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The Journal's mission is to cultivate an environment that values intellectual diversity, legal analytical precision, and the pursuit of impactful research. Each issue features contributions that bridge theoretical and practical approaches, drawing from comparative, international, and domestic perspectives. It presents legal scholarship that interrogates traditional doctrines, dissects contemporary legal challenges, and proposes innovative frameworks for understanding the complexities of law in an interconnected world.

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## EDITOR'S NOTE

Welcome to the 2025 3<sup>rd</sup> Volume, 3<sup>rd</sup> Edition of the *UST Law Journal*. This year's volume reflects our ongoing commitment to producing rigorous, forward-looking, and socially relevant legal scholarship that addresses the evolving challenges of our national, regional, and global legal landscape. As we expand our digital platform, the Editorial Board remains committed to our goal of providing accessible, high-quality research that fosters informed dialogue among scholars, practitioners, policymakers, and graduate students. We thank our contributors and readers for their trust and engagement as we usher in another year of meaningful discourse.

In this second featured article, *"Recognition of the Decree of Annulment or Declaration of Nullity of Marriage Rendered by an Ecclesiastical Tribunal: A Proposed Legislative Amendment,"* it addresses a longstanding and contentious legal question on whether ecclesiastical annulments or declarations of nullity issued by Church tribunals should be accorded civil effect under Philippine law. With the Philippines being a predominantly Catholic country while maintaining a constitutional commitment to the separation of Church and State, the issue remains a legally complex point of dialogue between religious autonomy and secular legal authority.

This article offers a thoughtful and well-reasoned analysis of the jurisprudential landscape, particularly in light of the jurisprudence and ecclesiastical decrees wherein the author explores the social implications, procedural challenges, and constitutional considerations that arise when parties seek recognition of Church-decreed nullity. By proposing a legislative amendment, this article invites policymakers and scholars to consider whether the current legal framework adequately responds to contemporary realities of marriage, family breakdown, and the lived experiences of Filipino couples.

Importantly, this piece highlights the pressing need for reforms that respect religious beliefs while preserving constitutional boundaries. It underscores that legal solutions must be both principled and humane, ensuring clarity, efficiency, and fairness for all parties involved. Whether one supports or opposes

legislative recognition of ecclesiastical decrees, this article provides a valuable scholarly foundation for informed debate.

The featured article is a timely contribution to ongoing conversations on family law reform, religious freedom, and constitutional structure. It is hoped that this will stimulate further research and thoughtful engagement within the legal community and beyond.

**IRENE D. VALONES, DCL, DPA**  
Editor-In-Chief

**RECOGNITION OF THE DECREE OF ANNULMENT  
OR DECLARATION OF NULLITY OF MARRIAGE  
RENDERED BY AN ECCLESIASTICAL TRIBUNAL:  
A PROPOSED LEGISLATIVE AMENDMENT**

**By:**

**DR. JONIEVE RAMOS-GABRIEL, DCL**

**ABSTRACT**

Marriage is the foundation of the family and an inviolable social institution. In the Philippines, marriage may be solemnized in accordance with the rituals and traditions of one's religion. A marriage solemnized in this manner has a two-fold aspect. It is secular inasmuch as marriage produces legal effects, such as property relations, family relations, and filiation, in which the state has an interest. At the same time, it is deeply embedded in religious culture and tradition and is usually governed by religious beliefs and norms of behavior.

The termination of marriage, however, may only be done in accordance with the laws of the state. It is solely governed by the Family Code, and only the secular aspect of marriage is taken into consideration, without regard to the religious or spiritual bond thereof. In a deeply religious country like the Philippines, where most marriages are celebrated through religious ceremonies, this poses a problem.

A study of pertinent laws, legal principles, and jurisprudence would reveal that the Philippines adheres to the benevolent neutrality approach in interpreting religious clauses. Prescinding from such, this study proposes that an accommodation of the decree of annulment or declaration of nullity of marriage issued by churches or religious sects is constitutionally sound. The same legal materials would also demonstrate the need to establish the procedure and parameters of the proposed legislative amendment in order to fully protect the state's interest in marriage.

**Keywords:** marriage, ecclesiastical tribunal, annulment

## **I. INTRODUCTION**

Religion precedes society, including the state itself. Way before humans learned to form communities and discover ways to govern themselves, they already believed in a being higher than themselves.

In primitive times, it can be said that all aspects of life were deeply rooted in religion.<sup>1</sup> The significance and importance of religion in the life of a human person cannot be overstated, as it encompasses each and every act, from birth to death. It comprehends every aspect of man's temporal life, and more

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<sup>1</sup>

Estrada vs. Escritor, A.M. No. P-02-1651, August 4, 2003.

importantly, even thereafter. Essentially, there was no distinction between the religious and the secular.

It was only when humans learned to govern themselves and consequently created the state that the duality between religion and the secular emerged. The church takes charge of that which is spiritual, while the state governs man's temporal existence. In religion, the priest is the principal figure, while for the state, it is the king. It cannot be gainsaid, however, that man has obligations and duties to both.

Fundamentally, the church and the state are two different independent authorities central to man's existence. The duality of the church and the state is in accord with the duality of man's nature, with man's spiritual yearnings and his earthly existence.<sup>2</sup> The church and the state are both sovereign entities in their respective domains, one spiritual and the other temporal.

Considering the duality of man's nature, most aspects of human affairs are affected by a person's religious convictions. When a religious person acts, they always do so in accordance with the morality and ethics of their religious principles. For a religious man, the secular cannot be completely divorced from the spiritual. This is also true in a social context.

Religious activities and ceremonies occupy a central place in an individual's existence as well as in society itself. Although religion and belief are personal, religious celebrations and activities are rarely undertaken alone; they are instead observed and honored in groups and by associations.

If there is one thing humanity has learned regarding the history of the church and the state, it is the discord brought about by the struggle between man's religious beliefs and the civil society to which he belongs. The constant strife between the spiritual and the temporal, and the authorities that administer them, led to the conception of the principle of the separation of church and state.

This wall of separation, however, is not absolute. One cannot be absolutely relegated to one side or the other. Religious and civic duties cannot be confined to specific activities alone. The spiritual and the secular permeate each other and often must coexist, especially considering the expanding and growing scope of activities and domains of religion and the state; they cannot continue in parallel lines without intersecting at one point or another.

An epitome of an instance where both the church and the state have an interest in a single human conduct is that of marriage. Marriage, by nature, is a religious act; it was so even before the institution of governments.

On the one hand, the state recognizes the importance of marriage in society and its individual constituents by enacting laws that protect and regulate marriage, as well as its related incidents. On the other hand, for most churches and religious sects, marriage is a holy union between a man and a woman. For

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<sup>2</sup> Ramos, Jonieve P., Recognition by Philippine Civil Courts of Catholic Church Declaration of Nullity of Marriage: A Proposed Legislative Framework, May 2016.



the Catholic Church, it is a sacrament. Undoubtedly, marriage is given special protection not only by the state but also by the church. It is protected not only in the secular sphere but also in its religious facet.

In the Philippines, the secular and religious interests in marriage are entrenched in the law, recognizing marriages solemnized in accordance with one's religion. Executive Order No. 209 enacted on July 6, 1987, otherwise known as The Family Code of the Philippines, permits marriage to be solemnized by any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, provided he is acting within the limits of the written authority granted by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect.<sup>3</sup>

Indubitably, marriage may be solemnized in accordance with the rituals and ceremonies of one's religion, and it is considered valid under Philippine laws. The civil society itself, through its laws, recognizes and respects the religious aspect of marriage. This is a clear recognition of an individual's right to religious freedom.

Consequently, a marriage which is solemnized by a priest, rabbi, imam, or minister, following the rituals and ceremonies of their church or religious sect, has a two-fold aspect. It is secular and valid under the laws of the state, inasmuch as it is a contract that produces legal effects. At the same time, it is a religious ceremony inasmuch as it is entered into in compliance with religious rituals and traditions. It should be underscored that for the church, marriage has sacred consequences and religious implications, and it has meaning and significance far greater than that given by the secular.

While the law recognizes marriages entered into in accordance with one's religion, the termination or dissolution thereof remains secular, governed by civil law and regulated by the state. The Family Code provides for the specific grounds therefor: annulment and declaration of nullity. Indeed, the Church has its own grounds and procedures for the termination or dissolution of marriage; however, these are not recognized by Philippine civil courts.

In the termination or dissolution of marriage, only the secular aspect thereof is taken into consideration without any regard to the union's religious component.

The impediment is apparently constitutional. First, the Constitution itself draws a line of division between the church and state by requiring its separation under Article II, Section 6 thereof. Second, the Constitution requires the state to provide protection to marriage, as it is the foundation of the family and an inviolable social institution.

The separation of church and state is intended to prevent the interference of religion in the affairs of the state as well as to secure religious liberty from

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<sup>3</sup>

Article 7 of The Family Code of the Philippines.



measures of control imposed by civil authorities. With regard to marriage as protected by the state, there is no dispute about that, as there is an entire article, Article XV of the Constitution, that is wholly devoted to marriage and the family. The state acknowledges the importance of marriage as a foundation of the very fabric of society. However, would the recognition of the termination of marriage by decree of ecclesiastical courts lessen the protection granted by the state to marriage? On the other hand, would failure to accommodate the termination of marriage by decree issued by ecclesiastical courts unduly burden the parties' freedom to practice their religion?

The fundamental importance of the inviolability of the human conscience was recognized by the Philippine Supreme Court in the landmark case of *Alejandro Estrada vs. Soledad Escritor*.<sup>4</sup> In the *Escritor* case, the Supreme Court established the constitutional posture of the state regarding religion and religious groups. It was settled once and for all that the Philippines adheres to the benevolent neutrality approach with respect to issues of religious freedom.

The benevolent neutrality approach allows accommodation of religion under certain circumstances. Accommodations are government policies that take religion specifically into account, not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance.<sup>5</sup>

The purpose or effect of accommodation is to remove a burden on, or facilitate the exercise of religion, to exempt when possible, from generally applicable governmental regulation individuals whose religious beliefs and practices would otherwise be infringed, or to create without state involvement an atmosphere in which voluntary religious exercise may flourish.<sup>6</sup>

## **PROBLEM RATIONALE AND SCOPE**

The principle of separation of church and state is deeply embedded in the Philippine Constitution, and consequently, in the country's entire legal system. It is intended to ensure the liberty of religious beliefs and practice as well as to prevent the church from interfering with purely secular affairs.

This wall of separation between the church and the state, however, is not unconditionally absolute, so that it can be breached at all times. Taking into consideration the present expansive activities and pursuits of both the church and state, it is not unimaginable that they are bound to entangle with each other time and again.

To illustrate, one of the instances where both the church and the state have an interest in a single human conduct is that of marriage. It is protected by the state and celebrated by the church.

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<sup>4</sup> A.M. No. P-02-1651, August 4, 2003 and June 22, 2006.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

Indeed, when a man and a woman enter into marriage, it is presumed to be for life. This remains the ideal. However, men as human beings are prone to so many incapacities and infirmities. Recognizing this, the state enacted laws that allow the annulment or declaration of nullity of marriage on specific grounds.

Be that as it may, it should be emphasized that there are also churches or religious sects that similarly allow the annulment or declaration of nullity of marriage, on grounds that have a basis in religious precepts.

For instance, the Catholic Church has established in the Philippines a Matrimonial Tribunal which determines what could have “caused the invalidity of the marital union.”<sup>7</sup> In this regard, the Tribunal “must investigate the pre-marital history of the parties involved, as well as the history of the marriage itself and what led to the breakdown of the marital relationship.”<sup>8</sup> Thereafter, if indeed there are grounds to declare the invalidity of the marriage, the Matrimonial Tribunal shall issue a decree of nullity of marriage. Despite the rigidity of the proceedings, such a decree, however, has no secular legal effects.

In the case of *Tilar vs. Tilar*,<sup>9</sup> the Supreme Court emphasized that the decree of declaration of nullity issued by the Catholic Church, in accordance with Canon Law, has no binding effect on the state and its civil courts.

Accordingly, religious couples who have grounds to seek the termination of their marital bonds in both civil and ecclesiastical courts have no other option but to undergo both civil and church procedures. Indeed, there is a compelling need for them to ensure that both the legal and the spiritual ties of marriage are severed.

Unfortunately, not all Filipinos have the resources to undergo both civil and religious annulment or declaration of nullity of marriage, as they are both time-consuming and both entail expenses.

It cannot be gainsaid that the separation of the spouses is always a difficult time for the parties and their family, especially the children, if there are. To require them to undergo two different and lengthy proceedings for the annulment or declaration of nullity of their marriage in order to terminate both the spiritual and legal ties thereof unnecessarily exposes them to further psychological, emotional, and financial ordeals.

There are cases, however, in which the parties opt to undergo only the civil proceedings for the termination of their marriage due to lack of resources to undergo both civil and church proceedings. This is despite knowing that the decision of the civil court terminating their marriage shall have no effect on the sacrosanctity of the religious aspect of their marriage.

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<sup>7</sup> Metropolitan Tribunal of Manila, accessed from [www.rcam.org/offices/metropolitan-tribunal-of-manila](http://www.rcam.org/offices/metropolitan-tribunal-of-manila).

<sup>8</sup> Ibid.

<sup>9</sup> G.R. No. 214529, July 12, 2017.

