RECENT DEVELOPMENTS IN PHILIPPINE CRIMINAL LAW: UNVEILING PRE-EXISTING SEX AND GENDER DISPARITIES IN THE CRIMES OF ADULTERY AND CONCUBINAGE*

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ABSTRACT

This Survey presents a critical, macro-level analysis of historical and jurisprudential trends involving the crimes of adultery and concubinage, arguing that they have failed to promote sex and gender equality as dissected from the 1911 case of *Mata* up to the 2024 case of *Valencia*. It further examines the legislative development of these crimes, including the history of proposed amendments, in relation to evolving ideologies, cultural and religious norms, and shifting political dynamics within the Philippine context.

This Survey aims to shed light on how these pre-existing inequalities affect both men and women in the Philippines, particularly how one crime is perceived as "more severe" and "more difficult to prosecute" than the other crime. With this, it raises questions on the continued compatibility of these laws with contemporary human rights standards, and discusses what steps, if any, have been taken to address or reconcile these disparities.

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I. INTRODUCTION

Marriage has long played a vital role in nurturing future generations that help build a thriving society. In turn, state governments have demonstrated a firm commitment to safeguard it through, among others, the prohibition of conduct harmful to marital bonds and family solidarity.[1] Notably, these laws include the laws on adultery and concubinage.

Throughout history, society has viewed adultery to be a serious violation of the husband's rights over his wife. In which case, he would be allowed to exercise some degree of "self-help" by exacting "vendetta" against

[1] Ted N. Echols, *Decriminalizing Adultery: An Unanticipated Step in Restoring the Value of Marriage*, 16 LIBERTY U. L. REV. 195, 195 (2022).

her and her paramour.[2] Families that refused to act against such transgression were considered dishonorable.[3]

In the modern West, adultery is treated as a moral wrong that becomes legally significant in marital divorce proceedings[4] (i.e., "absolute divorce"[5]), as it serves a solid ground to legally end a marriage.[6] In the Philippines, adultery and concubinage also become relevant in marital separation cases (i.e., "relative divorce"[7]), so much so that they are considered as a form of sexual infidelity, which is a cause for legal separation under Article 55 of the Family Code.[8]

In other jurisdictions, using marital infidelity as a ground for divorce would, for practical considerations, require establishing the elements of the crime in a separate criminal proceeding. One must win the criminal lawsuit first before he or she could use it as a means to dissolve his or her marriage.[9] In contrast, in our jurisdiction, prior criminal conviction is not necessary in a civil action for legal separation based on concubinage, as the said action "may proceed ahead of, or simultaneously with, a criminal action for concubinage […]."[10]

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[2] Jeremy D. Weinstein, *Adultery, Law, and the State: A History*, 38 HASTINGS L.J. 195, 202 (1986).

[3] *Id.* at 202–03.

[4] Nina Kršljanin, *Adultery as a Crime in the Western World and Beyond: From a Man's Property to (In)Fidelity, from Discrimination to Decriminalization*, *in* 1 FEMINIST APPROACHES TO LAW 129 (Dragica Vujadinović et al. eds., 2023).

[5] *See infra* Part II.C.

[6] Weinstein, *supra* note 2, at 218.

[7] *See infra* Part II.D.

[8] FAM. CODE, art. 55(8). Note that "sexual infidelity or perversion of either spouse has replaced adultery on the part of the wife and concubinage on the part of the husband as defined by the Revised Penal Code (CIV. CODE, art. 97) as one of the grounds for legal separation." Gandionco v. Peñaranda [hereinafter, "*Gandionco*"], G.R. No. 79284, 155 SCRA 725, 730–31 n.5, Nov. 27, 1987.

"Under the Family Code, sexual intercourse with another person, not the spouse, by a wife or a husband will be a ground for legal separation, as it constitutes infidelity […]." ARTURO TOLENTINO, I CIVIL CODE OF THE PHILIPPINES 322 (1991).

"This change answers the demands of Filipino women for the elimination of the double standard between men and women since concubinage on the part of the husband is very hard to prove (the man usually just keeps a mistress in another place but goes home to his wife every evening), while one sexual intercourse with another man is already adultery on the part of the wife," ALICIA V. SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES 99 (1995), "*but note that this double standard is still found in the Revised Penal Code*." Myrna S. Feliciano, *Law, Gender, and the Family in the Philippines*, 28 LAW & SOC'Y REV. 547, 558 (1994). (Emphasis supplied.) *See infra* Part II.C.

[9] Weinstein, *supra* note 2, at 218.

[10] *Gandionco*, 155 SCRA at 729.

Nonetheless, prosecuting adultery and concubinage has done more than enforce the law that preserves marital harmony and familial relationships. It rather lays bare the law's deeply embedded bias against women—a reality that many lawmakers choose to ignore, if not overlook.

This paper intends to shed light on the pre-existing sex and gender inequalities in the crimes of adultery and concubinage. It will navigate the issue, examine laws and jurisprudence relevant to it, and determine whether the present legal framework could be harmonized to resolve this.

Part II will delve into the history of adultery and concubinage laws and how they have been shaped and reshaped by evolving ideologies, cultural and religious norms, and varying political structures. Part III intends to determine whether the crimes of adultery and concubinage truly promote sex and gender inequalities in a system governed by social imbalances. It will analyze key Supreme Court decisions to reveal the complexities and nuances found in the law. Lastly, Part IV will discuss what steps have been taken to address the issue and whether such is feasible in the long run.

II. THE EVOLUTION OF FILIPINO WOMEN, MARRIAGE, FAMILY IN LAW AND SOCIETY

Historically speaking, the treatment towards Filipino women has significantly evolved through diverse cultural norms, enduring religious beliefs, and shifting power dynamics within the communities. It can be said that a huge part of this transformation is tied to how Filipinos value family and marriage, and how we regard them in accordance with our laws.

A. The Pre-Colonial Period

During the precolonial period, Filipino women assumed a prominent role in our different pre-colonial societies.[11] Not only could they fulfill religious tasks as priestesses or spirit ritualists ("*baylan* in Visayan and *catalonan*

[11] Feliciano, *supra* note 8, at 548.

in Tagalog"[12]) who earned respect and authority for their services,[13] but they could be said to have enjoyed a considerable degree of autonomy especially when they got married, which allowed them to hold their own property,[14] engage in trade and industry using money of their own, and manage a separate and independent income from their business, among others.[15]

Back then, monogamy was the prevailing norm. Although it was legally acceptable for husbands to maintain their concubines,[16] their wives could easily divorce them, remarry, and establish another family[17] "on grounds of incompatibility, neglect, or misconduct."[18] Nevertheless, the family was treated as a "basic unit of society" in the same vein that marriage was considered a "contract between families which gave their mutual consent instead of individuals."[19]

In southern Mindanao, the concept of marriage evolved into a "religious institution with strict moral standards," whereby the Islamic Sharia was followed "not only as 'law' but as a 'code of life.'"[20] "Reproduction with religious overtones was considered the objective of marriage," and there was

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[12] PATRICIO N. ABINALES & DONNA J. AMOROSO, *The Philippines in Maritime Asia to the Fourteenth Century*, *in* STATE AND SOCIETY IN THE PHILIPPINES 28 (2nd ed. 2005). *See* Feliciano, *supra* note 8, at 548; TEODORO AGONCILLO, *Pre-Colonial Philippines: Early Customs and Practices*, *in* HISTORY OF THE FILIPINO PEOPLE 36 (8th ed. 1990).

[13] ABINALES & AMOROSO, *New States and Reorientations*, *1368–1764*, *in* STATE AND SOCIETY IN THE PHILIPPINES, *supra* note 12, at 58–59. *See, e.g.*, EMMA BLAIR & JAMES ROBERTSON, *Expedition of Miguel Lopez de Legazpi — 1564-68: Résumé of contemporaneous documents, 1559–68*, *in* II THE PHILIPPINE ISLANDS, 1493–1898 139 (1903); EMMA BLAIR & JAMES ROBERTSON, *Documents of 1571–72: Relation of the Conquest of the island of Luzón*, *in* III THE PHILIPPINE ISLANDS, 1493–1898 164 (1903); EMMA BLAIR & JAMES ROBERTSON, V THE PHILIPPINE ISLANDS, 1493–1898 12 (1903).

[14] Feliciano, *supra* note 8; AGONCILLO, *supra* note 12. *See, e.g.,* WILLIAM HENRY SCOTT, *The Visayas: Social Organization*, *in* BARANGAY: SIXTEENTH-CENTURY PHILIPPINE CULTURE AND SOCIETY 142 (1994); EMMA BLAIR & JAMES ROBERTSON, *Native races and their customs*, *in* XL THE PHILIPPINE ISLANDS, 1493–1898 98 (1903). *But see* EMMA BLAIR & JAMES ROBERTSON, *Customs of the Tagalogs*, *in* VII THE PHILIPPINE ISLANDS, 1493–1898 183 (1903).

[15] Feliciano, *supra* note 8; AGONCILLO, *supra* note 12.

[16] Samuel R. Wiley, *The History of Marriage Legislation in the Philippines*, 20 ATENEO L.J. 23, 25 (1976).

