

EN BANC

[G.R. No. 221029, April 24, 2018]

REPUBLIC OF THE PHILIPPINES, PETITIONER, V. MARELYN
TANEDO MANALO, RESPONDENT.

DECISION

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 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:

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;
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;
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]

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:

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:

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]

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.

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.

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.

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 because the divorce was obtained by his Filipino spouse - 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 (obtained by the Filipino spouse) 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:

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 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.

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 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]

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 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 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 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, 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:

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?

MR. GASCON. No. Mr. Presiding Officer.

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 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 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 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:

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.

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."

x x x x

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 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

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.

Carpio,^[*] *Velasco, Jr., Leonardo-De Castro, Bersamin, Martires, Tijam, Reyes, Jr., and Gesmundo, JJ.*, concur.

Leonen, J., concur. See separate opinion.

Del Castillo and Perlas-Bernabe, JJ., join the dissent of *J. Caguioa*.

Caguioa, J., see dissenting opinion.

Sereno, C.J., on leave.

Jardeleza, J., no part.

^[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[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)

[4] *Id.* at 42-43.

[5] *Id.* at 25, 37-38.

[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).

[10] *Garcia v. Redo*, *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.*, 22 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.
- [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.
- [27] *Id.* at 114-115. (Citations omitted).
- [28] 625 Phil. 494 (2010).
- [29] *Supra* note 8.
- [30] *Dacasin v. Dacasin*, *supra*, at 507. (Citations omitted; underscoring ours)
- [31] *Van Dorn v. Judge Romillo, Jr.*, *supra* note 8, at 361-363. (Citations omitted).
- [32] *Supra* note 20.
- [33] *Supra* note 10.
- [34] *Fujiki v. Marinay, et al.*, *supra* note 20, at 549-550. (Citations omitted).
- [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. 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.

[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).

[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 Lucas 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.

[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.

[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).

[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.

[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*, 61 Phil. 207 (1939); and *Arca, et al. v. Javier*, 95 Phil. 579 (1954).

[68] See *Baptista v. Castañeda*, 16 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 Lucas 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.
- [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.
- [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*").
- [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.
- [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).

[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.

[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.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on **April 24, 2018** a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on May 17, 2018 at 3:15 p.m.

Very truly yours,

**(SGD.) EDGAR O.
ARICHETA**
Clerk of Court

CONCURRING OPINION

LEONEN, J.:

I concur with the *ponencia* of Justice Peralta, adding the following points.

I

The proposal of the Solicitor General is to give Article 26^[1] of our Family Code an interpretation which capacitates and empowers the Japanese husband the option to divorce and how such choice has effects in our country while, at the same time, disallowing the Filipina wife from being able to do the same simply because she is a Filipina.

That interpretation may be unconstitutional. Article II, Section 14 of our Constitution provides:

Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

This constitutional fiat advances the notion of gender equality from its passive formulation in Article III, Section 1^[2] to its more active orientation.

Article III, Section 1 simply states that "nor shall any person be denied the equal protection of the laws." Traditionally, this means that the State has no duty to find ways and means to ensure equality. It is only a prescription that whatever legal burdens and benefits are given to men should likewise be given to women. It does not require the State, through any of its organs, to find affirmative ways and means to battle the patriarchy—that complex of political, cultural, and economic factors that ensure women's disempowerment.

By enacting our Constitution and signing on to our political obligations to the Convention on the Elimination of All Forms of Discrimination Against Women, we have legally committed to do better.

We likewise note that the Family Code was followed by Republic Act No. 7192 or the Women in Development and Nation Building Act. Within this law are provisions which ensure equal treatment between men and women, thus:

Section 2. *Declaration of Policy.* - The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provide women rights and opportunities equal to that of men.

. . . .

Section 5. *Equality in Capacity to Act.* - Women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances.

In all contractual obligations where married men have the capacity to act, married women shall have equal rights.

To this end:

- (1) Women shall have the capacity to borrow and obtain loans and execute security and credit arrangements under the same conditions as men;
- (2) Women shall have equal access to all government and private sector programs granting agricultural credit, loans and non-material resources and shall enjoy equal treatment in agrarian reform and land resettlement programs;
- (3) Women shall have equal rights to act as incorporators and enter into insurance contracts; and
- (4) Married women shall have the rights equal to those of married men in applying for passports, secure visas and other travel documents, without need to secure the consent of their spouses.

In all other similar contractual relations, women shall enjoy equal rights and shall have the capacity to act which shall in every respect be equal to those of men under similar circumstances. (Underscoring supplied)

Republic Act No. 9710 or the Magna Carta of Women reflects the state policy to "[abolish]. . . the unequal structures and practices that perpetuate discrimination and inequality"^[3] between the sexes, and Section 19 of the law is specific on the equality of women and men as to rights relating to marriage and family relations:

Section 19. *Equal Rights in All Matters Relating to Marriage and Family Relations.* - The State shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure:

- (a) the same rights to enter into and leave marriages or common law relationships referred to under the Family Code without prejudice to personal and religious beliefs;
- (b) the same rights to choose freely a spouse and to enter into marriage only with their free and full consent. The betrothal and the marriage of a child shall have no legal effect;
- (c) the joint decision on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (d) the same personal rights between spouses or common law spouses including the right to choose freely a profession and an occupation;
- (e) the same rights for both spouses or common law spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property;

- (f) the same rights to properties and resources, whether titled or not, and inheritance, whether formal or customary; and
- (g) women shall have equal rights with men to acquire, change, or retain their nationality. The State shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. Various statutes of other countries concerning dual citizenship that may be enjoyed equally by women and men shall likewise be considered.

