he will not have any children because he does not believe in the doctrine of the Church that the primary purpose of marriage is procreation; or when one of the parties is a believer in divorce, contrary to the teaching of the Church, the marriage contracted is void *ab initio* for defects of knowledge.

2. *defects of consent* — where, for one reason or another, there was a wrong intention, such as an intention motivated or influenced by force, fear, misrepresentation, simulation, or wrong pretentions on the part of one of the contracting parties, marrying exclusively for money or for sex alone.

3. *physical defects* — that is, sexual incompetence and/or impotence, which need no extended discussion here.

4. *emotional defects* — any emotional disturbance that can be found or defined in the psychologist's and psychiatrist's book will qualify under this category. The "mama's boys" and the "papa's girls", persons with personality disorders, those suffering from sociopathy and emotional maladjustments that hinder them from constructively playing their role in society, those with "unconventional" behaviours, like the homosexuals and the lesbians, the deviants, the chronic criminals, the perverts —all these, contracting marriage, suffer from emotional defects which affect the validity of the marriage. If it is determined by the Church tribunal through the recommendation of experts requested to conduct a case study, that any of these emotional defects existed *at the time* of the marriage then it may, at the instance of the innocent party, hand down a declaration of annulment. Note with emphasis that all the grounds just mentioned must be proven to have existed at the time that the marriage was contracted.[24]

It will be noted that there already exist a good number of common denominators between the Church and our civil law rules. To start with, both establish the "diriment" or "invalidative" factors, as well as the factors of *form* and *ceremony*. Too, the Church's defects of consent and physical defects are also provided for in our law as is also the principle that no judicial pronouncement is necessary to nullify a marriage void *ab initio*. The problem before us now, would be whether we are ready to recommend the deletion of voidable marriages and adopt the Church's all-sweeping stand of the two categories of marriages. And if we do, would we be ready to give our assent to the emotional grounds as contemplated by the Church? To answer both of these questions in the affirmative, would be to render moot in one single stroke all the wrangling over the *pros* and *cons* of absolute divorce. On the other hand, one should consider what the effect of such a step would be on the constitutional concept of the marriage as being not merely a contract, but an institution.

And, more significantly, what about that sector of our society whose religious teaching does not include the indissolubility of marriage? Obviously, for them the principles on which the Church procedure of declaration of annulment and non-acceptance of divorce are based have neither urgency nor relevancy. Under the circumstances, it would seem that a middle-of-the-road solution would be the most ideal; that is, the provision in the law of alternative remedies, sufficiently liberal in either instance, annulment with wider grounds, more or less the same as those provided

[24]Author's interview with Fr. Gerardo Ty Veloso, OSB, Judge Matrimonial Court, Manila.

by Canon law for those who do not believe in divorce, and divorce for those who are not religiously inhibited from resorting to it.

Another possible and less complicated approach would be to add a provision in our marriage law recognizing Church annulments in very much the same manner that our existing statutes declare as valid, marriages celebrated by "priests, rabbis, ministers of the gospel of any denomination, church, religion or sect duly registered."[25] The only drawback in this recommendation is that, as far as I know, it is only the Catholic Church which, for the present, has a system of annulment. I am not aware of any of the Protestant and other church denominations.

Finally, there could also be the expedient of recognizing foreign divorces, provided that they were granted on grounds specified in our own laws. This would, of course, first entail the recognition of the institution of divorce in our family law.

To summarize, then, these are the observations which I wish to submit for your consideration and detailed study:

1) the need for raising the dignity of the "mere housewife" by devising a way by which her contribution in the management of the home can be gauged in terms of "allowances" or some other manner;

2) revision of the existing discriminatory provision of the law which, in autocratic and divisive manner, defines the roles of the husband as "provider" and the wife as "manager" of the family and the home, so as to decree, instead, that the maintenance and administration of the family is a joint responsibility of the spouses, who are enjoined (by the law) to assist and consult each other;

3) the pressing problems generated by mis-matched marriages which go beyond the mere contract — for it affects the happiness, stability and emotional equilibrium, not only of the contracting parties, but of the children as well.

It is earnestly to be hoped that you, as the most representative group of Filipino women in all walks of life, will make it your commitment to undertake a continuing study, not only during this International Women's Year, but in all the years to come, of the status of our women, with the end in view of curing existing discriminations and establishing more equitable treatment of women in our family law.

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[25]CIVIL CODE, art. 566.