



by Hon. Minerva Viojan-Siosana

There has been much debate on whether divorce should be legalized here in the Philippines. The religious sector strongly opposes it because of the belief that it would destroy the family.

But what is divorce? Divorce is the legal dissolution of a marriage by a court or other competent body. Do we have it here in the Philippines? Yes, but it is only limited among Muslims as the Muslim Code governs their family and property relations. The Family Code governs non-Muslim marriages and those of Filipino citizens, wherein only annulment and declaration of nullity of marriage are recognized but not divorce.

What is the difference between divorce and annulment or declaration of nullity of marriage? They differ on the grounds and processes. Absolute divorce in other countries is much simpler. There are several kinds of absolute divorce, such as contested, at-fault, summary, no-fault, uncontested, collaborative, electronic, and mediated divorce. The good thing about divorce is that it is simpler, faster, and more economical. It also does not leave additional emotional pain and injury to both parties. In electronic divorce, the parties can simply file an electronic request for no-fault collaborative divorce in a non-judiciary administrative entity. If there are no issues (e.g., children, real property, and

alimony), the parties can complete the process within one hour.

To date, the divorce bill is still with the Senate for deliberation. This bill has caused much stir in the religious sector as the latter strongly oppose it on the belief that it will destroy the family, which is the basic foundation of society.

But will it really destroy the family? Let us have a glimpse of that divorce bill that Congress passed. Under the bill¹, the grounds for a judicial decree of absolute divorce are:

1. Legal separation under Article 55 of the Family Code;
2. Annulment of marriage under Article 45 of the Family Code;
3. Nullification of marriage based on psychological incapacity under the Family Code;
4. Separation in fact for at least five years at the time the petition for absolute divorce is filed;
5. When one of the spouses undergoes a gender reassignment surgery or transitions from one sex to another;
6. Irreconcilable marital differences as defined in the bill;
7. Other forms of domestic or marital abuse that the bill defined;
8. Valid foreign divorce secured by either the alien or Filipino spouse; and
9. A marriage that a recognized religious tribunal nullified.

The good thing about the bill is that it provides a summary judicial process or an expeditious manner of resolving the divorce petition but is

limited only on these grounds:

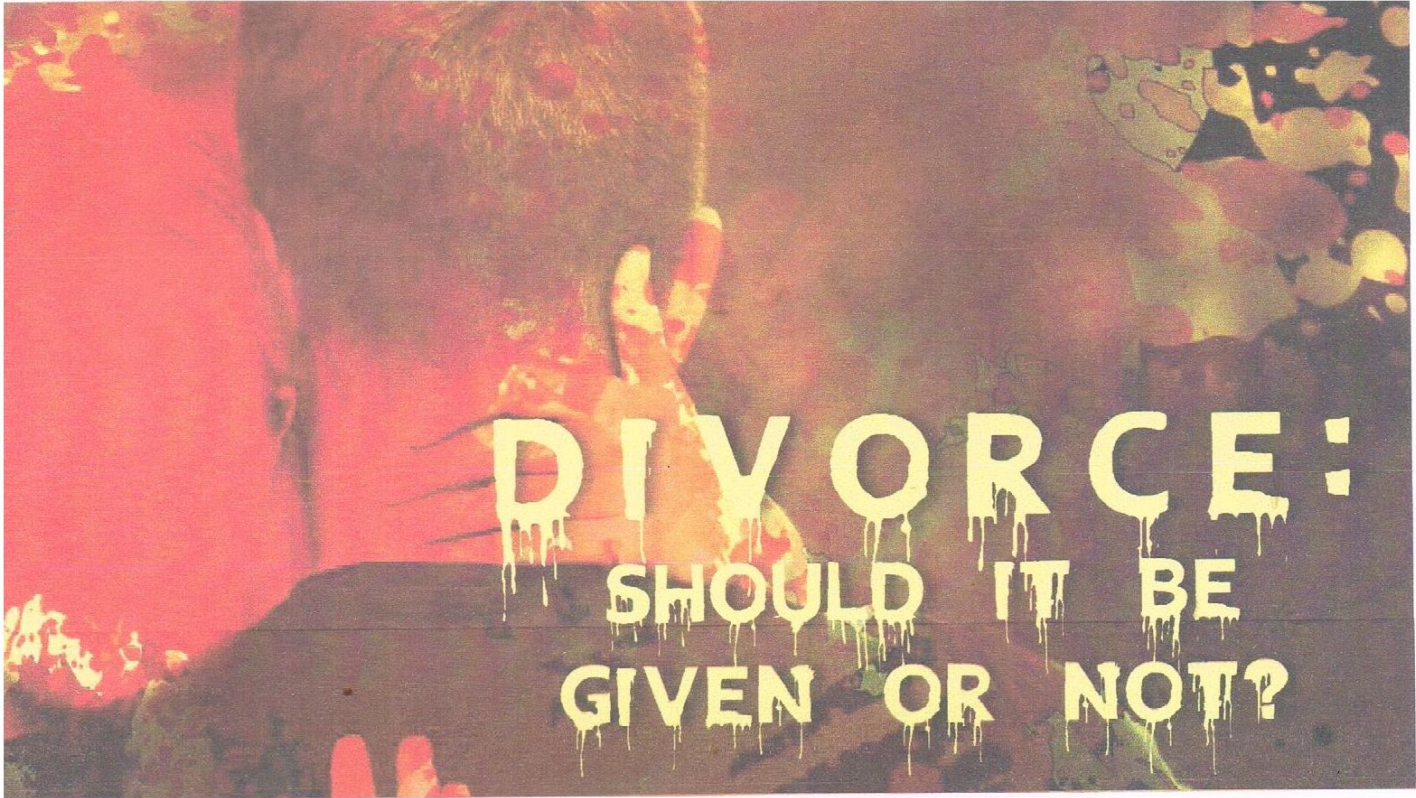
1. When the spouses have been separated for at least five years;
2. When one of the spouses has contracted a bigamous marriage;
3. When the spouses have been legally separated by judicial decree for two years or more;
4. When one of the spouses has been sentenced to imprisonment for six years, even if subsequently pardoned; and
5. When one of the spouses has undergone sex reassignment surgery.