Customary laws shall be respected: *Provided, however,* That they do not discriminate against women. (Underscoring supplied)

Section 19 is straightforward: the State shall ensure that men and women are to have "the same rights to enter into and leave marriages."

Following section 19 of Republic Act No. 9710, Article 26 of the Family Code should be read to mean that who initiates the divorce proceedings abroad is immaterial. Once a divorce decree is issued, the foreign spouse is deemed to have "obtained" a divorce which capacitates him or her to remarry. The same status should therefore be afforded to the Filipino spouse.

Besides, in many jurisdictions, the foreign spouse is given the option to divorce on the basis of a mutual recognition that irreconcilable differences have surfaced in the context of their relationship. Some foreign laws, therefore, allow joint filing for a divorce decree to ensure that there be less incrimination among the spouses, a more civil and welcoming atmosphere for their children, and less financial burden for the families affected. The interpretation proposed by the Solicitor General does not accommodate this possibility. It is blind to the actual complexities experienced by our citizens in mixed marriages.

II

Justice Caguioa provides the argument that interpreting Article 26 of the Family Code in the manner provided in the *ponencia* violates the nationality principle enshrined in Article 15 of the Civil Code.

I disagree.

Article 15 of the Civil Code provides:

Article 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.

Clearly, it is not only Article 26 of the Family Code or the Civil Code that applies. It should also include the Constitution, which is the bedrock of rights of any citizen. Thus, the State's obligation to "ensure the fundamental equality before the law of women and

men"^[4] applies with equal if not greater force. In my view, this is the full extent of the nationality principle. It is borne of rational interpretation, not judicial legislation.

III

Finally, my agreement with the *ponencia* is also impelled by my understanding that divorce is more consistent with the constitutionally entrenched fundamental freedoms inherent in individuals as human beings. It is also most consistent with the constitutional command for the State to ensure human dignity.

The restrictive nature of our marriage laws tends to reify the concept of a family which is already far from the living realities of many couples and children. For instance, orthodox insistence on heteronormativity may not compare with the various types of care that various other "non-traditional" arrangements present in many loving households.

The worst thing we do in a human relationship is to regard the commitment of the other formulaic. That is, that it is shaped alone by legal duty or what those who are dominant in government regard as romantic. In truth, each commitment is unique, borne of its own personal history, ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.

In other words, words that describe when we love or are loved will always be different for each couple. It is that which we should understand: intimacies that form the core of our beings should be as free as possible, bound not by social expectations but by the care and love each person can bring.

Yet, the present form and the present interpretation we have on the law on marriage constrains. In love, there are no guarantees. In choosing our most intimate partners, we can commit mistakes. It is but part of being human.

Our law cruelly defines the normal. The legal is coated in a false sense of morality poorly reasoned. It condemns those who have made bad choices into a living inferno.

In my view, this case is a step forward in the right direction.

IV

As I stated in a dissent^[5] I wrote in 2016, we had absolute divorce laws in the past. Act No. 2710,^[6] enacted in 1917, allowed the filing of a petition for divorce on the ground of adultery on the part of the wife, or concubinage on the part of the husband.^[7]

Eleven grounds for divorce were provided in Executive Order No. 141,^[8] effective during the Japanese occupation. These grounds included "intentional or unjustified desertion continuously for at least one year prior to the filing of a [petition] for divorce" and "slander by deed or gross insult by one spouse against the other to such an extent as to make further living impracticable."^[9]

After the Japanese left, the laws they enacted were declared void.^[10] Act No. 2710 again took effect until the Civil Code's enactment in 1950. Since then, absolute divorce

has been prohibited in our jurisdiction.

A world whose borders are increasingly becoming permeable with the ease of travel as well as with the technological advances will definitely foster more inter-cultural relationships. These relationships can become more intimate.

I am of the belief that the law never intended for the Filipino to be at a disadvantage. For so long as the Constitution itself guarantees fundamental equality, the absurd result from a literal and almost frigid and unfeeling interpretation of our laws should not hold. To say that one spouse may divorce and the other may not contribute to the patriarchy. It fosters an unequal relationship prone to abuse in such intimate relationships.

The law is far from frigid. It should passionately guarantee equality and I stand with this Court in ensuring that it does.

ACCORDINGLY, I vote to deny the Petition for Review on Certiorari and to affirm, with modification, the Court of Appeals' Decision in CA-G.R. CV No. 100076. The case should be remanded to the court of origin for further proceedings and reception of evidence as to the relevant Japanese law on divorce.

[1] FAMILY CODE, art. 26 provides:

Article 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), 3637 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 have capacity to remarry under Philippine law.

[2] CONST, art. III, sec. 1 provides:

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.

[3] Rep. Act No. 9710, sec. 2 provides:

Section 2. *Declaration of Policy.* - Recognizing that the economic, political, and sociocultural realities affect women's current condition, the State affirms the role of women in nation building and ensures the substantive equality of women and men. It shall promote empowerment of women and pursue equal opportunities for women and men and ensure equal access to resources and to development results and outcome. Further, the State realizes that equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality. To realize this, the State shall endeavor to develop plans, policies, programs,

measures, and mechanisms to address discrimination and inequality in the economic, political, social, and cultural life of women and men. The State condemns discrimination against women in all its forms and pursues by all appropriate means and without delay the policy of eliminating discrimination against women in keeping with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments consistent with Philippine law. The State shall accord women the rights, protection, and opportunities available to every member of society.