[17] *See, e.g.,* BLAIR & ROBERTSON, *Documents of 1582: Relation of the Filipinas Islands*, *in* V PHILIPPINE ISLANDS, *supra* note 13, at 157; SCOTT, *supra* note 14, at 140; SCOTT, *Mindanao and Luzon: Northern Luzon*, *in* BARANGAY, *supra* note 14, at 270.

[18] Flerida Ruth P. Romero, *Concerns and Emerging Trends on Laws Relating to Family and Children*, 86 PHIL. L.J. 5, 7 (2011). *See, e.g.,* BLAIR & ROBERTSON, *Relation of the Filipinas Islands*, *in* V PHILIPPINE ISLANDS, *supra* note 13, at 157.

[19] Romero, *supra* note 18, at 7.

[20] *Id.*

no notion of separation of church and state. For these reasons, crimes against chastity like adultery and concubinage became recognized.[21]

B. The Spanish Period

When Spain began colonizing the Philippines, its norms, customs, and beliefs were infused into our culture and daily life. Eventually, such were crystallized into laws and placed further restraints on Filipino women who were denied of political rights, and for a majority of the Spanish regime, educational rights.[22] They were only allowed to perform economic-related roles such as managing retail businesses and farms, as well as engaging in home-based crafts.[23]

Meanwhile, the laws of *Partidas* and *Novisima Recopilacion* governed marriages in the Philippines, which were later supplemented in 1883 by provisions on marital rights and obligations—without mention of divorce or the canonical and civil forms of marriage—from Spain's 1870 Provisional Law of Civil Marriage. All notably carried the fundamental principles of Roman law.[24]

C. The American Period

Undoubtedly, the arrival of American forces in the country had made a remarkable turning point in our history. It introduced English common law concepts, which were further integrated into our legal system alongside the existing Roman law principles from the early Spanish Civil Code.[25]

Additionally, the establishment of the American regime had paved way to the recognition of absolute divorce, i.e., one that "puts an end to the marriage,"[26] in the country, which former Supreme Court Senior Associate Justice Flerida Ruth P. Romero considered "a liberalization of the laws regulating family relations."[27] Thus, on March 11, 1917, the Philippine Legislature passed Act No. 2710, also known as "An Act to Establish Divorce."[28]

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[21] *Id.* at 7–8.

[22] Feliciano, *supra* note 8, at 548–49.

[23] *Id.* at 549.

[24] Wiley, *supra* note 16, at 33–34, 37, *citing* Benedicto v. de la Rama, 3 Phil. 34, 38 (1903).

[25] *Id.* at 37.

[26] TOLENTINO, *supra* note 8, at 311.

[27] Romero, *supra* note 18, at 22.

[28] Act No. 2710 (1917). An Act to Establish Divorce. *See* Wiley, *supra* note 16, at 39.

Essentially, the Act provided two grounds for absolute divorce, which are: (1) conviction for the crime of adultery and (2) conviction for the crime of concubinage, as defined under the *Código Penal* or the penal code at the time.[29] In which case, it was declared that "divorce shall not be granted without the guilt of the defendant being established by final sentence in a criminal action."[30] Thus, Articles 433 and 437 of the old Penal Code state that:

> Article 433. The penalty for adultery shall be *prision correccional* in its medium and maximum degrees.
>
> *Adultery is committed by any married woman who shall lie with a man who is not her husband and by a man who has carnal knowledge of her, knowing her to be married*, even if the marriage be subsequently declared void.[31]
>
> Article 437. *The husband who shall keep a concubine in his home, or out of it with scandal*, shall be punished with the penalty of *prision correccional* in its minimum and medium degrees.[32]

The provisions would reveal that there exists an obvious discrepancy in the treatment of men and women for the crimes of adultery and concubinage. In fact, Professor Myrna S. Feliciano had pointed this out earlier on in her article *Law, Gender, and the Family in the Philippines*, where she stated that "same standards were not applied to wives as to husbands for violation of the vow of mutual fidelity."[33]

D. The Civil and Family Codes of the Philippines

Executive Order No. 141, enacted during the Japanese occupation, introduced a new divorce law that effectively repealed Act No. by increasing the grounds for absolute divorce from two to eleven. However, this executive order was short-lived; it was declared void upon the liberation of the Philippines, thereby reinstating Act No. 2710.[34]

As the 1950 Civil Code was being drafted, widespread opposition to divorce, particularly from the country's Catholic majority, prompted lawmakers to remove the provision for absolute divorce under Act No. 2710.

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[29] § 1.
[30] § 8.
[31] CÓDIGO PENAL (1887), art. 433. (Emphasis supplied.)
[32] Art. 437, ¶ 1. (Emphasis supplied.)
[33] Feliciano, *supra* note 8, at 550.
[34] Exec. Order No. 141 (1943). *See* Wiley, *supra* note 16, at 40; Anaban v. Anaban-Alfiler, 898 Phil. 421, 431 (2021).

It was then replaced with "relative divorce" or *a mensa et thoro*—a divorce "from bed and board"—that did not dissolve the marriage between Filipino spouses, but merely allowed living separately from each other. The 1950 Civil Code, however, retained adultery and concubinage as valid grounds for "relative divorce."[35]

Interestingly, discrimination against women persisted. The main reason for this is that the laws penalizing adultery and concubinage remained unchanged both in the *Código Penal* and Revised Penal Code. Hence, the effects in securing a "relative decree" stayed mostly the same for women. As Professor Feliciano had raised, "proof of only one sexual contact by the wife with a man not her husband was sufficient to grant the separation."[36] Meanwhile, for the wife to be entitled to legal separation, "the husband must be guilty of concubinage as defined by the Revised Penal Code [by]: (1) maintaining a mistress in the conjugal dwelling, (2) having sexual intercourse with the other woman under scandalous circumstances, or (3) cohabiting with her in any other place."[37]

Nothing has changed even with the enactment of the Family Code in 1987. The Family Code simply adopted the previous law on "relative divorce" and expanded its grounds by adding the following grounds on top of adultery and concubinage: (1) repeated physical violence or grossly abusive conduct; (2) physical violence or moral pressure to change religious or political affiliation; (3) attempt to corrupt or induce to engage in prostitution; (4) final judgment of imprisonment of more than six years, even if pardoned, on the part of the spouse; (5) drug addiction or habitual alcoholism; (6) lesbianism or homosexuality; (7) contracting a subsequent bigamous marriage; (8) attempt by one spouse on the life of the other; and (9) abandonment without justifiable cause for more than one year.[38]

III. NAVIGATING SEX AND GENDER-BASED INEQUALITY IN ADULTERY AND CONCUBINAGE

With sex and gender inequality becoming readily apparent in family and marital laws, it is only necessary to explore how these inequities transcend into criminal law, particularly into the crimes of adultery and concubinage, using established jurisprudence. As a preliminary, it is fitting to revisit the

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[35] Romero, *supra* note 18, at 22–23; TOLENTINO, *supra* note 8, at 311.

[36] Feliciano, *supra* note 8, at 553.

[37] *Id. Compare* CIV. CODE, art. 97, *and* REV. PEN. CODE, art. 333; *with* REV. PEN. CODE, art. 334.

[38] FAM. CODE, art. 55. Grounds for Legal Separation.

cases of *Falcis v. Civil Registrar General* ("*Falcis*")[39] and *Valencia v. People* ("*Valencia*")[40] and examine how they attempted to ignite a broader social change within the Philippine legal system.

A. *Falcis* and *Valencia* at the Forefront of a Broader Social Change

The landmark case of *Falcis* involved a petition challenging the constitutionality of Articles 1[41] and 2[42] of the Family Code and seeking to nullify Articles 46(4)[43] and 55(6)[44] of the same.[45] The petitioners argued, among others, that the definition of marriage under the Code discriminates against the LGBTQIA+ community, and that its celebration should not be limited to opposite-sex couples only.[46]

Although the Supreme Court dismissed the petition on procedural grounds,[47] its *ponente,* Senior Associate Justice Marvic Leonen, raised significant points on sex and gender disparities in Philippine laws. Though merely *obiter,* the Court maintained that the various provisions in family, labor, and criminal laws either disproportionately benefit or burden one sex over the other. Specifically, in criminal law, Justice Leonen concluded that the laws on adultery and concubinage under Articles 333[48] and 334[49] of the Revised Penal Code are inherently discriminatory:

> Our penal laws likewise contain sex-specific provisions. For instance, *adultery is committed by a wife who had sex with a man who is not her husband*. In contrast, concubinage is committed when a husband keeps a mistress in the conjugal dwelling, has sex under scandalous circumstances, or cohabits in another place with a woman who is not his wife. While a woman who commits adultery shall be

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[39] [Hereinafter, "*Falcis*"], 861 Phil. 388 (2019).

[40] [Hereinafter, "*Valencia*"], G.R. No. 244657, Feb. 12, 2024. (slip op.).

[41] FAM. CODE, art. 1. "Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life […]."

[42] Art. 2. Essential Requisites of Marriage, one of which is the "Legal capacity of the contracting parties who must be a male and a female."

[43] Art. 46(4). This refers to the circumstances that constitute fraud as a ground for annulment, one of which is the "Concealment of drug addiction, habitual alcoholism or *homosexuality or lesbianism* existing at the time of the marriage." (Emphasis supplied.)

[44] Art. 55(6). Lesbianism or homosexuality as a ground for legal separation.

[45] *Falcis*, 861 Phil. at 415.

[46] *See id.* at 414–18.

[47] *Id.* at 564.

