Republic of the Philippines
Supreme Court
Baguio City

EN BANC

REPUBLIC OF THE PHILIPINES,
Petitioner,

- *versus* -

MARELYN TANEDO MANALO,
Respondent.

G.R. No. 221029

Present:

SERENO,* *C.J.*,
CARPIO,**
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,***
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*

Promulgated:

April 24, 2018

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RESOLUTION

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to reverse and set aside the September 18, 2014

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* On leave.
** Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.
*** No part.

Decision[1] and October 12, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 100076. The dispositive portion of the Decision states:

> **WHEREFORE**, the instant appeal is **GRANTED**. The *Decision* dated 15 October 2012 of the Regional Trial Court of Dagupan City, First Judicial Region, Branch 43, in SPEC. PROC. NO. 2012-0005 is **REVERSED** and **SET ASIDE**.
>
> Let a copy of this *Decision* be served on the Local Civil Registrar of San Juan, Metro Manila.
>
> **SO ORDERED**.[3]

The facts are undisputed.

On January 10, 2012, respondent Marelyn Tanedo Manalo *(Manalo)* filed a petition for cancellation of entry of marriage in the Civil Registry of San Juan, Metro Manila, by virtue of a judgment of divorce rendered by a Japanese court.

Finding the petition to be sufficient in form and in substance, Branch 43 of the Regional Trial Court (*RTC*) of Dagupan City set the case for initial hearing on April 25, 2012. The petition and the notice of initial hearing were published once a week for three consecutive weeks in a newspaper of general circulation. During the initial hearing, counsel for Manalo marked the documentary evidence (consisting of the trial court's Order dated January 25, 2012, affidavit of publication, and issues of the Northern Journal dated February 21-27, 2012, February 28 - March 5, 2012, and March 6-12, 2012) for purposes of compliance with the jurisdictional requirements.

The Office of the Solicitor General *(OSG)* entered its appearance for petitioner Republic of the Philippines authorizing the Office of the City Prosecutor of Dagupan to appear on its behalf. Likewise, a Manifestation and Motion was filed questioning the title and/or caption of the petition considering that, based on the allegations therein, the proper action should be a petition for recognition and enforcement of a foreign judgment.

As a result, Manalo moved to admit an Amended Petition, which the court granted. The Amended Petition, which captioned that it is also a petition for recognition and enforcement of foreign judgment, alleged:

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1 Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela concurring; *rollo*, pp. 23-31.

2 *Rollo*, pp. 32-33.

3 *Id.* at 30. (Emphasis in the original)

> 2. That petitioner is previously married in the Philippines to a Japanese national named YOSHINO MINORO as shown by their Marriage Contract x x x;
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> 3. That recently, a case for divorce was filed by herein [petitioner] in Japan and after due proceedings, a divorce decree dated December 6, 2011 was rendered by the Japanese Court x x x;
>
> 4. That at present, by virtue of the said divorce decree, petitioner and her divorced Japanese husband are no longer living together and in fact, petitioner and her daughter are living separately from said Japanese former husband;
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> 5. That there is an imperative need to have the entry of marriage in the Civil Registry of San Juan, Metro Manila cancelled, where the petitioner and the former Japanese husband's marriage was previously registered, in order that it would not appear anymore that petitioner is still married to the said Japanese national who is no longer her husband or is no longer married to her; furthermore, in the event that petitioner decides to be remarried, she shall not be bothered and disturbed by said entry of marriage;
>
> 6. That this petition is filed principally for the purpose of causing the cancellation of entry of the marriage between the petitioner and the said Japanese national, pursuant to Rule 108 of the Revised Rules of Court, which marriage was already dissolved by virtue of the aforesaid divorce decree; [and]
>
> 7. That petitioner prays, among others, that together with the cancellation of the said entry of her marriage, that she be allowed to return and use her maiden surname, MANALO.[4]

Manalo was allowed to testify in advance as she was scheduled to leave for Japan for her employment. Among the documents that were offered and admitted were:

> 1. Court Order dated January 25, 2012, finding the petition and its attachments to be sufficient in form and in substance;
> 2. Affidavit of Publication;
> 3. Issues of the Northern Journal dated February 21-27, 2012, February 28 - March 5, 2012, and March 6-12, 2012;
> 4. Certificate of Marriage between Manalo and her former Japanese husband;
> 5. Divorce Decree of the Japanese court;
> 6. Authentication/Certificate issued by the Philippine Consulate General in Osaka, Japan of the Notification of Divorce; and
> 7. Acceptance of Certificate of Divorce.[5]

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4 *Id.* at 42-43.
5 *Id.* at 25, 37-38.

The OSG did not present any controverting evidence to rebut the allegations of Manalo.

On October 15, 2012, the trial court denied the petition for lack of merit. In ruling that the divorce obtained by Manalo in Japan should not be recognized, it opined that, based on Article 15 of the New Civil Code, the Philippine law "does not afford Filipinos the right to file for a divorce, whether they are in the country or living abroad, if they are married to Filipinos or to foreigners, or if they celebrated their marriage in the Philippines or in another country" and that unless Filipinos "are naturalized as citizens of another country, Philippine laws shall have control over issues related to Filipinos' family rights and duties, together with the determination of their condition and legal capacity to enter into contracts and civil relations, including marriages."[6]

On appeal, the CA overturned the RTC decision. It held that Article 26 of the Family Code of the Philippines (*Family Code*) is applicable even if it was Manalo who filed for divorce against her Japanese husband because the decree they obtained makes the latter no longer married to the former, capacitating him to remarry. Conformably with *Navarro, et al. v. Exec. Secretary Ermita, et al.*[7] ruling that the meaning of the law should be based on the intent of the lawmakers and in view of the legislative intent behind Article 26, it would be the height of injustice to consider Manalo as still married to the Japanese national, who, in turn, is no longer married to her. For the appellate court, the fact that it was Manalo who filed the divorce case is inconsequential. Cited as similar to this case was *Van Dorn v. Judge Romillo, Jr.*[8] where the marriage between a foreigner and a Filipino was dissolved through a divorce filed abroad by the latter.

The OSG filed a motion for reconsideration, but it was denied; hence, this petition.

We deny the petition and partially affirm the CA decision.

Divorce, the legal dissolution of a lawful union for a cause arising after marriage, are of two types: (1) absolute divorce or *a vinculo matrimonii,* which terminates the marriage, and (2) limited divorce or *a mensa et thoro*, which suspends it and leaves the bond in full force.[9] In this jurisdiction, the following rules exist:

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6 *Id.* at 40-41.
7 663 Phil. 546 (2011).
8 223 Phil. 357 (1985).
9 *Amor-Catalan v. Court of Appeals,* 543 Phil. 568, 575 (2007), citing *Garcia v. Recio,* 418 Phil. 723, 735-736 (2001).

1. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it.[10]

2. Consistent with Articles 15[11] and 17[12] of the New Civil Code, the marital bond between two Filipinos cannot be dissolved even by an absolute divorce obtained abroad.[13]

3. An absolute divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.[14]

4. In mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry.[15]

On July 6, 1987, then President Corazon C. Aquino signed into law Executive Order *(E.O.)* No. 209, otherwise known as *The Family Code of the Philippines*, which took effect on August 3, 1988.[16] Shortly thereafter, E.O. No. 227 was issued on July 17, 1987.[17] Aside from amending Articles 36 and 39 of the Family Code, a second paragraph was added to Article 26.[18] This provision was originally deleted by the *Civil Code Revision Committee (Committee)*, but it was presented and approved at a Cabinet meeting after Pres. Aquino signed E.O. No. 209.[19] As modified, Article 26 now states:

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10 *Garcia v. Recio, supra*, at 730 and *Medina v. Koike,* G.R. No. 215723, July 27, 2016, 798 SCRA 733, 739.

11 Art. 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad. (9a)

12 Art. 17. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.(11a)

13 *Tenchavez v. Escano, et al.,*122 Phil. 752, 759-760 (1965), as cited in *Cang v. Court of Appeals,* 357 Phil. 129, 162 (1998); *Llorente v. Court of Appeals,* 399 Phil. 342, 356 (2000); and *Perez v. Court of Appeals,* 516 Phil. 204, 211 (2006). See also *Garcia v. Recio, supra* note 9, at 730; *Republic v. Iyoy,* 507 Phil. 485, 504 (2005); and *Lavadia v. Heirs of Juan Luces Luna,* 739 Phil. 331, 341-342 (2014).

14 *Garcia v. Recio, supra* note 9, at 730-731.

15 FAMILY CODE, Article 26 Paragraph 2. See also *Garcia v. Recio, supra note 9, at* 730 and *Medina v. Koike, supra* note 10.

16 *Republic of the Phils. v. Orbecido III,* 509 Phil. 108, 112 (2005), as cited in *San Luis v. San Luis,* 543 Phil. 275, 291 (2007).

17 *Id.* at 112-113, as cited in *San Luis v. San Luis, supra.*

18 *Id.* at 113, as cited in *San Luis v. San Luis, supra.*

19 Sempio-Diy, Alicia V., HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES, 1988, pp. 26-27.

> Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.
>
> Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

Paragraph 2 of Article 26 confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage.[20] It authorizes our courts to adopt the effects of a foreign divorce decree precisely because the Philippines does not allow divorce.[21] Philippine courts cannot try the case on the merits because it is tantamount to trying a divorce case.[22] Under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a spouse of foreign nationality, but the legal effects thereof, *e.g.,* on custody, care and support of the children or property relations of the spouses, must still be determined by our courts.[23]

According to Judge Alicia Sempio-Diy, a member of the *Committee*, the idea of the amendment is to avoid the absurd situation of a Filipino as still being married to his or her alien spouse, although the latter is no longer married to the former because he or she had obtained a divorce abroad that is recognized by his or her national law.[24] The aim was that it would solve the problem of many Filipino women who, under the New Civil Code, are still considered married to their alien husbands even after the latter have already validly divorced them under their (the husbands') national laws and perhaps have already married again.[25]

In 2005, this Court concluded that Paragraph 2 of Article 26 applies to a case where, at the time of the celebration of the marriage, the parties were Filipino citizens, but later on, one of them acquired foreign citizenship by naturalization, initiated a divorce proceeding, and obtained a favorable decree. We held in *Republic of the Phils. v. Orbecido III*:[26]

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20 *Medina v. Koike, supra* note 10 and *Fujiki v. Marinay,* 712 Phil. 524, 555 (2013).

21 *Fujiki v. Marinay, supra.*

22 *Id.*

23 See *Vda. de Catalan v. Catalan-Lee*, 681 Phil. 493, 498 (2012); *Roehr v. Rodriguez,* 452 Phil. 608, 617-618 (2003); and *Llorente v. Court of Appeals*, *supra* note 13.

24 *Supra* note 19, at 27. See also *Republic of the Phils. v. Orbecido III, supra* note 16, at 114, as cited in *Fujiki v. Marinay, supra* note 20, at 555 and *San Luis v. San Luis, supra* note 16, at 292.

25 *Supra* note 19, at 27.

26 *Supra* note 16.

> The jurisprudential answer lies latent in the 1998 case of *Quita v. Court of Appeals*. In *Quita*, the parties were, as in this case, Filipino citizens when they got married. The wife became a naturalized American citizen in 1954 and obtained a divorce in the same year. The Court therein hinted, by way of *obiter dictum*, that a Filipino divorced by his naturalized foreign spouse is no longer married under Philippine law and can thus remarry.
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> Thus, taking into consideration the legislative intent and applying the rule of reason, we hold that Paragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. x x x
>
> If we are to give meaning to the legislative intent to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce is no longer married to the Filipino spouse, then the instant case must be deemed as coming within the contemplation of Paragraph 2 of Article 26.
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> In view of the foregoing, we state the twin elements for the application of Paragraph 2 of Article 26 as follows:
>
> 1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
> 2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.
>
> The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.[27]

Now, the Court is tasked to resolve whether, under the same provision, a Filipino citizen has the capacity to remarry under Philippine law after initiating a divorce proceeding abroad and obtaining a favorable judgment against his or her alien spouse who is capacitated to remarry. Specifically, Manalo pleads for the recognition and enforcement of the divorce decree rendered by the Japanese court and for the cancellation of the entry of marriage in the local civil registry "in order that it would not appear anymore that [she] is still married to the said Japanese national who is no longer her husband or is no longer married to her; [and], in the event that [she] decides to be remarried, she shall not be bothered and disturbed by said entry of marriage," and to return and to use her maiden surname.

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27 *Id.* at 114-115. (Citations omitted).

We rule in the affirmative.

Both *Dacasin v. Dacasin*[28] and *Van Dorn*[29] already recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, respectively.