This summary judicial proceeding can be finished in less than a year.

Now going back to that argument that divorce will destroy the family, the declaration of policy as stated in that bill reads:

"While the State continues to protect and preserve marriage as a social institution and as the foundation of the family, it gives the opportunity to spouses in irremediably failed marriages to secure an absolute divorce decree under limited grounds and well-defined judicial procedures to terminate the continuing dysfunction of a long broken marriage; save the children from pain, stress, and agony consequent to their parent's constant marital clashes; and grant the divorced spouses the right to marry again for another chance to achieve marital bliss."

Here, the lawmakers acknowledge the fact of a failed marriage and a long-broken marriage; hence divorce, in reality, will not destroy something that was already destroyed long ago. Let me



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quote Justice Leonen as ponente in the latest case of *Tan-Andal vs. Andal*². He said:

"In dissolving, however, the marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond. Indeed, Article 36 of the Family Code, in classifying marriages contracted by a psychologically incapacitated person as a nullity, should be deemed as an implement of this constitutional protection of marriage. Given the avowed State interest in promoting marriage as the foundation of the family, which in turn serves as the foundation of the nation, there is a corresponding interest for the State to defend against marriages ill-equipped to promote family life.

Further, as the 'basic autonomous social institution,' the family should be protected under the Constitution regardless of its structure. This means that a family can be founded, whether or not the parents choose to marry or subsequently choose to dissociate, and this arrangement should be equally entitled to State protection. The right to choose our intimate partners is part of our right to autonomy and liberty, an inherent part of human dignity. Ultimately, should the State interfere with these choices, it should do so only

when public interest is imperiled."

The Family Code on the severance of marriage is just difficult for both parties. The psychological incapacity most resorted to will always create more pain for both spouses as each would have to prove the bad character of each (eventually). Recalling and telling in court the abuses, infidelity, irresponsibility, and betrayal will only bring back the pain that has long been forgotten.

We have to recognize that not all are gifted with the bliss of marriage life; it is not for all. We have to accept that there are marriages that cannot be fixed anymore. Those who were not

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lucky enough deserve a second chance in love.

They say that it would be the children who would suffer the most. That is not true at all. How many children grew up to be successful despite the fact that they came from a broken family? I came from a broken family, and this did not bother me at all. I am one of the living manifestations of that false belief. I grew up to be better than my family's expectations. My situation gave me strength and pushed me to do better in life. My mother was

a battered wife with her third husband, but she endured it all because she had no choice. She had nowhere to go and no one to turn to. More so, she was tied to the belief that it was a mortal sin to leave her husband, so she stayed and took it all in. I witnessed all the physical abuse, the almost daily marital squabbles, the flying chairs, the broken glasses and plates, the broken window with blood on it, and my siblings gone from the house only to find them in another's house all frightened, confused, and hungry. They say it is normal for married couples to go through that.

If that is the norm, then I do not want it. One lesson I learned from that situation is that a miserable wife cannot give love to her children, for her heart is full of anger and misery. She cannot give what she does not have.

Divorce is the answer. In the words of Justice Leonen, "Parting is already a sorrow. It need not be more than what it already is." If divorce is not for you, then good, but do not deprive those who need it the most.

¹ An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines. SBN-288. 18th Congress of the Republic of the Philippines. (2019).

² *Tan-Andal v. Andal*, G.R. No. 196359, 11 May 2021