For spouses who find it exceedingly difficult to undergo both civil and church annulment or declaration of nullity of marriage, seeking termination of the legal bond of marriage before the civil courts is the better option. Severing the legal tie of marriage would allow the parties to remarry and have another chance at marriage and family without worry that the long arm of the law will someday reach them. Otherwise, remarriage, cohabitation, or a mere affair with another may be criminally punishable with bigamy, concubinage, or adultery. All these at the expense of one's spiritual well-being.

For the church, being free to marry again before the eyes of the law does not mean that one is free to do so before the eyes of God. Thus, for those who choose to endure only the civil proceedings because they are unable to undergo the termination of their marriage both civilly and in church, they do so at the expense of their spiritual convictions and religious conscience.

It is also important to note that the granting of civil effects to church decrees of dissolution or declaration of nullity of marriage serves a significant secular purpose, which is central to the proposed law. It will effectively alleviate the continuous clogging of court dockets due to the high number of annulment and declaration of nullity cases pending in courts. Proceedings will no longer be redundant, resulting in the conservation of much-needed resources for the judiciary.

Accordingly, a recommendation is made in this study for a legislative enactment allowing the recognition of the termination of marriages by churches and other religious sects. Furthermore, this research also examines the need for judicial procedures in recognizing the civil effects of Church decrees. It also comprehensively discusses the parameters of the recommended legislative amendment and the necessity for such.

At this point, it is essential to emphasize that the Constitution is clear – no law shall be enacted respecting the establishment of religion. This is otherwise known as the Establishment Clause, which simply requires state neutrality on matters of religion. As such, no law can be passed favoring one religion over another.

The proposed legislative amendment strictly adheres to this Constitutional directive. However, for the purposes of this study, only the Catholic Church was considered and used as a basis for comparison. Thus, this study is limited to the Catholic Church and does not discuss any other religion except in terms of laws and jurisprudence, which were used to support the propositions.

## **II. METHODS**

This study aims to demonstrate the need for a law that would allow civil courts to recognize the civil effects of a decree or judgment on the annulment or declaration of nullity of marriage issued by the church or any other religious sect. Consequently, the said legislative amendment includes parameters intended to safeguard both religious interests and the interests of the state regarding marriage.

To achieve this objective, the traditional approach of blackletter methodology has been employed in this research. This approach enables the researcher to critically analyze the meanings and implications of the set of laws and cases studied, as well as the principles that underpin them. Aside from the blackletter methodology, other research methods were also utilized, including historical, descriptive-analytical, and comparative methods of analysis.

This study presents a historical account of the development and evolution of the principles of religious freedom as well as the separation of church and state in the Philippines. The historical narrative provides the foundation for a basic understanding of the laws and jurisprudence scrutinized in this research. It also lays down the context of why marriage, which is basically a religious ceremony for most Filipinos, is regulated by the state. From here, the two-fold aspect of marriage under the Philippine legal system has been exposed and explored.

To achieve the study's goals, a descriptive-analytical method was also employed. This research collates, organizes, and describes legal rules and principles from all relevant laws, legal doctrines, and court decisions related to the fundamental right to freely exercise one's religion, as well as those that address the concepts of marriage and its termination. An evaluation of the relationships and patterns between various legal concepts and principles has also been conducted.

This research uses and comprehensively gather, analyze, and adequately interpret all concepts related to the proposal, from law and jurisprudence alike, such as the principles of marriage and the nature of its termination, both its secular and religious components; the principle of separation of church and state; and the principle of religious freedom, with respect to both the free exercise clause and the establishment clause.

A resort to the comparative method of analysis has likewise been made in order to determine the similarities and distinctions between the grounds for annulment and declaration of nullity of marriage under the state laws and the detriments of marriage and other grounds for declaration of nullity of marriage under the Canon law.<sup>10</sup>

This study offers commentary on the significance of the authoritative legal sources with the purpose of identifying an underlying system or principle – that a law recognizing the civil effects of a decree of annulment or declaration of nullity of marriage by the church or other religious sect is not violative of the non-establishment clause, but will in fact, give meaning to the principle of inviolability of the religious conscience.

Furthermore, it has also been demonstrated that the source materials in this research contain interrelated points of law or rules, which, when considered together, necessitate the inclusion of parameters in the proposed legislative amendment.

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<sup>10</sup> Supra, note 2, Art. 1.

### III. ACCOMMODATION OF RELIGIOUS FREEDOM IN THE TERMINATION OF MARRIAGE

#### A. MARRIAGE UNDER STATE LAWS AND CATHOLIC CHURCH

##### 1. CONCEPT OF MARRIAGE

###### 1.a. UNDER STATE LAWS

Marriage is an inviolable social institution and the foundation of the family.<sup>11</sup> The family, being an indispensable component of society, highlights the importance of marriage as a private relation impressed with public interest.

As an institution of the highest importance, marriage is given utmost safeguard by the state in order to promote its stability and permanence. The fundamental law of the land, the 1987 Philippine Constitution itself, professes that marriage shall be protected by the state.<sup>12</sup>

The Family Code of the Philippines embodies the state principles respecting marriage. Section 1 thereof defines marriage and declares that marriage is a contract. However, it is not an ordinary contract. As may be gleaned from its definition, the nature, consequences, and incidents of marriage are governed by law and not subject to stipulation. As a consequence of the constitutional mandate to protect marriage, it is highly regulated by the state.

To further emphasize the importance of the family as an institution, Article 49 of the Family Code declares that the “family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law, and no custom, practice, or agreement destructive of the family shall be recognized or given effect.”

In the case of *Eduardo P. Manuel vs. People of the Philippines*,<sup>13</sup> the Supreme Court maintained that, in actuality, there are three parties to every civil marriage – two willing spouses and an approving state. Although the definition of marriage only refers to a man and a woman as contracting parties, the Supreme Court gave paramount importance to the state's position on marriage. The laws regulating civil marriages as part of public policy have been sustained and deemed necessary to serve the interest, safety, good order, comfort, or general welfare of the community.<sup>14</sup>

Although considered a private act, marriage is highly regulated by the state, from beginning to end. Foremost, it cannot be entered into except upon authority of the state, which is represented by the issuance of a marriage license. It cannot be considered as valid absent the essential and formal requisites

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<sup>11</sup> Section 2, Article XV of the 1987 Constitution.

<sup>12</sup> Ibid.

<sup>13</sup> G.R. No. 165842, November 29, 2005.

<sup>14</sup> Ibid.



provided for by law. Once entered into validity and in accordance with law, the marriage bond becomes indissoluble except upon specific grounds provided for by law.

A marriage celebrated in accordance with one's religion has to comply with all the necessary requirements of a civil marriage in order for the same to have civil effects as well.

In the case of *Jo-Ann Diaz Salgado vs. Luis G. Anson*,<sup>15</sup> the Supreme Court held that the requirement and issuance of a marriage license are the state's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested. This interest proceeds from the constitutional mandate that the state recognizes the sanctity of family life and of affording protection to the family as a basic autonomous social institution.

Indubitably, no marriage may be validly entered into by any person without the authority granted by the state through the issuance of a marriage license, save certain exceptions which are likewise delineated by law.<sup>16</sup>

Nevertheless, no marriage may be considered as valid and with legal consequences without the presence of all the essential<sup>17</sup> and formal<sup>18</sup> requisites of marriage as provided for by law.

The absence of any of the essential or formal requisites of marriage renders the marriage void *ab initio*. A defect in any of the essential requisites of marriage renders the marriage voidable, while an irregularity in any of the formal requisites shall not affect the validity of the marriage.<sup>19</sup>

The absence of the essential or formal requisites rendering the marriage void *ab initio* is covered by Article 35 of the Family Code, which provides for specific grounds by which a marriage may be declared void *ab initio*. In addition to Article 35, the Family Code provides for other grounds for declaring a marriage null and void. Article 36 provides for the ground of psychological incapacity in which either or both contracting parties are incapacitated to comply with any of the marital obligations. Article 37 of the Family Code provides for void marriages due to relationship, such as those between ascendants and descendants as well as between brothers and sisters. Article 38 of the Family Code provides for void marriages for reasons of public policy. Meanwhile,

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<sup>15</sup> G.R. No. 204494, July 27, 2016.

<sup>16</sup> Articles 27-34, Chapter 2. Marriages Exempted from License Requirement of The Family Code of the Philippines.

<sup>17</sup> Art. 2. No marriage shall be valid, unless these essential requisites are present:

- (1) Legal capacity of the contracting parties who must be a male and a female; and
- (2) Consent freely given in the presence of the solemnizing officer.

<sup>18</sup> Art. 3. The formal requisites of marriage are:

- (1) Authority of the solemnizing officer;
- (2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and
- (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

<sup>19</sup> Article 4 of The Family Code of the Philippines.

Articles 41 and 53 of the Family Code provide for void marriages due to non-compliance with the pertinent law on subsequent marriage.

The Family Code also concedes that there are marriages that are considered as valid but may be annulled, invalidated, or dissolved for certain defects. These are voidable marriages, which may be found under Article 45 of the Family Code.

Under state laws, marriages that are void *ab initio* should be distinguished from voidable marriages. A voidable marriage is valid, although it suffers from a defect, until it is annulled by a court of competent jurisdiction. A void *ab initio* marriage, on the other hand, is considered to have never taken place and cannot be the source of rights, although it may have legal effects, such as those declared by law regarding properties<sup>20</sup> and the legitimacy of children.<sup>21</sup> A voidable marriage may be ratified by free cohabitation or prescription, while a void *ab initio* marriage cannot be ratified or confirmed. Furthermore, an action to declare a marriage voidable prescribes, resultantly, a voidable marriage must be assailed during the lifetime of the parties and not after the death of either. In contrast, an action to declare a marriage void *ab initio* is imprescriptible. Consequently, a marriage void *ab initio* may be questioned even after the death of either party,<sup>22</sup> as it is subject to collateral attack.

The parties to the marriage, however, cannot presume to declare their own marriage void *ab initio*. All presumptions shall favor the validity of marriage and the permanency of the marriage bonds. As a result, no less than a state pronouncement through the civil courts, after due hearing and procedure, is required in order to have a marriage annulled or declared null and void.<sup>23</sup>

In the case of *Domingo vs. Court of Appeals*,<sup>24</sup> the Supreme Court clearly explained that the Family Code settled once and for all that the parties to a marriage should not be allowed to assume that their marriage is void and must first secure a judicial declaration of the nullity of their marriage before they can be allowed to marry again.

In the case of *Republic of the Philippines vs. Liberty D. Albios*,<sup>25</sup> the Supreme Court maintained that marriage, as an inviolable social institution, must be safeguarded from the whims and caprices of the contracting parties. Marriage should not be perceived as easily entered into and may just as easily be nullified at any convenient time.

Nevertheless, despite the state protection given to the contract of marriage, there are instances when even with its apparent celebration, there can really be no marriage to speak of if it suffers from some defect that renders it void or voidable.

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<sup>20</sup> Articles 147 and 148 of The Family Code of the Philippines.

<sup>21</sup> Article 50 in relation to Article 43 of The Family Code of the Philippines.

<sup>22</sup> *Ninal vs. Bayadog*, G.R. 133778, March 14, 2000.

<sup>23</sup> Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

<sup>24</sup> G.R. No. 104818, September 17, 1993.

<sup>25</sup> G.R. No. 198780, October 16, 2013.



In the case of *Valerio E. Kalaw vs. Ma. Elena Fernandez*,<sup>26</sup> the Supreme Court proclaimed that the dissolution of marital bonds is not meant to diminish the value of marriage, but in actuality, it protects the sanctity of marriage by allowing persons who cannot comply with the essential marital obligations due to some psychological disorder to be relieved from the marital bonds.

It was further held in the *Kalaw* case that in Article 36, there is no marriage to speak of in the first place, as it is void from the very beginning. To indulge in imagery, the declaration of nullity under Article 36 will simply provide a decent burial to a stillborn marriage.<sup>27</sup>

In the case of *Malcampo-Sin vs. Sin*,<sup>28</sup> the Supreme Court emphasized the importance of the active participation of the state in the termination of marital bonds when it remanded to the trial court a case for declaration of nullity of marriage as a result of the apparent lack of participation of the investigating prosecutor in the trial of the case.

Clearly, with respect to the validity, voidability, or nullity of a marriage, it is the civil law that shall regulate and govern. The legal bonds of marriage cannot be simply dissolved or declared null and void at the caprice of the parties involved, as they are imbued with public interest. The state's participation in a case for annulment or declaration of nullity of marriage is a necessary requisite for the validity of the judgment.

In the case of *Cynthia Bolos vs. Danilo Bolos*,<sup>29</sup> the Supreme Court clarified that Philippine family law is based on the policy that marriage is not merely a contract, but a social institution in which the state is vitally interested. The break-up of families weakens the social and moral fabric; thus, society and even the state are concerned with their preservation.

### **1.b. UNDER CANON LAW**

The state has no monopoly on ensuring that the utmost protection is given to marriage. The Catholic Church places paramount value on marriage, considering it both a covenant and a sacrament. Under Canon 840 of the Code of Canon Law, sacraments "are signs and means which express and strengthen the faith, render worship to God, and effect the sanctification of humanity and thus contribute in the greatest way to establish, strengthen, and manifest ecclesiastical communion."