In *Dacasin*, post-divorce, the former spouses executed an Agreement for the joint custody of their minor daughter. Later on, the husband, who is a US citizen, sued his Filipino wife to enforce the Agreement, alleging that it was only the latter who exercised sole custody of their child. The trial court dismissed the action for lack of jurisdiction, on the ground, among others, that the divorce decree is binding following the "nationality rule" prevailing in this jurisdiction. The husband moved to reconsider, arguing that the divorce decree obtained by his former wife is void, but it was denied. In ruling that the trial court has jurisdiction to entertain the suit but not to enforce the Agreement, which is void, this Court said:

> Nor can petitioner rely on the divorce decree's alleged invalidity – not because the Illinois court lacked jurisdiction or that the divorce decree violated Illinois law, but <u>because the divorce was obtained by his Filipino spouse</u> – to support the Agreement's enforceability. The argument that foreigners in this jurisdiction are not bound by foreign divorce decrees is hardly novel. *Van Dorn v. Romillo* settled the matter by holding that an alien spouse of a Filipino is bound by a divorce decree obtained abroad. There, we dismissed the alien divorcee's Philippine suit for accounting of alleged post-divorce conjugal property and rejected his submission that the foreign divorce <u>(obtained by the Filipino spouse)</u> is not valid in this jurisdiction x x x.[30]

Van Dorn was decided before the Family Code took into effect. There, a complaint was filed by the ex-husband, who is a US citizen, against his Filipino wife to render an accounting of a business that was alleged to be a conjugal property and to be declared with right to manage the same. Van Dorn moved to dismiss the case on the ground that the cause of action was barred by previous judgment in the divorce proceedings that she initiated, but the trial court denied the motion. On his part, her ex-husband averred that the divorce decree issued by the Nevada court could not prevail over the prohibitive laws of the Philippines and its declared national policy; that the acts and declaration of a foreign court cannot, especially if the same is contrary to public policy, divest Philippine courts of jurisdiction to entertain matters within its jurisdiction. In dismissing the case filed by the alien spouse, the Court discussed the effect of the foreign divorce on the parties and their conjugal property in the Philippines. Thus:

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28 625 Phil. 494 (2010).

29 *Supra* note 8.

30 *Dacasin v. Dacasin*, *supra*, at 507. (Citations omitted; underscoring ours)

There can be no question as to the validity of that Nevada divorce in any of the States of the United States. The decree is binding on private respondent as an American citizen. For instance, private respondent cannot sue petitioner, ***as her husband,*** in any State of the Union. What he is contending in this case is that the divorce is not valid and binding in this jurisdiction, the same being contrary to local law and public policy.

It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released private respondent from the marriage from the standards of American law, under which ***divorce dissolves the marriage***. As stated by the Federal Supreme Court of the United States in *Atherton vs. Atherton*, 45 L. Ed. 794, 799:

> "The purpose and effect of a decree of divorce from the bond of matrimony by a court of competent jurisdiction are to change the existing status or domestic relation of husband and wife, and to free them both from the bond. The marriage tie, when thus severed as to one party, ceases to bind either. A husband without a wife, or a wife without a husband, is unknown to the law. When the law provides, in the nature of a penalty, that the guilty party shall not marry again, that party, as well as the other, is still absolutely freed from the bond of the former marriage."

Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. As he is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, *et. seq*. of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.[31]

In addition, the fact that a validly obtained foreign divorce initiated by the Filipino spouse can be recognized and given legal effects in the

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31 *Van Dorn v. Judge Romillo, Jr., supra* note 8, at 361-363. (Citations omitted).

Philippines is implied from Our rulings in *Fujiki v. Marinay, et al.*[32] and *Medina v. Koike.*[33]

In *Fujiki*, the Filipino wife, with the help of her first husband, who is a Japanese national, was able to obtain a judgment from Japan's family court, which declared the marriage between her and her second husband, who is a Japanese national, void on the ground of bigamy. In resolving the issue of whether a husband or wife of a prior marriage can file a petition to recognize a foreign judgment nullifying the subsequent marriage between his or her spouse and a foreign citizen on the ground of bigamy, We ruled:

> Fujiki has the personality to file a petition to recognize the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy because the judgment concerns his civil status as married to Marinay. For the same reason he has the personality to file a petition under Rule 108 to cancel the entry of marriage between Marinay and Maekara in the civil registry on the basis of the decree of the Japanese Family Court.
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> There is no doubt that the prior spouse has a personal and material interest in maintaining the integrity of the marriage he contracted and the property relations arising from it. There is also no doubt that he is interested in the cancellation of an entry of a bigamous marriage in the civil registry, which compromises the public record of his marriage. The interest derives from the substantive right of the spouse not only to preserve (or dissolve, in limited instances) his most intimate human relation, but also to protect his property interests that arise by operation of law the moment he contracts marriage. These property interests in marriage include the right to be supported "in keeping with the financial capacity of the family" and preserving the property regime of the marriage.
>
> Property rights are already substantive rights protected by the Constitution, but a spouse's right in a marriage extends further to relational rights recognized under Title III ("Rights and Obligations between Husband and Wife") of the Family Code. x x x[34]

On the other hand, in *Medina*, the Filipino wife and her Japanese husband jointly filed for divorce, which was granted. Subsequently, she filed a petition before the RTC for judicial recognition of foreign divorce and declaration of capacity to remarry pursuant to Paragraph 2 of Article 26. The RTC denied the petition on the ground that the foreign divorce decree and the national law of the alien spouse recognizing his capacity to obtain a divorce decree must be proven in accordance with Sections 24 and 25 of Rule 132 of the Revised Rules on Evidence. This Court agreed and ruled

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32 *Supra* note 20.

33 *Supra* note 10.

34 *Fujiki v. Marinay, et al., supra* note 20, at 549-550. (Citations omitted).

that, consistent with *Corpuz v. Sto. Tomas, et al.*[35] and *Garcia v. Recio,*[36] the divorce decree and the national law of the alien spouse must be proven. Instead of dismissing the case, We referred it to the CA for appropriate action including the reception of evidence to determine and resolve the pertinent factual issues.

There is no compelling reason to deviate from the above-mentioned rulings. When this Court recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, it should not stop short in likewise acknowledging that one of the usual and necessary consequences of absolute divorce is the right to remarry. Indeed, there is no longer a mutual obligation to live together and observe fidelity. When the marriage tie is severed and ceased to exist, the civil status and the domestic relation of the former spouses change as both of them are freed from the marital bond.

The dissent is of the view that, under the nationality principle, Manalo's personal status is subject to Philippine law, which prohibits absolute divorce. Hence, the divorce decree which she obtained under Japanese law cannot be given effect, as she is, without dispute, a national *not* of Japan, but of the Philippines. It is said that a contrary ruling will subvert not only the intention of the framers of the law, but also that of the Filipino people, as expressed in the Constitution. The Court is, therefore, bound to respect the prohibition until the legislature deems it fit to lift the same.

