

# Divorce, Philippine-Style

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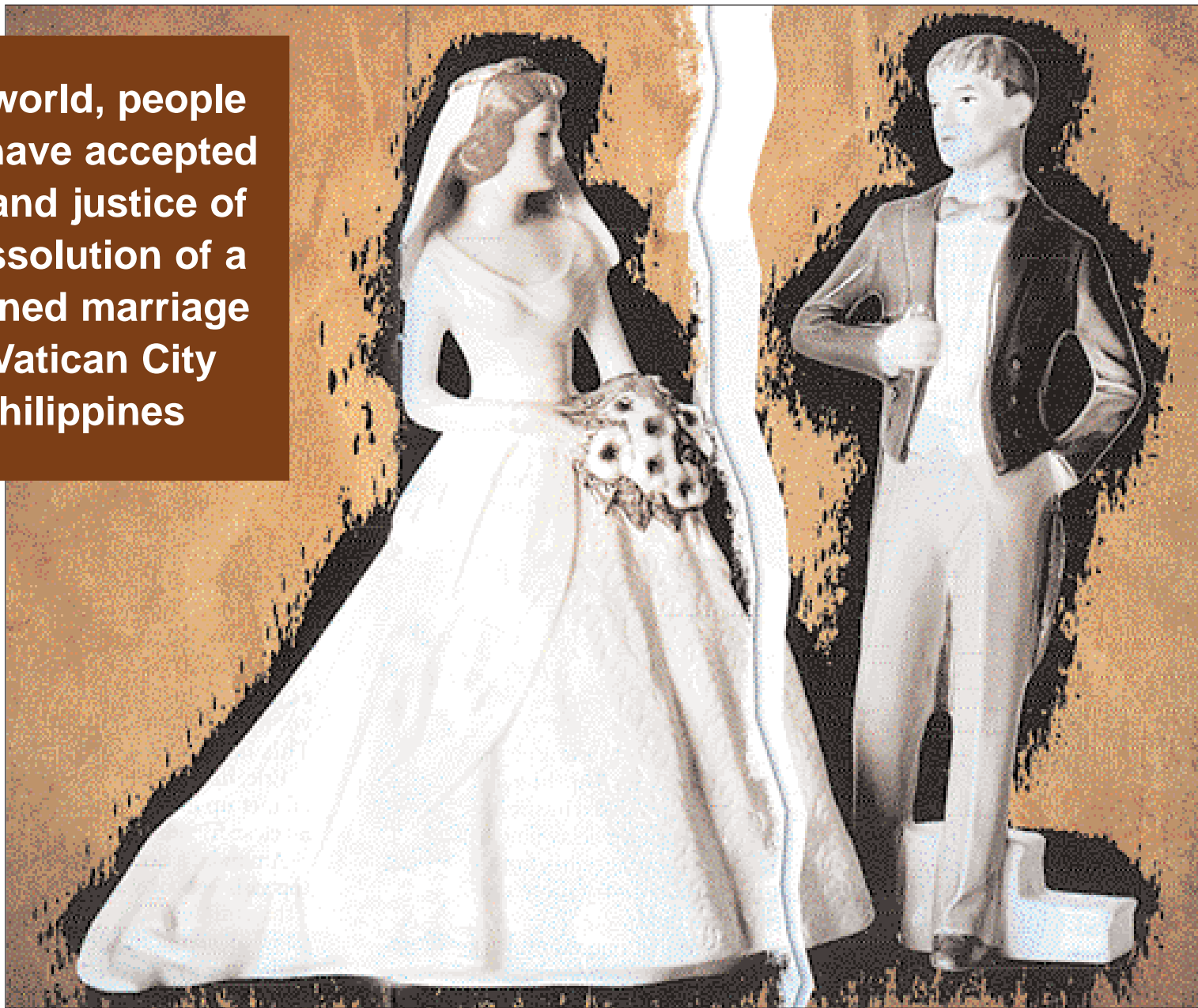
## Rodel Rodis in Manila

Philippine Daily Inquirer

Of the 195 countries in the world, only three do not currently allow for divorce and that number will be further reduced by one next year when Malta officially adopts a divorce law. This total includes all 53 countries in Africa, 52 out of the 53 in Asia, 47 out of the 48 in Europe, all 13 in South America, and all 7 in Central America. Each of these incredibly diverse countries whether Christian, Muslim or Buddhist, democracy or dictatorship have adopted some form of divorce law except for the Philippines and Vatican City.