The definition of marriage, as outlined in Canon 1055 of the Code of Canon Law, clarifies the nature of marriage. It is a natural institution, a covenant, and a contract that is directed to a lifetime partnership, and the ends thereof are procreation and the education of children. More importantly, marriage cannot exist without it, yet it is also a sacrament.

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<sup>26</sup> G.R. No. 166357, September 19, 2011.

<sup>27</sup> Ibid.

<sup>28</sup> G.R. No. 137590, March 26, 2001.

<sup>29</sup> G.R. No. 186400, October 20, 2010.

In Void and Voidable Marriages in the Family Code and Their Parallels in Canon Law by Rev. Fr. Artemio A. Baluma,<sup>30</sup> the basic elements of marriage as described under Article 1 of the Family Code and Canon 1055 of the Canon Law have certain parallelisms, which can be illustrated as follows:

Article 1 Family Code	Canon 1055 Canon Law
1. Marriage is a special contract. The contract establishes between the parties a social or domestic relationship, that of husband and wife. The obligations arising therefrom do not come from the parties, but are the creations of law.	1. Marriage is a covenant. The notion of covenant in Christian marriage sinks deeper than that of an ordinary contract. The term ‘contract’ is viewed as a legal concept with emphasis on the law and not on the theological and personalistic dimension of marriage.
2. It is a permanent union. Marriage is a contract sui generis, differing in notable aspects from ordinary contracts chiefly because it cannot be dissolved by the parties, but only by the sovereign power of the state for valid causes.	3. In marriage, the spouses establish a partnership of the whole life between themselves. This partnership is the bonum coniugum, the good of the spouses.
3. The union is between a man and a woman. Two males cannot marry each other, neither two females. Family life directed to procreation cannot spring from such union.	2. It is entered into by a man and a woman. It cannot countenance any homosexual marriage. It is founded on God’s creating man male and female whom He blessed to increase, multiply, fill the earth and conquer it.
4. It is entered into in accordance with law. Marriage is an institution of society regulated and controlled by public authority. The public has an interest in marriage.	
5. Its purpose is the establishment of conjugal and family life. Marriage is	4. The union is ordered also toward the procreation and education of offspring.

<sup>30</sup> Pages 22-26.

the voluntary union for life of one man and one woman who take each as husband and wife and who discharge towards each other the duties imposed by law upon their conjugal life.	
	5. Marriage among baptized is a sacrament. Every valid marriage covenanted by a certainly baptized man and a certainly baptized woman, be he/she a Catholic or not, is of its nature a sacrament, reflecting the union of Christ with the church.

In *Arcanum*,<sup>31</sup> Pope Leo XIII’s February 10, 1880, Encyclical on Christian Marriage, considered the precursor of other encyclicals on the same topic, defined the nature and goals of marriage, as well as the ills that beset it. The *Arcanum* recognizes civil marriage and concedes that marriage also belongs to the civil order, about which the state rightly makes strict inquiry and justly promulgates decrees. Yet, it refuses to accede that marriage solely belongs in the secular sphere, wholly governed by the unnatural laws of the state.<sup>32</sup>

Marriage, from its institution, should exist between two only, between one man and one woman, and that the marriage bond is by the will of God so closely and strongly made that no man may dissolve it or render it asunder.<sup>33</sup> “For this cause shall a man leave father and mother, and shall cleave to his wife, and they two shall be in one flesh. Therefore, now they are not two, but one flesh. What, therefore, God hath joined together, let no man put asunder.”<sup>34</sup>

In Christian marriage, the contract is inseparable from the sacrament. Marriage is not instituted by the will of man but by the authority and command of God. It is similar to the spousal covenant of Christ with the Church. It was raised by Christ from a rite of nature to a sacrament and gave to his Church legislative and judicial power with regard the bond of the union.<sup>35</sup>

For the Church, the relegation of marriage to the secular sphere deprives it of all holiness. The civil society pays no regard to the Catholic Church, her divine power and prudent laws. The distinction by which civil society severed the matrimonial contract from the sacrament is completely flawed, for in Christian marriage, the contract is inseparable from the sacrament.<sup>36</sup>

<sup>31</sup> Pope Leo XIII, *Arcanum* [Encyclical on Christian Marriage], February 10, 1880. Accessed from [http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_10021880\\_arcanum.html](http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_10021880_arcanum.html)

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

The *Familiaris Consortio*,<sup>37</sup> an Apostolic Exhortation of Pope Paul II to the Episcopate, to the Clergy, and to the Faithful of the Whole Catholic Church on the Role of the Christian Family in the Modern World, defines the importance of the roles of marriage and the family. It also underscores the sacramentality of marriage, declaring that the spouses “belonging to each other is the real representation, by means of the sacramental sign, of the very relationship of Christ with the Church.”

The *Gaudium Et Spes*,<sup>38</sup> or the Pastoral Constitution on the Church in the Modern World, which was promulgated by Pope Paul VI on 7 December 1965 after the Second Vatican Council, maintained the importance of marriage and family in the Christian community and society in general. The well-being of the individual person and of human and Christian society is intimately linked with the healthy condition of that community produced by marriage and family. For the good of the spouses, their off-springs, and of society itself, the existence of the sacred bond no longer depends on human decisions alone.<sup>39</sup>

Priests who are duly trained on family matters are directed to nurture the vocation of spouses by a variety of pastoral means. It can be done by preaching God’s word, by liturgical worship, and by other spiritual aids to conjugal and family life. Priests are ordered to provide spiritual aids to conjugal and family life, to sustain them sympathetically and patiently in difficulties and to make spouses courageous through love for purposes of forming illustrious families.<sup>40</sup>

In the 2014 *Instrumentum Laboris*<sup>41</sup> on the Pastoral Challenges of the Family in the Context of Evangelization, in the III Extraordinary General Assembly of the Synod of Bishops, the family is acknowledged as an inviolable asset. The Church also recognized the need to provide care for families living in stressful and critical situations. It likewise provides for pastoral program for the family in light of new challenges, such as marriage preparation and support for familial spirituality.

The Code of Canon Law mandates Pastors of souls to ensure that the entire ecclesiastical community is engaged in safeguarding the sanctity of marriage. Catechisms are adopted so that minors, youth, and adults are instructed about the meaning of the Christian marriage.

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<sup>37</sup> John Paul II, *Familiaris Consortio*, [Apostolic Exhortation On the Role of the Christian Family in the Modern World], November 22, 1981. Accessed from [http://w2.vatican.va/content/john-paul-ii/en/apost\\_exhortations/documents/hf\\_jp-ii\\_exh\\_19811122\\_familiaris-consortio.html](http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html).

<sup>38</sup> Pope Paul VI, *Gaudium Et Spes* [Pastoral Constitution on the Church in the Modern World], December 7, 1965. Accessed from [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_const\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html).

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> *Instrumentum Laboris* 2014, Pastoral Challenges of the Family in the Context of Evangelization, III Extraordinary General Assembly of the Synod of Bishops. Accessed from [http://www.vatican.va/roman\\_curia/synod/documents/rc\\_synod\\_doc\\_20140626\\_instrumentum-laboris-familia\\_en.html](http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20140626_instrumentum-laboris-familia_en.html).

Canon law requires that the parties be personally prepared prior to the celebration of marriage.<sup>42</sup> Thus, before the celebration of matrimony, certain preparatory acts are required in order to ensure its valid and licit celebration.<sup>43</sup> The parties intending to receive the Sacrament of Marriage have to present certificates of Baptism. The parties are required to undergo canonical investigation to ensure their preparedness to enter into the Sacrament of Matrimony.<sup>44</sup> Marriage banns announcing the intentions of the parties are likewise posted in the parish or parishes where the contracting parties belong, in order to ensure that there is no obstacle to the impending marriage.

The prenuptial investigation provided under Canon 1067 has three purposes according to the Catholic Bishops Conference of the Philippines (CBCP): (1) to find out any possible impediment rendering the marriage invalid or illicit, causes of defective or vitiated consent; (2) to ensure the freedom of the parties, and (3) to find out whether the contracting parties are sufficiently instructed in Catholic doctrine, especially on the nature, purpose, and essential characteristics of marriage.<sup>45</sup>

During the marriage, Pastors of souls are obliged to extend help to spouses with the end in view of preserving and protecting the conjugal covenant. Under Canon 1063, this assistance may be in the form of preaching, catechesis, and help offered to those who are married.

Similar to a civil marriage, matrimony under the Canon law has essential properties not dependent on the will of the contracting parties but emanate from the very nature of marriage itself.

Canon 1156 provides that the essential properties of marriage are unity and indissolubility. The unity of marriage refers to the fact that marriage is monogamous – the husband and the wife are not allowed to enter into any relationship or affair with others. Indissolubility of marriage refers to the perpetual bond that ties the husband and wife upon contracting a valid marriage. The matrimonial bond by nature is perpetual and exclusive. A canonical and sacramental marriage validly celebrated between spouses cannot be dissolved by any human power or for any cause or reason other than the death of either party.<sup>46</sup>

It is the duty of Christian spouses to treat each other with fidelity and faithfulness until they are parted by death. A Christian marriage embodies a distinctive stability by virtue of it being a sacrament, blessed with the Grace of God.

For the Catholic Church, a marriage validly celebrated cannot be the subject of an annulment proceedings. It cannot be dissolved or invalidated for whatever cause or reason. Be that as it may, despite the fact that marriage is

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<sup>42</sup> Canon 1063, Canon Law.

<sup>43</sup> Canon 1066, Canon Law.

<sup>44</sup> Canon 1067, Canon Law.

<sup>45</sup> Supra, note 30, page 57.

<sup>46</sup> Canon 1141, Canon Law.



indissoluble by nature, the Catholic Church recognizes that there are certain instances when a marriage entered into suffers from a defect that renders the marriage null and void, or invalid, from the beginning. Thus, under the Canon law, there are generally two kinds of marriage: valid and void.

Under the Canon law, valid marriages are those [1] which observe canonical form; [2] which have no diriment impediment; and [3] where the parties give their free consent. These unions produce juridical effects.

Canons 1108 up to 1123, of Chapter V, Title VII, Part I of the Code of Canon Law govern the form of the celebration of marriage. Canons 1083 to 1094 of Chapter III, Title VII, Part I of the Code of Canon Law provide for the diriment impediments of marriage which render a person unqualified to contract marriage validly.

An important essential element of a valid marriage is the consent of the contracting parties. A defect in the consent likewise causes the invalidity of marriage. Chapter IV, Title VII, Part 1, Book VI of the Code of Canon Law deals with matrimonial consent.

In *Marriage Nullity*,<sup>47</sup> Archbishop Oscar V. Cruz, Judicial Vicar of the National Appellate Matrimonial Tribunal of the Philippines, categorized marriage nullifying realities into three groups, to wit:

“(1st) Impediments to Marriage in terms of ‘Underage’, ‘Impotence’, ‘Pre-Existing Marriage Bond’, ‘Disparity of Worship’, ‘Sacred Orders’, ‘Vow of Chastity’, ‘Abduction’, ‘Crime’, ‘Consanguinity’, ‘Affinity’, ‘Public Propriety’ and ‘Adoption’.

(2nd) Defects of Matrimonial Consent caused by ‘Error’, ‘Deceit’, ‘Simulation’, ‘Condition’, ‘Force’, and/or ‘Fear’.

(3rd) Incapacity to Contract Marriage by reason of substandard ‘Use of Reason’, on account of faulty ‘Judgment’ or by virtue of a personal liability of ‘Psychological Nature’ – with the observation that these three last and more intricate causes are the more often invoked marriage nullity causes during these so called ‘modern’ times that seem to more readily undermine human mental functions, judgment faculty or psychological constitution – in that order of gravity and significance specifically in the realm of rationality and pursuant canonico-normative provisions.”

## **2. COMPARISON OF THE PROCEDURE FOR TERMINATION**

### **2.a. UNDER STATE LAWS**

In order to provide guidelines and to clarify the procedure on the provisions of the Family Code respecting termination of marriage, the Supreme Court issued Administrative Matter No. 02-11-10 dated March 4, 2003, entitled

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<sup>47</sup> O. V. Cruz, *Marriage Nullity*. Manila: Eresbooks Publishing Inc., 2015.

Rules on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, for the guidance of the bench and bar.

All actions for annulment of marriage, as well as for declaration of nullity of marriage, should comply with the procedure laid down by the Supreme Court in Administrative Matter No. 02-11-10. The pertinent portions thereof are as follows:

1. A petition for the declaration of absolute nullity of a void marriage may be filed solely by the husband or the wife.
2. An action or defense for the declaration of absolute nullity of void marriage shall not prescribe.
3. The following persons may file a petition for annulment of voidable marriage based on any of the grounds under Article 45 of the Family Code and within the period herein indicated:
  - (1) The contracting party whose parent, or guardian, or person exercising substitute parental authority did not give his or her consent, within five years after attaining the age of twenty-one unless, after attaining the age of twenty-one, such party freely cohabitated with the other as husband or wife; or the parent, guardian or person having legal charge of the contracting party, at any time before such party has reached the age of twenty-one;
  - (2) The sane spouse who had no knowledge of the other's insanity; or by any relative, guardian, or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during the a lucid interval or after regaining sanity, provided that the petitioner, after coming to reason, has not freely cohabited with the other as husband or wife;
  - (3) The injured party whose consent was obtained by fraud, within five years after the discovery of the fraud, provided that said party, with full knowledge of the facts constituting the fraud, has not freely cohabited with the other as husband or wife;
  - (4) The injured party whose consent was obtained by force, intimidation, or undue influence, within five years from the time the force intimidation, or undue influence disappeared or ceased, provided that the force, intimidation, or undue influence having disappeared or ceased, said party has not thereafter freely cohabited with the other as husband or wife;
  - (5) The injured party where the other spouse is physically incapable of consummating the marriage with the other and such incapability continues and appears to be incurable, within five years after the celebration of marriage; and
  - (6) The injured party where the other party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable, within five years after the celebration of marriage.
4. The petition shall be filed in the Family Court, Regional Trial Court.
5. The public prosecutor is required to ascertain the absence of collusion between the parties.
6. A pre-trial is mandatory.