We beg to differ.

Paragraph 2 of Article 26 speaks of *"a divorce x x x validly obtained abroad by the alien spouse capacitating him or her to remarry."* Based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding. The Court is bound by the words of the statute; neither can We put words in the mouths of the lawmakers.[37] "The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."[38]

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35 642 Phil. 420 (2010).

36 *Supra* note 9.

37 *Commissioner of Customs v. Manila Star Ferry, Inc.*, 298 Phil. 79, 86 (1993).

38 *Globe-Mackay Cable and Radio Corp. v. NLRC,* 283 Phil. 649, 660 (1992), as cited in *Victoria v. Commission on Elections,* 299 Phil. 263, 268 (1994); *Enjay Inc. v. NLRC,* 315 Phil. 648, 656 (1995); and *Pioneer Texturizing Corp. v. NLRC,* 345 Phil. 1057, 1073 (1997). See also *National Food Authority v.*

Assuming, for the sake of argument, that the word *"obtained"* should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act.[39] Laws have ends to achieve, and statutes should be so construed as not to defeat but to carry out such ends and purposes.[40] As held in *League of Cities of the Phils., et al. v. COMELEC, et al.*:[41]

> The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter.

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country.[42] Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law.

Conveniently invoking the nationality principle is erroneous. Such principle, found under Article 15 of the Civil Code, is not an absolute and unbending rule. In fact, the mere existence of Paragraph 2 of Article 26 is a testament that the State may provide for an exception thereto. Moreover, blind adherence to the nationality principle must be disallowed if it would

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Masada Security Agency, Inc., 493 Phil. 241, 251 (2005); *Rural Bank of San Miguel, Inc. v. Monetary Board*, 545 Phil. 62, 72 (2007); *Rep. of the Phils. v. Lacap*, 546 Phil. 87, 100 (2007); and *Phil. Amusement and Gaming Corp. (PAGCOR) v. Phil. Gaming Jurisdiction Inc. (PEJI), et al.*, 604 Phil. 547, 553 (2009).

39 *Mariano, Jr. v. COMELEC*, 312 Phil. 259, 268 (1995).

40 *Id.*

41 623 Phil. 531, 564-565 (2009).

42 *Fujiki v. Marinay, supra* note 20, at 555.

cause unjust discrimination and oppression to certain classes of individuals whose rights are equally protected by law. The courts have the duty to enforce the laws of divorce as written by the Legislature only if they are constitutional.[43]

While the Congress is allowed a wide leeway in providing for a valid classification and that its decision is accorded recognition and respect by the courts of justice, such classification may be subjected to judicial review.[44] The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution.[45] When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, and require a stricter and more exacting adherence to constitutional limitations.[46] If a legislative classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class **strict** judicial scrutiny is required since it is presumed unconstitutional, and the burden is upon the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest.[47]

"Fundamental rights" whose infringement leads to strict scrutiny under the equal protection clause are those basic liberties explicitly or implicitly guaranteed in the Constitution.[48] It includes the right of procreation, the **right to marry**, the right to exercise free speech, political expression, press, assembly, and so forth, the right to travel, and the right to vote.[49] On the other hand, what constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history.[50] It is akin to the paramount interest of the state for

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43 See *Barretto Gonzalez v. Gonzalez,* 58 Phil. 67, 72 (1933), as cited in *Tenchavez v. Escaño, et al., supra* note 13, at 762.

44 See *Assn. of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform,* 256 Phil. 777, 808 (1989) and *Sameer Overseas Placement Agency, Inc. v. Cabiles,* 740 Phil. 403, 436 (2014).

45 *Central Bank Employees Assn., Inc. v. Bangko Sentral ng Pilipinas,* 487 Phil. 531, 597 (2004) as cited in *Serrano v. Gallant Maritime Services, Inc.,* 601 Phil. 245, 436 (2009). See also Puno, C.J., Separate Concurring Opinion, *Ang Ladlad LGBT Party v. COMELEC,* 632 Phil. 32, 100 (2010); Brion, J., Separate Opinion, *Biraogo v. Phil. Truth Commission of 2010,* 651 Phil. 374, 550 (2010); and Leonardo-De Castro, J., Concurring Opinion, *Garcia v. Judge Drilon, et al.*, 712 Phil. 44, 125 (2013).

46 *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, supra.*

47 *Serrano v. Gallant Maritime Services, Inc., et al.,* 601 Phil. 245, 282 (2009) and *Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc.,* G.R. Nos. 189185 & 189305, August 16, 2016, 800 SCRA 313, 360. See also Brion, J., Separate Opinion, *Biraogo v. Philippine Truth Commission of 2010, supra*; Velasco, Jr., J., Concurring Opinion, *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.), et al.,* 774 Phil. 508, 706 (2015); and Jardeleza, J., Concurring Opinion, *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697 & 221698-700, March 8, 2016, 786 SCRA 1, 904..

48 Brion, J., Separate Opinion, *Biraogo v. Philippine Truth Commission of 2010, supra* note 45, at 553.

49 See Morales, J., Dissenting Opinion, *Central Bank Employees Assn., Inc. v. Bangko Sentral ng Pilipinas,* 487 Phil. 531, 697-698 (2004) as cited by Brion, J., Separate Opinion, *Biraogo v. Philippine Truth Commission of 2010, supra* note 45, at 553, and Leonen, J., Separate Opinion, *Samahan ng mga Progresibong Kabataan v. Quezon City,* G.R. No. 225442, August 8, 2017.

50 *Serrano v. Gallant Maritime Services, Inc., et al.,* 601 Phil. 245, 298 (2009).

which some individual liberties must give way, such as the promotion of public interest, public safety or the general welfare.[51] It essentially involves a public right or interest that, because of its primacy, overrides individual rights, and allows the former to take precedence over the latter.[52]

Although the Family Code was not enacted by the Congress, the same principle applies with respect to the acts of the President, which have the force and effect of law unless declared otherwise by the court. In this case, We find that Paragraph 2 of Article 26 violates one of the essential requisites[53] of the equal protection clause.[54] Particularly, the limitation of the provision only to a foreign divorce decree initiated by the alien spouse is unreasonable as it is based on superficial, arbitrary, and whimsical classification.