Included among the vast majority of countries is Italy, the home base of Roman Catholicism, which amended its Civil Code on Dec 1, 1970 to permit the granting of divorces. Also included is Spain, the country which brought Christianity to the Philippines, which passed a divorce law in 1981. Ireland the country that has sent more Catholic priests to the Philippines than perhaps any other country prohibited divorce in its 1937 Constitution but repealed this prohibition in 1995.

All over the world, people and nations have accepted the wisdom and justice of providing for some form of dissolution of a state-sanctioned marriage except understandably for Vatican City, the eternal bastion of total male superiority which will never need to pass a divorce law



for its assorted priests, bishops, cardinals, and its Holy Father Pope. And, inexplicably, for the Philippines, which has had two women presidents and where women comprise the majority of its population.

There it is, in the first article of its Family Code, the Philippine state declares that marriage is an inviolable social institution, a special contract of permanent union between a man and a woman.

But critics point out that it is a permanent union only for the women as the men have had no problems engaging in unions with other women. One former Philippine senator openly brags about siring 82

children with dozens of women. One former president openly acknowledges his relationships with various mistresses who remain actively involved in his presidential quest.

While divorce is not legal in the Vatican and in the Philippines, both provide for the nullity of marriage. The canonical law of the Vatican provides for ecclesiastical declarations of nullity. The Philippine Family Code has provisions on Declaration of Absolute Nullity, Annulment and Legal Separation which substantially coincide with the Vatican's canon law provisions on Nullity while the Family Code provision on Legal Separation is essentially the same

as the Catholic Church's provision on Canonical Separation.

Annulment or nullity refers to a process of invalidating what was previously valid. A legal fiction is created whereby the state of factually declares a marriage void ab initio, from the beginning. If the marriage never existed, then there is no need to dissolve it.

The grounds for nullity in the Philippines are: minority (a party below 18 even with the consent of parent(s)), lack of authority of the solemnizing officer, absence of a marriage license, bigamous/polygamous marriage, mistaken identity, incestuous marriage and psychological

incapacity. Psychological incapacity, according to one legal authority, contemplates downright incapacity or inability to take cognizance of and to assume the basic marital obligations; not a mere refusal, neglect or difficulty, much less, ill will, on the part of the errant spouse.

This nullity by psychological incapacity is the Philippine version of divorce. In the United States, the grounds for nullity are all based on conditions that were in existence at the time of the taking of the marital vows (bigamous marriage, minority, physical incapacity, mental incapacity, and fraud). Divorce, on the other hand, is based on conditions that occur after the marriage.

In the Philippines, married parties were always able to file petitions to

practice and procedure for obtaining a nullity by psychological incapacity has expanded, even providing for instances where the respondent spouse is out of the country or could not otherwise be served with the legal papers by allowing for summons by publication.

While divorce by any other name is still a divorce, in the Philippines, it is only because it came by another name, nullity by psychological incapacity, that it exists. How it came into being is a story filled with serendipity and irony.

When Cory Aquino became president on Feb 26, 1986, after People Power ousted Ferdinand Marcos, she abolished the 1973 Constitution that Marcos enacted by dictatorial fiat and replaced it with the 1986 Freedom Constitution. She then appointed 50 commissioners to draft a new constitution that would be presented to the people for ratification in February of 1987. Under Cory's Freedom Constitution, there were only two branches of government, the Executive and the Judiciary where the power to make laws was vested in the Executive branch.

