

PROGRAM ON SOCIAL AND POLITICAL CHANGE

DIVORCE AND ANNULMENT OF MARRIAGE IN THE PHILIPPINES

A Comparative Analysis and Synthesis

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INTRODUCTION

Marriage is defined as "a special contract of permanent union between a man and a woman entered into accordance with law for the establishment of conjugal and family life" (Family Code of the Philippines, art. 1). The passage of House Bill (HB) No. 9349, otherwise known as the "Absolute Divorce Act" authored by Representative Edcel Lagman, sparks debates and creates polarization among individuals, communities, and Philippine society in general on whether such bill would serve as a precursor for the dissolution of more marriages or a catalyst for the creation of more happy marriages. The bill seeks to provide absolute divorce as a legal remedy for irreparably broken marriages under specific grounds and judicial processes. Its goal is to spare children from the emotional strain of parental disputes and allow divorced individuals to remarry (Lagman et al. 2024). It has a Senate counterpart under Senate Bill (SB) No. 147, otherwise known as the Dissolution of Marriage Act. According to its principal author, Senator Risa Hontiveros (2022), "It is high time for the Philippines to reinstitute absolute divorce, allowing married spouses in irremediably broken unions to finally start anew."

Along with Vatican City, the Philippines has not yet legalized divorce, owing to the predominance and influence of Catholic faith and religion on marriage and family among its population. Those who are against absolute divorce contend that there are already existing legal remedies to escape unhappy marriages such as annulment of marriage, legal separation, and nullity of marriage. The Catholic Church opposes the promulgation and enactment of divorce on the following grounds: (a) it is unconstitutional, (b) it is immoral, (c) it will destroy the Filipino family, (d) it will legalize promiscuity, (e) it will contribute to the increase in broken families, (f) it will be prone to abuse by spouses who find it easier to give up on their marriages, (g) it will lead to custody battles, and (h) it is detrimental for the children (Gloria 2007, 18).

This policy brief provides a succinct comparative analysis of divorce (as proposed in HB No. 9349 and SB No. 147) and annulment in the Philippines, examining their definitions, grounds, procedures, and outcomes. By synthesizing current legislative attempts to legalize

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divorce with existing provisions in the Family Code, this brief offers policy recommendations and directions for utilizing both divorce and annulment as policy tools for dissolving marriages in the Philippines.

DISTINCTIONS OF ANNULMENT, DIVORCE, LEGAL SEPARATION, AND NULLITY OF MARRIAGE

This policy brief compares annulment of marriage in the Philippines with the proposed divorce bills (HB No. 9349 and SB No. 147), focusing on their grounds, procedures, and outcomes. The analysis also incorporates modifications to legal separation grounds under article 55 of the Family Code, adding another dimension to the comparison. In annulment, the marriage of the parties is declared defective from the beginning. This refers to a marriage that is annullable and voidable, meaning, marriage that is valid until proven void. The defect can be used to nullify the marriage within the specified period but the same may be ignored and the marriage becomes perfectly valid after the lapse of that period, or the defect may be cured through some act. The defect relates to the time of the celebration of the marriage and has nothing to do with the circumstances occurring after the marriage is celebrated. In an annulment, the marriage is legally canceled, and the man and the woman are restored to their single status (Bernardo, Israel, and Ursua 2001, 3).

On its part, divorce terminates a valid marriage. The grounds for its termination have nothing to do with any defect or omission at the time of the celebration of the marriage but with what occurs during the existence of the marriage. The proposed House Bill No. 9349 otherwise known as An Act Reinstituting Absolute Divorce as an Alternative Mode for the Dissolution of Marriage, refers to absolute divorce as "the judicial dissolution of a marriage or the termination of the bond of matrimony where the spouses return to their status of being single with the right to contract marriage again" (sec. 4).

While annulment and divorce dissolve a marriage, legal separation maintains it despite allowing spouses to live apart. Grounds for legal separation, which focus on actions during the marriage, are largely adopted as grounds for divorce in House Bill No. 9349. Unlike annulment and divorce, a declaration of nullity establishes that a marriage was never valid due to preexisting impediments (e.g., age, invalid license, prohibited relationships). Though allowing remarriage, a declaration of nullity is difficult to obtain due to the evidentiary burden of proving these impediments, especially psychological incapacity.

GROUNDS FOR ANNULMENT OF MARRIAGE

Table 1 illustrates the comparison between the grounds for annulment of marriage according to the Family Code of the Philippines and the proposed grounds for annulment of marriage under House Bill No. 9349.