A Filipino who is married to another Filipino is not similarly situated with a Filipino who is married to a foreign citizen. There are real, material and substantial differences between them. *Ergo,* they should not be treated alike, both as to rights conferred and liabilities imposed. Without a doubt, there are political, economic, cultural, and religious dissimilarities as well as varying legal systems and procedures, all too unfamiliar, that a Filipino national who is married to an alien spouse has to contend with. More importantly, while a divorce decree obtained abroad by a Filipino against another Filipino is null and void, a divorce decree obtained by an alien against his or her Filipino spouse is recognized if made in accordance with the national law of the foreigner.[55]

On the contrary, there is no real and substantial difference between a Filipino who initiated a foreign divorce proceedings and a Filipino who

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51 *Id.*

52 Brion, J., Separate Concurring Opinion, *Sps. Imbong v. Hon. Ochoa, Jr., et al.,* 732 Phil. 1, 326-327 (2014).

53 To be valid, the classification must conform to the following requirements:

1.) It must rest on substantial distinctions.

2.) It must be germane to the purpose of the law.

3) It must not be limited to existing conditions only.

4) It must apply equally to all members of the same class. (See *PAGCOR v. Bureau of Internal Revenue,* 660 Phil. 636, 648 [2011]; *Maj. Gen. Garcia v. The Executive Secretary, et al.,* 692 Phil. 114, 141-142 [2012]; *Corpuz v. People,* 734 Phil. 353, 405 [2014]; *Ferrer, Jr. v. Mayor Bautista,* 762 Phil. 233, 277 (2015); *Drugstores Association of the Philippines, Inc. v. National Council on Disability Affairs,* G.R. No. 194561, September 14, 2016, 803 SCRA 25, 55; *Ocampo v. Enriquez,* G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120 & 226294, November 8, 2016; and *Mindanao Shopping Destination Corp. v. Duterte,* G.R. No. 211093, June 6, 2017).

54 Section 1, Article III of the Constitution states:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

55 *Tenchavez v. Escano, et al., supra* note 13, as cited in *Cang v. Court of Appeals, supra* note 13;; *Llorente v. Court of Appeals, supra* note 13; and *Perez v. Court of Appeals, supra* note 13. See also *Garcia v. Recio, supra* note 9, at 730; *Republic v. Iyoy, supra* note 13; and *Lavadia v. Heirs of Juan Luces Luna, supra* note 13. FAMILY CODE, Article 26 Paragraph 2. See also *Garcia v. Recio, supra* note 9, at 730 and *Medina v. Koike, supra* note 10.

obtained a divorce decree upon the instance of his or her alien spouse. In the eyes of the Philippine and foreign laws, both are considered as Filipinos who have the same rights and obligations in a alien land. The circumstances surrounding them are alike. Were it not for Paragraph 2 of Article 26, both are still married to their foreigner spouses who are no longer their wives/husbands. Hence, to make a distinction between them based merely on the superficial difference of whether they initiated the divorce proceedings or not is utterly unfair. Indeed, the treatment gives undue favor to one and unjustly discriminate against the other.

Further, the differentiation in Paragraph 2 of Article 26 is arbitrary. There is inequality in treatment because a foreign divorce decree that was initiated and obtained by a Filipino citizen against his or her alien spouse would not be recognized even if based on grounds similar to Articles 35, 36, 37 and 38 of the Family Code.[56] In filing for divorce based on these grounds,

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[56] Art. 35. The following marriages shall be void from the beginning:

(1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians;

(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;

(3) Those solemnized without a license, except those covered by the preceding Chapter;

(4) Those bigamous or polygamous marriages not falling under Article 41;

(5) Those contracted through mistake of one contracting party as to the identity of the other; and

(6) Those subsequent marriages that are void under Article 53.

Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. (*As amended by E.O. 227*)

Art. 37. Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:

(1) Between ascendants and descendants of any degree; and

(2) Between brothers and sisters, whether of the full or half blood.

Art. 38. The following marriages shall be void from the beginning for reasons of public policy:

(1) Between collateral blood relatives, whether legitimate or illegitimate, up to the fourth civil degree;

(2) Between step-parents and step-children;

(3) Between parents-in-law and children-in-law;

(4) Between the adopting parent and the adopted child;

(5) Between the surviving spouse of the adopting parent and the adopted child;

(6) Between the surviving spouse of the adopted child and the adopter;

(7) Between an adopted child and a legitimate child of the adopter;

(8) Between the adopted children of the same adopter; and

(9) Between parties where one, with the intention to marry the other, killed that other person's spouse or his or her own spouse. (82)

Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (83a)

Art. 52. The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons. (n)

Art. 53. Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.

the Filipino spouse cannot be accused of invoking foreign law at whim, tantamount to insisting that he or she should be governed with whatever law he or she chooses. The dissent's comment that Manalo should be "reminded that all is not lost, for she may still pray for the severance of her marital ties before the RTC in accordance with the mechanisms now existing under the Family Code" is anything but comforting. For the guidance of the bench and the bar, it would have been better if the dissent discussed in detail what these "mechanisms" are and how they specifically apply in Manalo's case as well as those who are similarly situated. If the dissent refers to a petition for declaration of nullity or annulment of marriage, the reality is that there is no assurance that our courts will automatically grant the same. Besides, such proceeding is duplicitous, costly, and protracted. All to the prejudice of our *kababayan*.

It is argued that the Court's liberal interpretation of Paragraph 2 of Article 26 encourages Filipinos to marry foreigners, opening the floodgate to the indiscriminate practice of Filipinos marrying foreign nationals or initiating divorce proceedings against their alien spouses.

The supposition is speculative and unfounded.

First, the dissent falls into a hasty generalization as no data whatsoever was shown to support what he intends to prove. *Second,* We adhere to the presumption of good faith in this jurisdiction. Under the rules on evidence, it is disputably presumed (*i.e.,* satisfactory if uncontradicted and overcome by other evidence) that a person is innocent of crime or wrong,[57] that a person intends the ordinary consequences of his voluntary acts,[58] that a person takes ordinary care of his concerns,[59] that acquiescence resulted from a belief that the thing acquiesced in was conformable to the law and fact,[60] that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage,[61] and that the law has been obeyed.[62] It is whimsical to easily attribute any illegal, irregular or immoral conduct on the part of a Filipino just because he or she opted to marry a foreigner instead of a fellow Filipino. It is presumed that interracial unions are entered into out of genuine love and affection, rather than prompted by pure lust or profit. *Third,* We take judicial notice of the fact that Filipinos are relatively more forbearing and conservative in nature and that they are more often the victims or at the losing end of mixed marriages. And *Fourth,* it is not for Us to prejudge the motive behind a Filipino's decision to marry an alien national. In one case, it was said:

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57 RULE 131, Section 3(a).
58 *Id.*, Section 3(c).
59 *Id.*, Section 3(d).
60 *Id.*., Section 3(x)..
61 *Id.*, Section 3(aa).
62 *Id.*, Section 3(ff).