Aquino had three legal advisers, all women, who were concerned about the inequity in cases where Filipino women were divorced by their foreigner husbands who were able to remarry while their Filipino wives could not do so about cases where the Filipino husbands were abusive or otherwise sick in the head.

Cory's advisers knew that a Congress would never pass such a law that would be favourable to women and which the Church would consider contrary to Philippine culture and tradition. With Cory's power to enact laws by her decree under the Freedom Constitution about to end, the advisers hurriedly drafted a Family Code which included provisions for this Philippine divorce by another name. Cory signed it into law on July 6, 1987 before the Philippine Congress was re-established and convened on July 27, 1987.

While officially, the Philippines is the only country aside from Vatican City to not allow for divorce, unofficially, the Philippines is in step with the rest of the world on this issue. Ironically, this was accomplished by the most devoutly Catholic president the Philippines has ever had.

have their marriages annulled based on the same pre-existing conditions that are the grounds for nullity in the United States. A significant change occurred in the Philippines in 1988 when parties were now able to file for nullity based on conditions that occurred after marriage where one errant party has displayed conflicting personality, emotional immaturity, irresponsibility, or has engaged in physical abuse, habitual alcoholism, sexual infidelity or perversion, and abandonment. Or even, in at least one case, habitual lying. These are normally grounds for divorce in the United States.

More than 21 years later, the

## Familian Glow at HFC Kalutara

It really feels like the good old school days," says one of the participants. The atmosphere at the rehearsal sessions, in the school hall, is really that of a group of school children getting ready for a concert.

In reality, it is the past pupils of Holy Family Convent, Kalutara, who are getting all geared-up for the variety entertainment they have organized for the 75th year celebrations of the school.

The speciality of this group of people is that the participants are from 20 to 70 years of age, spanning over three generations! There will be singing and dancing galore, and it will all be quite upbeat too.

It will be a rare sight for anyone who is lucky enough to be present at the HFC Main Hall, on July 25, 2009. For the convenience of the

audience, there will be two shows: a matinee at 3.00 p.m. and the main show, with Rev. Sr. Mechilde

these participants have not singing and dancing, yet they will not look like anything but professionals during the show and it gives me so much pleasure to see the familial spirit still aglow in them,"

says, Mrs Ann De Silva, the President of the Association and the dancing teacher of H.F.C. Kalutara, for the past 28 years who, as usual, handles the choreography.

The Treasurer, Mrs Priyanganie Arsekularathne, says "the strength of the Familians is manifest in the show".

The name of this variety entertainment speaks for itself - for it really glorifies the sisterhood, unity, sharing and caring of the Familians! That actually was how Miss. Siricia Perera was inspired into naming this variety entertainment as "Familian Glow".

For more details contact Mrs. Priyanganie Arsekularathne on 034-2222907.



Marie gracing the occasion as Chief Guest, at 6.30 p.m. "As school girls, some of

## "Kasun Kalhara Live in Concert"

Kasun Kalhara's fans are in for a big treat on July 25, when Mahamaya College, Kandy, (PPA - Colombo Branch) presents "Kasun Kalhara Live in Concert" together with Nadeeka, Indrachapa and Nirosha Vijajini at Bishop's College Auditorium. A large crowd of fans are expected to flock to the venue when the curtain goes up at 7 p.m.

Mahamaya College, Kandy (PPA Colombo Branch), the organizers of the event, was established in 1984 and since then their agenda has been enriched with school development projects, religious activities and welfare activities. The Association undertook and successfully concluded rebuilding and rehabilitation

work after several natural disasters - most notably the 2004 Tsunami. They have donated generously towards the health sector and assisted the brave service personnel in numerous ways, such as donating 30 wheelchairs, prosthetic limbs and a house for a disabled serviceman.

This year, they are raising funds for the award of scholarships to students in need of financial assistance. The committee has worked hard to make this event a success.