[48] REV. PEN. CODE, art. 333. Adultery.

[49] Art. 334. Concubinage.

> punished with imprisonment, a man who commits adultery shall only suffer the penalty of *destierro*. Further, *a husband who engages in sex with a woman who is not his wife does not incur criminal liability if the sexual activity was not performed under "scandalous circumstances."*[50]

Significantly, these prevailing sex and gender disparities were discussed in more detail in the 2024 case of *Valencia*. There, the Court affirmed the conviction of the accused for the crime of adultery based on mere circumstantial evidence.[51] Justice Leonen, the lone dissenter, argued that circumstantial evidence, albeit relevant, was not sufficient to meet the required standard of proof beyond reasonable doubt:

> *As to the second element, or the act of sexual intercourse, it cannot be gleaned that sexual intercourse had indeed taken place. None of the prosecution witnesses testified that sexual intercourse between petitioner and Rubirosa took place.* […]
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> * * *
>
> Monaby further testified that petitioner and her mother "usually slept together, although she does not know if they were wearing undergarments, as they were always covered by blanket." Monaby testified in court as follows:
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> Q: So you went up and check, what did you find out?
> A: I saw them hugging and he is kissing my mother?
>
> Q: That is all you saw at that time at Countryside Subdivision?
> A: They were together in bed.
>
> Q: But they were only hugging and kissing?
> A: That is only what I saw.
>
> *Clearly, Monaby did not see the actual act of sexual intercourse. Thus, her testimony is not sufficient to establish the second element of adultery.*[52]

While advancing his argument on the accused's supposed acquittal, Justice Leonen took the occasion to reveal some glaring defects in the laws on concubinage and adultery. He maintained that "there is an apparent inequality between the crimes of concubinage and adultery," notwithstanding the fact that "both are crimes against chastity and involve married couples

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[50] *Falcis*, 861 Phil. at 524–25. (Emphasis supplied. Citations omitted.)

[51] *Valencia*, G.R. No. 244657.

[52] *Valencia v. People,* G.R. No. 244657, Feb. 12, 2024 (Leonen, *J., dissenting*) (slip op. at 3).

engaging in affairs outside of the marital bond."[53] Pointedly, he highlighted that (a) adultery is treated as a "graver offense" than concubinage due to its elements that must be established and its imposable penalty,[54] and (b) concubinage is "harder to prove" than adultery despite carrying a lighter penalty.[55]

Put differently, a perusal of Articles 333 and 334 of the Revised Penal Code would show that adultery is "graver" than concubinage, given that the former carries a heavier penalty than the latter. Justice Leonen pointed out that the crime of adultery has a prescribed penalty of *prision correccional* in its medium and maximum periods, while the crime of concubinage has a lesser penalty of *prision correccional* in its minimum and medium periods.[56]

As to the difficulty of proving concubinage relative to adultery, he observed that the very act of cohabiting with another woman would require "a period of time" to constitute concubinage,[57] considering that the parties would be "[dwelling] together in the manner of husband and wife."[58] In this way, concubinage will certainly be harder to prove than adultery, which only takes "one act of sexual intercourse" to produce a conviction.[59]

Justice Leonen also argued that this situation would have a corresponding effect of imposing a "harsher penalty" on women, for the reason that "[o]ne act of sexual intercourse with a man not her husband equates to adultery, but one night with a woman not his wife is not sufficient to say that concubinage exists."[60]

In conclusion, Justice Leonen suggested viewing the issue in the lens of a "substantive sex equality approach"—an approach originally formulated by feminist legal scholar Catharine A. Mackinnon—to better address the looming sex and gender-based issues in the laws on adultery and concubinage.[61] To elucidate, Mackinnon posits that this approach does not really deal or resolve "whether men and women are the same or different, are treated the same or differently, and whether the two fit […]."[62] It is rather

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[53] *Id.* at 4.
[54] *Id.* at 6.
[55] *Id.* at 7.
[56] *Id.* at 6–7, *citing* REV. PEN. CODE, art. 333–34.
[57] *Id.* at 7.
[58] *Id.* at 6–7, *citing* Ocampo v. People [hereinafter, "*Ocampo*"], 72 Phil. 268, 269 (1941).
[59] *Id.* at 7.
[60] *Id.* at 11.
[61] *Id.*
[62] Catharine A. MacKinnon, *The Road Not Taken: Sex Equality in* Lawrence v. Texas, 65 OHIO ST. L.J. 1085 (2004).

geared towards determining "whether a law promotes equality or inequality on the basis of sex in a domain in which the sexes are socially unequal […]."[63]

B. The Double Standard in Adultery and Concubinage: A Jurisprudential Review

At this juncture, it is perhaps apt to revisit the long line of Supreme Court decisions to gain a deeper understanding of the nuances found in the laws of adultery and concubinage, and accordingly, determine whether they promote equality in a domain where sex and gender are socially uneven. One of the earliest foundational cases on this is *United States v. Mata*.[64]

1. The Mata Principle

As mentioned, the crime of adultery is considerably "graver" than the crime of concubinage, given that the penalty for the former is heavier than the latter. This statement has a solid leg to stand on, especially since their penalties have not changed much throughout the years. Perceptibly, the prescribed penalties for adultery and concubinage remain the same under Articles 433 and 437 of the *Código Penal*:

> Article 433. The penalty for adultery shall be *prision correccional in its medium and maximum degrees*.[65]
>
> Article. 437. The husband who shall keep a concubine in his home, or out of it with scandal, shall be punished with the penalty of *prision correccional in its minimum and medium degrees*.[66]

The reason behind this "graver" classification was explained in *Mata*. The Supreme Court held that the law was crafted that way to address the "danger of introducing spurious heirs into the family," so that the rights of the legitimate heirs will not be impaired, nor will they be deprived of their rights to their lawful inheritance:

> The gist of the crime of adultery under the Spanish law, as under the common law in force in England and the United States in the absence of statutory enactment, is *the danger of introducing spurious heirs into the family, whereby the rights of the real heirs may be impaired and a man may be charged with the maintenance of a family not his own*. And since, under Spanish law, legitimate heirs may be begotten of a bigamous

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[63] *Id.* at 1086.
[64] [Hereinafter, "*Mata*"], G.R. No. 6300, 18 SCRA 490, Mar. 2, 1911.
[65] CÓDIGO PENAL (1887), art. 433, ¶ 1. (Emphasis supplied.)
[66] Art. 437, ¶ 1. (Emphasis supplied.)

> marriage, the danger of the introduction of spurious heirs is not less real as a result of the infidelity of the wife of a bigamous marriage than it is in the case of a lawful wife; logically, therefore, the incontinence of the wife of a bigamous marriage, as long as the bigamous relations exist, was deemed by the Spanish legislator to constitute the crime of adultery, and penalized in like manner as is the martial faithlessness of a lawful wife.[67]

In so holding, the Supreme Court recognized the fact that Spanish law, as well as English and American common laws, have a similar understanding of our law on adultery.[68]

The case of *United States v. Topiño*[69] subsequently reaffirmed the *Mata* principle. In that case, the Supreme Court declared that the law on adultery was primarily aimed to protect the integrity of the family and the honor of the husband:

> The husband being the head of the family and the only person who could institute the prosecution and control its effects, *it is quite clear that the principal object in penalizing the offense by the state was to protect the purity of the family and the honor of the husband*, but now the conduct of the prosecution, after it is once commenced by the husband, and the enforcement of the penalties imposed is also a matter of public in which the Government is vitally interested to the extent of preserving the public peace and providing for the general welfare of the community.[70]

Scholars and experts, however, have expressed caution over the continued acceptance of the *Mata* rationale. For one, Dean Bartolome Carale maintained that its soundness and propriety "[are] now open to question" with the emergence of and access to oral contraceptives and other forms of birth control,[71] adding that the reasoning for the distinction between adultery and concubinage is perhaps attributable to the "traditional superiority and ascendancy of the male which will be crushed with a single act of infidelity by the wife."[72]

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[67] *Mata*, 18 SCRA at 494. (Emphasis supplied.)

[68] *Id.*

[69] [Hereinafter, "*Tojino*"], G.R. No. 11895, 35 SCRA 901, Dec. 20, 1916.

[70] *Id.* at 912. (Emphasis supplied.)

[71] Bartolome S. Carale, *Criminal Adultery and Fornication in the Philippines: A Re-Examination*, 45 PHIL. L.J. 344, 347 (1970).

[72] *Id.*

The Philippine Commission on Women (PCW) has shared a similar sentiment when it launched its "Women's Priority Legislative Agenda" policy brief for the 18th Congress. It opined that the rationale in the 1911 case of *Mata* may no longer be significant in our present circumstances.[73] To elucidate, present circumstances have paved way for the use of genetic technology like DNA testing to determine the paternity and filiation of children. Such testing is now protected by law, particularly A.M. No. 06-11-5-SC on the Rules of DNA Evidence.[74] Moreover, it pointed out that Articles 172, 173, and 175 of the Family Code are other available legal remedies which would nonetheless help resolve the legitimate filiation of children.[75]

Without detracting from the merits of the foregoing points, what is perhaps of equal—if not of greater—importance is the law's discriminatory impact on women. As settled in *Mata*, the reason behind the "graver" penalty of adultery is the need to protect the offended spouse and his real heirs against the introduction of spurious heirs into his family.[76] This seems to be fully unjustified, considering that a similar situation would nevertheless occur if it were the husband who commits the marital infidelity in the crime of concubinage. In other words, there lies no difference at all.