> Motives for entering into a marriage are varied and complex. The State does not and cannot dictate on the kind of life that a couple chooses to lead. Any attempt to regulate their lifestyle would go into the realm of their right to privacy and would raise serious constitutional questions. The right to marital privacy allows married couples to structure their marriages in almost any way they see fit, to live together or live apart, to have children or no children, to love one another or not, and so on. Thus, marriages entered into for other purposes, limited or otherwise, such as convenience, companionship, money, status, and title, provided that they comply with all the legal requisites, are equally valid. Love, though the ideal consideration in a marriage contract, is not the only valid cause for marriage. Other considerations, not precluded by law, may validly support a marriage.[63]

The 1987 Constitution expresses that marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.[64] Nevertheless, it was not meant to be a general prohibition on divorce because Commissioner Jose Luis Martin C. Gascon, in response to a question by Father Joaquin G. Bernas during the deliberations of the 1986 Constitutional Commission, was categorical about this point.[65] Their exchange reveal as follows:

> MR. RAMA. Mr. Presiding Officer, may I ask that Commissioner Bernas be recognized.
>
> THE PRESIDING OFFICER (Mr. Colayco). Commissioner Bernas is recognized.
>
> FR. BERNAS. Just one question, and I am not sure if it has been categorically answered. I refer specifically to the proposal of Commissioner Gascon. Is this to be understood as a prohibition of a general law on divorce? His intention is to make this a prohibition so that the legislature cannot pass a divorce law.
>
> MR. GASCON. Mr. Presiding Officer, that was not primarily my intention. My intention was primarily to encourage the social institution of marriage, but not necessarily discourage divorce. But now that he mentioned the issue of divorce, my personal opinion is to discourage it, Mr. Presiding Officer.
>
> FR. BERNAS. No. my question is more categorical. Does this carry the meaning of prohibiting a divorce law?
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> MR. GASCON. No. Mr. Presiding Officer.

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63 *Rep. of the Phils. v. Albios,* 719 Phil. 622, 636 (2013).

64 1987 CONSTITUTION, Article XV, Section 2. This echoed the Family Code provision, which provides:

> 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. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

65 Bernas, Joaquin G., S.J., THE INTENT OF THE 1986 CONSTITUTION WRITERS, 1995 Edition, pp. 1132, citing V RECORD 41.

FR. BERNAS. Thank you.[66]

Notably, a law on absolute divorce is not new in our country. Effective March 11, 1917, Philippine courts could grant an absolute divorce on the grounds of adultery on the part of the wife or concubinage on the part of the husband by virtue of Act No. 2710 of the Philippine Legislature.[67] On March 25, 1943, pursuant to the authority conferred upon him by the Commander-in-Chief of the Imperial Japanese Forces in the Philippines and with the approval of the latter, the Chairman of the Philippine Executive Commission promulgated an E.O. No. 141 *("New Divorce Law")*, which repealed Act No. 2710 and provided eleven grounds for absolute divorce, such as intentional or unjustified desertion continuously for at least one year prior to the filing of the action, slander by deed or gross insult by one spouse against the other to such an extent as to make further living together impracticable, and a spouse's incurable insanity.[68] When the Philippines was liberated and the Commonwealth Government was restored, it ceased to have force and effect and Act No. 2710 again prevailed.[69] From August 30, 1950, upon the effectivity of Republic Act No. 386 or the *New Civil Code*, an absolute divorce obtained by Filipino citizens, whether here or abroad, is no longer recognized.[70]

Through the years, there has been constant clamor from various sectors of the Philippine society to re-institute absolute divorce. As a matter of fact, in the current 17th Congress, House Bill (*H.B.*) Nos. 116,[71] 1062,[72] 2380[73] and 6027[74] were filed in the House of Representatives. In substitution of these bills, H.B. No. 7303 entitled *"An Act Instituting*

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66 Record of the Constitutional Commission: Proceedings and Debates, Volume V, September 24, 1986, p. 41.

67 See *Garcia Valdez v. Soteraña Tuason*, 40 Phil. 943, 944 (1920); *Francisco v. Tayao,* 50 Phil. 42 (1927); *People v. Bitdu,* 58 Phil. 817 (1933); *Sikat v. Canson,* 67 Phil. 207 (1939); and *Arca, et al. v. Javier,* 95 Phil. 579 (1954).

68 See *Baptista v. Castañeda,* 76 Phil. 461 (1946); *Luz v. Court of First Instance of Tacloban,* 77 Phil. 679 (1946); and *Antonio v. Reyes,* 519 Phil. 337 (2006).

69 *Baptista v. Castañeda, supra,* at 463.

70 *Tenchavez v. Escano, et al.,supra* note 13, at 759-760, as cited in *Cang v. Court of Appeals, supra* note 13; *Llorente v. Court of Appeals, supra* note 13; and *Perez v. Court of Appeals, supra* note 13. See also *Garcia v. Recio, supra* note 9, at 730; *Republic v. Iyoy, supra* note 13; and *Lavadia v. Heirs of Juan Luces Luna,* 739 Phil. 331, 341-342 (2014).

71 Entitled *"Instituting Absolute Divorce in the Philippines And For Other Purposes,"* with Representative Edcel C. Lagman as Principal Author.

72 Entitled *"An Act Amending Title I, Chapter 3, of Executive Order No. 209, Otherwise Known as the Family Code of the Philippines, Prescribing Additional Ground for Annulment,"* with Representative Robert Ace S. Barbers as Principal Author.

73 Entitled *"An Act Introducing Divorce in the Philippines, Amending for the Purpose Articles 26, 55 to 66 and Repealing Article 36 Under Title II of Executive Order No. 209, As Amended, Otherwise Known as the Family Code of the Philippines, and For Other Purposes,"* with Gabriela Women's Party Representatives Emmi A. De Jesus and Arlene D. Brosas as principal authors.

74 Entitled *"An Act Providing for Grounds for the Dissolution of a Marriage,"* with Representatives Teddy B. Baguilat, Jr., Rodel M. Batocabe, Arlene D. Brosas, Ariel B. Casilao, France L. Castro, Nancy A. Catamco, Pia S. Cayetano, Emmi A. De Jesus, Sarah Jane I. Elago, Gwendolyn F. Garcia, Ana Cristina Siquian Go, Edcel C. Lagman, Pantaleon D. Alvarez, Antonio L. Tinio, and Carlos Isagani T. Zarate as Principal Authors.