Table 1. Comparative Table of the 1987 Family Code of the Philippines and House Bill No. 9349 on the Grounds for Annulment of Marriage

	GROUNDS FOR ANNULMENT (1987 FAMILY CODE OF THE PHILIPPINES, CH. 3, ART. 45)	GROUNDS FOR ANNULMENT (HB NO. 9349)	DIFFERENCES
(1)	That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, 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, such party freely cohabited with the other and both lived together as husband and wife;	Similar ground	
(2)	That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;	Similar ground	Existed at the time of the marriage or supervenes after the marriage
(3)	That 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;	Similar ground	
(4)	That 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;	Similar ground	
(5)	That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable;	Similar ground	Existed at the time of the marriage or supervenes after the marriage
(6)	That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.	Similar ground	Existed at the time of the marriage or supervenes after the marriage

Executive Order No. 209, series of 1987, otherwise known as The Family Code of the Philippines signed by then-President Corazon Aquino on 6 July 1987, lays down the grounds for annulment of marriage. Chapter 3, article 45 of the Family Code refers to the following grounds for which marriage may be annulled. House Bill No. 9349 subsumes the grounds for annulment of marriage as grounds for divorce on the condition that ground 2 (either party was of unsound mind), ground 5 (either party was incapable of consummating the marriage), and ground 6 (either party was afflicted with a transmissible infection) existed either at the time of the marriage or supervenes after the marriage. Other grounds for divorce stipulated in HB 9349 include (a) when the spouses have been separated in fact for at least five years at that time the petition for absolute divorce is filed, and reconciliation is highly improbable; (b) psychological incapacity of either spouse as provided for in article 36 of the Family Code of the Philippines, whether or not the incapacity existed at the time of the marriage or supervenes after the marriage; (c) when one of the spouses undergoes a sex reassignment surgery or transitions from one sex to another; (d) irreconcilable differences; and (e) other forms of domestic or marital abuse. House Bill No. 9349 adopts the Family Code's grounds for an annulment but adds conditions for grounds 2, 5, and 6, allowing them to exist at the time of marriage or arise afterward. This differs from the Family Code, which focuses on conditions existing at the time of marriage. HB 9349 also incorporates grounds for legal separation as grounds for divorce.

GROUNDS FOR DIVORCE: CHANGES AND MODIFICATIONS MADE ON THE GROUNDS FOR LEGAL SEPARATION AS GROUNDS FOR DIVORCE UNDER HOUSE BILL NO. 9349

Table 2 enumerates and depicts the changes and modifications made by section 5 of House Bill No. 9349, otherwise known as the Absolute Divorce Act, on the grounds for absolute divorce as lifted from the grounds for legal separation under article 55 of the Family Code of the Philippines.

Table 2. Changes and modifications made from legal separation (1987 Family Code of the Philippines, article 55) as grounds for absolute divorce under House Bill No. 9349 (Absolute Divorce Act)

SEPA	GROUNDS FOR LEGAL RATION (1987 FAMILY CODE HE PHILIPPINES ARTICLE 55)	GROUNDS FOR ABSOLUTE DIVORCE (HB NO. 9349)	CHANGES AND MODIFICATIONS MADE
abu peti	neated physical violence or grossly asive conduct directed against the itioner, a common child, or a child he petitioner;	Physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;	No changes
to c	rsical violence or moral pressure compel the petitioner to change gious or political affiliation;	Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;	No changes
or in chil eng	empt of respondent to corrupt nduce the petitioner, a common ld, or a child of the petitioner, to gage in prostitution, or connivance uch corruption or inducement;	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;	No changes
resp	al judgment sentencing the pondent to imprisonment of more n six years, even if pardoned	Final judgment sentencing the respondent to imprisonment of more than six (6) years, even if pardoned;	No changes
	ng addiction or habitual oholism of the respondent;	Drug addiction or habitual alcoholism or chronic gambling of the respondent	Addition or insertion of "chronic gambling"
	bianism or homosexuality of the pondent;	Homosexuality of the respondent	Deletion of "Lesbianism"
a su whe	ntracting by the respondent of absequent bigamous marriage, ether in the Philippines or oad;	Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;	No changes
(8) Sex	ual infidelity or perversion;	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 through in vitro fertilization or a similar procedure or when the wife bears a child after being a victim of rape;	Change "sexual infidelity" to "marital infidelity" and added "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 through in vitro fertilization or a similar procedure or when the wife bears a child after being a victim of rape";
	empt by the respondent against life of the petitioner;	Attempt by the respondent against the life of the petitioner, a common child or a child of the petitioner;	Addition or insertion of "a common child or a child of the petitioner"
re	candonment of petitioner by spondent without justifiable use for more than one year.	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 spouse can petition the proper Family Court for an absolute divorce based on said judicial decree of legal separation.	Addition or insertion of "When the spouses are legally separated by judicial decree for more than two (2) years, either spouse can petition the proper Family Court for an absolute divorce based on said judicial decree of legal separation"