Moreover, the 2023 case of *Singgit v. People*[77] has recognized that the crime of concubinage is not only as a violation of the spouses' marital vow but also as an "attack on the family caused by the infidelity of the spouse."[78] If such were the case, then the "graver" penalty in adultery should likewise be imposed in the crime of concubinage.

2. The "Harshness" of the Law on Adultery

The "harshness" of the law on adultery can be discerned not only on the "gravity" of the imposable penalty but also on the manner of its imposition against the erring partners.[79] To be precise, the law on adultery

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[73] *Phil. Comm'n on Women, Repealing the Revised Penal Code provisions on Adultery and Concubinage* 1 (Phil. Comm'n on Women Policy Brief, WPLA-PB-02, 2019), *at* https://pcw.gov.ph/assets/files/2019/10/PCW-WPLA-PB-02-Repeal-of-RPC-provisions-on-Adultery-and-Concubinage-AEB.pdf.

[74] *Id.*, *citing* DNA EVID. RULE, § 9(c).

[75] *Id.*, *citing* FAM. CODE, arts. 172, 173, 175.

[76] *Mata*, 18 SCRA 490, 494.

[77] 936 Phil. 1098 (2023).

[78] *Id.* at 1108.

[79] *See* Phil. Comm'n on Women, *Eliminating Discrimination Against Women in the Revised Penal Code (RPC): Decriminalizing Adultery and Concubinage* (Phil. Comm'n on Women Policy Brief, WPLA-PB-03, 2019), *at* https://pcw.gov.ph/assets/files/2019/07/PCW-WPLA-Policy-Brief-3-Adultery-Concubinage.pdf.

prescribes the penalty of *prision correccional* in its medium and maximum periods against the guilty partners, *i.e.*, imprisonment upon the infidel spouse and her paramour.[80]

In concubinage, the penalty of *prision correccional* in its minimum and medium periods is meted out against the guilty spouse *only*.[81] His partner who willingly and knowingly committed the same infidel act will not suffer the same imprisonment but will rather be banished in view of the penalty *destierro*.[82]

In the case of *United States v. Serrano*,[83] the Supreme Court discussed that the accused wife's "breach of the fidelity she owed her husband," even if she had managed to prove that she was abandoned by her husband "in poverty without means of obtaining a livelihood," did not free or exempt her from criminal liability, ratiocinating that "she has means within the law to compel him to fulfill the duties imposed upon him by marriage."[84]

However, under the current provision of the Revised Penal Code on adultery, the law may not be as harsh as it initially appears. It affords a measure of leniency toward the offending wife by allowing the court to impose the penalty one degree lower when the mitigating circumstance of abandonment without justification by the offended husband is present.[85] Notably, this mitigating circumstance could only be found in the crime of adultery. In contrast, there is no corresponding provision under the law on concubinage that grants the same consideration to the offending husband. This is quite odd, much less contrary to common experience, given that unjustified abandonment can occur regardless of sex and gender. To date, there is no clear legal rationale explaining why such leniency is not equally extended to husbands accused of concubinage.

3. Cohabitation in a State of Adultery

At this point, it can be argued that the absence of the mitigating circumstance of unjustified abandonment does not completely place erring

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[80] REV. PEN. CODE, art. 333, ¶ 2.

[81] Art. 334, ¶ 1.

[82] Art. 334, ¶ 2.

[83] G.R. No. 9772, 28 SCRA 230, Oct. 16, 1914.

[84] *Id.* at 231.

[85] REV. PEN. CODE, art. 334, ¶ 3. "If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed." *See* 2 LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW 1131 (20th ed. 2021). "Abandonment without justification is not exempting, but only mitigating circumstance."

husbands at a particular disadvantage under the law on concubinage. The reason for this is that, as earlier raised, the crime of concubinage is still "more difficult" to prove than adultery.

Although this argument deserves merit, one should not overlook the fact that the law on concubinage still operates at the expense of women. To reiterate, an erring husband would be liable for concubinage when he engages in an illicit sexual activity with another woman for a certain "period of time."[86] Unlike in the crime of adultery, it would be insufficient for one act of sexual intercourse to take place, since what the law punishes is the evil act of cohabiting with a woman and not the sexual intercourse *per se*. With this, the husband can only be held accountable if he commits several extra-marital sexual acts, and not just a single or isolated one, within the context of cohabitation with another woman.

In support of these points, the Supreme Court in the case of *People v. Zapata*[87] has unequivocally pronounced that adultery is "a crime of result and not of tendency."[88] It explained that the crime is deemed consummated "at the moment of the carnal union" between the offending spouse and her paramour. In which case, each act of sexual intercourse would be considered as one count of adultery:

> *Adultery is a crime of result and not of tendency, as the Supreme Court of Spain has held; it is an instantaneous crime which is consummated and exhausted or completed at the moment of the carnal union. Each sexual intercourse constitutes a crime of adultery.* True, two or more adulterous acts committed by the same defendants are against the same person—the offended husband, the same status—the union of the husband and wife by their marriage, and the same community represented and the same community represented by the State for its interest in maintaining and preserving such status.[89]

The Supreme Court in *People v. Pitoc*[90] has also discussed the very concept of cohabitation as one of the punishable acts in the crime of concubinage. In discussing "whether[,] within the meaning of the law, the defendant cohabited 'with a woman who is not his wife,'" the Court also pointed out that cohabitation does not carry the same weight as a "single act of adultery" and is rather regarded as "cohabiting in a state of adultery [which]

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[86] *Valencia*, G.R. No. 244657(Leonen, *J., dissenting*) (slip op. at 7). *See supra* Part III.A.
[87] G.R. No. 3047, 88 SCRA 688, May 16, 1951.
[88] *Id.* at 691.
[89] *Id.* (Citations omitted. Emphasis supplied.)
[90] G.R. No. 18513, 43 SCRA 758, Sept. 18, 1922.

may [take place in] a week, a month, a year, or longer, but still it is one offense only":

> *'Cohabit' means […] to dwell with another in the same place; second, to live together as husband and wife.*
>
> [T]o "cohabit" is to dwell together, so that matrimonial cohabitation is the *living together of a man and woman ostensibly as husband and wife.*
>
> * * *
>
> 'Obviously the legal sense of the term […], *making it criminal for persons not married to cohabit together, is to live together in the same house as married persons living together or in the manner of husband and wife.*'
>
> To "cohabit," according to the sense in which the word is used in a penal statute, means dwelling together as husband and wife, or in sexual intercourse, and *comprises a continued period of time. Hence the offense is not the single act of adultery; it is cohabiting in a state of adultery; and it may be a week, a month, a year, or longer, but still it is one offense only.*
>
> To "cohabit" means to dwell together, inhabit or reside in company, or in the same place or country. Specifically, *'to dwell or live together as husband and wife,' often with reference to persons not legally married, and usually, but not always, implying sexual intercourse.*[91]

4. The Blur Between Cohabitation and "Scandalous Circumstances"

It bears clarifying that, within the legal framework of concubinage, the act of cohabitation does not include illicit sexual intercourses that are committed during "occasional, transient interviews."[92] Consequently, it should be done "in the manner of husband and wife, for some period of time"[93] to constitute concubinage. The Supreme Court in *Ocampo v. People* held that:

> We are here concerned only with the third way of committing the offense under which petitioner was convicted. *The term "cohabit" means to dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse.* And, whether an association, for illicit intercourse, has

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[91] *Id.* at 761–62. (Citations omitted. Emphasis supplied.)
[92] *Ocampo*, 72 Phil. at 269.
[93] *Id.*

> been such as to constitute an unlawful assumption of the conjugal relation, is, in every case a question of fact, and *the extent of such association as to constitute a cohabitation within the meaning of the law, is a matter of court's appreciation*.[94]

Given that the requisite "scandalous circumstances" is not required to make a married man guilty of the crime of concubinage if he keeps his mistress in the conjugal dwelling, such is simply required to prove another mode of committing concubinage—sexual intercourse—that does not amount to cohabitation. In this wise, the case of *Unites States v. Macababbag*[95] is instructive, where it was ruled that "it is only when the mistress is kept elsewhere that scandalous circumstances become an element of the crime."[96]

Illicit sexual intercourses committed during "occasional, transient interviews," though, could form part of the crime concubinage, if they are conducted under "scandalous circumstances."[97] This means that concubinage could still be committed if the illicit sexual acts were not done in a private manner. To reinforce the point, Dean Carale explained that:

> *The husband might have sexual intercourse with a single woman and not be guilty of any crime assuming, of course, that it was done voluntarily (on the part of the husband's paramour) and privately. Otherwise, if there should be scandal*, or cohabitation, *then the husband commits concubinage* and his paramour is equally liable but with a very insignificant penalty.[98]

On this score, a married man could be held liable for concubinage if he commits sexual intercourse during "occasional, transient interviews," provided that it is done under "scandalous circumstances." In the same vein, he could not be held accountable if it cannot be established that he committed sexual intercourse, however many, under "scandalous circumstances." "Scandalous circumstances" is therefore a crucial ingredient in committing this mode of concubinage, and not the act of sexual intercourse *per se*.[99]

Meanwhile, it can be observed that the element of "scandalous circumstances" is not required in the crime of adultery, as the mere act of

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[94] *Id.*

[95] G.R. No. 10564, 31 SCRA 257, Aug. 6, 1915.