The State affirms women's rights as human rights and shall intensify its efforts to fulfill its duties under international and domestic law to recognize, respect, protect, fulfill, and promote all human rights and fundamental freedoms of women, especially marginalized women, in the economic, social, political, cultural, and other fields without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status. The State shall provide the necessary mechanisms to enforce women's rights and adopt and undertake all legal measures necessary to foster and promote the equal opportunity for women to participate in and contribute to the development of the political, economic, social, and cultural realms.

The State, in ensuring the full integration of women's concerns in the mainstream of development, shall provide ample opportunities to enhance and develop their skills, acquire productive employment and contribute to their families and communities to the fullest of their capabilities.

In pursuance of this policy, the State reaffirms the right of women in all sectors to participate in policy formulation, planning, organization, implementation, management, monitoring, and evaluation of all programs, projects, and services. It shall support policies, researches, technology, and training programs and other support services such as financing, production, and marketing to encourage active participation of women in national development.

[4] CONST., art. II, sec. 14.

[5] See Dissenting Opinion in *Matudan v. Republic*, G.R. No. 203284, November 14, 2016, < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/203284.pdf> > [Per J. Del Castillo, Second Division].

[6] An Act to Establish Divorce (1917).

[7] Act. No. 2710, sec. 1 provides:

Section 1. A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband, committed in any of the forms described in article four hundred and thirty-seven of the Penal Code.

See *Valdez v. Tuazon*, 40 Phil. 943, 948 (1920) [Per J. Street, En Banc].

[8] Otherwise known as "The New Divorce Law."

[9] *Baptista v. Castañeda*, 76 Phil. 461, 462 (1946) [Per J. Ozaeta, En Banc].

[10] *Id.* at 462-463.

DISSENTING OPINION

CAGUIOA, J.:

The Supreme Court x x x aims to adopt a liberal construction of statutes. By liberal construction of statutes is meant that method by which courts from the language used, the subject matter, and the purposes of those framing laws, are able to find out their true meaning. There is a sharp distinction, however, between construction of this nature and the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial.^[1]

On the basis of the Court's rulings in *Van Dorn v. Romillo, Jr.*^[2] (*Van Dorn*), *Republic of the Philippines v. Orbecido III*^[3] (*Orbecido*), and *Dacasin v. Dacasin*^[4] (*Dacasin*), the *ponencia* holds that Article 26(2) of the Family Code permits the **blanket** recognition, under Philippine law, of a divorce decree obtained abroad by a Filipino citizen against the latter's foreigner spouse.

I disagree.

At the outset, it bears to emphasize that the public policy against absolute divorce remains in force. At present, there exists no legal mechanism under Philippine law through which a Filipino may secure a divorce decree upon his own initiative. Accordingly, it is the Court's duty to uphold such policy and apply the law as it currently stands until the passage of an amendatory law on the subject.

As members of the Court, ours is the duty to interpret the law; this duty does not carry with it the power to determine what the law should be in the face of changing times, which power, in turn, lies solely within the province of Congress.

Article 26(2) of the Family Code is an exception to the nationality principle under Article 15 of the Civil Code.

Article 26(2) was introduced during the meetings of the Joint Civil Code and Family Law Committee (the Committee) to address the effect of foreign divorce decrees on mixed marriages between Filipinos and foreigners. The provision, as originally worded, and the rationale for its introduction, appear in the deliberations:

[Professor Esteban B. Bautista (Prof. Bautista)]'s position, even under the present law, was that the Filipina wife should be allowed to remarry as long as the divorce is valid under the national law of the husband, with which [Judge Alicia Sempio-Diy (Judge Diy)] and [Justice Leonor Ines-Luciano (Justice Luciano)] concurred.

After further deliberation, [Justice Ricardo C. Puno (Justice Puno)] suggested that they formulate the base to cover the above situation. Judge Diy and [Justice Eduardo P. Caguioa (Justice Caguioa)] formulated the base as follows:

In a mixed marriage between a Filipino citizen and a foreigner, both capacitated to marry under Philippine law, in case the foreigner should obtain a valid divorce abroad, capacitating him to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.^[5]

However, subsequent deliberations show that the Committee ultimately resolved to delete the provision and defer action until absolute divorce is determined in future legislation:

On Article [26(2)], [Justice Jose B.L. Reyes (Justice Reyes)] commented that it seems to discriminate against Filipinos, who are married to Filipinos, since the provision governs only Filipinos married to foreigners.

Justice Puno suggested that, in line with Justice Caguioa's view that xxx they should make the Proposed Family Code as acceptable as possible and since they are not touching on divorce which is one of the big issues and they are leaving it to future legislation, **they omit Article 126(2) temporarily and take it up when they take up the matter of absolute divorce.**

Prof. Bautista remarked that it is a matter of equity, justice and fairness that Article [26(2)] should be retained. On the point raised by Justice Reyes, Prof. Bautista opined that there is no unfairness in the case of a Filipino, who is married to a Filipino, because in the case of a Filipino who is married to a foreigner, the foreigner is already free, and yet the Filipino is still married to nobody. [Dean Bartolome S. Carale (Dean Carale)] added that if two Filipinos are married anywhere, they are both covered by the Philippine prohibitory laws because they are nationals of the Philippines. Justice Caguioa, however, pointed out that, in effect, there is preferential treatment in the case of Filipinos married to foreigners, since if the foreigner gets a divorce, the Filipino spouse also automatically gets a divorce. Dean Carale remarked that Article [26(2)] will in effect encourage Filipinos to marry

foreigners. Prof. Bautista disagreed since **it is the foreigner and not the Filipino, who will seek divorce.**

x x x x

Justice Reyes remarked that this article is an implicit recognition of foreign divorce, with which Justice Caguioa concurred. Prof. Bautista and [Professor Florida Ruth P. Romero (Prof. Romero)] pointed out that the article will only cover exceptional cases and special situations and that there is a reasonable and substantial basis for making it an exception.

