

A Critical Analysis of the Filiation Divide in the Family Code of the Philippines

Atty Brian Jay N/A Corpuz

Dean, College of Law, , Mariano Marcos State University

Abstract

This paper critically examined the provisions of the Family Code of the Philippines (Executive Order No. 209) dealing with the “legitimate” and “illegitimate” filiation classifications. The Philippines is one of the few remaining countries which still label non-marital children as “illegitimate” under its system of laws. The legal frames of the pertinent provisions of the Family Code were studied through context doctrinal analysis and determined their constitutionality particularly to the Equal Protection Clause of the 1987 Philippine Constitution. The provisions’ congruence to the United Nations Convention on the Rights of the Child (UNCRC), particularly the non-discrimination clause (Article 2) and paramountcy clause (Article 3) were also analyzed.

This study employed a descriptive-analytical approach. A multi-layered analysis on the legal frames of the legal provisions was utilized as research methodology. It was found out and concluded that many legal frames of the Family Code are inconsistent and repugnant with the equal protection clause of the 1987 Philippine Constitution and not compliant and congruent to Article 2 (non-discrimination clause) and Article 3 (best interest of the child clause) of the UNCRC. Based on the findings and conclusions of this study, it was recommended that the provisions of the Family Code of the Philippines dealing with filiation divide be immediately revised to cure their legal maladies and errors.

Keywords: filiation law, Equal Protection Clause, UNCRC

1. Introduction

The need to review the gaps of Philippine filiation laws, especially on the divide between the “legitimates” and the “illegitimates”, is very urgent and compelling. None other than the Supreme Court of the Philippines in the recent case, *Aquino vs. Aquino* (2021), articulated and recognized that “non-marital children primarily suffer the consequences imposed by laws, despite the status being beyond their power to change.” It pronounced that the Philippines needs now to “depart from regressive conjectures about family life in favor of the best interest of the child”, and to abandon the presumption that “non-marital children are products of non-marital relationship or that they are automatically placed in a hostile environment.” We also take note that in this landmark case, the Supreme Court began departing from using the term “illegitimate children” in its dispositions showing a pivotal attitude. [1]

In the leading American case of *Weber vs. Aetna Casualty and Surety* (1947), it pronounced that the status of illegitimacy has expressed through the ages society’s condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously no

child is responsible for his birth and penalizing an illegitimate is an ineffectual – as well as unjust - way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where - as in this case - the classification is justified by no legitimate state interest, compelling or otherwise. [2]

The importance of filiation in every country's system of laws cannot be underestimated because it determines the rights and obligations of parents to their children. Moreover, laws on filiation are indispensably connected with a child's civil personality which is the foundation of many civil rights one has to enjoy throughout a lifetime. In this sense, all family laws of countries usually dedicate a chapter or a section to paternity recognition and rules on filiation. The maternity determination –the biological one- is not always regulated because obviously this is established at the born time. *Mater semper certa est* (The mother is always certain).

Under Title VI (Paternity and Filiation), Article 163 of the Family Code, the law dichotomizes two types of children by natural filiation – “legitimate” and “illegitimate”. In the succeeding articles (Articles 164 to 171), they provide that those born outside a marriage is “legitimate” and those who are not are “illegitimate”. Subsequently, they postulate the effects of such filiation and how to establish or impugn such legitimacy or illegitimacy. This policy and direction of the present Family Code emphasizes the classifications of children based on their birth's circumstances.

All throughout the legal history of the Philippines, children born out of wedlock are at severe legal disadvantages. Just by the terms used to designate them in statutes, children born out of wedlock are called “spurious” or “illegitimate”. The terms are not only socially demeaning but also legally despicable which connote the discriminatory attitude of Philippine laws towards them. That is just in the name. The legal consequences and repercussions are much more alarming, especially to the civil and family rights of children.

