



Women's Priority Legislative Agenda for the 17th Congress

7

Recognizing Sexual Abuse and Focusing on the Violence and Abusive Conduct as Grounds for Legal Separation: Amending the Family Code Provision on Legal Separation

Philippine
Commission
on Women



POLICY BRIEF NO. 7

This policy brief provides the rationale for amending the Family Code provision on Legal Separation and focusing on the violence and abusive conduct as grounds for legal separation and recognizing sexual abuse.

WHAT IS THE ISSUE? WHAT HAS BEEN OUR RECENT EXPERIENCE/S WITH REGARDS TO THE ISSUE?

Under the Family Code of the Philippines, **repeated** physical violence or **grossly** abusive conduct is a ground for filing an action for legal separation. Specifically,

“Article. 55. A petition for legal separation may be filed on any of the following grounds:

1. *Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner; xxx”*

This provision is specifically limited to physical violence or grossly abusive conduct. It requires that the physical violence experienced must be of serious degree but does not have to amount to an attempt against the life of the victim (petitioner). The violence must also be repeated to the extent that life with the abuser (defendant) becomes extremely difficult for the victim (petitioner).¹ Similarly, the word “grossly” which characterizes the extent of abusive conduct that the perpetrator commits has become a burden as well on the victim (petitioner) to prove.

These circumstances reinforce the batterers’ attempts to control and demean their victims and contribute to perpetuating violence against women particularly within the sanctity of the home, as exacerbated by this law. It is detrimental to women and children’s safety and welfare.

WHY IS THE ISSUE IMPORTANT?

Violence against women is a grave violation of human rights. Its impact ranges from immediate to long-term multiple physical, sexual and mental consequences for women and girls, including death.² It limits human development and restrains women to participate actively in social activities. Violence also has repercussions on Women’s families, the community and the country at large. It has tremendous costs, from greater health care and legal expenses and losses in productivity, impacting national budgets and overall development.³

The 2008 and 2013 National Demographic and Health Survey (NDHS) results showed that the usual perpetrators of sexual violence for the ever married women and the never married women are their current husband/partner and current/former boyfriend, respectively.⁴

It is important to consider that an abusive conduct is an abuse regardless of its severity. Researchers have difficulty measuring emotional abuse due to its complex operationalization.⁵ It can be very subtle, often being overlooked by a victim’s friends and family.⁶ People think domestic violence is just a black eye or a broken limb, but it is really about one person’s attempt to control and dominate their partner.⁷ The hallmark of emotional abuse is the destruction of one’s self and it has led some victims and researchers to describe it as more painful and damaging to the victim than physical abuse.⁸ It is in fact responsible for long-term problems with health, self-esteem, depression, and anxiety.⁹

According to the 2008 and 2013 NDHS results, one in five ever-married women aged 15 – 49 years has experienced emotional violence committed by their husband/partner.¹⁰

WHAT ARE THE EXISTING LAWS OR POLICIES RELATED TO THE ISSUE?

Section 12 of RA 9710 or the Magna Carta of Women (MCW) provides for the amendment or repeal of laws that are discriminatory to women which, among others, include Article 55 (1) on the requirement for repeated physical abuse and grossly abusive conduct as a ground for legal separation. It also defines violence against women (VAW) as “any act of gender-based violence that results in, or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.”

RA 9262 or the Anti-Violence against Women and Their Children Act of 2004 considers violence against women and their children as a public crime. Section 2 of this law calls on the State “to protect the family and its members, particularly women and children from violence and threats to their personal safety and security.”

RA 9262 identifies sexual abuse as a form of “violence against women and their children.” It has defined sexual violence as:

“...an act which is sexual in nature, committed against a woman or her child. It includes, but not limited to:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim’s body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) prostituting the woman or her child.”

WHAT ARE THE CONSIDERATIONS IN ADDRESSING THIS ISSUE IN THE COUNTRY?

Promoting women’s rights and gender equality

Amending the said provision on legal separation in the Family Code will give women and children additional State protection within the confines of the family home. While the proposed amendment will apply to both spouses, it is viewed that it will be more beneficial for women as they comprise the majority of reported domestic violence cases. The proposed amendments will give the woman an option to file a petition for legal separation from an abusive husband which is civil in nature, instead of filing a criminal case.

Responding to International Commitments

Such amendment conforms with Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which calls upon the States Parties to 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. Article 16 also calls upon the 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. In addition, CEDAW General Recommendation No. 19 prohibits not just gender-based discrimination but more specifically, gender-based violence.

Alignment with National Priorities

The proposed amendment is aligned with the Philippine Plan for Gender-Responsive Development (1995-2025) and Women’s Empowerment, Development and Gender Equality Plan (Women’s EDGE Plan) which comprehensively tackle violence against women (VAW) within the context of a national development framework.

POLICY RECOMMENDATION

It is proposed that Article 55 (1) of the FCP be **amended to include sexual violence and remove “repeated” and “grossly” and focus on the acts committed rather than the severity and instances of violence and abusive conduct.** The proposed amendment shall read as follows:

“Art. 55. A petition for legal separation may be filed on any of the following grounds:

1. *PHYSICAL AND/OR SEXUAL*

*VIOLENCE, OR ABUSIVE CONDUCT
directed against the petitioner, a common
child, or a child of the petitioner; XXX”*

CONCLUSION

Amending Article 55 (1) of the Family Code will give women and children additional State protection consistent with R.A. 9262. To this end, it is with hope that our legislators, consistent with their mandates under the Constitution and the Magna Carta of Women, shall give highest priority to the enactment of this proposed amendment together with other measures that protect and enhance the right of all the people to human dignity, particularly in the attainment of substantive equality.

ENDNOTES

¹ Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* (Volume I, 1961)

² Ending Violence Against Women (March 2015), <http://www.unwomen.org/en/what-we-do/ending-violence-against-women#sthash.DwQ4xfLi.dpuf>

³ Ibid.

⁴ *Announcement – One in Five Women aged 15-49 has experienced Physical Violence in 2013* (Philippine Statistics Authority, 2014) http://nap.psa.gov.ph/announce/2014/PSA-NSCB_FS-201412-SS2-01_violence.asp

⁵ Gunnur Karakurt and Kristin Silver, *Emotional Abuse Intimate Relationships* (US National Library of Medicine National Institutes of Health, 2013),

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3876290/>

⁶ *Psychological/Emotional Abuse* (Welsh Women Aid, 2012), <http://www.welshwomensaid.org.uk/index.php?Itemid=65>

⁷ Jana Pruden, *Domestic Silence: Meet the Face of abuse* (*Edmonton Journal*, 2015)

<http://edmontonjournal.com/news/insight/domestic-silence-meet-the-faces-of-abuse>

⁸ Christy-Dale Sims, *Invisible Wounds, Invisible Abuse* (*Journal of Emotional Abuse*, Vol. 8 (4) 2008)

⁹ *Education Wife Assault*. Emotional Abuse Focus Group (Springtide Resources, 1999)

¹⁰ Maternity Protection Coalition Press Release (05 June 2000), http://www.ibfan.org/fact-maternity-tools-5_june.html.

¹¹ Ibid.