After further discussion, Justice Puno rephrased Article [26(2)] in accordance with Dr. Cortes' suggestion as follows:

Where a marriage between a Filipino citizen and a foreigner is validly celebrated abroad and a divorce is thereafter validly obtained abroad capacitating such foreigner to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

x x x x

Having sufficiently discussed the matter, the Committee decided to put the issue to a vote.

The members voted as follows:

(1) Justice Puno, Justice Caguioa, Dr. Cortes, Dean Carale, Dean Gupit and Prof. Baviera were for the deletion of Article [26(2)].

(2) Justice Diy, Prof. Bautista, Prof. Romero and [Director Flora C. Eufemio] were for its retention.

Hence, **the Committee agreed that x x x Article [26(2)] shall be deleted** x x x.^[6] (Emphasis and underscoring supplied)

Accordingly, Article 26(2) did not appear in the initial version of the Family Code under Executive Order (EO) 209 which was signed into law by then President Corazon Aquino on July 6, 1987. Days later, or on July 17, 1987, President Aquino issued EO 227 which incorporated, among others, Article 26(2). Thus, when the Family Code finally took effect on August 3, 1988, Article 26, in its entirety, read as follows:

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.

While Article 26(2) was reinstated by executive fiat, it is nevertheless clear that the true spirit behind the provision remains explicit in the Committee deliberations — **Article 26(2) had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code, which states:**

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.

The deliberations show that Article 26(2) has the effect of (i) enforcing divorce decrees which are binding on foreign nationals under their national law; and (ii) recognizing the *residual* effect of such foreign divorce decrees on their Filipino spouses who are bound by the prohibition against absolute divorce under the Civil Code.^[7]

To be sure, Article 26(2) had not been crafted to dilute the Philippines' policy against absolute divorce. In fact, this perceived possible dilution is precisely what prompted the majority of the Committee members to vote for the deletion of Article 26(2) in the initial version of the Family Code found in EO 209. **As the deliberations indicate, the exception provided in Article 26(2) is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse,** thus:

Justice Caguioa explained that the intention of the provision is to legalize foreign divorces for the Filipino so that in the case of a Filipina, who was married to an American, who in turn later secured a divorce, said Filipina will be allowed to remarry. Justice Puno and Judge Diy remarked that this is not clear in the provision [Article 26(2)]. **Justice Puno, however, commented that it will open the gates to practically invalidating the Philippine laws by the simple expedient of marrying a foreigner, and that it will be an additional cause for the breakage of families, with which Justice Caguioa concurred. Judge Diy stated that, on the other hand, it is an absurdity for a Filipina to be married without a husband.**^[8]
(Emphasis supplied)

I believe that this view is consistent with the Court's rulings in *Van Dorn, Orbecido*, and *Dacasin*.

In *Van Dorn*, a case decided prior to the enactment of the Family Code, an American citizen sought to compel his former Filipina wife to render an accounting of their alleged conjugal business in Manila. The American citizen argued that he retained the right to share in the proceeds of the disputed business, as the divorce decree issued by the Nevada District Court cannot be given effect in the Philippines. Ruling against the American citizen, **the Court held that the divorce decree issued by a United States court is binding against him as an American citizen.**^[9] **As a residual effect of such divorce, the American citizen no longer had standing to sue as the husband of his former Filipina wife.**^[10] Hence, in *Van Dorn*, the Court held:

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.** x x x^[11] (Emphasis supplied)

In *Orbecido*, a Filipino citizen sought permission to remarry before the courts, claiming that his former Filipina wife had obtained a divorce decree against him from an American court *after* she had become a naturalized American citizen. **The Court held that the effects of the divorce decree should be recognized in the Philippines since it was obtained by the former wife as an American citizen in accordance with her national law, and that as a consequence, the Filipino husband should be allowed to remarry pursuant to Article 26(2).** In so ruling, the Court laid down elements for the application of Article 26(2), thus:

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.

In this case, when [the Filipino spouse's] wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between [them]. As fate would have it, the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry. Clearly, the twin requisites for the application of Paragraph 2 of Article 26 are both present in this case. Thus x x x the "divorced" Filipino spouse, should be allowed to remarry.^[12] (Emphasis and underscoring supplied)

Still, in *Dacasin*, a Filipino wife secured a divorce decree against her American husband from an Illinois court. The decree awarded sole custody over the parties' daughter in favor of the Filipino wife. While the parties subsequently executed a Joint Custody Agreement, the Filipino wife refused to honor the agreement, prompting the American husband to seek redress before the Philippine courts. The Court held that the Illinois divorce decree is binding on the American citizen, and that the latter cannot be permitted to evade the terms of the custodial award. **Citing the nationality principle, the Court stressed that "a foreign divorce decree carries as much validity against the alien divorcee in this jurisdiction as it does in the jurisdiction of the alien's nationality, irrespective of who obtained the divorce."**^[13] It bears stressing that the issue raised in *Dacasin* was the enforceability of the Joint Custody Agreement against the American husband, and *not* the validity of the foreign divorce decree as against the Filipino wife.