Such classifications of natural filiation created legal gaps, challenges and problems in varying degrees regarding civil rights accorded to children – legitime and inheritance, support, parental authority, custody, use of surnames, among others. This is even without mentioning how socially and psychologically agonizing to be labelled by the society as “illegitimate”, or “spurious”. The most controversial in recent times is the restrictions of an illegitimate child to inherit from the family of his natural parent which is feudalistic and imperial in nature that must be revisited. It must be noted that the New Civil Code, the law that governs Philippine succession, is around 70-year-old law.

The reason of the framers of our Family Code and Civil Code on some disparities on civil rights among “legitimate” and “illegitimate” children is obvious – to discourage bearing a child out of wedlock due to one family's dignity and honor in the society. Lanslet, et. al (1981) concluded that such legal tradition could be traced from Europe, particularly in dealing with heirships to the throne and family issues. The Poor Law of 1576 formed the basis of English bastardy law. Its purpose was to punish a bastard child's mother and putative father, and to relieve the parish from the cost of supporting mother and child. By an act in 1576, it was ordered that their putative fathers should support bastards, though bastardy orders in the quarter sessions date from before this date. If the genitor could be found, then he was put under very great pressure to accept responsibility and to maintain the child. [3]

However, such legal traditions and policies are no longer proper in the modern society with the advent of concepts of equity and equality in the eyes of the law. This view is more of a punishment to the children who have no fault at all rather than the parents, which is abominable. The innocent children will carry the

legal curse for a lifetime, not to mention, an inequitable treatment in civil dealings. This is disregarding the fact that children's biological, social and economic needs encompass all regardless of their birth's circumstances. Children need the same level of care and nurture. Viewed rightly, no child is born without parents. As they have no participation in their conception, there can be no illegitimate children in all contextual senses. So why should they bear the heavy burden?

Empirically, as of 2017, data from the Philippine Statistics Authority (2017) show that non-marital children are more than the marital ones in the Philippines, with 53 percent. The most number of non-marital children in terms of percentage are in Eastern Visayas, with 65 percent, and the National Capital Region (NCR) at 64.9 percent. [4]

Social Children's Trend International (2024) reports that this demographic characteristic has the same trend all throughout the world. Based on the report, the highest rates of non-marital childbearing occur in Latin America (55–74 percent). The only other countries to share these high rates are South Africa (59 percent) and Sweden (55 percent). The range within Europe is also huge: from 18 percent (Italy) to 55 percent (Sweden). Those in North America and Oceania are also high and rising, though New Zealand (47 percent) and the United States (41 percent) stand out, with more than four out of ten births outside of marriage in these two countries. Additionally, 18 percent or more of births in the remaining countries are to unmarried mothers, a number that has climbed dramatically in recent years throughout much of the world. [5]

The statistical numbers imply a global shift of social construct towards non-marital children, leading to a more liberal approach. The world is finally emancipating from its traditional view, particularly on the civil rights of non-marital children. Moreover, the United Nations Convention on the Right of the Child (UNCRC) is emphatic on the non-discrimination to children in any circumstance. The Philippines is a signatory to this Convention which became the most important international agreement on children's universal rights. It has become the most widely ratified human rights treaty in history and has helped transform children's lives around the world. Against the backdrop of a changing world order, world leaders came together and made a momentous obligation to the world's children. They made a promise to every child to protect and fulfil their rights, by adopting this international legal framework.

With these, there is a need to rethink and analyze the Philippine filiation laws in light with the equal protection clause of the 1987 Constitution and the equal state obligations of the Philippines to the UN Convention on the Rights of the Child, particularly the non-discrimination clause (Article 2) and paramountcy clause (Article 3).

2. Methodology

This study employed a descriptive-analytical approach, whereby a rigorous analysis on the legal frames of the pertinent provisions of the Family Code on the "legitimate" versus "illegitimate" divide, was conducted. The research structure is basically a legislative analysis. Etzioni (1978) defines a legislative analysis as "one concerned with mapping out alternative approaches on a social phenomenon with specifying potential differences in the intention, effect, and the cost of various options." It is a problem-based study [6].