[96] *Id.* at 258.

[97] REV. PEN. CODE, art. 334, ¶1. "*Concubinage.* — Any husband who shall [...] have sexual intercourse, under scandalous circumstances, with a woman who is not his wife [...]." *See Ocampo*, 72 Phil. at 269.

[98] Carale, *supra* note 71, at 346. (Emphasis supplied.)

[99] *See id.*; *Ocampo*, 72 Phil. at 269.

sexual intercourse would be enough to sustain a conviction.[100] This makes the law fundamentally unfair for women, considering that they become *instantly liable irrespective of how the voluntary sexual act is committed or what the attending circumstances are* unlike in concubinage. To make matters worse, there is no reasonable explanation as to why this element is present in concubinage and not in adultery.

5. Tailoring "Scandalous Circumstances" as Acts Con Escandalo

At present, there is no hard and fast rule on what makes up "scandalous circumstances" within the framework of concubinage. Its determination is left to the sound discretion of the courts, which will appreciate the facts and evidence on a case-by-case basis.

Be that as it may, the Supreme Court has provided some guidelines on what constitutes a "scandalous circumstance" in concubinage. In *United States v. Casipong*,[101] the Court opined that a particular act carries with it the circumstance of a scandal if it is done "in plain sight of the community without caution and with effrontery," such that it "gives rise to criticism and general protest among the neighbors and by its bad example offends the conscience and feelings of every moral person."[102]

As Justice Luis B. Reyes, an esteemed commentator in criminal law, had put it, "[t]he qualifying expression of 'under scandalous circumstances' refers to the act of sexual intercourse" which can nevertheless be established by "circumstantial evidence."[103]

Oddly enough, a close examination of some Supreme Court decisions would reveal that these guidelines were rather adopted to evaluate the general conduct of the accused and his mistress and how they displayed their relationship in public.

In the case of *United States v. Campos Rueda*,[104] the Supreme Court dismissed the case against the accused for lack of evidence to show the

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[100] *Compare* REV. PEN. CODE, art. 333, ¶ 1, "Adultery is committed by any married woman who shall have *sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married*, even if the marriage be subsequently declared void," *with* REV. PEN. CODE, art. 334, ¶1, "Any husband who shall [...] have *sexual intercourse, under scandalous circumstances, with a woman who is not his wife*." (Emphasis supplied.)

[101] G.R. No. 6608, 20 SCRA 178, Sept. 5, 1911.

[102] *Id.* at 180.

[103] REYES, *supra* note 85, at 1138.

[104] G.R. No. 11549, 35 SCRA 51, Oct. 12, 1916.

element of "scandalous circumstances" in the crime of concubinage. It ruled that there was no one in the neighborhood to corroborate the testimonies of the "spies" employed by the offended spouse who claimed that the accused and his alleged concubine performed "acts *con escandalo*." Several of the neighbors were also called in to testify, but they maintained that there was nothing "which aroused their suspicions or caused them to believe that the relations of the appellant and his codefendant were not what they should be."[105] Accordingly, the Court reasoned out that:

> If the appellant and his codefendant had been associated together under scandalous circumstances, it would seem that at least some of the neighbors or persons living in that vicinity might have been found, who had observed such conduct. *If the conduct of the appellant in relation with his codefendant had been* con escandalo *in fact, it would seem to have been unnecessary for the prosecution to have gone into another part of the city to find witnesses to prove that fact*. The mere fact that it was necessary to employ spies for the purpose of watching the conduct of the appellant, in relation with the fact that none of the people living in the vicinity had observed any suspicious conduct on his part in relation with his codefendant, gives rise to a serious doubt that the acts were committed *con escandalo*.[106]

Quite noticeably, the Court did not apply the guidelines to qualify the act of "sexual intercourse." On the contrary, it used them to determine the existence of "acts *con escandalo*" and "scandalous relationship" between the accused and his alleged mistress, which are not recognized elements under the law on concubinage.

Viewed on a more practical lens, this suggests that sexual intercourse under "scandalous circumstances" is indeed difficult to prove, even if the law allows full appreciation of circumstantial evidence in court. With this, it appears more certain that the inclusion of "under scandalous circumstances" in the law remains questionable. This holds even true especially that the crime of adultery does not require such element in the commission of sexual intercourse.

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[105] *Id.* at 54–55.

[106] *Id.* at 55. (Emphasis applied.)

IV. EFFORTS TO ELIMINATE SEX AND GENDER DISPARITIES IN THE LAWS ON ADULTERY AND CONCUBINAGE

With the growing recognition of these disparities in the legal system, the Philippine state has taken positive steps to eliminate them through various law reforms. Reforms have been pursued through various means—from proposed legislative revisions and statutory amendments in the Senate to calls by certain sectors for the complete decriminalization of adultery and concubinage. These initiatives collectively represent a pivotal move in advancing sex and gender equality and aligning the country's legal framework with contemporary human rights standards.

A. Reframing the Law on Concubinage

Aiming to reduce inequality between men and women, then Senator Edgardo J. Angara introduced Senate Bill No. 2015 during the First Regular Session of the 15th Congress on July 26, 2010.[107] From his standpoint, adultery and concubinage both transgress the marital vows of the spouses and cause the destruction of family solidarity.[108] Despite this, the law on concubinage has imposed a lesser penalty than that of adultery, and concubinage remains more difficult to prove in court.[109] Thus, he recommended to amend the law on concubinage in the following manner:

> SECTION 1. Article 334 of Act Number 3815, as amended, otherwise known as the Revised Penal Code is hereby amended to read as follows:
>
> > "Article 334. *Concubinage* - Any husband who shall keep a mistress in the conjugal dwelling or, shall have sexual intercourse [, under scandalous circumstances,] with a woman not his wife, or shall cohabit with her in any other place shall be punished by *prision correctional* in its [minimum and] medium AND MAXIMUM periods.
> >
> > IF THE PERSON GUILTY OF CONCUBINAGE COMMITTED THE OFFENSE WHILE BEING ABANDONED WITHOUT JUSTIFICATION BY THE OFFENDED SPOUSE, THE PENALTY NEXT LOWER IN DEGREE THAN THAT PROVIDED IN THE NEXT PRECEDING PARAGRAPH WILL BE IMPOSED."

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[107] S. No. 2015, 15th Cong., 1st Sess. (2010). An Act Amending Article 334 of Act Number 3915.

[108] Pmbl. ¶ 5.

[109] Pmbl. ¶ 3.

> The concubine shall suffer the penalty of *PRISION CORRECIONAL* IN ITS MEDIUM AND MAXIMUM PERIODS IF SHE PERFORMS SEXUAL INTERCOURSE WITH THE MAN KNOWING HIM TO BE MARRIED, OTHERWISE, THE CONCUBINE SHALL SUFFER THE PENALTY OF *destierro*."[110]

One notable feature of Senate Bill No. 2015 is the deletion of the phrase "under scandalous circumstances" which qualified the act of "sexual intercourse."[111] This removal is apt to address the ongoing disparity between men and women, as it gives erring married men an undue advantage over erring married women who violate the same act of marital infidelity. As established, it becomes more advantageous for erring married men not to be instantly held liable for concubinage, considering that the act of "sexual intercourse" is more difficult to prove in court. It requires gathering more evidence to support the theory that the evil act was indeed done "under scandalous circumstances." In contrast, erring married women are deemed immediately liable, once it is established that they committed sexual intercourse with a different man regardless of the circumstances.

The bill also seeks to modify the penalties imposed on the offending spouse and the alleged concubine, aiming to correct the injustice of adultery being punished more severely than concubinage. It proposes aligning the prescribed penalty for concubinage with that of adultery by prescribing *prision correccional* in its medium and maximum periods.[112]

With respect to the accused-concubine, the Bill did not merely retain the prescribed penalty of *destierro* in Article 333 of the Code.[113] It has neutralizes the existing disparity in concubinage where the accused-concubine goes scot-free even if she willingly and voluntarily committed the infidel act with the accused-spouse. Hence, the Bill provides for the penalties of (a) *prision correccional* in its medium and maximum periods if accused-concubine knew that accused-spouse was still married during the incident or (b) *destierro* if she did not know at all that he was married.[114]

The Bill, however, retains the other modes of committing concubinage—specifically keeping a mistress in the conjugal dwelling" and

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[110] § 1. (Alterations and emphasis in the original.)
[111] § 1.
[112] § 1.
[113] § 1.
[114] § 1.

"cohabiting with her in any other place."[115] Notably, these acts are not considered equally punishable under the crime of adultery, where the sole basis for liability is the plain act of sexual intercourse. Retaining these additional modes may inadvertently reinforce existing sex and gender disparities. Accordingly, it would be more appropriate to either (a) remove them from the crime of concubinage, (b) incorporate them into the definition of adultery as an equally punishable acts, or (c) treat them as mere aggravating circumstances in both crimes.