7. Trial is necessary except on matters that may be compromised.
8. Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children, and delivery of their presumptive legitimes pursuant to Articles 50 and 51 of the Family Code.
9. The court shall issue the Decree of annulment or declaration of nullity after:
  - (1) Registration of the entry of judgment granting the petition for declaration of nullity or annulment of marriage in the Civil Registry where the marriage was celebrated and in the Civil Registry of the place where the Family Court is located;
  - (2) Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located; and
  - (3) The delivery of the children's presumptive legitimes in cash, property, or sound securities.
10. An aggrieved party or the Solicitor General may appeal from the decision of the Regional Trial Court.

The decision of the Regional Trial Court may be appealed by an aggrieved party or by the Solicitor General, if it is the interest of the state that is offended, to the Court of Appeals. In turn, the decision of the Court of Appeals may be appealed to the Supreme Court, in accordance with the provisions of the Revised Rules of Court.

## **2.b. UNDER CANON LAW**

For the Catholic Church, the procedure for the declaration of nullity of marriage is governed by Canons 1671-1691 in Book VII, Part III, Title I, Chapter I of the Code of Canon Law, entitled 'Cases to Declare the Nullity of Marriage.' In the *Mitis Iudex Dominus Iesus* (MIDI),<sup>48</sup> the Apostolic Letter *Motu Proprio* of the Supreme Pontiff, dated August 15, 2015, Pope Francis reformed Canons 1671-1691 of the Code of Canon Law.

The MIDI provides for a few fundamental criteria that have guided the reforms made in the judicial proceedings.

The changes implemented by the MIDI do not favor the nullity of marriages, but are intended to expedite and simplify the judicial processes. As far as the three (3) bases for the declaration of nullity of marriage are concerned (presence of impediment, defective consent, and lack of canonical form), they are not at all altered. The goal is to expedite the process and bring the Christian

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<sup>48</sup> Pope Francis, *Mitis Iudex Dominus Iesus*, [Apostolic Letter *Motu Proprio* of the Supreme Pontiff], Vatican Website, September 8, 2015. Accessed from [w2.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio\\_20150815\\_mitis-iudex-dominus-iesus.html](http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html).

faithful closer together, thereby negating the physical and moral distance between the Church and her children, all for the greater purpose of saving souls.

There are three different categories of procedure for a declaration of nullity of marriage. It may either be ordinary or formal, documentary or administrative, or the shorter process or briefer.

The ordinary procedure has five (5) basic phases: introductory phase, trial phase, decision phase, appeal / executory phase, and post-judicial responsibility.<sup>49</sup>

It is under the introductory phase that the petition is filed, accepted and cited, issues are joined and the tribunal is constituted. The Bill of Complaint or petition (*libellus*) is the formal request by a legally authorized party and addressed to the competent tribunal. The petition specifies the reasons for the alleged nullity and must have supporting facts and proof. It also invokes the service of the judge to declare the nullity of the subject marriage.<sup>50</sup> After ensuring the validity of the petition, the first duty of the tribunal is to ascertain that it has the competence to try the case in its court. The decision to accept a case is made in written form, through a decree. The decree includes a citation or a notification to all parties, including the Defender of the Bond.<sup>51</sup> It is in the joinder of issues that the Judicial Vicar determines the ground or grounds by which the validity of marriage is being challenged.<sup>52</sup>

The trial phase covers the issuance of the summons, hearings and gathering of proofs, publication of the acts, and the issuance of the decree of conclusion.<sup>53</sup> The summons are served to the principal parties and the qualified witnesses, to present evidence to the court for the hearings. In Church matrimonial tribunals, the inquisitorial system is utilized, rather than adversarial. It is the presiding judge who asks the relevant questions, although the associate judges, in cases of collegial tribunals, and the defender of the bond may also participate by propounding questions to those who take the witness stand.<sup>54</sup> Thereafter, a decree on the publication of the acts is issued by the tribunal in order to inform the parties and their legal representatives that the investigation is about to conclude, thereby allowing them to supply additional proof, if necessary.<sup>55</sup> Once the production of proof has been completed, the tribunal shall issue a decree of conclusion in order to close the trial phase.<sup>56</sup>

The third stage, the decision phase, covers the drafting and publication of the sentence. To pronounce an affirmative sentence, the tribunal must reach moral certainty. The MIDI explains moral certainty as “a preponderance of proofs and indications is not sufficient, but it is required that any prudent doubt

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<sup>49</sup> Dela Victoria, Jose Junar N., *A Step-By-Step Guide to the New Marriage Nullity Procedures*. Manila: Aletheia Publishing, 2017, page 31.

<sup>50</sup> Ibid, pages 34-35.

<sup>51</sup> Ibid, page 37.

<sup>52</sup> Ibid, page 39.

<sup>53</sup> Ibid, page 31.

<sup>54</sup> Ibid, page 47.

<sup>55</sup> Ibid, page 50.

<sup>56</sup> Ibid, page 52.

of making an error, in law or in fact, is excluded, even if the mere possibility of the contrary is not removed.”<sup>57</sup> Once a judgment has been rendered, a copy thereof shall be furnished to the petitioner and respondent, their procurators, the promoter of justice and the defender of the bond. However, the sentence shall have no legal effect until it has been officially published.<sup>58</sup>

The fourth stage, is the appeal / executory phase. The appeal against the sentence can be made to one of the following tribunals:

10.1. From the Suffragan Diocese: The appeal is made to the Metropolitan.

10.2. From the Metropolitan: The appeal is made to the senior suffragan, or to the Roman Rota.

10.3. In the Philippines, the National Appellate Matrimonial Tribunal (NAMT) may continue to receive appeals from any tribunals.<sup>59</sup>

Under the rules of the Church, the post-judicial responsibility rests on the Judicial Vicar of the tribunal to notify the local ordinary of the place in which the marriage took place so that the notation of the declaration of the nullity of a marriage is made in the baptismal register of the parties and in the marriage register.<sup>60</sup> Such registration would give the parties to the case the right to remarry under the Catholic Church. However, it has no civil effects.

The procedure for declaration of nullity of marriage may be documentary or administrative when the defect is clear and the parties are allowed to present only documentary evidence. The briefer is a procedure introduced by the MIDI, and is similar to the documentary process. Both have five (5) phases: introductory, instructional, decision, appeal / executory, and post-judicial responsibility.

Under the introductory phase, the introductory bill of complaint or the petition is filed and directed to the Bishop or the tribunal, and must indicate a ground for nullity.<sup>61</sup> Specific to the briefer, the judicial petition must be introduced by both spouses or by one of them, with the consent of the other. If the respondent opposes the petition, the case shall be treated in accordance with the ordinary process.<sup>62</sup>

The facts, proofs and documents which would readily show the nullity of the marriage should already be attached to the petition. Once the Judicial Vicar is convinced of the merit of the case, he issues a decree containing both the acceptance of the petition and the citation of the parties.<sup>63</sup>

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<sup>57</sup> Ibid, page 55.

<sup>58</sup> Ibid, page 56.

<sup>59</sup> Ibid, page 59.

<sup>60</sup> Ibid, page 60, citing *MI, canon 1682 S2*.

<sup>61</sup> Ibid, page 63.

<sup>62</sup> Ibid, page 64.

<sup>63</sup> Ibid, page 65.

The second phase is the instruction and discussion stage of the proceedings. With respect to the briefer, the presentation of the evidence must be held in a single setting. The proofs rendering the nullity of the marriage must be relevant and irrefutable so much so that they can be consolidated in a single session of instruction.<sup>64</sup>

The third phase is the decision stage of the proceedings. If moral certainty on the nullity of the marriage is reached, the Bishop shall sign the Affirmative Sentence of the Nullity, and the Notary certifies it. However, if moral certainty is not reached, the Bishop shall refer the case to the ordinary process.<sup>65</sup>

The fourth phase is the appeal / executory stage of the proceedings. In a briefer, an appeal against the affirmative decision is a rare possibility because the case was jointly initiated by the parties or by one of the parties with the consent of the other.

Under the fifth phase of the proceedings is the post-judicial notification of nullity. In the absence of an appeal, it is the duty of the Judicial Vicar to notify the ordinary of the place where the marriage took place regarding the declaration of the nullity of the marriage.<sup>66</sup> This notation must also be made in the baptismal register of the parties to re-establish the freedom of the parties to contract marriage.<sup>67</sup> Again, this has no civil effects.

The MIDI is intended to provide a more streamlined set of rules for declaring the nullity of marriage and a readily accessible judicial process. Accordingly, the procedure for declaring a marriage null under Canon law is made shorter, but not necessarily easier.<sup>68</sup>

### **3. COMPARISON OF THE GROUNDS AND EFFECTS**

#### **3.a. GROUNDS**

A good marriage is the bedrock of a good family, and a good family produces a good society – such is the basis of the value given by the state on marriage. For the Catholic Church, marriage is one of the seven sacraments; thus, the Church is vigilant in defending and safeguarding matrimony.

The state and the church both favor marriage. Thus, a presumption in favor of marriage is established under state laws and jurisprudence, as well as in the Canon law of the Catholic Church.

In the case of *Adong vs. Cheong Seng Gee*,<sup>69</sup> the Supreme Court elaborated that persons dwelling together in apparent matrimony are presumed to be

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<sup>64</sup> Ibid, page 71.

<sup>65</sup> Ibid, page 76.

<sup>66</sup> Ibid, page 79, citing *MI canon 1682 S2*.

<sup>67</sup> Ibid, citing *canon 535 S2*.

<sup>68</sup> *Supra*, note 2, citing Personal communication with Arch. Oscar V. Cruz, Judicial Vicar of the National Appellate Matrimonial Tribunal, on April 6, 2016.

<sup>69</sup> G.R. No. 18081, March 3, 1922.

married in fact, absent evidence to the contrary. *Semper praesumitur pro matrimonio* – Always presume marriage.

In the case of *Malcampo-Sin vs. Sin*,<sup>70</sup> the Supreme Court declared that marriage is of a permanent nature and is immutable when both spouses give their consent to enter it, their consent becomes irrevocable, unchanged even by their independent wills.

Similarly, on the part of the Catholic Church, Canon 1060 provides that “[m]arriage enjoys the favor of law. Consequently, in doubt the validity of a marriage must be upheld until the contrary is proven.”

Be that as it may, no matter how much marriage is regulated and protected by the state, as well as defended and safeguarded by the Catholic Church, there are instances when a marriage simply fails for one reason or another.

In recognition of such, the Family Code provided grounds for termination of marriage, either through annulment for voidable marriages or declaration of nullity for marriages that are void *ab initio*. Meanwhile, the Catholic Church also recognizes the fact that there are unions that may fail due to a lack or defect of any of the required elements of marriage. However, for the Catholic Church, a marriage validly celebrated cannot be the subject of any action for the annulment or dissolution of marriage bonds.