Thus, rather than serving as bases for the blanket recognition of foreign divorce decrees in the Philippines, I believe that the Court's rulings in *Van Dorn, Orbecido* and *Dacasin* merely clarify the parameters for the application of the nationality principle found in Article 15 of the Civil Code, and the exception thereto found in Article 26(2) the Family Code. These parameters may be summarized as follows:

1. Owing to the nationality principle, all Filipino citizens are covered by the prohibition against absolute divorce. As a consequence of such prohibition, a divorce decree obtained abroad **by a Filipino citizen** cannot be enforced in the Philippines. **To allow otherwise would be to permit a Filipino citizen to invoke foreign law to evade an express prohibition under Philippine law.**

2. Nevertheless, the effects of a divorce decree obtained **by a foreign national** may be extended to the Filipino spouse, provided the latter is able to prove (i) the issuance of the divorce decree, and (ii) the personal law of the foreign spouse allowing such divorce.^[14] This exception, found under Article 26(2) of the Family Code, respects the binding effect of the divorce decree on the foreign national, and merely recognizes the residual effect of such decree on the Filipino spouse.

It should be emphasized, however, that the prohibition against absolute divorce only applies to Filipino citizens. Accordingly, it cannot be invoked by a foreign national to evade the effects of a divorce decree issued pursuant to his national law. To reiterate, **a divorce decree issued by a foreign court remains binding on the foreign spouse in the Philippines, regardless of the party who obtained the same provided that such decree is valid and effective under the foreign spouse's national law.**

In essence, the applicable rule (whether Article 15 of the Civil Code on one hand, or Article 26[2] of the Family Code on the other), is determined by (i) the law upon which the divorce decree had been issued; (ii) the party who obtained the divorce decree; (iii) the nature of the action brought before the Philippine courts; and (iv) the law governing the personal status of the party seeking relief.

The corresponding effect of these determining factors are, in turn, illustrated by the relevant cases involving the issue at hand, decided after the issuance of EO 227:

Case	Incidents of Divorce	Incidents of Action in the Philippines	Court's Resolution
<i>Pilapil v. Ibay-Somera</i> ^[15] (<i>Pilapil</i>)	Divorce obtained in Germany by German spouse	German spouse filed two (2) complaints charging Filipino spouse with adultery	The divorce decree is binding on the German spouse pursuant to the nationality principle. Accordingly, the German spouse lacks standing

			to file the complaints as "offended spouse", having obtained the divorce decree prior to the filing of said complaints.
<i>Republic v. Iyoy</i> ^[16] (<i>Iyoy</i>)	Divorce obtained in the United States by Filipino wife prior to her naturalization as an American citizen	Filipino husband invokes the divorce decree secured by his Filipino wife as additional ground to grant his petition for declaration of nullity	The divorce decree cannot be recognized in the Philippines since the Filipino wife obtained the same while still a Filipino citizen, and was, at such time, bound by Philippine laws on family rights and duties, pursuant to the nationality principle.
<i>Orbecido</i>	Divorce obtained in the United States by naturalized American spouse	Filipino spouse sought enforcement of divorce in the Philippines	The effects of the divorce decree must be recognized in favor of the Filipino spouse pursuant to Article 26(2) of the Family Code. Accordingly, the Filipino spouse should be allowed to re-marry.
<i>Dacasin</i>	Divorce obtained in the United States by Filipino spouse	American spouse sought enforcement of the Joint Custody Agreement he had executed with his former	The divorce decree is binding on the American spouse, pursuant to the nationality principle.

		Filipino wife, which bore terms contrary to those in the divorce decree	Accordingly, he cannot be allowed to evade the same by invoking the terms of the Joint Custody Agreement.
<i>Bayot v. Court, of Appeals</i> ^[17] (<i>Bayot</i>)	Divorce obtained in the Dominican Republic by naturalized American spouse	Naturalized American spouse sought annulment of her marriage with her Filipino spouse through a petition for annulment filed before the Regional Trial Court (RTC)	The divorce decree is binding on the naturalized American spouse, pursuant to the nationality principle. Accordingly, she is left without any cause of action before the RTC, as a petition for annulment presupposes a subsisting marriage.
<i>Fujiki v. Marinay</i> ^[18] (<i>Fujiki</i>)	Divorce obtained in Japan by Filipina wife against her second husband, who is a Japanese national	First husband (also a Japanese national) sought recognition of the divorce obtained by his Filipina wife against her second husband through a Petition for Judicial Recognition of Foreign Judgment (or Decree of Absolute Nullity of Marriage) filed before the RTC	The effect of the divorce decree issued pursuant to Japanese law may be recognized in the Philippines in order to affect the status of the first husband, who, pursuant to the nationality principle, is governed by Japanese law. Such recognition is in line with the Philippines' public policy, which

			characterizes bigamous marriages as void <i>ab initio</i> .
<i>Medina v. Koike</i> ^[19] (<i>Medina</i>)	Divorce jointly obtained in Japan by Filipina wife and Japanese husband	Filipina wife sought to enforce the divorce in the Philippines through a Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry before the RTC	The case was remanded to the CA to allow Filipina wife to prove that the divorce obtained abroad by her and her Japanese husband is valid according to the latter's national law.