B. Reformulating the Laws on Adultery and Concubinage Toward a Singular Crime of Marital Infidelity

1. Senate Bill No. 1933

During the 15th Congress in 2010, then Senator Miriam Defensor-Santiago filed Senate Bill No. 1933. The measure stemmed from a series of consolidated bills on adultery and concubinage submitted before the Committee on Constitutional Amendments, Revision of Codes and Laws, which she chaired during the 10th Congress.[116] It sought to amend Articles 333 and 344, as well as repeal Article 334 of the Code, in recognition of the State's constitutional mandate to promote, maintain, and ensure equality between men and women in the eyes of the law.[117] Accordingly, its relevant portions are reproduced as follows:

> SECTION 1. Article 333 of the Penal Code is hereby amended to read as follows:
>
> > "Art. 333. MARITAL INFIDELITY. (Who are guilty of adultery?) MARITAL INFIDELITY [ADULTERY] is committed by any married PERSON [woman] who shall have sexual RELATIONS [intercourse] with a PERSON [man] OTHER THAN HIS OR her SPOUSE [husband], and by the SEXUAL PARTNER [man] of the MARRIED PERSON knowing the LATTER [her] to be married, even if the marriage be subsequently declared void.

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[115] § 1.

[116] S. No. 1933, 10th Cong., 1st Sess., pmbl. ¶ 3 (2010). Eliminating Gender Bias in Adultery and Concubinage Bill.

[117] "This requires the State to apply the law regardless of one's gender," pmbl. ¶1, *citing* CONST. art. II, § 14.

> "MARITAL INFIDELITY [adultery] shall be punished by prision correccional in its MINIMUM [medium] and MEDIUM [maximum] periods."
>
> "ANY PERSON ACCUSED OF MARITAL INFIDELITY SHALL BE EXEMPT FROM CRIMINAL LIABILITY IF THE OFFENSE WAS COMMITTED AFTER THE ISSUANCE OF A FINAL DECREE OF LEGAL SEPARATION BY A COMPETENT COURT. HOWEVER, IF THE OFFENSE WAS COMMITTED AFTER THE ACCUSED SPOUSE HAD BEEN JUSTIFIABLY ABANDONED [(If the person guilty of adultery committed this offense while): abandoned without justification] OR SUBJECTED TO REPEATED PHYSICAL VIOLENCE OR GROSSLY ABUSIVE CONDUCT by the offended spouse, the penalty next lower in degree than that provided in the [next] preceding paragraph shall be imposed, AND THE SAME PENALTY SHALL BE IMPOSED ON THE CO-ACCUSED IN THE MARITAL INFIDELITY CASE."[118]

SECTION 2. Article 344, paragraph 1, of the Penal Code is hereby amended to read as follows:

> "Art. 344. Prosecution of the crimes of MARITAL INFIDELITY [adultery, concubinage], seduction, rape, and acts of lasciviousness. – "The crime[sJ of MARITAL INFIDELITY [adultery and concubinage] shall not be prosecuted except upon a complaint filed by the offended spouse. xxx"

To eliminate the sex- and gender-based distinctions in Articles 333 and 334 of the Revised Penal Code, Senate Bill No. 1933 proposes to reclassify the crimes of adultery and concubinage into a single, unified crime of marital infidelity. This approach is more responsive to the prevailing issues, as it recognizes that both offenses punish a singular evil act and root cause—the violation of a person's marital vow.

Verily, the Bill represents a significant and commendable innovation in sex and gender law discourse. Still, there are areas that need refinement to further enhance its effectiveness.

For instance, the Bill uses the words "shall have sexual relations" in lieu of "shall have sexual intercourse" that is found in the original text of the

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[118] § 1. (Alterations and emphasis in the original.)

law.[119] The term "sexual relations," if construed in its plain and ordinary meaning, is so broad that it may not include having sexual intercourse and just be confined to a simple act of intimacy. It may likewise go as far as keeping a paramour in the accused's conjugal dwelling or cohabiting with him or her in any other place. Yet, the Bill does not adequately define and describe this element or how it could be committed to be punishable. It also does not make any specific reference to an existing law or jurisprudence for that matter.

Meanwhile, the Bill provides two mitigating circumstances that would enable the courts to reduce the imposable penalty in favor of the accused, namely: (a) that the marital infidelity was committed "after the accused had been justifiably abandoned" and (b) that the infidel-spouse was "subjected to repeated physical violence or grossly abused conduct by the offended spouse."[120]

It is highly likely that the Bill included the mitigating circumstance of "abandonment" to address the gap found in Article 334 of the RPC on concubinage, since Article 333 contains the mitigating circumstance of "abandonment" while Article 334 does not. The Bill, however, departs from a particular requirement of the mitigating circumstance found in Article 333.

To note, Article 333 requires that the infidel-spouse should have committed the act of infidelity "while being abandoned without justification."[121] The Bill states that the infidel-spouse should have committed the act of infidelity "after [he or she] had been justifiably abandoned."[122] The mere change in these wordings, though, remains unexplained.

The Bill also appears to add the circumstance of "acts of repeated physical violence or grossly abusive conduct," likely to reflect the realities of marital disarray in the country. However, no sufficient data has been presented or gathered to establish a causal connection between one's experience of abuse and his or her act of "marital infidelity." By merely concluding that a spouse would likely violate his or her marital vow just because he or she was being subjected to physical, verbal or psychological abuse risks setting a troubling precedent in Philippine laws.

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[119] § 1. (Alterations and emphasis in the original.)
[120] § 1.
[121] REV. PEN. CODE, art. 333, ¶ 3.
[122] § 1.

2. Senate Bill No. 212

In the 19th Congress, Senator Raffy Tulfo introduced Senate Bill No. 212.[123] The Bill acknowledges the existing sex-based discrepancies in the crimes of adultery and concubinage, noting that the crime of adultery carries a heavier penalty than the crime of concubinage, and that the former is easier to establish than the latter.[124] It likewise stresses that these discrepancies contravene the State's policy "[ensuring] the fundamental equality before the law of women and men" as provided in the Constitution.[125] Accordingly, the proposed amendments are replicated as follows:

> SECTION 1. Article 333 of the Revised Penal Code, is hereby deleted in its entirety and replaced with the following:
>
> > Article 333. *Marital Infidelity*. – Marital infidelity is committed by any married person who shall have sexual intercourse with another person who is not such person's spouse and by the other person whom the offender has sexual intercourse with, knowing the offender to be married, even if the marriage be subsequently declared void.
> >
> > Marital infidelity shall be punished by *prision correccional* in its medium and maximum periods.[126]
>
> SECTION 2. Article 334 of the Revised Penal Code is hereby repealed.[127]
>
> SECTION 3. The first two paragraphs of Article 344 of the Revised Penal Code are hereby amended to read as follows:
>
> > Article 344. *Prosecution of the crimes of [adultery, concubinage] MARITAL INFIDELITY, seduction, abduction, rape, and acts of lasciviousness*. – The crime[s] of MARITAL INFIDELITY shall not be prosecuted except upon a complaint filed by the offended spouse. THE OFFENDED SPOUSE MAY INSTITUTE CRIMINAL PROSECUTION AT THE PLACE OF HIS OR HER RESIDENCE AT THE TIME THE OFFENSE WAS COMMITTED.

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[123] S. No. 212, 19th Cong., 1st Sess. (2022). Equality of Men and Women on Laws Relating to Crimes Against Chastity Bill.

[124] Pmbl. ¶ 1.

[125] Pmbl. ¶ 1, *citing* CONST. art. II, § 14.

[126] § 1.

[127] § 2.

> The offended party cannot institute criminal prosecution (i) without including both the guilty parties, if they are both alive; [nor, in any case,] (ii) if he OR SHE shall have consented or pardoned the offenders; (iii) IF HE OR SHE IS LIKEWISE GUILTY OF MARITAL INFIDELITY; (IV) OR IF HE OR SHE HAS ABANDONED HIS OR HER SPOUSE WITHOUT JUST CAUSE FOR A PERIOD OF AT LEAST ONE YEAR.[128]

> SECTION 4. *Effect on Pending Cases*. – All pending cases under the provisions of Article 333 and Article 334 of the Revised Penal Code on Adultery and Concubinage prior to its amendment by this Act shall be dismissed upon effectivity of this Act.[129]

Similar to Senate Bill No. 1933, Senate Bill No. 212 strives to do away with the distinctions of adultery and concubinage, and consequently, identify them as a single, unified crime of "marital infidelity." With this, it aims to fix the varying penalties for adultery and concubinage under Articles 333 and 334 of the Code by prescribing a uniform penalty of *prision correccional* in its medium and maximum periods.[130]

The Bill includes a proviso that affords the offended-spouse an option to file a criminal case for marital infidelity "at the place of his or her residence at the time the offense was committed."[131] This proviso, however, may be dispensed with for being a mere surplusage. Notably, it involves a procedural matter that does not really affect the substantive nature of the crime. Besides, standard practice dictates that victims can file their cases at the place of their residence, even if the same is not expressly stated in a penal statute. At any rate, including this proviso might only confuse or mislead the public. It may give the wrong impression that offended-spouses can no longer pursue a case of "marital infidelity" if the deed was done while they were residing abroad.

The Bill likewise contains some additional provisos in which the offended-spouse would be precluded from instituting a criminal case of "marital infidelity" against the infidel-spouse and his or her paramour.[132] Among these is a provision barring prosecution if the offended-spouse "abandoned his or her spouse without just cause for a period of at least one year."[133] This effectively exempts the infidel-spouse from incurring criminal

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[128] § 3. (Alterations and emphasis in the original.)
[129] § 4.
[130] § 1.
[131] § 3.
[132] § 3.
[133] § 3.

liability, as the aggrieved party is barred from filing a complaint if he or she unjustifiably leaves the infidel-spouse for at least one year. This approach appears inconsistent with Article 333, which treats unjustified abandonment not as a bar to prosecution, but merely a mitigating circumstance.[134]

3. Senate Bill No. 1140

Similarly, during the 19th Congress, Senator Joel Villanueva filed Senate Bill No. 1140, which sought to replace Article 333 in its entirety, delete Article 334, and amend 344 of the Code.[135] The bill aims to strengthen the law against "marital infidelity" and eliminate unequal treatment between men and women in the crimes of adultery and concubinage. It was anchored on the notion that that the penal framework for such crimes is biased in favor of married men; in which case, they could only be held liable "under very specific and hard-to-prove conditions."[136] Consequently, the proposed amendments are reproduced as follows:

> SEC. 2. Article 333 of Act No. 3815, otherwise known as the Revised Penal Code, is hereby deleted in its entirety and replaced with the following:
>
> > ARTICLE 333. MARITAL INFIDELITY. – MARITAL INFIDELITY IS COMMITTED BY ANY MARRIED PERSON WHO SHALL HAVE SEXUAL INTERCOURSE WITH ANOTHER PERSON WHO IS NOT HIS/HER LEGITIMATE SPOUSE, EVEN IF THE MARRIAGE IS SUBSEQUENTLY DECLARED VOID, AND BY THE PERSON WHOM HE/SHE HAS SEXUAL INTERCOURSE WITH, KNOWING OR HAVING REASONABLE GROUNDS TO BELIEVE THAT THE GUILTY SPOUSE IS MARRIED.
> >
> > MARITAL INFIDELITY SHALL BE PUNISHED BY PRISION CORRECCIONAL IN ITS MEDIUM AND MAXIMUM PERIODS.
> >
> > IF THE PERSON GUILTY OF MARITAL INFIDELITY COMMITTED THIS OFFENSE WHILE BEING ABANDONED, THE PENALTY

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[134] *Compare* § 3, *with* REV. PEN. CODE, art. 333, ¶ 3. "If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, *the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed*." (Emphasis supplied.)

[135] S. No. 1140, 19th Cong., 1st Sess. (2022). Anti-Marital Infidelity Bill.

[136] Pmbl. ¶ 2.

> NEXT LOWER IN DEGREE THAN THAT PROVIDED ABOVE SHALL BE IMPOSED.
>
> MUSLIMS AND MEMBERS OF INDIGENOUS PEOPLES COMMUNITIES WHO ACTIVELY AND CONTINUOUSLY PRACTICE SINCE TIME IMMEMORIAL CUSTOMS AND TRADITIONS ALLOWING MULTIPLE SPOUSES SHALL BE HELD LIABLE FOR MARITAL INFIDELITY IF THEY ENGAGE IN SEXUAL INTERCOURSE WITH ANY PERSON OTHER THAN THE OFFICIAL SPOUSES RECOGNIZED BY THEIR RESPECTIVE FAITHS AND TRADITIONS.[137]

SEC. 3. Article 334 of the Revised Penal Code is hereby deleted.[138]

SEC. 4. Article 344 of the Revised Penal Code is hereby amended to read as follows:

> Article 344. Prosecution of the crimes of [adultery, concubinage,] MARITAL INFIDELITY, seduction, abduction, rape and acts of lasciviousness. - The [crimes] CRIME of MARITAL INFIDELITY shall not be prosecuted except upon a complaint filed by the offended spouse.
>
> The offended party can institute criminal prosecution AGAINST THE OFFENDING SPOUSE ALONE, OR AGAINST both the guilty parties: *PROVIDED*, THAT the [he] OFFENDED SPOUSE DID NOT consent TO SUCH ACT or pardon the offenders IN WRITING; *PROVIDED*, FURTHER, THAT THE OFFENDED SPOUSE IS NOT GUILTY OF MARITAL INFIDELITY: PROVIDED, FINALLY, THAT NOTHING HEREIN SHALL PREVENT THE OFFENDED SPOUSE, THE PARENTS AND PARENTS-IN-LAW OF THE OFFENDED SPOUSE, OR THE CHILDREN OF THE OFFENDED AND GUILTY SPOUSES FROM FILING THE APPROPRIATE CIVIL ACTION UNDER THE CIVIL CODE.
>
> The offenses of seduction, abduction or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the

[137] § 2.
[138] § 3.

> offender has been expressly pardoned by the above-named persons, as the case may be.
>
> In cases of seduction, abduction and acts of lasciviousness, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.[139]

Although Senate Bill No. 1140 shows great promise, some provisions should have had a more simplified formulation to achieve overall clarity. These provisions are: (a) having "reasonable grounds to believe" that the guilty spouse is married;[140] (b) the mitigating circumstance of "abandonment" with or without just cause;[141] (c) the option to file the case "against the offending spouse alone";[142] (d) the requirement to pardon the offenders "in writing";[143] and (e) allowing the ascendants and children of the offended spouse to seek reparation in an appropriate civil proceeding.[144] At this point, it is only apt to discuss each of them below.

First, the Bill states that the paramour shall be equally liable as the infidel-spouse if he or she knew or "[had] reasonable grounds to believe that the guilty spouse is married,"[145] a standard not found in the current laws on adultery and concubinage. This provision introduces interpretive challenges, as the Bill does not define what constitutes "reasonable grounds to believe." Although its determination may be left at the sound discretion of the courts, it remains contentious as to the required standard for its proof: whether the element of "reasonable grounds to believe" should be established with proof beyond reasonable doubt, preponderance of evidence, or mere substantial evidence.

Second, the Bill includes a mitigating circumstance of "abandonment"[146] that is likewise afforded to the infidel-spouse in Article 333 of the Code. The latter, however, contains a qualification that the mitigating circumstance of "abandonment" must only be appreciated if the infidel-

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[139] § 4. (Alterations and emphasis in the original.)
[140] § 2.
[141] § 2.
[142] § 4.
[143] § 4.
[144] § 4.
[145] § 2.
[146] § 2.

spouse was abandoned by the offended-spouse "without justification."[147] In contrast, the Bill does not contain this qualification. Rather, it treats the offended-spouse's act of "abandonment" as a mitigation of criminal liability regardless of the cause of the abandonment—even if it was justified or not. The underlying rationale for this has yet to be clarified.

Third, the Bill stipulates that the offended-spouse has the option to file the case not only against the two erring parties but also "against the offending spouse alone."[148] This transgresses the basic principles of fairness and equity, as in fact, it distorts the notion of "marital infidelity" which practically entails mutual participation between the infidel-spouse and paramour. Not only does it shift the blame on the infidel-spouse but also ignores the paramour's supposed involvement in the infidel act. Pointedly, this becomes more worrying if it is later proven that the paramour knowingly and willingly perpetrated the crime alongside the infidel-spouse.

Fourth, the same stipulation renders nugatory the Bill's provision on pardon which should be done "in writing."[149] By implication, the filing of a criminal case of "marital infidelity" solely against the infidel-spouse would have the effect of pardoning the paramour outside the manner of what the Bill requires. The filing of the case against the infidel-spouse only would mean that the offended-spouse is no longer interested to pursue the case against the paramour. It would also prevent the paramour from incurring criminal liability, in the same way that the offended-spouse would have had to pardon him or her before the institution of the criminal action.

In addition, restricting the manner by which the offended-spouse could pardon the offending parties violates the "private" nature of the crime of "marital infidelity," as well as the "personal" right of the offended-party to pursue or not pursue the case against the offending-parties. It goes against established jurisprudence which mandates that pardon could be done in any form, whether express or implied, so long as the offended-spouse extends it before the institution of the criminal action.[150]

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[147] REV. PEN. CODE, art. 333, ¶ 3. "If the person guilty of adultery committed this offense while being *abandoned without justification by the offended spouse*, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed." (Emphasis supplied.)

[148] S. No. 1140, 19th Cong., 1st Sess., § 4 (2022).

[149] § 4.

[150] Ligtas v. Ct. of Appeals, G.R. No. 47498, 149 SCRA 514, 519, May 7, 1987.

Fifth, the Bill allows the ascendants and children of the offended-spouse to seek reparation in an appropriate civil proceeding.[151] This affects the very essence of the crime of "marital infidelity." As said, the crime of "marital infidelity" is a private crime that is personal to the offended-party. He or she possesses the exclusive right, as mandated by law, to institute the criminal action against the offending-parties. All the same, he or she has the exclusive right to seek reparation from the damage caused by the offending-parties. Such right, therefore, could not and should not be transmitted to nor assumed by another on his or her behalf.