The grounds for declaring a marriage null under Canon law and for declaring a marriage null, as well as for annulling a voidable marriage under the Family Code, are similar. A comparative table is provided hereunder, to wit:

CANON LAW	FAMILY CODE
Can. 1067. <sup>71</sup> The conference of bishops is to establish norms about the examination of spouses and about the marriage banns or other opportune means to accomplish the investigations necessary before marriage. After these norms have been diligently observed, the pastor can proceed to assist at the marriage. <sup>72</sup>	Void marriages Art. 35. The following marriages shall be void from the beginning: (3) Those solemnized without license.
Can. 1083	Void marriages

<sup>70</sup> G.R. No. 137590, March 26, 2001.  
<sup>71</sup> This is not a ground for declaration of nullity. However, it is a similar provision in the Canon law with Article 35(3) of the Family Code.  
<sup>72</sup> In the prenuptial investigation, the parish priest must know about the age, place of residence, parents, religion, catechetical instruction, freedom to marry and other items related to consanguinity and consent of parents or their advice. (Supra, note 30, Page 56)



<p>S1. A man before he has completed his sixteenth year of age and a woman before she has completed her fourteenth year of age cannot enter into a valid marriage.<sup>73</sup></p>	<p>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.</p>
<p>Can. 1084 S1. Antecedent and perpetual impotence to have intercourse, whether on the part of the man or the woman, whether absolute or relative, nullifies marriage by its very nature.</p>	<p>Voidable marriages Art. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage: (5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable.</p>
<p>Can. 1085 S1. A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage.</p>	<p>Void marriages Art. 35. (4) Those bigamous or polygamous marriages not failing under Article 41.</p>
<p>Can. 1086 §1. A marriage between two persons, one of whom has been baptized in the Catholic Church or received into it and has not defected from it by a formal act and the other of whom is not baptized, is invalid.</p>	
<p>Can. 1087 Those in sacred orders invalidly attempt marriage.</p>	
<p>Can. 1088 Those bound by a public perpetual vow of chastity in a religious institute invalidly attempt marriage.</p>	
<p>Can. 1089 No marriage can exist between a man and a woman who has been abducted or at least detained with a</p>	<p>Voidable marriage Art. 45. (4) That the consent of either party was obtained by force,</p>

<sup>73</sup> Canon 1083 establishes the ages of sixteen and fourteen for a man and a woman to be able to marry, such age having been completed. But the canon allows episcopal conferences to set a higher age. So, the Catholic Bishops' Conference of the Philippines (CBCP) set the ages of eighteen for both parties to marry. This local legislation, though, is only for liceity, not for validity. (Ibid, Pages 50-51.)

view of contracting marriage with her unless the woman chooses marriage of her own accord after she has been separated from the captor and established in a safe and free place.	intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife
Can. 1090 S1. Anyone who with a view to entering marriage with a certain person has brought about the death of that person's spouses or of one's own spouse invalidly attempts marriage.	Void marriages Art. 38. The following marriages shall be void from the beginning for reasons of public policy: (9) Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse.
Can. 1091 S1. In the direct line of consanguinity marriage is invalid between all ancestors and descendants, both legitimate and natural.	Void marriages Art. 37. Marriages between the following are incestuous and void from the beginning, whether 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.
Can. 1091 S2. In the collateral line marriage is invalid up to and including the fourth degree.	Void marriages 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.
Can.1092 Affinity in the direct line in any degree invalidates a marriage	Void marriages Art. 38. The following marriages shall be void from the beginning for reasons of public policy: (2) Between step-parents and step-children. (3) Between parents-in-law and children-in-law.
Can. 1093 The impediment of public propriety arises from an invalid marriage after the establishment of common life or from notorious or public concubinage. It nullifies marriage in the first degree of the direct line	



between the man and the blood relatives of the woman, and vice versa.	
<p>Can. 1094</p> <p>Those who are related in the direct line or in the second degree of the collateral line by a legal relationship arising from adoption cannot contract marriage together validly.</p>	<p>Void marriages</p> <p>Art. 38. The following marriages shall be void from the beginning for reasons of public policy:</p> <p>(4) Between the adopting parent and the adopted child;</p> <p>(5) Between the surviving spouse of the adopting parent and the adopted child;</p> <p>(6) Between the surviving spouse of the adopted child and the adopter;</p> <p>(7) Between an adopted child and a legitimate child of the adopter;</p> <p>(8) Between adopted children of the same adopter;</p>
<p>Can. 1095</p> <p>The following are incapable of contracting marriage:</p> <p>1. those who lack the sufficient use of reason.</p>	<p>Voidable marriages</p> <p>Art. 45</p> <p>(2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife.</p>
<p>Can. 1095</p> <p>2. those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted.</p> <p>3. those who are not able to assume the essential obligations of marriage for causes of a psychic nature.</p>	<p>Void marriages</p> <p>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.</p>
<p>Can. 1097</p> <p>§1. Error concerning the person renders a marriage invalid.</p> <p>§2. Error concerning a quality of the person does not render a marriage invalid even if it is the cause for the contract, unless this</p>	<p>Void marriages</p> <p>Art. 35. The following marriages shall be void from the beginning:</p> <p>(5) Those contracted through mistake of one contracting party as to the identity of the other.</p>

quality is directly and principally intended. <sup>74</sup>	
<p>Can. 1098</p> <p>A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life.</p>	<p>Voidable marriage</p> <p>Art. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:</p> <p>(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.</p>
<p>Can. 1102</p> <p>§1. A marriage subject to a condition about the future cannot be contracted validly.</p>	
<p>Can. 1103</p> <p>A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free.</p>	<p>Voidable marriages</p> <p>Art. 45</p> <p>(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;</p>
<p>Can. 1105</p> <p>§1. To enter into a marriage validly by proxy it is required that:</p> <p>§2. To be valid the mandate must be signed by the one mandating and by the pastor or ordinary of the place where the mandate is given, or by a priest delegated by either of them, or at least by two witnesses, or it must be made by means of a document which is authentic according to the norm of civil law.<sup>75</sup></p>	
<p>Can. 1108</p> <p>S1. Only those marriages are valid which are contracted before</p>	<p>Void Marriages</p> <p>Art. 35. The following marriages shall be void from the beginning:</p>

<sup>74</sup> Renders the marriage void on the grounds of deceit. (Ibid, Page 65.)

<sup>75</sup>

Invalid proxy marriage.

the local ordinary, pastor, or a priest deacon delegated by either of them, who assist, and before two witnesses according to the rules expressed in the following canons and without prejudice to the exceptions mentioned in can. 144, 1112, S1, 1116, and 1127, SS1-2.	(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.
<p>Can. 1707</p> <p>§1. Whenever the death of a spouse cannot be proven by an authentic ecclesiastical or civil document, the other spouse is not considered free from the bond of marriage until after the diocesan bishop has issued a declaration of presumed death.</p> <p>§2. The diocesan bishop is able to issue the declaration mentioned in §1 only if, after having carried out appropriate investigations, he attains moral certitude of the death of the spouse from the depositions of witnesses, from rumor, or from evidence. The absence of a spouse alone, even for a long time, is not sufficient.</p> <p>§3. The bishop is to consult the Apostolic See in uncertain and complicated cases.<sup>76</sup></p>	<p>Art. 41. A marriage contracted by any person during 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.</p>

The ground of psychological incapacity, which may be found under Article 36, is a new provision in the Family Code. In the case of *Republic of the Philippines vs. Court of Appeals and Roridel Molina*,<sup>77</sup> the Supreme Court recognized that Article 36 was derived by the Family Code Revision Committee from paragraph 3, Canon 1095 of the Code of Canon Law.

For the Church, the problem of the validity of marriage where one of the parties is psychologically incapable to assume marital obligations has two viewpoints. Firstly, it can be attacked on the ground of defective consent flowing from a volitional weakness which is caused by mental illness in its broadest sense. Secondly, it can be attacked on the ground of lack of the object of consent, that is, the party is not capable of fulfilling the essential obligations of marriage.<sup>78</sup>

On the part of the state, psychological incapacity remains undefined. The term psychological incapacity defies any precise definition since psychological

<sup>76</sup> This is not a ground for declaration of nullity. However, it is a similar provision in Canon Law with Article 41 of the Family Code.

<sup>77</sup> G.R. No. 108763, February 13, 1997.

<sup>78</sup> Supra, note 30, Page 76.

causes can be of an infinite variety. However, in the *Molina* case, which is one of the early cases interpreting Article 36, the Supreme Court laid down the guidance in the interpretation of Article 36 for both the bench and bar. The *Molina* case took into consideration the opinions of two *amici curiae*, specifically, the Most Reverend Oscar V. Cruz, the Judicial Vicar of the National Appellate Matrimonial Tribunal of the Catholic Church, and Justice Ricardo C. Puno, a member of the Family Code Revision Committee.

It is important to note of the ruling of the Supreme Court in the *Molina* case where civil courts are directed to give respect to decisions of the Matrimonial Tribunal. The same is not true conversely. The Matrimonial Tribunal of the Catholic Church does not recognize any decree or judgment of annulment or declaration of nullity issued by the civil courts.<sup>79</sup> The Matrimonial Tribunal conducts its own investigation on the grounds relied upon for declaration of nullity and does not recognize any prior decree or judgment issued by the civil courts.

In the case of *Santos vs. Court of Appeals*,<sup>80</sup> it was held by the Supreme Court that although neither decisive nor even perhaps all that persuasive for having no juridical or secular effect, the jurisprudence under Canon Law prevailing at the time of the code's enactment, nevertheless, cannot be dismissed as impertinent for its value as an aid, at least, to the interpretation or construction of the codal provision.

In the case of *Leonilo Antonio vs. Marie Yvonne F. Reyes*,<sup>81</sup> the Supreme Court laid down the importance of the opinion of Canon law experts in the interpretation of psychological incapacity, giving much respect to the decisions of the Matrimonial Tribunal.

In the said *Antonio* case, the Metropolitan Tribunal of the Archdiocese of Manila previously decreed the invalidity of the marriage in question in a Conclusion dated 30 March 1995, citing the lack of due discretion on the part of respondent. Such decree of nullity was affirmed by both the National Appellate Matrimonial Tribunal, and the Roman Rota of the Vatican. In fact, the respondent's psychological incapacity was considered so grave that a restrictive clause was appended to the sentence of nullity prohibiting respondent from contracting another marriage without the Tribunal's consent.<sup>82</sup>

Again, the Supreme Court acknowledged in the *Antonio* case, the influence of Catholic Church doctrine in the formulation and subsequent understanding of Article 36 of the Family Code, or the ground of psychological incapacity. Thus, it was held that the Court of Appeals erred when it failed to take into consideration the fact that the marriage of the parties has been declared void *ab initio* by the Catholic Church. According to the Supreme Court, this detail is not

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<sup>79</sup> *Supra*, note 2.

<sup>80</sup> G.R. No. 112019, January 4, 1995.

<sup>81</sup>

G.R. No. 155800, March 10, 2006.

<sup>82</sup> *Ibid*.

inconsequential and should have been taken into consideration in the determination of the case.<sup>83</sup>

There are similarities in the grounds provided under the Family Code and the Canon law respecting annulment of marriage, as well as in the declaration of nullity of marriage. Accordingly, it is not without any basis or unreasonable on the part of the state to recognize the decree of nullity issued by the Matrimonial Tribunal of the Catholic Church.

### 3.b. EFFECTS

One of the most important natural consequences of the termination of marriage is the right to remarry, both on the part of the state and the Catholic Church.

On the part of the state, it should be borne in mind that there are two grounds in termination of marriage: the annulment of a voidable marriage and the declaration of nullity of a void *ab initio* marriage.

A voidable marriage is that which is valid until it is annulled on any of the grounds of annulment of marriage provided under Article 45 of the Family Code. There exists a valid marriage bond which the law allows to be severed in accordance with the grounds provided for by law and the procedure laid down by the rules.<sup>84</sup> On the other hand, a void marriage is inexistent from the beginning. There is no valid marriage bond at all.

Under state laws, whether the ground is annulment or declaration of nullity of marriage, after the decree has been issued and has attained finality, the parties thereto shall thereafter have the right to remarry.

On the part of the Church, once the decree of declaration of nullity of marriage has been confirmed at the appellate grade, the parties are likewise allowed to contract another marriage, unless there is a restrictive clause forbidding such.<sup>85</sup>

The problem lies in the fact that under state laws, the decree of nullity issued by the Church is not recognized. Thus, should the parties enter into another contract of marriage after a decree of nullity has been issued by the Church respecting their first marriage, they shall still be criminally liable for bigamy under Article 349 of the Revised Penal Code.

Also important is Article 40 of the Family Code, which requires a judicial declaration of void marriage before the parties thereto can remarry, the purpose of which is to do away with any continuing uncertainty on the status of the second marriage. The subsequent provision, Article 41, provides that a marriage contracted by any person during the subsistence of a previous marriage is null and void.

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<sup>83</sup> Ibid.

<sup>84</sup> Administrative Matter No. 02-11-10-SC.

<sup>85</sup> Section 1, Canon 1684 of the Canon law.

For purposes of remarriage, only a judicial declaration by the courts confirming the nullity of the first marriage would suffice. Thus, upon issuance of a decree of nullity by the Matrimonial Tribunal of the Catholic Church and should any of the parties thereto enter into another contract of marriage, albeit allowed by the Church, they would be liable for the crime of bigamy.

## **B. STATE ACCOMMODATION AND BURDEN ON RELIGIOUS FREEDOM**

### **1. ESTABLISHMENT CLAUSE AND FREEDOM OF RELIGION CLAUSE**

The principle of separation of church and state is based on mutual respect.<sup>86</sup> Generally, the state cannot meddle in the internal affairs of the church, much less question its faith and dogmas or dictate to it. It cannot favor one religion over another and discriminate against it. On the other hand, the church cannot impose its beliefs, even if it sincerely believes that they are for the good of the state.

Notwithstanding the significance of the principle of separation of church and state, it cannot be gainsaid that religion has a moralizing effect that is beneficial to the individual, as well as the society in general, including the government. The Constitution itself recognizes that total separation between the church and state is not possible in an absolute sense. Some relationship between the government and religious organizations is inevitable.

The constitutional assurance of religious freedom, as provided under Section 5, Article III of the 1987 Constitution, offers two guarantees: the Establishment Clause and the Free Exercise Clause.

The Establishment Clause essentially requires the state to remain neutral in its relationships with groups of religious believers and nonbelievers.<sup>87</sup> Under this principle, a state cannot set up a church. The state cannot pass laws that aid one religion, aid all religions, or prefer one religion over another. The state cannot force or influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for attending or not attending church. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. A state cannot openly or secretly participate in the affairs of any religious organization or groups and vice versa.<sup>88</sup> It is intended to erect a wall of separation between church and state.<sup>89</sup>

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<sup>86</sup> *Imbong vs. Ochoa*, G.R. No. 204819, April 8, 2014.