The theoretical foundation and philosophy of this study is heavily anchored on Herbert Lionel Adolphus (H.L.A.) Hart's model of positivist-realist legal theory. Legal positivism and realism have a long history and a broad influence. They have antecedents in ancient political philosophy and are discussed in medieval legal and political thoughts. Hart, like most legal positivist-realists, believed that "the foundation for a

legal system - the ultimate explanation of why something is a valid law- is a set of social facts, in particular, the evolving beliefs, attitudes and behavior of a population." For Hart, the authority of law is social realities and the changes that occur. The ultimate criterion of validity and applicability in a legal system is neither a legal fixed norm nor a presupposed norm, but rather a flexible social rule that exists because it is actually practiced and accepted, that is, used to guide societal conduct. Law ultimately rests on actual social pragmatics and constructs, i.e., as sources of law, and how laws may be changed. [7]

In the context of this study, filiation laws must be dynamic and evolving to the changes of time. With the numerous social advocacies all over the world that all children should be treated equal and none should be left behind, there is a need to examine the legal frame of the filiation divide in the Family Code of the Philippines. Indeed, laws ultimately rest on actual social pragmatics and constructs because they must be relevant and resilient to the social frames that people have. Otherwise, they are not responsive, or could create disparities to the very subjects they intend to cover. In the case of Philippine filiation laws, there must be an intensive analysis whether the filiation divide of being a "legitimate" or "illegitimate" child is still applicable, relevant and conducive to our contemporary social constructs and other prevailing social circumstances. Through this, we could concretize our filiation laws according to the very soul of the society they serve, especially to children.

3. Results and Discussions

Terminology and Classification. Under the Family Code of the Philippines, there are two classifications of natural filiation which is being termed as "filiation divide" in this study – legitimate and illegitimate. This dichotomy eliminated five distinctions among various types of illegitimate children under the old Philippine Civil Code which is a reminiscence of the Spanish influence, particularly the *Codigo Civil de 1889*. Hence, illegitimate children are not anymore classified as natural children, natural children by legal fiction, acknowledged or recognized natural children, and illegitimate children other than natural, such as spurious children and adulterous children. The legal frame under the Family Code is that, all of them are illegitimate children.

However, while apparently the Family Code liberalized the classification by eliminating the five gradations of illegitimate children and simplifying it only into two, it still maintained the New Civil Code's terminology as "legitimate" or "illegitimate". Meaning, it still maintained the legal tradition that legitimate children are contextually treated as more superior or preferred, termed as "more noble", while illegitimate children are begotten with impropriety. This is in accordance with the suppositions of Coolidge (2007) that there is still strong social repugnance to children who are begotten outside of marriage. From the term, "illegitimate" it gives the impressions that the child's existence is still considered as reprehensible and a disgrace to the dignity of a family or the woman [8].

Under the Family Code of the Philippines, the classification of legitimacy or illegitimacy is still based on the time and validity of the marriage of the parents. Unlike in some countries, like Australia, there are other methods of designating filiation, say, type of parentage and methods of conception. In other words, natural filiation classification in the Philippines is based on whether a child is conceived or born during a valid marriage of the parents.

In the Family Code Committee deliberations in 1988, there was a good chance to ventilate this issue for discussions but the arguments seemed to have focused more on peripheral matters. It was stated that the term "legitimate" or "illegitimate" was maintained in our Family Code only to establish a status, and not as a reference to the legality or morality of the act of the parents. With the ratiocination that the term

“legitimate” or “illegitimate” is only to establish a status, and with the fact that the determination of such status is based on the spheres of a valid marriage, it must have been better and logical that the terminology used as status is “marital” or “non-marital”. It could also be “matrimonial” or “non-matrimonial”, as being termed in the current Civil Code of Spain to which the family and civil law traditions of the Philippines is heavily based on. It is easy to conclude then that the terms used by the Family Code is not in conformity to their supposed intention.