C. Decriminalizing Adultery and Concubinage

It is interesting to briefly point out that the Model Penal Code developed by the American Law Institute, which influenced New York's Commission on Revision of the Criminal Law to recommend the omission of adultery from its Revised Penal Law, did not penalize "sexual sins" and other illicit sexual activities like adultery, if they neither factor in acts of violence nor involve children, incompetents, and other dependents.[152]

Dean Carale explained that "[t]he decision to keep penal law out of the area of private sexual relations was based on the notion that private morality should be immune from secular regulation."[153] Thus, in relation to the Philippine crime of adultery, he opined that it should rather be decriminalized, and that victims of marital infidelity could seek redress in the form of a tort or civil action before the proper forum:

> [T]his brief paper merely exposes the writer's views that adultery, even in a Philippine setting, should not be made a criminal offense. […] *The possibility of another alternative in the form of a tort action may be inquired into. The Civil Code of the Philippines contains a separate title on "Human Relations" covering a variety of causes of action for breach of morals, customs, etc.* […].
>
> Whatever alternatives be taken, *the view is still being taken by the writer that the Revised Penal Code of the Philippines can stand some amendments*, most especially in the field of sexual offenses.[154]

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[151] § 4.
[152] Carale, *supra* note 71, at 349–50.
[153] *Id.* at 350.
[154] *Id.* at 352, *citing* CIVIL CODE, arts. 19–20.

At present, proposals to decriminalize adultery and concubinage have continued to advance.[155] For instance, the PCW advocates for the deletion of Articles 333 and 334 of the Code, maintaining that "[a]dultery and concubinage should be decriminalized or removed since they involve [a] violation of the marriage contract[;] hence, the liability should only be civil in nature."[156] It pointed out that several countries like Haiti, Uganda, Mexico, and South Korea have already decriminalized adultery. They condemned the law as a means that treats women as men's property, and that it violated the person's rights to self-determination and privacy.[157]

The foregoing is likewise in line with the view of the United Nations Working Group on Discrimination against Women ("Working Group") that "the criminalization of sexual relations between consenting adults is a violation of the right to privacy."[158] Notably, the Working Group, through its Chair-Rapporteur, Alda Facio, transmitted a letter dated November 17, 2017 to the Philippine government, bringing the review of Articles 333 and 334 of the Code and removal of all discriminatory provisions to its attention, as the criminalization of adultery and concubinage "seems to contravene international human rights norms and standards."[159] She noted that:

> *[The] enforcement of such laws leads to discrimination and violence against women in law and in practice* and has stressed that while criminal law definitions of adultery may be ostensibly gender neutral and prohibit adultery by both men and women, closer analysis reveals that the criminalisation of adultery is *both in concept and practice overwhelmingly directed against women and girls*.[160]

The Working Group has also expressed concerns that the criminalization of adultery goes against the International Covenant on Civil

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[155] Khushi Shandilya, *Adultery as an Offence: Elements and Decriminalization*, 4 INT'L J.L. MGM'T & HUMAN. 2001, 2010 (2021).

[156] Phil. Comm'n on Women, *supra* note 79, at 3.

[157] *Id.* at 2; Shandilya, *supra* note 155, at 2011.

[158] Phil. Comm'n on Women, *supra* note 79, at 1, *citing* U.N. Human Rights Office, *Statement by the United Nations Working Group on discrimination against women in law and in practice*, U.N. OFF. HIGH COMM'R HUM. RTS. WEBSITE, Oct. 18, 2012, *at* https://www.ohchr.org/en/statements-and-speeches/2012/10/statement-united-nations-working-group-discrimination-against-women.

[159] Letter from Alda Facio, Chair-Rapporteur, U.N. Working Grp. on Discrimination Against Women in Law & in Practice, to Rodrigo Duterte, President of the Republic of the Philippines [hereinafter "Letter from Alda Facio to Rodrigo Duterte"], OL PHL 14/2017 (Nov. 14, 2017), *at* https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Communications/32/OL-PHL-14-11-17.pdf.

[160] *Id.* at 2. (Emphasis supplied.)

and Political Rights ("ICCPR")[161] and the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW")[162] to which the Philippines is a State-Party.[163]

The ICCPR states that "[n]o one shall be subjected to arbitrary or unlawful interference with his [or her] privacy, family, home or correspondence, nor to unlawful attacks on his [or her] honor and reputation."[164]

Further, the CEDAW prescribes that "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: […] (g) [t]o repeal all national penal provisions which constitute discrimination against women."[165] It also calls on States-Parties to "take all appropriate measures to eliminate discrimination against women and [ensure equality of men and women] in all matters relating to marriage and family relations."[166]

V. CONCLUSION

As aptly pointed out by the PCW, the dissimilarity in the treatment of adultery and concubinage stems from deeply rooted biases[167] that have been shaped by social, cultural, religious, and political structures over time.[168] In these unfortunate instances, a man's infidelity is often normalized if not dismissed, while a woman's fidelity is being held to stricter standards as she is expected to be faithful to her husband at all times.[169]

These inherent biases become apparent on how the crimes of adultery and concubinage are prosecuted in light of their differing penalties, legal requirements, and other related circumstances. To reiterate, adultery appears to be a graver offense than concubinage, and concubinage is harder to

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[161] International Covenant on Civil and Political Rights [hereinafter, "ICCPR"], Mar. 23, 1976, 999 U.N.T.S. 171.

[162] Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter, "CEDAW"], Sept. 3, 1981, 1249 U.N.T.S. 13.

[163] Letter from Alda Facio to Rodrigo Duterte, *supra* note 159, at 2.

[164] ICCPR art. 17.

[165] CEDAW, art. 2(g). *See* Phil. Comm'n on Women, *supra* note 79, at 2.

[166] CEDAW, art. 16. *See* Phil. Comm'n on Women, *supra* note 79, at 2.

[167] Phil. Comm'n on Women, *supra* note 79, at 2.

[168] *See supra* Part II.

[169] Phil. Comm'n on Women, *supra* note 79, at 1–2.

prosecute than adultery.[170] Viewing this issue in the substantive equality approach, the crimes of adultery and concubinage appear to be misaligned with our country's current legal landscape that reflects contemporary human rights standards between men and women.[171]

Article II, Section 14 of the 1987 Constitution provides that "[t]he State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men."[172] The Magna Carta of Women gives more light to this by including in its Declaration of Policy, among others, that "[t]he State condemns discrimination against women in all its forms," and that "[t]he State shall accord women the rights, protection, and opportunities available to every member of society."[173]

To ensure that our laws on adultery and concubinage are not incongruent with human rights standards, the State has taken strides to harmonize them through legislative reforms.

Section 12 of The Magna Carta of Women mandates the State to "take steps to review and, when necessary, amend and/or repeal existing laws that are discriminatory to women."[174] The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the Philippines is a signatory to, also requires States to modify, abolish, or repeal "existing laws, regulations, customs, and practices" and "all national penal provisons" that constitute discrimination against women.[175]

For instance, several Senate Bills have been introduced seeking to amend the law on concubinage to place it on equal footing with the law on adultery.[176] Other proposals have aimed to eliminate the altogether by codifying them under a unified crime of marital infidelity.[177] Notably, these Bills progressed only to the committee deliberation stage for further refinement before the adjournment of the respective Congress in which they were.[178] Their failure to advance beyond this stage may be attributed to a lack

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[170] *See supra* Part III.

[171] *See supra* Part III.A.

[172] CONST. art. II, § 14.

[173] Rep. Act No. 9710 (2004), § 2, ¶2. The Magna Carta of Women.

[174] § 12.

[175] CEDAW art. 2(f)–(g).

[176] *See supra* Part IV.

[177] *See supra* Part IV.B.

[178] *15th Congress - Senate Bill No. 1933*, SENATE OF THE PHIL. WEBSITE, *at* https://web.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-1933; *19th Congress - Senate Bill No. 212*, SENATE OF THE PHIL. WEBSITE, *at*

of prioritization or endorsement from the Chief Executive,[179] or to insufficient legislative support and consensus building.[180] As these matters fall beyond the scope of this Survey, a more in-depth examination of the underlying factors and theories may be pursued in a separate scholarly inquiry.

Apart from these legislative reforms, there are proposals to decriminalize adultery and concubinage by sectoral groups like the PCW that view them as violations of the spouses' rights to privacy and their marriage contract. Accordingly, they suggest that one's liability should strictly be civil in nature.[181]

As things stand, decriminalizing adultery and concubinage might appear too progressive in the country's overall development. From a legalist's point of view, it can produce a chilling effect on existing laws and statutes, such as the Anti-Violence Against Women and Their Children Act which treats marital infidelity as a form of psychological violence against the woman and/or her child.[182] The fact that it recognizes the act of marital infidelity as a form of violence shows that it is violative of a person's mental and emotional rights, and hence, evil in itself.

The decriminalization of adultery and concubinage also warrants careful consideration coming from a moral, social, and cultural standpoint. Without being presumptive, it can raise concerns about its long-term implications on marital institutions, moral values, and social accountabilities – issues that are likewise best examined in a separate, dedicated study.

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https://web.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SBN-212; *19th Congress - Senate Bill No. 1140*, SENATE OF THE PHIL. WEBSITE, *at* https://web.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SBN-1140.

[179] See Rogelio Alicor L. Panao, *Beyond Roll Call: Executive-Legislative Relations and Lawmaking in the Philippine House of Representatives*, 35 Philippine Political Science Journal, 62-64 (2014).

[180] See Rogelio Alicor L. Panao, *Does the Upper House Have the Upper Hand?* 40 Philippine Political Science Journal, 13 and 15 (2019).

[181] *See supra* Part IV.C.

[182] *See* Rep. Act No. 9262 (2004), § 3(c). Anti-Violence Against Women and Their Children Act of 2004. "'*Psychological violence*' *refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to* intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and *marital infidelity*. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children." (Emphasis supplied.)