<sup>87</sup> *Estrada vs. Escritor*, A.M. No. P-02-1651, June 22, 2006.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*



In the case of *Lemon vs. Kurtzman*,<sup>90</sup> it was determined that the main evils against which the Establishment Clause was intended to afford protection are: sponsorship, financial support, and active involvement of the state in religious activities. Religion should be allowed to rise and fall on its own, without any intervention or assistance from the state.

The principle of non-establishment does not require complete and absolute separation of the church and state. Rigidity can very well defeat the basic purposes of the Establishment Clause, which is to ensure that no religion is sponsored or favored, none commanded, and none inhibited.<sup>91</sup> The Establishment Clause primarily seeks to establish the boundaries between the church and the state, thereby avoiding excessive entanglement between the two authorities.

Meanwhile, the Free Exercise Clause springs from the inviolability of the human conscience. It is intended to protect freedom to believe and to practice one's religion. The right to religious conscience is a fundamental human right protected by the Bill of Rights, as embodied in Article III of the 1987 Constitution. The observance of religious freedom is not only a Constitutional mandate; it is not created by positive law, but rather emanates from the human dignity and worth of the human person, and is inherent in every individual.

Religion has to do with man's relations to his Maker and the obligations he believes they impose, including the manner in which an expression shall be made by him of his beliefs. In this regard, no interference on the part of the state can be permitted. The basis of this is man's freedom of choice, which guarantees the liberty of the religious conscience.

It has been posited that there is a natural antagonism between the Establishment Clause and the Free Exercise Clause. It has been said that the command not to establish a religion is incompatible with the command to uphold the right to practice one's religion.<sup>92</sup>

The conflict is more apparent than real. Free exercise is the end, and proscribing establishment is a necessary means to this end. The Establishment Clause and the Free Exercise Clause share a common goal – to promote individual freedom of religious beliefs and practices. The Free Exercise Clause prohibits the government from inhibiting the free exercise of religion with penalties for religious beliefs and practices, while the Establishment Clause prohibits the government from inhibiting religious beliefs with rewards for them.<sup>93</sup>

The right to religious profession and worship has a two-fold aspect: the freedom to believe and the freedom to act on one's beliefs. The first is absolute as long as the belief is confined within the realm of thought. The second is subject

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<sup>90</sup> 403 U.S. 602, 1971.

<sup>91</sup> *Walz vs. Tax Commission of City of New York*, 397 U.S. 664, 1970.

<sup>92</sup> *Supra*, note 1.

<sup>93</sup> *Ibid*.



to regulation, where the belief is translated into external acts that affect the public welfare.<sup>94</sup>

The individual is free to believe or disbelieve. He is free to worship any god or none at all, to embrace or reject any religion. However absurd his beliefs may be to others, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. "Men may believe what they cannot prove."<sup>95</sup>

However, where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the state. As great as this liberty may be, religious freedom, like all the other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others. It is erroneous to think that the mere invocation of religious freedom will stalemate the state and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices that are inimical to society. This is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.<sup>96</sup>

Be that as it may, it bears reiteration that the purpose of the religion clauses – both in the restriction it imposes on the power of the government to interfere with the freedom of religion and the limitation on the government to establish, aid, and support religion – is the protection and promotion of religious liberty.<sup>97</sup>

The religion clauses of the Constitution are designed to safeguard the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good.<sup>98</sup>

## 2. ACCOMMODATION OF RELIGION

The 1987 Philippine Constitution mandates the separation of church and state. The total and absolute separation between the church and the state, however, is not possible as it is, in fact, inimical to the interest of the individual, and consequently, society itself. Absolute separation may work to curtail religious freedom, which is also guaranteed by the Constitution.

Complete and absolute separation between the church and state is not possible as some sort of relationship between them must unavoidably exist. The wall of separation is not rigid and inflexible; instead, the boundary is a flexible blur simply intended to protect one from the other.

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<sup>94</sup> Cruz, Isagani, *Constitutional Law*. Manila: Central Lawbook Publishing Co., 1995 Ed., Page 174.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid, Page 175.

<sup>97</sup> Supra, note 1.

<sup>98</sup> Victoriano vs. Elizalde Rope Workers Union, G.R. No. L-25246, September 12, 1974.

As a constitutional mandate, religious freedom is not an inhibition of the profound reverence of religion and is not a denial of the influence of religion in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized by the state.<sup>99</sup>

The liberty of religious conscience requires the state to aid and support the individual so he can live his life in accordance with the demands of his religion and in pursuit of his own personal salvation. Thus, the principle of toleration and accommodation has become an exception to the rule of separation.

On occasion, the state is required to observe not only religious tolerance but also religious accommodation, in order to give life to the Constitutional guarantee of religious freedom.

In the case of *Re: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City*,<sup>100</sup> accommodation has been explained as a recognition of the reality that some governmental measures may not be imposed on a certain portion of the population for the reason that these measures are contrary to their religious beliefs. As long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the state to regulate or prohibit such right would be an unconstitutional encroachment.

Accommodation may be characterized into two kinds: mandatory and permissive. Mandatory accommodations are those which are found to be constitutionally compelled or required by the free exercise clause, while permissive accommodations are those not required by the free exercise clause but permitted by the establishment clause.<sup>101</sup>

Mandatory accommodation occurs when three (3) conditions are met: first, a statute or government action has burdened claimant's free exercise of religion and there is no doubt as to the sincerity of the claimant's religious belief; second, the state has failed to demonstrate a particularly important or compelling governmental goal in preventing an exemption; and, that the state has failed to demonstrate that it used the least restrictive means. On the other hand, permissive accommodation is not absolutely required by the free exercise clause, thus, it may be granted or withheld by the state.

The 1987 Philippine Constitution itself provides several general concessions accorded to religious sects and denominations. Foremost, the Preamble of the Constitution, where the Filipino People implored the Aid of Almighty God "in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good," is a recognition of the lofty position where religion is consigned in the Filipino society. The mention of the 'Almighty God' in the Preamble not only recognized but also bolstered the religious nature of the Filipino people and the influence of religion in the Filipino society.

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<sup>99</sup> Gregorio Aglipay vs. Juan Ruiz, G.R. No. L-45459, March 13, 1937.

<sup>100</sup> A.M. No. 10-4-19-SC, March 7, 2017.

<sup>101</sup> Supra, note 1.

At this point, it bears emphasis that there are provisions on accommodation of religion that may be found in the 1987 Constitution which proves that despite the mandated policy of separation of church and state, it is not hostile at all to religion. Thus, the following constitutional provisions, to wit:

“Article VI  
Legislative Department

Section 28 ...

(3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

Section 29 ...

(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.”

“Article XIV  
Education, Science and Technology, Arts, Culture, and Sports

Section 3 ...

(3) At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government.”

In the case of *American Bible Society vs. City of Manila*,<sup>102</sup> the Supreme Court gave meaning to Section 28, Article VI of the Constitution, which declared that churches shall be exempt from taxation. Thus, it was held that to tax the exercise of religious practice can make its exercise so costly as to be tantamount to a deprivation of resources necessary for its maintenance. Thus, the taxing authority has the power to deprive those who do not have the financial means from exercising their right to religious freedom.

Aside from the basic principles provided in the Constitution, there are laws enacted by the legislative department of the government that afford

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<sup>102</sup> G.R. No. L-9637, April 30, 1957.

concessions to religious sects and denominations. These legislative acts are forms of permissive accommodation.

The observance of religious holidays is an illustration of the preferential treatment and value bestowed by the State to religion. Thus, the enactment of the following legislative concessions:

“Administrative Code

Chapter 7

Regular Holidays and Nationwide Special Days

Section 26.

A. Regular Holidays

...

Maundy Thursday - Movable date

Good Friday - Movable date”<sup>103</sup>

“Republic Act No. 9177<sup>104</sup>

Section 1. The first day of Shawwal, the tenth month of the Islamic calendar, is hereby declared a national holiday for the observance of Eidul Fitr, and the tenth day of Zhul Hijja, the twelfth month of the Islamic calendar is hereby declared a regional holiday in the Autonomous Region in Muslim Mindanao (ARMM) for the observance of Eidul Adha. Eidul Fitr is the first day marking the end of the thirty (30)-day fasting period of Ramadhan Eidul Adha is a tenth day in the month of Hajj or Islamic Pilgrimage to Mecca wherein Muslims pay homage to Abraham's supreme act of sacrifice and signifies mankind's obedience to God.”

“Republic Act No. 9849<sup>105</sup>

Section 1. The tenth day of Zhul Hijja, the twelfth month of the Islamic Calendar, is hereby declared as a national holiday for the observance of Eidul Adha. Eidul Adha is a tenth day in the month of Hajj or Islamic Pilgrimage to Mecca wherein Muslims pay homage to Abraham's supreme act of sacrifice and signifies mankind's obedience to God.”

“P.D. No. 291<sup>106</sup>

Sec. 3. (a) During the fasting season on the month of Ramadan, all Muslim employees in the national government, government-owned or controlled corporations, provinces, cities, municipalities and other

<sup>103</sup> Section 26, Article 7 of the Administrative Code.

<sup>104</sup> July 22, 2002.

<sup>105</sup> July 27, 2009.

<sup>106</sup> As amended by P.D. 322.

instrumentalities shall observe office hours from seven-thirty in the morning (7:30 a.m.) to three-thirty in the afternoon (3:30 p.m.) without lunch break or coffee breaks, and that there shall be no diminution of salary or wages, provided, that the employee who is not fasting is not entitled to the benefit of this provision.”

Even the Revised Penal Code provides protection to religion and religious worship. Despite the principle of separation of church and state under the Constitution, crimes against religious worship were listed under the title ‘Crimes Against Fundamental Laws of the State’ of Book 2 of the Revised Penal Code. Thus, the crimes ‘interruption of religious worship’ and ‘offending religious feeling’ under the Revised Penal Code are punished as crimes against the fundamental laws of the state.

Clearly, the influence of religion in society and its importance in the conduct of human affairs are recognized by the state. As may be gleaned from the provisions of the Revised Penal Code under Crimes Against Religious Worship, religion is given not only preferential treatment but also protection by the state.

#### “Revised Penal Code

##### Title Two

##### Crimes Against the Fundamental Laws of the State

##### Section Four. – Crimes against religious worship

Art. 132. Interruption of religious worship. – The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestations of any religion.

If the crime shall have been committed with violence or threats, the penalty shall be prision correccional in its medium and maximum periods.

Art. 133. Offending the religious feelings. – The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.”

One of the most notable acts of legislative accommodation is Presidential Decree No. 1083, also known as the Code of Muslim Personal Laws of the Philippines, which was enacted on February 4, 1977. Although the Muslim Code was legislated as a form of political concession in order to acknowledge Muslim demands for recognition and on the justification that they were a minority culture, the fact cannot be disguised that it championed religious freedom in the Philippines.

The Code of Muslim Personal Laws considers the customs, traditions, beliefs, and interests of the Muslim cultural community, and recognizes the Muslim legal system as part of the laws of the land.

“Presidential Decree 1083

Code of Muslim Personal Laws of the Philippines

Art. 2. Purpose of Code. — Pursuant to Section 11 of Article XV of the Constitution of the Philippines, which provides that "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies," this Code:

- (a) Recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective;
- (b) Codifies Muslim personal laws; and
- (c) Provides for an effective administration and enforcement of Muslim personal laws among Muslims.”

On June 18, 1961, Republic Act No. 3350, entitled An Act Amending Paragraph (4), Subsection (a) of Section 4 of Republic Act No. 875, was enacted. Republic Act No. 3350 exempts from the application and coverage of a union closed shop agreement employees belonging to any religious sect which prohibits affiliation of their members with any labor organization.

The constitutionality of Republic Act No. 3350 was questioned and upheld by the Supreme Court in the 1974 case of *Benjamin Victoriano vs. Elizalde Rope Workers’ Union*.<sup>107</sup> The law directly benefitted and favored members of the Iglesia ni Cristo, exempting them from the operation of closed shop agreement, and consequently, from union obligation and liability.

In the *Victoriano* case, the Supreme Court sustained the primacy of religious freedom. The free exercise of religious profession or belief is superior to contract rights; in case of conflict, the latter must yield to the former. The freedom of religion enjoys a preferred position in the constitutional system. Religious freedom, although not absolute as in any other rights, is a fundamental personal right and liberty, and has a preferred position in the hierarchy of values.

Throughout the years, the Supreme Court has decided a number of cases wherein it declared that religious realities, traditions and established practices shall be protected with a flexible reading of the principle of separation of church and state, as well as by the no establishment and freedom of religion clauses.

In the early case of *Gregorio Aglipay vs. Juan Ruiz*,<sup>108</sup> which was decided on March 13, 1937, the petitioner, Mons. Gregorio Aglipay, Supreme Head of the Philippine Independent Church, sought the issuance of a writ of prohibition to prevent the respondent Director of Posts from issuing and selling postage stamps

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<sup>107</sup> Supra, note 98.

<sup>108</sup> Supra, note 99.



commemorative of the Thirty-third International Eucharistic Congress. He claimed that the act of the Director of Posts violated the provisions of section 23, subsection 3, Article VI, of the Constitution of the Philippines, which prohibits the use of public money for the benefit or support of any church or religious sect. This prohibition provided under subsection 3 of Article VI of the Constitution is a direct corollary of the principle of separation of church and state.