Absolute Divorce and Dissolution of Marriage in the Philippines" or the *Absolute Divorce Act of 2018* was submitted by the House Committee on Population and Family Relations on February 28, 2018. It was approved on March 19, 2018 on Third Reading – with 134 in favor, 57 against, and 2 abstentions. Under the bill, the grounds for a judicial decree of absolute divorce are as follows:

1. The grounds for legal separation under Article 55 of the Family Code, modified or amended, as follows:

   a. Physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
   b. Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
   c. Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
   d. Final judgment sentencing the respondent to imprisonment of more than six (6) years, even if pardoned;
   e. Drug addiction or habitual alcoholism or chronic gambling of the respondent;
   f. Homosexuality of the respondent;
   g. Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
   h. Marital infidelity or perversion or having a child with another person other than one's spouse during the marriage, except when upon the mutual agreement of the spouses, a child is born to them by *in vitro* or a similar procedure or when the wife bears a child after being a victim of rape;
   i. Attempt by the respondent against the life of the petitioner, a common child or a child of the petitioner; and
   j. Abandonment of petitioner by respondent without justifiable cause for more than one (1) year.

When the spouses are legally separated by judicial decree for more than two (2) years, either or both spouses can petition the proper court for an absolute divorce based on said judicial decree of legal separation.

1. Grounds for annulment of marriage under Article 45 of the Family Code, restated as follows:

a. The party in whose behalf it is sought to have the marriage annulled was eighteen (18) years of age or over but below twenty-one (21), and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one (21), such party freely cohabited with the other and both lived together as husband or wife;
b. either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;
c. The consent of either party was obtained by fraud, unless such party afterwards with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

d. The consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;
e. Either party was physically incapable of consummating the marriage with the other and such incapacity continues or appears to be incurable; and
f. Either party was afflicted with a sexually transmissible infection found to be serious or appears to be incurable.

Provided, That the grounds mentioned in b, e and f existed either at the time of the marriage or supervening after the marriage.

1. When the spouses have been separated in fact for at least five (5) years at the time the petition for absolute divorce is filed, and reconciliation is highly improbable;

2. Psychological incapacity of either spouse as provided for in Article 36 of the Family Code, whether or not the incapacity was present at the time of the celebration of the marriage or later;

3. When one of the spouses undergoes a gender reassignment surgery or transitions from one sex to another, the other spouse is entitled to petition for absolute divorce with the transgender or transsexual as respondent, or vice-versa;

4. Irreconcilable marital differences and conflicts which have resulted in the total breakdown of the marriage beyond repair, despite earnest and repeated efforts at reconciliation.

To be sure, a good number of the Filipinos led by the Roman Catholic Church react adversely to any attempt to enact a law on absolute divorce, viewing it as contrary to our customs, morals, and traditions that has looked upon marriage and family as an institution and their nature of permanence, inviolability, and solidarity. However, none of our laws should be based on any religious law, doctrine, or teaching; otherwise, the separation of Church and State will be violated.[75]

> In the same breath that the establishment clause restricts what the government can do with religion, it also limits what religious sects can or cannot do. They can neither cause the government to adopt their particular doctrines as policy for everyone, nor can they cause the government to restrict other groups. To do so, in simple terms, would cause the State to adhere to a particular religion and, thus, establish a state religion.[76]

The Roman Catholic Church can neither impose its beliefs and convictions on the State and the rest of the citizenry nor can it demand that the nation follow its beliefs, even if it sincerely believes that they are good

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75 See Leonen, J., dissenting in *Matudan v. Republic,* G.R. No. 203284, November 14, 2016.
76 *Re: Letter of Tony Q. Valenciano,* A.M. No. 10-4-19-SC (Resolution), March 7, 2017.

for the country.[77] While marriage is considered a sacrament, it has civil and legal consequences which are governed by the Family Code.[78] It is in this aspect, bereft of any ecclesiastical overtone, that the State has a legitimate right and interest to regulate.

The declared State policy that marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State, should not be read in total isolation but must be harmonized with other constitutional provisions. Aside from strengthening the solidarity of the Filipino family, the State is equally mandated to actively promote its total development.[79] It is also obligated to defend, among others, the right of children to special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.[80] To Our mind, the State cannot effectively enforce these obligations if We limit the application of Paragraph 2 of Article 26 only to those foreign divorce initiated by the alien spouse. It is not amiss to point that the women and children are almost always the helpless victims of all forms of domestic abuse and violence. In fact, among the notable legislation passed in order to minimize, if not eradicate, the menace are R.A. No. 6955 (prohibiting mail order bride and similar practices), R.A. No. 9262 *("Anti-Violence Against Women and Their Children Act of 2004")*, R.A. No. 9710 *("The Magna Carta of Women")*, R.A. No. 10354 *("The Responsible Parenthood and Reproductive Health Act of 2012")*, and R.A. No. 9208 *("Anti-Trafficking in Persons Act of 2003")*, as amended by R.A. No. 10364 *("Expanded Anti-Trafficking in Persons Act of 2012")*. Moreover, in protecting and strengthening the Filipino family as a basic autonomous social institution, the Court must not lose sight of the constitutional mandate to value the dignity of every human person, guarantee full respect for human rights, and ensure the fundamental equality before the law of women and men.[81]

A prohibitive view of Paragraph 2 of Article 26 would do more harm than good. If We disallow a Filipino citizen who initiated and obtained a foreign divorce from the coverage of Paragraph 2 of Article 26 and still require him or her to first avail of the existing "mechanisms" under the Family Code, any subsequent relationship that he or she would enter in the meantime shall be considered as illicit in the eyes of the Philippine law. Worse, any child born out of such "extra-marital" affair has to suffer the stigma of being branded as illegitimate. Surely, these are just but a few of the adverse consequences, not only to the parent but also to the child, if We are to hold a restrictive interpretation of the subject provision. The irony is that the principle of inviolability of marriage under Section 2, Article XV of

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77 See *Sps. Imbong, et al. v. Hon. Ochoa, Jr., et al.*, 732 Phil. 1, 167 (2014).

78 *Tilar v. Tilar*, G.R. No. 214529, July 12, 2017.