The proposed Absolute Divorce Act (HB No. 9349) largely mirrors the grounds for legal separation in the Family Code, with key adjustments: "chronic gambling" in Item 5 is added as a ground due to its potential to disrupt families, while "lesbianism" in Item 6 is removed to avoid singling out a specific form of homosexuality. On the other hand, in item 8, the bill transitions from "sexual infidelity" to "marital infidelity" since sexual infidelity can also be committed outside of marriage while marital infidelity is a more precise and concise term when referring to sexual infidelity committed within the marriage. The bill is also more explicit in expanding the grounds on "having a child with another person other than one's spouse during marriage" as tangible and concrete evidence that marital infidelity has indeed been consummated. The item also provided clarificatory exemptions when marital infidelity does not exist, such as when having a child outside of marriage occurs in cases of vitro fertilization and rape. However, the bill also stresses the importance of the mutual agreement of the spouses in recognizing and acknowledging such exemptions.

In item 9, the bill included as a ground for divorce the attempt against the life of "a common child or a child of the petitioner." This probably enunciates that a threat against the life of a wife or offenses committed against women also constitute a threat against the life of their children. This can be construed as a whole in the light of the intention of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, which seeks to protect the rights and welfare of women and children against any forms of threat, intimidation, violence and other abuses which may be inflicted upon them by their husbands and intimate partners. Finally, in item 10, the bill included and upgraded the legal separation for more than two years among couples as a basis for filing divorce. In this case, legal separation could consequently lead to divorce which results in the dissolution of marriage with finality and legality.

GROUNDS FOR DIVORCE UNDER HOUSE BILL NO. 9349 AND SENATE BILL NO. 147: DIFFERENCES AND DISPARITIES

Table 3 illustrates the comparative matrix between House Bil No. 9349 (Absolute Divorce Act) and Senate Bill No. 147 (Dissolution of Marriage Act) regarding the grounds for divorce.

Table 3. Comparative Matrix of House Bill No. 9349 and Senate Bill No. 147 with respect to the grounds for divorce

HB NO. 9349 GROUNDS FOR DIVORCE (LAGMAN ET AL. 2024)	SB NO. 147 GROUNDS FOR DIVORCE (HONTIVEROS 2022)	DIFFERENCES/DISPARITIES
Grounds for Legal Separation under Article 55 of the Family Code of the Philippines with slight modifications and changes	The grounds for legal separation under article 55 of the Family Code or any other special law; <i>Provided</i> , that, physical violence or grossly abusive conduct under article 55 (1) need not be repeated; <i>Provided</i> , that, lesbianism and homosexuality per se under article 55(6) shall not be a ground, unless either or both spouses commit marital Infidelity;	In House Bill No 9349, Homosexuality including lesbianism is a ground for divorce while Senate Bill No. 147 provides a qualifying circumstance of marital infidelity for homosexual couples to constitute a ground for divorce.
Grounds for Annulment of Marriage	Silent	House Bill No. 9349 includes the grounds for annulment of marriage as grounds for divorce while Senate Bill No. 147 is silent about it.
When the spouses have been separated in fact for at least five (5) years at that time the petition for absolute divorce is filed, and reconciliation is highly improbable	Five continuous years of separation, with or without a judicial decree of separation; Provided, that when the spouses are legally separated by judicial decree under Article 55 of the Family Code of the Philippines, a two (2) year's period from the time of the issuance of the decree of legal separation will suffice	House Bill No. 9349 merely cites the spouse's separation in fact for at least 5 years as grounds for divorce. Meanwhile, Senate Bill No. 147 sets forth spouses' legal separation for two years before five years of continuous separation can be considered a ground for divorce.
Psychological incapacity of either spouse as provided for in Article 36 of the Family Code of the Philippines, whether or not the incapacity existed at the time of the marriage or supervenes after the marriage	Commission of the crime of rape by the respondent spouse against the petitioner-spouse, whether before or after the celebration of marriage,	Senate Bill No. 147 does not mention psychological incapacity as one of the grounds for divorce while House Bill No. 9349 does not explicitly mention marital rape as grounds.
When one of the spouses undergoes a sex reassignment surgery or transitions from one sex to another	A final decree of absolute divorce validly obtained in a foreign jurisdiction,	House Bill No. 9349 considers being transgender and transsexuality as grounds for divorce, which Senate Bill No. 147 does not specify as a ground.
Irreconcilable differences	Irreconcilable marital differences or irreparable breakdown of the marriage, despite earnest efforts at reconciliation.	Both include irreconcilable differences as grounds for divorce.
Other forms of domestic or marital abuse		House Bill No. 9349 does not specify what constitutes "other forms of domestic or marital abuse" while Senate Bill No. 147 does not specifically mention it as a ground.

Unlike House Bill No. 9349, Senate Bill No. 147 expands the grounds for divorce beyond those for legal separation and annulment. However, it aligns with House Bill No. 9349 by requiring a two-year legal separation period before a five-year separation can be used as grounds for divorce. Moreover, Senate Bill No. 147 seeks to prevent the occurrences of marital rape in accordance with Republic Act No. 8353, otherwise known as the Anti-Rape

Law of 1997, which seeks to protect even married women and their children against abusive men and husbands. Meanwhile, unlike House Bill No. 9349, Senate Bill No. 147 does not consider lesbianism and homosexuality itself as grounds for divorce unless there is a commission of marital infidelity on the part of either or both spouses. This is to get rid of gender bias and discrimination when it comes to the grounds for divorce. In other words, one's

gender and sexuality should not be made a basis for filing a divorce, but the acts or behavior that are detrimental and prejudicial to the existence of the marriage should be considered grounds for filing a divorce complaint.

While Senate Bill No. 147 views marital infidelity as one of the leading grounds for divorce, unlike House Bill No. 9349, it does not specifically mention "psychological incapacity" as one of its grounds. It could probably be attributable to the vagueness and ambiguities of what psychological incapacity actually constitutes, making it difficult for spouses and family court to prove its existence, particularly in the annulment of marriage cases. The challenge to prove the existence of psychological incapacity is also considered one of the paramount reasons why settlement and resolution of annulment cases are heavily docketed and the processes are lengthy, time-consuming, and costly. Psychological incapacity refers to the condition provided for article 36 of the Family Code of the Philippines, which warrants the nullification of marriage. Hence removing the psychological incapacity as a grounds could make annulment and divorce settlements easy swift, and speedy.

In addition, Senate Bill No. 147, unlike House Bill No. 9349, explicitly recognizes divorce obtained from a foreign country or abroad as a sufficient ground for filing a divorce in the Philippines and which essentially nullifies it as bigamous marriages upon the grant of the final decree of absolute divorce. At present, foreign divorces can now be considered as a valid divorce in the Philippines. The Supreme Court (2022) has reiterated the rule that in petitions for judicial recognition of foreign divorce, one must prove not only the fact of divorce but also the national law of the foreign spouse for the divorce ruling to be legally recognized in the Philippines (cf. Republic v. Kikuchi 2022).

Finally, the bill proposes the inclusion of "irreconcilable difference or irreparable breakdown of the marriage as its final grounds which can be construed as irreconcilable differences. However, the bill is not clear on what specific irreconcilable marital differences or irreparable breakdowns actually constitute grounds for divorce. This is what opponents and detractors of the bill contend as susceptible and open to abuse in the absence of the breakdown and particularities on the basis and silence on the circumstances of irreconcilable differences. While citing irreconcilable differences may be the fastest and

swiftest way of proving and expediting divorce, it needs specific requisites and criteria to facilitate it judiciously.

In terms of procedures for Absolute Divorce, both House Bill No. 9349, section 9 and Senate Bill No. 147, section 6 enshrine that the procedure of obtaining absolute divorce shall be similar to the procedure in securing annulment of marriage, legal separation, and nullification of marriage from the proper family court:

- **a.** It shall commence upon the filing of a verified petition for absolute divorce by the petitioner-spouse or petitioner-spouses.
- **b.** A petition for absolute divorce may be filed separately or jointly by the spouses based on the grounds of divorce stipulated in both bills.
- c. A joint petition plan filed by both spouses with common children should be accompanied by a joint plan for parenthood, which provides for the support, parental authority, custody, and living arrangements of common children.
- d. The court determines the adequacy of the joint plan to protect the rights and interests of the common children and approves the joint plan for parenthood together with the grant of a divorce decree.
- e. All creditors of the absolute community or conjugal partnership of gains, as well as the personal creditors of the spouses, shall be listed in the petition for absolute divorce.

RECOMMENDATIONS

To ensure clarity and consistency in the proposed divorce legislation, the following policy recommendations are put forth:

- Harmonize grounds for divorce: Align House Bill No. 9349 and Senate Bill No. 147 on the inclusion of legal separation and annulment grounds as grounds for absolute divorce.
- Clarify "homosexuality" as a ground: Reconcile the differing approaches to "homosexuality" as a ground for divorce, ensuring clarity and alignment with marital infidelity provisions.

- **Define the role of legal separation:** Determine whether a two-year legal separation decree should be a mandatory precondition for divorce based on five years of separation in fact.
- Address being transgender and transsexuality: Establish a clear and consistent approach to being transgender and transsexuality as grounds for divorce, specifying any conditions or requirements.
- **Provide precise definitions:** Offer specific definitions for "irreconcilable differences" and "psychological incapacity" to ensure consistent application and interpretation.

These recommendations aim to strengthen the proposed divorce legislation, ensuring clarity, consistency, and fairness in its implementation.

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