The Supreme Court held in the said *Aglipay* case that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, any benefit received by the Roman Catholic Church from the said government action, was however, not the aim and purpose of the Government. These are incidental results, which may be religious in character, but can be legitimately undertaken by appropriate legislation. The main purpose, which is secular in nature, should not be frustrated by its subordinate to mere incidental results not contemplated by the law.

In the case of *Andres Garces vs. Numeriano G. Estenzo*,<sup>109</sup> the Supreme Court upheld the constitutionality of four resolutions of the barangay council of Valencia, Ormoc City, regarding the acquisition of the wooden image of San Vicente Ferrer to be used in the celebration of his annual feast day, finding that the barrio fiesta is a socio-religious affair. In the *Garces* case, the Supreme Court had the occasion to declare that not every governmental activity which involves the expenditure of public funds and which has some religious tint is violative of the constitutional provisions regarding separation of church and state, freedom of worship and banning the use of public money or property.

The aforementioned only illustrates that the Constitution and statutes, as well as judicial interpretations thereof, have accorded several concessions to religion. The state cannot restrict, impede or in any way intrude on the religious freedom of an individual as well as that of any religious sect or denomination. The State is not allowed to discriminate or show any preference for any religious sect or denomination. However, the state is not precluded from aiding and supporting religion so long as it is done equally and impartially and in order to further the freedom of conscience.

### **3. BURDEN ON MARRIAGE**

A suitable illustration of permissive accommodation may be found in the Family Code, in the contract of marriage. Article 7 of the Family Code allows a marriage to be solemnized by any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect, provided that he acts within the limits of the written authority granted by his church or religious sect.

In the solemnization of marriage, the value of religion and religious traditions are in fact acknowledged by the state. Unfortunately, the state recognition does not extend to the termination of marriage.

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<sup>109</sup> G.R. No. L-53487, May 25, 1981.

The policy of the state in restricting the termination of marriages only to its civil aspect, without regard to the beliefs, practices, and traditions of churches and religious sects, violates an individual's religious freedom.

Be that as it may, there are apparent Constitutional impediments in the recognition of the termination of marriage decreed by the Matrimonial Tribunal of the Catholic Church, or by any ecclesiastical tribunal, for that matter. It appears that the principles of separation of church and state, as well as the establishment clause in the Constitution, proscribe any law that may release marriage from the claws of secularization. The proscription, however, is more apparent than real.

Fundamentally, the Establishment Clause requires the government to be neutral on religious matters. The right of religious conscience, being a fundamental human right, should take precedence over state neutrality.<sup>110</sup> In fact, state neutrality violates freedom of religion in instances where an action properly falls within the realm of religion.<sup>111</sup>

In the case of *County of Allegheny vs. American Civil Liberties Union*,<sup>112</sup> decided by the United States Supreme Court on July 3, 1989, it was pointed out that the establishment clause was understood to mean that "government may not promote or affiliate itself with any religious doctrine or organization, may not discriminate among persons on the basis of their religious beliefs and practices, may not delegate a governmental power to a religious institution, and may not violate itself too deeply in such an institution's affairs."

Thus, the questions remain: Will the enactment of a law recognizing the dissolution of marriage decreed by the church or religious sects in the Philippines violate the Establishment Clause? Or will it promote religious freedom instead?

In the case of *Roel Ebralinag vs. The Division Superintendent of Schools of Cebu*,<sup>113</sup> the Supreme Court maintained that religious freedom is a fundamental human right entitled to utmost priority and the greatest protection among human rights, as it involves the relationship of man to his Creator. In the hierarchy of rights, religious freedom comes to the fore and deserves the utmost safeguard and protection. According to Thomas Jefferson, religious freedom is the most inalienable and sacred of all human rights.<sup>114</sup>

The inclusion of religious freedom in the Bill of Rights is a guarantee that it is placed in a realm that the government, in all its power and might, cannot unduly burden. The case of *School District vs. Schempp*,<sup>115</sup> decided by the United

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Morrison, Scott, *Religion, Law and the State: Toleration, Non-preferentialism, and Equidistance*. 58 Ateneo Law Journal 871, 2014, Page 887.

<sup>111</sup> Bernas, Joaquin, *The Constitution of the Republic of the Philippines: A Commentary*. Manila: Rex Book Store, 1995, page 233.

<sup>112</sup> 492 U.S. 573, July 3, 1989.

<sup>113</sup> G.R. No. 95770, March 1, 1993.

<sup>114</sup> Virginia Board of Visitors Minutes, 1819. ME 19:416.

<sup>115</sup> 374 U.S. 203 (1963).

States Supreme Court on June 17, 1963, specifically declared that the purpose of the “Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.”

The right to religious freedom, as well as other fundamental and inherent rights of a human being, may not be submitted to a vote and they depend on the outcome of no elections. Religion has been placed in a realm that is not within the power of government to invade.

In the case of *Gregorio Aglipay vs. Juan Ruiz*,<sup>116</sup> the Supreme Court explicitly stated that what is guaranteed by the Constitution is religious liberty, not merely religious toleration.

With respect to marriage, the State acknowledges the individual’s right to religious freedom when it allows the solemnization of marriage in accordance with one’s religion. It cannot be gainsaid, however, that the termination of marriage is no less religious than its establishment. Thus, the imposition by the State that marriage bonds may only be terminated in accordance with the state’s laws is a burden and a clear restraint on religion.

In the case of *American Bible Society v. City of Manila*,<sup>117</sup> the Supreme Court specifically stated that the restraint of religious liberty can only be justified on the grounds that there is a clear and present danger of a substantive evil that the state has the right to prevent.

The sole justification for a prior restraint or limitation on the exercise of religious freedom is the existence of a grave and present danger of a character that is both grave and imminent. There must exist serious evil to public safety, public morals, public health, or any other legitimate public interest, that the state has a right and duty to prevent.<sup>118</sup>

In Constitutional Rights and Social Demands Notes and Cases Part II,<sup>119</sup> Fr. Joaquin Bernas laid down the basic framework of the free exercise exemptions doctrine in this wise: If the plaintiff can show that a law or governmental practice inhibits the exercise of his religious beliefs, the burden shifts to the government to demonstrate that the law or practice is necessary to the accomplishment of some important or compelling secular objective and that it is the least restrictive means of achieving that objective.

Religious freedom requires the state to aid and support citizens so that they can live their lives in accordance with the demands of their religion and pursue their own personal salvation. Without any valid justification for a prior restraint or limitation on the exercise of religious freedom, the State is not warranted to take away from the ambit of religion the severance of marital bonds.

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<sup>116</sup> Supra, note 99.

<sup>117</sup> Supra, note 102.

<sup>118</sup> Supra, note 113.

<sup>119</sup> Manila: Rex Book Store, 1996.

However, it is conceded that the State has the right to regulate marriage and its termination. Thus, the State has the right to protect marriage bonds from unchecked termination, has the right to provide specific grounds for termination, and has the right to safeguard the effects of marriage, such as property relations and filiation. In the case of *Martin Centeno vs. Hon. Victoria Villalon-Pornillos*,<sup>120</sup> the Supreme Court noted that even the exercise of religion may be regulated, albeit with some slight inconvenience, in order that the state may protect its citizens from injury.

Be that as it may, the recognition of the termination of marital bonds under the Catholic Church will not create any of the dangers the State intends to prevent. In fact, the Catholic Church has more interest in the preservation of marriage than the state itself.

As strongly stated in the *Familiaris Consortio*,<sup>121</sup> considering the problems that beset the modern family and consequently the society itself, there is a necessity to recover an awareness of the primacy of moral values. Christian spouses should be re-educated as to the nature of the gift of the sacrament of matrimony, that it is for the church, both a vocation and a commandment. Thus, Christian spouses should remain faithful to each other despite the adversities and difficulties they may encounter and should always be in obedience to the holy will of the Lord. All Christian spouses are called to observe moral law at all times.

It is the perception of the Catholic Church, and not only of the state, that marriage and family also have important roles in society. On the part of the Church, the importance of marriage extends beyond its value in society. It is also a means by which an individual Christian, or the Christian spouses, worship and give grace to their God.

The sacrament of matrimony should be raised again to a moral pedestal where it actually belongs; however, this cannot be done by the Catholic Church alone, and the help of the state is necessary. The state should acknowledge that the secularization of marriage, relegating it to a mere contract, actually helps destroy the institution it has sworn to protect.

The state should return marriage to the realm of religion where it rightfully belongs -- not only its celebration but also its termination. The recognition of decisions or decrees of nullity of marriage issued by the church would allow people to return to their moral roots. They need not choose between that which is legal or moral, as what is moral would become part of the laws of the land. It is in this regard that legislative activity has the potential to transform culture, norms, and human behavior.<sup>122</sup>

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<sup>120</sup> G.R. No. 113092 September 1, 1994.

<sup>121</sup> Supra, note 37.

<sup>122</sup> Bentele, Keith Gunnar, et. al., *Breaking Down the Wall Between Church and State: State Adoption of Religious Inclusion Legislation*. Oxford University Press. Journal of Church and State vol. 56 no. 3, pages 503-533. doi:10.1093/jcs/css145.

The state policy of disregarding decrees of nullity of marriage issued by the church is definitely not the least restrictive means of achieving the state objective of protecting marriage and the family. It will be better served if the church termination of marriage bonds is recognized, subject to certain conditions that may be imposed by the state, which may be justified under its police power.

#### **4. ESTRADA VS. ESCRITOR AND ITS EFFECTS ON MARRIAGE**

In the landmark case of *Estrada vs. Escritor*,<sup>123</sup> an administrative case was filed against Soledad S. Escritor, a court interpreter in Branch 253, Regional Trial Court of Las Pinas City, for cohabiting with a man who was not her husband. In her defense, Escritor claimed that her conjugal arrangement is in conformity with her religious beliefs.

Escritor admitted that she started living with Luciano Quilapio, Jr., without the benefit of marriage, for more than twenty (20) years even when her husband was still alive, but living with another woman. She also admitted that she and Quilapio have a son.

As members of Jehovah's Witnesses and the Watch Tower and Bible Tract Society, Escritor and Quilapio asserted that their conjugal arrangement is in conformity with their religious beliefs and has the approval of their congregation. That after ten (10) years of living together, she executed a 'Declaration of Pledging Faithfulness', which allowed her to cohabit with a man who was not her husband despite legal impediments.

During the trial of the case, Escritor presented a witness who testified about the procedure and nature of the declaration, as well as the biblical verses used as its basis. She further alleged that the declaration renders the resulting union moral and binding within the congregation worldwide, except in countries where divorce is permitted.

After exhaustive consideration and discussion, the Supreme Court ruled that the Solicitor General had failed to demonstrate a compelling interest on the part of the state. As a result, the Supreme Court decided to carve out an exception from the prevailing laws and jurisprudence on illicit relations for which government employees are held administratively liable, and ruled in favor of Escritor, upholding religious freedom.

The Supreme Court maintained that there are two (2) main standards used by the courts in deciding religious clause cases: separation, in the form of strict separation or strict neutrality, and benevolent neutrality or accommodation.

The theory of strict separation protects the principle of separation of church and state by adhering to a rigid interpretation of the principle. Consequently, religious institutions are not allowed to receive aid, whether direct or indirect, from the state. The state cannot even adjust its secular programs to alleviate the burdens these programs place on believers. Strict neutrality requires the state to be neutral in its relations with religious believers and non-believers.

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<sup>123</sup> Supra, note 4.



Similarly, it does not permit accommodation of secular government programs to religious beliefs. Moreover, the government avoids religion-specific policies, even at the cost of inhibiting religious expression. Thus, the theory of separation can lead to a brooding and pervasive devotion to the secular, or even hostility to the religious, which is prohibited by the Philippine Constitution.<sup>124</sup>

The importance of the *Escritor* case in the wealth of Philippine jurisprudence on religion clause cases lies in the Court's declaration that the Philippines subscribes to the benevolent neutrality approach in the determination of religion clause cases.

The principle of benevolent neutrality allows accommodation of religion under certain circumstances. Accommodation is a government policy that takes religion specifically into account, not to promote the government-favored form of religion without hindrance. Its purpose or effect is to remove a burden on, or to facilitate the exercise of religion.

Accommodation is forbearance, not alliance.<sup>125</sup> It does not reflect agreement with religion or any religious organization, but rather respect for the conflict between temporal and spiritual authority that a religious believer may encounter.

The 1987 Constitution is not hostile nor indifferent to religion. In fact, several provisions therein illustrate that the 1987 Constitution leans on accommodation. The principle of benevolent neutrality or accommodation is evident, not only in the Constitution, but also in legislative enactments and Philippine jurisprudence.

In resolving cases involving a plea for exemption on the basis of the Free Exercise Clause, the Supreme Court applies the strictest test, the compelling state interest test. Under the compelling state interest test, only the most compelling governmental interests will justify any infringement on religious conduct.

The application of the compelling state interest test follows a specific process. If the plaintiff can show that a law or government practice inhibits the free exercise of his religious beliefs, the burden shifts to the government to demonstrate that the law or practice is necessary to the accomplishment of some important secular objective and that it is the least restrictive means of achieving that objective. If the plaintiff meets this burden and the government does not, the plaintiff is entitled to exemption from the law or practice at issue.<sup>126</sup> However, in order to be protected, the claimant's belief must be 'sincere,' although it need not be consistent, coherent, or clearly articulated.

In considering the compelling state interest in a given situation, the following questions should accordingly be satisfied:

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<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Supra, note 1.



1. Has the statute or government action created a burden on the free exercise clause?
2. Is there a sufficiently compelling state interest to justify this infringement of religious liberty?
3. Has the state, in achieving its legitimate purposes, used the least intrusive means possible so that the free exercise is not infringed any more than necessary to achieve the legitimate goal of the state?<sup>127</sup>

In the *Escritor* case, the Supreme Court found that there is no doubt that choosing between keeping her employment and abandoning her religious belief and practice and family on the other hand, places a burden on Soledad Escritor's right to freely exercise her religion.

With respect to the state's compelling interest on the matter, the highest court held that the Office of the Solicitor General failed to demonstrate the gravest abuses, endangering paramount interests which could limit or override respondents' fundamental right to religious freedom. Neither did the government exert any effort to show that the means it seeks to achieve its legitimate state objective is the least intrusive means.<sup>128</sup>

#### IV. CONCLUSION AND RECOMMENDATIONS

##### A. CONCLUSION

Marriages solemnized in accordance with the rituals, practices, and traditions of one's religion are recognized by the State as valid under Article 7 of the Family Code. However, marital bonds may be terminated only in accordance with the laws of the state. In the termination of marriages, only the secular aspect is taken into consideration without regard to the religious aspect thereof.

Those who believe in the spiritual sanctity of marriage, who for one reason or another requires the annulment or declaration of nullity of their marriage bonds, have to undergo both civil and religious proceedings in order to effectively terminate marital bonds in both its secular and religious aspect.

Unfortunately, considering the time and effort required, as well as the psychological, emotional, and financial conditions the parties in a case for annulment or declaration of nullity of marriage, as well as their families, would be exposed during the pendency of the action, religious couples usually opt to undergo civil proceedings rather than the procedure for declaration of nullity of marriage before ecclesiastical courts.

Severing the legal tie of marriage will allow the parties to remarry without worry that they may be criminally liable for bigamy, concubinage, or adultery. Obviously, this will be at the expense of a person's spiritual well-being.

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<sup>127</sup> Ibid, citing *Lemon vs. Kurtzman*.

<sup>128</sup> Ibid.

The fact that religious couples are essentially required to choose between the secular and ecclesiastical procedures for the termination of their marriage is a clear imposition of burden on their religious freedom.

The liberty of religious conscience is a fundamental human right protected by the Bill of Rights embodied in Article III of the Constitution. The observance of religious freedom is not only a statutory mandate; it is not created by positive law but emanates from human dignity and worth of the human person. It is an inherent right of every individual, and as such, it cannot be extinguished by the passage of time or prescribe by mere non-recognition.

A study of pertinent laws, legal principles, and jurisprudence would show that the Philippines subscribes to the benevolent neutrality approach in the interpretation of religion clauses. Under the benevolent neutrality approach, the wall of separation of church and state is meant to protect the church from the state. Benevolent neutrality allows accommodation of religion under certain circumstances.

Accommodations are government policies that take religion specifically into account not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. The purpose or effect of accommodation is to remove a burden on, or facilitate the exercise of, a person's or institution's religion.

By allowing exemptions or accommodations, religious couples need not choose between their spiritual and temporal obligations, it allows them to obey spiritual rather than temporal authority, to comply with their religious duties and obligations rather than be constrained by the laws of the state. Religious freedom is a matter less of rights than duties; more precisely, it is a matter of right derived from duties.<sup>129</sup>

The religious duty or obligation that will be protected by the proposed bill is the right of religious spouses to have their marriage annulled or declared null and void by their own ecclesiastical tribunals. Should civil courts recognize such decrees, religious spouses need not have to undergo both proceedings under the civil and ecclesiastical courts. For those religious spouses who are unable to go through both proceedings, they need not have to choose between civil and ecclesiastical proceedings, to the detriment of their faith and spiritual convictions. This is allowed as a form of permissive accommodation.

Indeed, the recognition of decrees of annulment or declaration of nullity of marriage issued by ecclesiastical tribunals may not be absolutely required by the free exercise clause under Section 5, Article III of the 1987 Constitution, as may be gleaned from the decisions of the Supreme Court merely giving respect to decisions of the Matrimonial Tribunal but not conclusiveness. However, this is a form of permissive accommodation similar to Article 7 of the Family Code recognizing the authority of priests, rabbis, imams and ministers of churches and religious sects to solemnize marriage.

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<sup>129</sup> Supra, note 87.

If the solemnization of marriage in accordance with one's religion can be accommodated by the state, there is no reason why the termination of marital bonds cannot be similarly accommodated, provided that the interests of the state in marriage are safeguarded. It cannot be gainsaid that the denial of an individual or a religious community's right to act upon a religious duty, practice, or tradition can be justified only by appeal to a more compelling duty or obligation.

In Justice Francis H. Jardeleza's concurring opinion in the case of *Re: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City*, he aptly stated:

"This is the path that our jurisprudence on the Religion Clauses has taken. It is one that chooses accommodation, where there is no danger of breaching the wall of separation, instead of a blind and literal adherence to the concept of a separate church and state. To repeat, the Establishment Clause exists not for the sake of separation per se but as a tool to allow all religion (as well as the choice not to have one) to thrive and flourish. Our Establishment Clause, existing in the context of a unique Filipino culture, has developed its own narrative. It is this narrative that must permeate any understanding of what it means for our constitutional democracy to uphold the separation of church and state."

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"The duty of the state, as mandated by the Religion Clauses of the Constitution, is not to endeavor to completely rid itself of any traces of respect for religion, but to pursue a policy where the freedom to believe or not to believe may thrive."<sup>130</sup>

In the absence of a compelling state interest, the State must create exemptions to laws of general applicability when these laws threaten religious convictions or beliefs. The legislative department, by virtue of its permissive authority, may create an exemption from the Family Code that specifies the grounds for annulment and declaration of nullity of marriage and allows the severance of marital bonds only in accordance with civil law.

## **B. RECOMMENDATIONS**

There is a need to amend the Family Code to allow Philippine civil courts to recognize the decrees of annulment and declaration of nullity of marriage issued by ecclesiastical tribunals.

It is essential to emphasize that, in creating accommodations, the interests of the state should be afforded utmost protection. Unlimited freedom, whether based on religion or not, would erode order in the very state tasked with protecting those freedoms. Thus, a test is necessary in order to determine

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<sup>130</sup> Supra, note 100.

whether the interests of the State are sufficiently protected. However, not just any interest of the State would suffice to prevail over the right to religious freedom, as this is a fundamental right that enjoys a preferred position in the hierarchy of rights – the most inalienable and sacred of all human rights.<sup>131</sup>

This research has demonstrated a strong state interest in marriage. State policy requires that marriage and marital relations be surrounded by every safeguard, and the severance of marital ties may be made only in the manner prescribed and on grounds specified by law.

Accordingly, the proposed legislative amendment necessarily requires the inclusion of conditions or measures that ensure the state's interest in marriage does not become subservient to any religion, lest it violate the Establishment Clause and the principle of separation of church and state. Hence, the following salient features of the proposed legislative amendment are necessary in order to sufficiently safeguard the institution of marriage, to wit:

1. The church or religious sect should have an established judicial system or procedure in determining whether there are grounds to terminate a marriage.
2. The church or religious sect that solemnized the marriage shall have jurisdiction over the annulment or declaration of nullity proceedings.
3. Only grounds similar to those provided under the Family Code shall be recognized. The effects of the ecclesiastical decree would be the same as those provided in the Family Code.
4. The legislative amendment shall have a secular purpose.

As to the matter of whether the proposed legislative amendment is in danger of violating the establishment clause, suffice it to say that under the principle of non-establishment, the state may not prefer or aid one religion over another, but may aid all religions equally or the cause of religion in general.

The case of *Lemon vs. Kurtzman*,<sup>132</sup> which was decided by the United States Supreme Court in 1971, established the test or cumulative criteria in determining whether a law meets the requirements of the establishment clause. In determining the constitutionality of government policies or statutes challenged under the establishment clause, the government policy or statute must pass what has been known as the Lemon test. The Lemon test requires a challenged policy or statute to meet the following criteria to pass scrutiny under the establishment clause, to wit:

“First, the statute must have a secular legislative purpose;  
Second, its primary or principal effect must be one that neither advances nor inhibits religion; and  
Finally, the statute must not foster an excessive entanglement with religion.”

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<sup>131</sup> Supra, note 87.

<sup>132</sup> Supra, note 90.

The proposed legislative amendment has a secular purpose that is central to the proposed law. By recognizing ecclesiastical decrees, religious couples need not undergo redundant procedures under both civil and ecclesiastical laws. This would preserve much-needed resources, not only on the part of the parties but also on the part of the civil courts that are besieged by annulment and declaration of nullity cases.

It would effectively alleviate the continuous clogging of court dockets due to the high number of annulment and declaration of nullity cases pending in courts. Proceedings will no longer be redundant, which would result in the conservation of much needed resources of the judiciary.

Justice delayed is justice denied. The number of dockets of courts has increased immensely that the Supreme Court has been desperately trying to find a way for courts to cope up with it. The proposed law would in fact help in alleviating the number of dockets of courts by the simple expedience of conferring civil effects to ecclesiastical procedures respecting the dissolution or declaration of nullity of marriage.

The primary or principal effect of the proposed law neither advances nor inhibits religion. The primary or principal effect of the proposed law is simply to recognize ecclesiastical procedures in the annulment or declaration of nullity of marriage so that religious couples need not undergo redundant procedures under civil and ecclesiastical tribunals. The ecclesiastical procedures would remain the same and would be recognized as such, provided that they fall under the conditions set forth by the proposed law.

The proposed legislative enactment will also not foster any excessive entanglement with religion. In the *Lemon* case, it was emphasized that “[i]n order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority.”<sup>133</sup>

The proposed law will certainly not benefit any specific religious institution, except in a very indirect way. It is the people of the state who will benefit, or the members of the congregation of any church or religious sect to which the proposed law may be applicable. The church or religious sect will not directly deal with the state, represented by the civil courts who are tasked to recognize the ecclesiastical decrees. The case shall be filed by the respective individuals qualified under the proposed law and not the church or religious sect themselves.

As aptly put in Pope Paul VI’s *Dignitatis Humanae*,<sup>134</sup> the “promotion of the inviolable rights of man ranks among the essential duties of government...

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<sup>133</sup> Ibid.

<sup>134</sup> Pope Paul VI, *Dignitatis Humanae* [Declaration on Religious Freedom, On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious], December 7, 1965, Accessed from Vatican Website on February 27, 2016, [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html).



Government is also to help create conditions favorable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights and to fulfill their religious duties, and also in order that society itself may profit by the moral qualities of justice and peace which have their origin in men's faithfulness to God and His holy will."

## **1. PROPOSED LEGISLATIVE AMENDMENT**

The proposal is to amend Article 40 of the Family Code, which should read as follows:

Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

Where a marriage has been annulled or declared void ab initio by a church or religious sect, which has an established judicial system and procedure, on grounds similar to any of the grounds for annulment or nullity of marriage in this Code, such shall be recognized by civil courts.

In this regard, the church or religious sect that solemnized the marriage shall have jurisdiction to issue the decree of annulment or declaration of nullity of the said marriage.

Accordingly, all laws, decrees, orders, proclamations, rules, and/or regulations inconsistent therewith should likewise be repealed, modified, or superseded.

The proposed legislative enactment will allow only those 'grounds similar to any of the grounds for annulment or nullity of marriage under this Code,' referring to the Family Code. The provisions of the state law still govern with respect to the grounds for severance of marital bonds. This is especially important, considering that the secular purpose of the statute is to recognize decrees of annulment or declaration of nullity of marriage by ecclesiastical tribunals, thereby preventing redundant procedures and substantially decreasing court dockets.

## **2. PROCEDURAL GUIDELINES**

The Supreme Court has rule-making authority as embodied under Paragraph 5, Section 5 of Article VIII of the 1987 Constitution. It is the Supreme Court that has the authority to issue the rules of procedure that will cover the proposed legislative enactment.

The guidelines on the recognition of annulment and declaration of nullity of marriage issued by ecclesiastical tribunals should include the following salient features:



1. What to allege. - A petition for recognition of judgment shall attach a Certification from the ecclesiastical tribunal, which issued the decree of annulment or declaration of nullity of marriage, stating the following:

a. That proper ecclesiastical procedures for termination of marriage were complied with;

b. The ecclesiastical ground specifically relied upon;

c. That the decree is final and executory.

The petition shall likewise allege the equivalent ground under the Family Code.

2. Proceedings. - The Petition shall be governed by Rule 108 of the Rules of Court.

3. Agreement. - The parties may submit before the Court an agreement that shall cover their property relations, support, and visitation rights of children. If the parties do not submit such an agreement, or the Court denies the agreement on the ground that it is violative of the law, the provisions of the Family Code shall apply.

The Sacrament of Matrimony should be raised again to a moral pedestal where it actually belongs. The State should return marriage to the realm of religion where it rightfully belongs -- not only its celebration but also its termination. The recognition of decisions or decrees of nullity of marriage issued by the church would allow people to return to their moral roots. They need not choose between what is legal and moral, as religious morality would become part of the laws of the land.

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