

SENATE

S. No. 1296

INTRODUCED BY SEN. MANNY VILLAR

EXPLANATORY NOTE

Article II, Section 14 of the Constitution declares:

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

Consistent with the constitutional mandate, in the Family Code, the terms "adultery" (on the part of the wife) and "concubinage" (on the part of the husband) has been replaced with "sexual infidelity" (on the part of either spouses) as one of the grounds for legal separation (Article 55 of EO 209, as amended).

However, long after the passage of the Family Code in 1987, the Revised Penal Code has yet to remove the distinction between adultery (Art. 333) and concubinage (Art. 334) as felonies, thus perpetuating the disadvantaged position of the wife, who is penalized with a heavier penalty than the husband, and whose single act of infidelity consummates the offense. This is different in the case of the husband, whose marital indiscretion is not treated as a felony unless attended by the circumstances enumerated in Article 334.

This disparate treatment of wives and husbands is recognized in the Philippine jurisprudence:

"To our legislators adultery is not a violation of the laws relating to marriage. It is a violation of those laws only when it is committed by a woman. The husband can break those laws without committing adultery. She, in other words, is, in reality, the only person capable of committing the crime under the law of the Philippines Islands... (U.S. vs. Topino & Guzman, dissenting opinion of Moreland, J., 35 Phil. 901, 916)."

The bill seeks to end the discriminatory treatment of wives—and effectively, to harmonize the Revised Penal Code with the present provisions of the Family Code—by doing away with the distinction between adultery and concubinage, and instead criminalizing any and all acts of sexual infidelity,

regardless of which spouse commits it. The proposed amendment also abrogates the traditional essence of adultery, that is, the danger introducing spurious heirs into the family. Sexual infidelity becomes now, as it should be, a violation of the laws relating to marriage.

In view of preserving the fundamental equality of women and men as guaranteed by the Constitution, the passage of this bill is earnestly sought.



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AN ACT
ACCORDING EQUAL RIGHTS TO WIVES AND HUSBANDS IN THE
PHILIPPINES BY AMENDING ARTICLES 333, 334 AND 344 OF THE
REVISED PENAL CODE

*Be it enacted by the Senate and House of Representatives of the
Philippines in congress assembled:*

SECTION 1. Article 333 of the Revised Penal Code is hereby amended to
read as follows:

"Art. 333. **Who are guilty of [adultery] SEXUAL
INFIDELITY.**— [Adultery] SEXUAL INFIDELITY is committed by
any married [woman] PERSON who shall have sexual intercourse
with [a man] ANOTHER PERSON not HIS OR her [husband]
SPOUSE, and by the [man] PERSON who has carnal knowledge of
HIM OR her, knowing HIM OR her to be married, even if the
marriage be subsequently declared void.

"[Adultery] SEXUAL INFIDELITY shall be punished by
prision correccional in its medium and maximum periods.

"[If the person guilty of adultery committed this offense while
being abandoned without justification by the offended spouse, the
penalty next lower in degree than that provided in the next
preceding paragraph shall be imposed.]"

SECTION 2. Article 334 of the Revised Penal Code is hereby amended to
read as follows:

"Art. 334. [Concubinage] **MAINTAINING A PARAMOUR.**—
Any [husband] MARRIED PERSON who shall keep a [mistress]
PARAMOUR in the conjugal dwelling, [or shall have sexual
intercourse, under scandalous circumstances, with a woman who is

not his wife,] or shall cohabit with [her] A PARAMOUR in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

"The [concubine] PARAMOUR shall suffer the penalty of *destierro*.

"AS USED IN THIS ARTICLE, "PARAMOUR" SHALL INCLUDE ANY PERSON WHO COHABITS WITH A MARRIED PERSON OF EITHER SEX UNSER CIRCUMSTANCES WHERE THET ASSUME AND EXERCISE TOWARD EACH OTHER THE RIGHTS AND PRIVILEGES WHICH PROPERLY BELONG TO PERSONS MARRIED TO EACH OTHER."

SECTION 3. The first two paragraphs of Article 344 of the Revised Penal Code, are hereby amended to read as follows:

"Art. 344. *Prosecution of the crimes of [adultery] SEXUAL INFIDELITY, [concubinage] MAINTAINING A PARAMOUR, seduction, abduction, rape and acts of lasciviousness.*— The crimes of [adultery] SEXUAL INFIDELITY and [concubinage] MAINTAINING A PARAMOUR shall not be prosecuted except upon a complaint filed by the offended spouse.

"The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he OR SHE shall have consented or pardoned the offenders[.], NOR, IN ANY CASE, IF HE OR SHE IS LIKEWISE GUILTY OF SEXUAL INFIDELITY OR MAINTAINING A PARAMOUR, NOR, IN ANY CASE, IF HE OR SHE SHALL HAVE ABANDONED THE GUILTY SPOUSE WITHOUT JUST CAUSE FOR MORE THAN ONE YEAR...."

SECTION 4. This Act shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved.