

New Policy Directions in Philippine Family Law

FLERIDA RUTH P. ROMERO *

There has been extensive government intrusion into both the internal and external aspects of family relations, due mainly to present-day socio-economic pressures which have affected the Filipino family in particular, and Philippine society in general. The government, in an effort to cope with these pressures, has adopted radical changes in policy, but many of these policies conflict with traditional Filipino values and practices (e.g., family planning and population control). As a result, implementation of these policies has met stiff resistance from individuals and from such institutions as the Church. On the other hand, there is a need to recognize changing attitudes and practices affecting family relations which are opposed to traditional values. Policies and laws must therefore be reexamined so that they reflect the changing mores and attitudes of the times and the recent policies adopted by government.

University of the Philippines President Edgardo J. Angara once perceptively observed that there is an acute need for predictability in today's uneasy world than before. He said that "the pressure of change with its increasing velocity and magnitude . . . make people feel that nothing is certain anymore." He pointed out that social institutions have precisely evolved whose main concern is to give society the certitude it needs.

He posed a basic question. What have certain social institutions done to give a society a sense of stability and purpose? Focusing on the family which, together with the Church and the school, has been at the forefront in trying to bind a community together, he asked: "Given the rapid pace of industrialization and the consequent social mobility, how has the family responded? How does it propose to remain solid in the face of all the counterforces that seek to undermine its formulation?"

These issues underscore the importance of the family in forging a strong, stable society and its continuing relevance. The first institution to have the opportunity of shaping a person's values and attitudes, it predetermines

* Professor, U.P. College of Law and Director, U.P. Law Center.

the kind of people a country shall produce. Through the family, a nation's culture and traditions are preserved and passed on from generation to generation. Indeed it is no exaggeration to state that a nation is only as strong as its basic unit, the family.

In meeting the challenges implicit in President Angara's questions, the family is circumscribed by the parameters laid down in the law. For instance, no less than the Constitution of the Philippines categorically states: "The State shall strengthen the family as a basic social institution."¹ Additionally, the law which regulates the relationships of people in their day-to-day lives, the Civil Code, provides: "The family is a basic social institution which public policy cherishes and protects."² Note the recurrence of the descriptive phrase "basic social institution." Such an explicit reference to public policy is essentially a command to policy-makers and implementors to positively pursue a course of action aimed at strengthening the family and concomitantly refrain from actuations which would undermine its foundations.

Who are these policy-makers in the sphere of family relations whose official acts serve as the guidelines for implementors? Because public policy is mainly based on law and official pronouncements, it is the legislature, the executive and the judiciary, all vested with constitutional authority to act, which enunciate government positions and the area in which all agencies, including the family, can operate.

The threshold question confronting government officials is: To what extent may the state regulate family relations? Time was when the metes and bounds of official action were clearly delineated. There was no doubt that it is the law which governs family relations. Therefore no custom, practice or agreement of private parties which is destructive of the family shall be recognized or given any effect.³ Hence, judicial and administrative officials are enjoined to foster the mutual assistance, both moral and material, which should be rendered among members of the same family.⁴

It should be borne in mind, however, that there are two aspects in family relations, namely, the internal aspect which, being essentially natural and moral, pertain to intimate matters which are better left to the members of the family to regulate. Some examples of these are the sexual relations of the spouses, the degree of discipline to be imposed by the parents upon their children, the strictness or permissiveness to be observed by the parents vis-a-vis their children and other practices which are meant to govern the domestic life of the family.

With respect however to the external aspect, the law plays a more

dynamic role inasmuch as other persons or the public interest may be affected. Some examples are the rights and duties of the spouses to each other and of the parents to their children, as well as substantive and procedural rules pertaining to the act of getting married including the consequences and incidents of marriage.

Within the last twenty years, however, there has been a noticeable trend of the government to veer away from *laissez faire* and regulate matters heretofore deemed sacrosanct.

A notable example is the extent to which the government is making inroads in the family prerogative of determining the number and spacing of children. Large families are the tradition in Philippine culture since children are considered a source of pride and joy by their parents. Moreover, they provide the much needed help on the farm or at home and are regarded as their parents' security in their old age. However, traditional practices have crumbled before the dilemma confronting developing countries hard put to match scarce resources with exploding populations. Socio-economic demands of the environment convinced the country's policy-makers to adopt a vigorous policy of family planning and population control to keep population figures down in order to raise the level of living of the people. Thus this emerging policy found its way into the Constitution which now declares it to be the responsibility of the state to achieve and retain population levels most conducive to the national welfare.⁵ Pursuant to this clear-cut policy, statutes were enacted which impliedly discouraged child-bearing beyond the fourth. For instance, beyond the fourth delivery, the mother can no longer enjoy maternity leave with pay. Also, only the first four children can be allowed as income tax deductions.

The ensuing vigorous nationwide campaign advocating the use of contraceptives met stiff resistance from the Catholic church. Here is an illustration of a continuing conflict between powerful opposing forces where socio-economic pressures have prevailed due to a policy decision of the legislature and a strong executive. The disturbing question for libertarians is whether this new policy, which encroaches on intimate matters better left to the spouses themselves, does not constitute a violation of the personal rights of individuals and an intrusion into the privacy of the family.