79 Article XV, Section 1.

80 Article XV, Section 3(2).

81 Article II, Sections 11, 12 and 14. See also Republic Act Nos. 7192 (*"Women in Development and Nation Building Act"*) and 9710 (*"The Magna Carta of Women"*).

the Constitution is meant to be tilted in favor of marriage and against unions not formalized by marriage, but without denying State protection and assistance to live-in arrangements or to families formed according to indigenous customs.[82]

This Court should not turn a blind eye to the realities of the present time. With the advancement of communication and information technology, as well as the improvement of the transportation system that almost instantly connect people from all over the world, mixed marriages have become not too uncommon. Likewise, it is recognized that not all marriages are made in heaven and that imperfect humans more often than not create imperfect unions.[83] Living in a flawed world, the unfortunate reality for some is that the attainment of the individual's full human potential and self-fulfillment is not found and achieved in the context of a marriage. Thus, it is hypocritical to safeguard the quantity of existing marriages and, at the same time, brush aside the truth that some of them are of rotten quality.

Going back, We hold that marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it.[84] In reiterating that the Filipino spouse should not be discriminated against in his or her own country if the ends of justice are to be served, *San Luis v. San Luis*[85] quoted:

> x x x In *Alonzo v. Intermediate Appellate Court*, the Court stated:
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> > But as has also been aptly observed, we test a law by its results; and likewise, we may add, by its purposes. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to *render justice*.
> >
> > Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in a particular case because of its peculiar circumstances. In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.

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82 Bernas, Joaquin G., S.J., THE INTENT OF THE 1986 CONSTITUTION WRITERS, 1995 Edition, pp. 1132, citing V RECORD 40, 44.

83 See *Paras v. Paras,* 555 Phil. 786, 804 (2007)

84 *San Luis v. San Luis, supra* note 16, at 292-293.

85 *Supra* note 16.

> As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence. "Courts are apt to err by sticking too closely to the words of a law," so we are warned, by Justice Holmes again, "where these words import a policy that goes beyond them."
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> x x x x
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> More than twenty centuries ago, Justinian defined justice "as the constant and perpetual wish to render every one his due." That wish continues to motivate this Court when it assesses the facts and the law in every case brought to it for decision. Justice is always an essential ingredient of its decisions. Thus when the facts warrant, we interpret the law in a way that will render justice, presuming that it was the intention of the lawmaker, to begin with, that the law be dispensed with justice.[86]

Indeed, where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law.[87] A statute may, therefore, be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent.[88]

The foregoing notwithstanding, We cannot yet write *finis* to this controversy by granting Manalo's petition to recognize and enforce the divorce decree rendered by the Japanese court and to cancel the entry of marriage in the Civil Registry of San Juan, Metro Manila.

Jurisprudence has set guidelines before Philippine courts recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country. Presentation solely of the divorce decree will not suffice.[89] The fact of divorce must still first be proven.[90] Before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.[91]

> x x x Before a foreign judgment is given presumptive evidentiary value, the document must first be presented and admitted in evidence. A

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86 *San Luis v. San Luis, supra* note 16, at 293-294.

87 *Republic of the Phils. v. Orbecido III, supra* note 16, at 115.

88 *Id.*

89 *Garcia v. Recio, supra* note 9, at 731, as cited in *Vda. de Catalan v. Catalan-Lee, supra* note 23, at 501.

90 *Fujiki v. Marinay, supra* note 20, at 544 and *Vda. de Catalan v. Catalan-Lee, supra* note 23, at 499.

91 *Garcia v. Recio, supra* note 9, at 731, as cited in *Medina v. Koike, supra* note 10 and *Republic of the Phils. v. Orbecido III, supra* note 16, at 116. See also *Bayot v. The Hon. Court of Appeals, et al.*, 591 Phil. 452, 470 (2008).

> divorce obtained abroad is proven by the divorce decree itself. Indeed the best evidence of a judgment is the judgment itself. The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country.
>
> Under Sections 24 and 25 of Rule 132, on the other hand, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.[92]

In granting Manalo's petition, the CA noted:

> In this case, Petitioner was able to submit before the court *a quo* the 1) *Decision* of the Japanese Court allowing the divorce; 2) the *Authentication/Certificate* issued by the Philippine Consulate General in Osaka, Japan of the *Decree of Divorce*; and 3) *Acceptance of Certificate of Divorce* by Petitioner and the Japanese national. Under Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48 (b) of the Rules of Court, these documents sufficiently prove the subject Divorce Decree as a fact. Thus, We are constrained to recognize the Japanese Court's judgment decreeing the divorce.[93]

If the opposing party fails to properly object, as in this case, the divorce decree is rendered admissible as a written act of the foreign court.[94] As it appears, the existence of the divorce decree was not denied by the OSG; neither was the jurisdiction of the divorce court impeached nor the validity of its proceedings challenged on the ground of collusion, fraud, or clear mistake of fact or law, albeit an opportunity to do so.[95]

Nonetheless, the Japanese law on divorce must still be proved.

> x x x The burden of proof lies with the "party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action." In civil cases, plaintiffs have the burden of proving the material allegations of the complaint when those are denied by the answer; and defendants have the burden of proving the material allegations in their answer when they introduce new matters. x x x

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92 *Garcia v. Recio, supra* note 9, at 732-733. (Citations omitted). See also *Vda. de Catalan v. Catalan-Lee, supra* note 23, at 499 and 501-502 and *San Luis v. San Luis, supra* note 16, at 294.

93 *Rollo*, pp. 29-30.

94 *Garcia v. Recio, supra* note 9, at 733-734.

95 See *Bayot v. The Hon. Court of Appeals, et al., supra* note 75, at 470-471; and *Roehr v. Rodriguez, supra* note 23, at 617.

> It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. Like any other facts, they must be alleged and proved. x x x The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative.[96]

Since the divorce was raised by Manalo, the burden of proving the pertinent Japanese law validating it, as well as her former husband's capacity to remarry, fall squarely upon her. Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The September 18, 2014 Decision and October 12, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 100076, are **AFFIRMED IN PART**. The case is **REMANDED** to the court of origin for further proceedings and reception of evidence as to the relevant Japanese law on divorce.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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[96] *Garcia v. Recio, supra* note 9, at 735. (Citations omitted). See also *Vda. de Catalan v. Catalan-Lee*, *supra* note 23, at 500-501; *San Luis v. San Luis, supra* note 16, at 295; *Republic of the Phils. v. Orbecido III, supra* note 16, at 116; and *Llorente v. Court of Appeals*, *supra* note 13, at 354.

WE CONCUR:

On leave
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Acting Chief Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

I join the dissent of J. Caguioa

MARIANO C. DEL CASTILO
Associate Justice

I join the dissent of J. Caguioa

ESTELA M. PERLAS-BERNABE
Associate Justice

I concur. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

No part
FRANCIS H. JARDELEZA
Associate Justice

See dissenting opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Acting Chief Justice