The factual circumstances in the foregoing cases illustrate and confirm the legislative intent behind Article 26(2), that is, primarily, to recognize foreign divorce decrees secured by foreign nationals insofar as they affect Filipinos who would otherwise be precluded from invoking such decrees in our jurisdiction, and, as well, to recognize those foreign divorce decrees obtained by Filipinos insofar as they affect their foreign spouses whose national laws allow divorce. For emphasis, I quote the relevant portion of the deliberations:

Prof. Bautista remarked that it is a matter of equity, justice and fairness that Article [26(2)] should be retained, x x x Dean Carale added that if two Filipinos are married anywhere, they are both covered by the Philippine prohibitory laws because they are nationals of the Philippines. Justice Caguioa, however, pointed out that, in effect, there is preferential treatment in the case of Filipinos married to foreigners, since if the foreigner gets a divorce, the Filipino spouse also automatically gets a divorce. Dean Carale remarked that Article [26(2)] will in effect encourage Filipinos to marry foreigners. **Prof. Bautista disagreed since it is the foreigner and not the Filipino, who will seek divorce.**

x x x x

Justice Reyes remarked that this article is an implicit recognition of foreign divorce, with which Justice Caguioa concurred. Prof. Bautista and Prof. Romero pointed out that the article will only cover exceptional cases and special situations and that there is a reasonable and substantial basis for making it an exception.^[20]
(Emphasis and underscoring supplied)

Consistent with the foregoing, the Court held in *Iyoy*:

As it is worded, Article 26, paragraph 2, refers to a special situation wherein one of the [parties in the marriage] is a foreigner who divorces his or her Filipino spouse. *By its plain and literal interpretation, the said provision cannot be applied to the case of respondent Crasus and his wife Fely because at the time Fely obtained her divorce, she was still, a Filipino citizen.* x x x **At the time she filed for divorce, Fely was still a Filipino citizen, and pursuant to the nationality principle embodied in Article 15 of the Civil Code of the Philippines, she was still bound by Philippine laws on family rights and duties, status, condition, and legal capacity, even when she was already living abroad. Philippine laws, then and even until now, do not allow and recognize divorce between Filipino spouses. Thus, Fely could not have validly obtained a divorce from respondent Crasus.**^[21] (Emphasis and underscoring supplied)

Article 26(2) of the Family Code merely recognizes the classification previously made pursuant to the nationality principle.

The *ponencia* characterizes Article 26(2) of the Family Code as unconstitutional, as it proceeds from a "superficial [and] arbitrary" classification.^[22] This position appears to be based on the premise that Article 26(2) creates new distinctions in itself. This premise, however, is simply erroneous.

The classification under Article 26(2), (that is, between Filipinos in mixed marriages and Filipinos married to fellow Filipinos) was created as a matter of necessity, in *recognition* of the classification between Filipinos and foreign nationals which had been created by Article 15 of the Civil Code decades prior.

In his Separate Opinion in *Pilapil*, Justice Paras highlights the interplay between these two provisions, thus:

In the case of *Recto v. Harden* (100 Phil. 427 [1956]), the Supreme Court considered the absolute divorce between the American husband and his American wife as valid and binding in the Philippines on the theory that their status and capacity are governed by their *National law*, namely, American law. There is no decision yet of the Supreme Court regarding the validity of such a divorce if one of the parties, say an American, is married to a Filipino wife, for then two (2) different nationalities would be involved.

In the book of Senate President Jovito Salonga entitled *Private International Law* and precisely because of the *National law* doctrine, he considers the absolute divorce as valid insofar as the American husband is concerned but void insofar as the Filipino wife is involved. This results in what he calls a "socially grotesque situation," where a Filipino woman is still married to a man who is no longer her husband. It is the opinion however, of the undersigned that very likely the opposite expresses the correct view. **While under the *national law* of the husband the absolute divorce will be valid, still one of the exceptions to the application of the proper**

foreign law (one of the exceptions to comity) is when the foreign law will work an injustice or injury to the people or residents of the forum. Consequently since to recognize the absolute divorce as valid on the part of the husband would be injurious or prejudicial to the Filipino wife whose marriage would be still valid under her national law, it would seem that under our law existing before the new Family Code (which took effect on August 3, 1988) the divorce should be considered void both with respect to the American husband and the Filipino wife.^[23] (Emphasis supplied)

Hence, to characterize Article 26(2) as unconstitutional in such respect would be to disregard the nationality principle and the reasons which render the adoption thereof necessary; it would be tantamount to insisting that Filipinos should be governed with whatever law they choose.

Article 26(2) of the Family Code rests on substantial and reasonable distinctions.

It has been argued that the *verba legis* interpretation of Article 26(2) of the Family Code violates the equal protection clause, and that the application of the provision in this manner would not only be oppressive, but likewise unconstitutional.

These reservations appear to proceed from three different classifications which, in turn, have been called into question — *first*, that between Filipinos in mixed marriages and Filipinos who are married to fellow Filipinos; *second*, that between Filipinos and foreigners; and *finally*, that between men and women.

As earlier discussed, the *ponencia* finds the first classification "superficial [and] arbitrary"^[24] insofar as it limits the scope of recognition to cover only those divorce decrees obtained by foreign nationals.

It bears to stress, however, that the guarantee of equal protection under the Constitution does not require that all laws indiscriminately operate with equal force with respect to all subjects at all times;^[25] the guarantee does not preclude classification provided they are reasonable and based on substantial distinctions.^[26]

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. **Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same.** The equal protection clause does not forbid discrimination as to things that are different. **It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.**

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.**^[27] (Emphasis supplied)

There should be no dispute on the existence of substantial distinctions between Filipinos in mixed marriages and those who are married to fellow Filipinos. In fact, several of these distinctions were highlighted in the *ponencia*, thus:

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.**^[28] (Emphasis supplied)

As observed by the *ponencia*, the most important distinction between Filipinos in mixed marriages and those who are married to fellow Filipinos is their exposure to the absurdity for which Article 26(2) had been precisely crafted, as only Filipinos in mixed marriages may find themselves married without a spouse due to the effects of a foreign divorce decree. This distinction is "substantial" as to necessitate a difference in treatment before the law.

To disregard these substantial distinctions for the sake of liberality would empower Filipinos in mixed marriages to obtain divorce decrees by invoking foreign law at whim, and effectively sanction a legal preference in their favor at the expense of those Filipinos who happen to be married to their fellow Filipinos. A liberal interpretation of Article 26(2) would, in Dean Carale's words, "encourage Filipinos to marry foreigners."^[29]

To stress, all Filipinos are bound by the prohibition against absolute divorce. **The recognition afforded to foreign divorce under Article 26(2) is extended only as a means to recognize its residual effect on Filipinos whose marital ties to their**

alien spouses are severed by operation of the latter's national laws. The provision was not intended to grant any preferential right in favor of Filipinos in mixed marriages, but intended merely to recognize the operation of foreign divorce on foreigners whose national laws permit divorce.

Equally apparent is the fundamental distinction between foreigners and Filipinos under the second classification, the former being subject to their respective national laws and the latter being bound by the laws of the Philippines regardless of their place of residence. Clearly, foreigners and Filipinos are not similarly situated. Hence, the determination of their legal status, among others, cannot be made subject to the same parameters. In any case, I emphasize, at the sake of being repetitious, that such classification had been created not by Article 26(2) of the Family Code, but rather, the nationality principle under Article 15 of the Civil Code:

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.

Finally, I find that Article 26(2) does not make any discernable distinction between men and women, as the exception therein may be invoked by both men and women with equal force to attain the same end, provided that the requirements for its application obtain. While I am certainly aware that the respondent in this case is one of the many Filipino women who find themselves in unsuccessful marriages with foreign nationals, I am equally aware that this unfortunate circumstance is similarly faced by Filipino men, who, like their female counterparts, are precluded from obtaining an absolute divorce under Philippine law.

Respondent's case falls outside of the scope of Article 26(2) of the Family Code.

In this case, it has been established that (i) the respondent is a Filipino citizen who married a Japanese national; (ii) **it was the respondent who subsequently obtained a divorce decree against her Japanese husband** from a Japanese court; and (iii) the respondent thereafter filed a Petition for Recognition and Enforcement of a Foreign Judgment^[30] before the RTC.^[31] It is clear that respondent is, and has always been, a Filipino citizen. Pursuant to the nationality principle, respondent's personal status is subject to Philippine law which, in turn, prohibits absolute divorce.

Hence, the divorce decree which respondent obtained under Japanese law cannot be given effect, as she is, without dispute, a national *not* of Japan, but of the Philippines. Nevertheless, the *verba legis* application of Article 26(2) does not deprive the respondent of legal remedies, as she may pray for the severance of her marital ties before the RTC in accordance with the mechanisms now existing under the Family Code.

The Constitution mandates the protection of the family as a basic autonomous social institution.^[32] In this connection, the Family Code characterizes marriage as a special contract of **permanent union**, and regards the family as "an inviolable social institution whose nature, consequences, and incidents are governed by law" and

generally, not subject to stipulation.^[33] Upon these fundamental principles rests the prohibition against absolute divorce, which had remained effective and unchanged since the enactment of the Civil Code in 1950.^[34]

Adherence to this prohibition is met with much reservation, as it purportedly forces Filipinos to play second-fiddle to their foreign spouses, and places said Filipinos at a disadvantage. Moreover, it had been argued in the deliberations of the Court that such adherence sanctions various forms of abuse that plague mixed marriages, and deprives Filipinos in such marriages of a way out. I find that these observations, pressing as they are, already delve into the wisdom of statutes governing marriage and personal status with which the Court cannot interfere.

To note, Article 26(2) of the Family Code has remained unchanged since the issuance of EO 227. The blanket recognition of absolute divorce overturns the Court's unequivocal interpretation of the provision as laid down in the cases of *Pilapil*, *Iyoy*, *Orbecido*, *Dacasin*, *Bayot*, *Fujiki* and *Medina*, which span a period of nearly three decades. Ascribing a contradictory interpretation to the provision, under the guise of equal protection, essentially re-writes Article 26(2) and gives it a meaning completely different from the framers' intention.

While I am not oblivious to the difficulty that results from the prohibition on absolute divorce and commiserate totally with the respondent in this regard, I find that the prohibition remains, and thus, must be faithfully applied. To my mind, 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 bound to respect the prohibition, until the legislature deems it lit to lift the same through the passage of a statute permitting absolute divorce.**

As recognized by the *ponencia*, there are currently four bills on the subject of divorce and severance of marriage pending before the 17th Congress: (i) House Bill No. 116 (HB 116) and House Bill No. 2380 (HB 2380) which propose different grounds for the issuance of a judicial decree of absolute divorce; (ii) House Bill No. 1062 (HB 1062) which proposes the inclusion of separation in fact as an additional ground for annulment of marriage; and (iii) House Bill No. 6027 (HB 6027) which proposes additional grounds for dissolution of marriage. These bills have been consolidated and substituted by House Bill No. 7303^[35] (HB 7303), which, at present, is awaiting deliberations before the Senate.^[36]