Another example of a more extensive intrusion by the government into the private domain of family affairs is its enactment of the Child and Youth Welfare Code. Responding to the demands of an increasingly permissive and child-oriented society, a charter of rights and duties of children vis-a-vis their parents was enacted. While some view the statutes as more idealistic than realistic, it is a fact that detailed rules are laid down for the care of the children, and it even imposes criminal liability for erring parents. There are

also copious provisions governing the institutional care of all kinds of deprived children as a demonstration of the sovereign right of *parens patriae* of the state. The emphasis laid in this law on the rights of children constitutes an unmistakable erosion on the powers and prerogatives of the traditionally authoritarian Filipino family. The Supreme Court has correspondingly expanded the duties of the parents when it decided in one case that if death is caused by mistake or negligence by a married minor still living with his parents, the latter shall be answerable for any damages that will have to be paid to the surviving heirs of the victim, in spite of the fact that married minors are already considered emancipated from parental authority. This change of policy giving minor children more rights than before has sown seeds of apprehension in the hearts of not a few adults who fear that the time may come when, as in the United States, the state through its law enforcement officers, may effectively prevent parents from disciplining and chastising their own children.

Here is still another example of a radical change of policy affecting some, but not all, of the people. The Filipinos have, since time immemorial, been governed by uniform laws, regardless of ethnic differences. In 1977, however, a Code of Muslim Personal Laws of the Philippines was enacted which in essence applies the Islamic law and principles to Filipino Muslims. This step was taken "pursuant to the spirit of the provision of the Constitution of the Philippines that, in order to promote the advancement and effective participation of the National Cultural Communities in the building of the New Society, the State shall consider their customs, traditions, beliefs and interests in the formulation and implementation of its policies."⁶

With the elevation of Muslim practices into law, adherents of the Islamic faith may now contract plural marriages. The non-Muslim sector of the population, being governed by the Civil Code will continue observing monogamy and any marriage contracted while there is a previous subsisting marriage shall still be considered bigamy which is penalized by law. This revolutionary change of policy has been justified on socio-political grounds. Doubts have, however, been expressed as to the constitutionality of such a law which, in effect, denies some people the equal protection of the laws guaranteed by the Bill of Rights of the Constitution.

Proposed Policy Changes in Family Law

The U.P. Law Center finds itself in a position where it influences policy-making in various aspects of the nature of law-making. Pertinent to the topic under discussion is an ongoing project which seeks to amend the Civil Code in order that it may reflect the changing mores and attitudes of the times or the recent policies laid down by the government.

The need for some kind of a decision on whether to preserve the *status quo* or break new ground has always been a critical step that has to be taken. For instance, the heightened awareness of the populace, particularly the women, regarding their subordinate status calls for amendments which will grant equal rights to women and eliminate discrimination against them. This will include the repeal of the provision which in effect prohibits widows from marrying within 300 days after the death of their husbands and the prohibition upon women against receiving gifts from people outside the immediate family without the consent of the husband, as well as the power or right of the husband to object to his wife's exercising her profession, occupation or engaging in business if he has serious and valid grounds for so objecting or if his income is sufficient to support the family. It is likewise sought to give the wife an equal opportunity to be the administrator of the conjugal properties as well as the properties of the unemancipated children.

In the area of marriage, an amendment seeks to raise the minimum age of marriage of girls and boys from 14 in the case of the former and 16 in the case of the latter to the uniform age of 18. This change is proposed on the ground that many marriages flounder because of the immaturity of the parties.

A controversial area is the dissolution of marriage through divorce. Much heat has been generated because while some would favor divorce upon specific limited grounds to dissolve the marriage tie and leave the parties free to remarry, there is the official position of the Catholic church against divorce to contend with. The proponents of the move point out that the present law allowing merely legal separation without dissolving the marriage encourages illicit relationships which result in illegitimate children. On the other hand, the church would preserve the sanctity of the marriage bonds on the ground that "what God had put together, let no man put asunder".

Another debatable question is whether illegitimate children should be treated as legitimate children by the law as regards the exercise of rights, such as successional rights. It is pointed out that these children should not be penalized for the misdeeds of their parents. On the other hand, treating bastards on the same footing as legitimate children would water down the sanctity of marriage and encourage immoral relationships.

Closely related to these issues is the need to recognize a growing trend among couples to abjure marriage and resort to live-in relationships. Society cannot simply close its eyes to this social phenomenon. If laws are to regulate contemporary practices, our civil law must enact new provisions where there are gaps.

To conclude, if the law is to remain relevant to the times, a periodic re-examination of policies and official actuations is in order.

Endnotes

¹ Article 2, Section 4, Constitution of the Philippines.

² Article 216, Civil Code of the Philippines.

³ Article 218, Civil Code of the Philippines.

⁴ Article 219, Civil Code of the Philippines.

⁵ Article 15, Section 10, Constitution of the Philippines.

⁶ Presidential Decree No. 1083.