HB 7303 proposes the issuance of divorce decrees on the basis of the following grounds:

1. The existing grounds for legal separation and annulment of marriage under Articles 55 and 45 of the Family Code;
2. Separation in fact for at least five years;
3. Psychological incapacity, whether or not present at the time of the celebration of the marriage;
4. Gender reassignment surgery or transition from one sex to another undertaken by either spouse; and
5. Irreconcilable marital differences.^[37]

These movements towards the passage of a divorce law illustrate that the difficulty which results from the absolute prohibition against marriage is being addressed by the 17th Congress through a statute specifically crafted for the purpose. **That the legislature has seen it necessary to initiate these proposed laws is a clear delineation of the Court's role — that is, to simply apply the current law and not for it to indulge in judicial legislation.**

Indeed, it is desirable, if not imperative, that statutes in a progressive democracy remain responsive to the realities of the present time. *However*, responsiveness is a matter of policy which requires a determination of what the law *ought* to be, and not what the law actually *is*.^[38] Widening the scope of the exception found in Article 26(2) so as to indiscriminately recognize foreign divorce in this jurisdiction is doing, in Justice Elias Finley Johnson's^[39] words, "exactly what the Legislature itself [has] refused to do."^[40] It *not only* subverts the standing public policy against absolute divorce; *worse*, it sanctions a violation of the fundamental principle of separation of powers — a violation which cannot be undone by any subsequent law. To wield judicial power in this manner is to arrogate unto the Court a power which it does not possess; it is to forget that this State, is foremost governed by the rule of law and not of men, however wise such men are or purport to be.

Considering the foregoing, I submit that the Court of Appeals erred when it reversed the RTC's order denying respondent's Petition for Enforcement. Hence, I vote to **GRANT** the instant Petition for Review.

[1] See *Tañada v. Yulo*, 61 Phil. 515-516, 519 (1935) [Per J. Malcolm, En Banc]; emphasis supplied.

[2] 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division].

[3] 509 Phil. 108 (2005) [Per J. Quisumbing, First Division].

[4] 625 Phil. 494 (2010) [Per J. Carpio, Second Division].

[5] Minutes of the 146th joint Meeting of the Civil Code and Family Law Committees dated July 12, 1986, p. 5.

[6] Minutes of the 149th Joint Meeting of the Civil Code and Family Law Committees dated August 2, 1986, pp. 14-15.

[7] See CIVIL CODE, Arts. 15 and 17.

[8] *Supra* note 5.

[9] *Supra* note 2, at 361.

[10] *Id.* at 362.

[11] *Id.*

[12] *Supra* note 3, at 115-116.

[13] *Supra* note 4, at 508; emphasis and underscoring supplied.

[14] See *Medina v. Koike*, 791 Phil. 645, 651-652 (2016) [Per J. Perlas-Bernabe, First Division]; *Garcia v. Recio*, 418 Phil. 723, 725 and 730-731 (2001) [Per J. Panganiban, Third Division].

[15] 256 Phil. 407 (1989) [Per J. Regalado, Second Division].

[16] 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division].

[17] 591 Phil. 452 (2008) [Per J. Velasco, Jr., Second Division].

[18] 712 Phil. 524 (2013) [Per J. Carpio, Second Division].

[19] *Supra* note 14.

[20] *Supra* note 6.

[21] *Supra* note 16, at 503-504.

[22] *Ponencia*, p. 14.

[23] *Supra* note 15, at 421.

[24] *Ponencia*, p. 14.

[25] See generally *Department of Education, Culture and Sports v. San Diego*, 259 Phil. 1016 (1989) [Per J. Cruz, En Banc].

[26] See *Fariñas v. Executive Secretary*, 463 Phil. 179, 206-208 (2003) [Per J. Callejo, Sr., En Banc].

[27] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 559-560 (2004) [Per J. Puno, En Banc].

[28] *Ponencia*, p. 14.

[29] *Supra* note 6, at 14.

[30] Formerly captioned as Petition for Cancellation of Entry of Marriage; see *ponencia*, p. 2.

[31] *Ponencia*, p. 2.

[32] CONSTITUTION, Art. II, Sec. 12.

[33] FAMILY CODE, Title I, Art. 1.

[34] See generally *Raymundo v. Peñas*, 96 Phil. 311 (1954) [Per J. J.B.L. Reyes, En Banc].

[35] AN ACT INSTITUTING ABSOLUTE DIVORCE AND DISSOLUTION OF MARRIAGE IN THE PHILIPPINES.

[36] HB 7303 passed its second reading on March 14, 2018, and was likewise approved on its third and final reading before the lower house on March 19, 2018. See "*House passes divorce bill on second reading*," < <http://www.sunstar.com.ph/article/423557> > (last accessed on March 19, 2018) and "*House approves divorce bill on 3rd reading*," < <https://www.rappler.com/nation/198516-divorce-bill-philippines-passes-third-reading-house-representatives> > (last accessed on March 22, 2018).

[37] See HB 7303, Sec. 5.

[38] See generally *People v. Vera*, 65 Phil. 56 (1937) [Per J. Laurel, En Banc].

[39] Justice Elias Finley Johnson served as Associate Justice of the Supreme Court of the Philippines from 1903 to 1933.

[40] See *Nicolas v. Alberto*, 51 Phil. 370, 380 (1928) [Dissenting Opinion, J. Johnson]



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