Even by analyzing the definition of “illegitimate children” under Article 165 of the Family Code which is “conceived and born outside marriage”, it does not automatically connote “extramarital affair” to justify the use of the term. In fact, as highlighted in the preceding discussions, being a child born out of wedlock could also be the choice of parents who has no legal impediment but prefer not to marry. This is widely accepted as an alternative domestic setup and allowed by law and it is no longer considered “illicit”, hence, there is nothing “illegitimate” about it. It is also possible the father of an unborn child dies before marrying the child’s mother. There are also instances when parents bear a child while they are still below the marriable age, yet, there is nothing illegal about it. Or, in involuntary cases when the relationship of parents failed, and the father abandoned the child. Worse, for rape victims who bravely bear and raise the child but could not marry her perpetrator.

Even with children born from illicit affairs do not justify the use of the term “illegitimate” if the rationalization of the Family Code Committee is used. The act or sin of the parents is separate from the civil entity of the child. Hence, it is erroneous to attach the filiation identity of the child to the nature of the deed.

Thus, the lexical reference of filiation classification as “legitimate” or “illegitimate” is against the non-discrimination (Article 2) and the best-interest-of-the-child (Article 3) mandates of the UNCRC. It is high time to eliminate the discriminatory term to non-marital children as “illegitimate”. It does not promote a dignified civil identity and personality of the child. This is also enshrined under Article 8 of the UNCRC that “State Parties shall undertake to respect the right of the child to preserve his or her identity” and such identity includes a birth’s circumstance that is respectable, decent and positive for his future.”

Medically assisted reproduction (MAR). Undoubtedly, one of the breakthroughs introduced by the Family Code is the inclusion of artificial insemination in the Philippine filiation frame. Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor, or both, are legitimate, provided that both of them authorized or ratified the same in a written instrument executed and signed before the child is born. The instrument must be recorded in the civil registry, which is a mandatory requirement. This means that the frame of the law allows homologous insemination (by the husband or donor) or heterologous insemination (by both husband and donor). The child produced through homologous or heterologous insemination is still considered legitimate for as long as there is compliance to the procedural requirements of the law.

However, under the Family Code, the child conceived or born as a product of artificial insemination is still considered as legitimate of the husband and wife, even if the husband is not related by blood anymore to the child in case of heterologous insemination or through a donor. To some authors, this is highly anomalous. Based on the frame of the law, for as long as there is compliance to the legal procedures and requirements of the law, especially on registration, the law considers the child as legitimately filiated. It is also provided that the father cannot impugn the legitimacy if the procedures are fully complied.

Unfortunately, the law is not clear in a situation when there is a failure to comply with the procedural requirements relative to artificial insemination. What will be the status of the child? Based on Article 164

of the Family Code, and applying the “legitimacy presumption” it could tentatively be construed that the child is legitimate, with the phrasing, “children conceived or born during the marriage of the parents are legitimate”, and for as long as the father does not impugn it. But what is then the legal significance of the procedural requirements which must be complied with? The child could not also be classified as “illegitimate” because “he was conceived or born in a marriage.” To reiterate, the law is not so clear on this matter. If the father officially impugns the filiation, then it could said, the child is illegitimate. To avoid or eradicate this confusion, there should be an express provision averring that “none compliance with the procedural requirements will render the filiation of the child non-marital, whether the father impugns the same or not.”

Because of these legal gaps particularly putting the filiation status of the child in limbo, it is obvious that the provisions of the Family Code is not compliant to Article 8 of the UNCRC which mandates a State Party to protect and establish clearly the filiation identity of a child.

Presumption and Impugning Legitimacy of Natural Filiation. Based on the current legal frame of the Family Code, filiation presumes status of a child based on the time of conception or birth. Obviously, the law presupposes a valid marriage between the husband and the wife. Hence, the husband is presumed to be the father of the child of his wife. This presumption holds even though they were no longer living together when the child was conceived and born, and even though the mother has admitted that her husband is not the father of her child, or even though she has disclosed who the biological father of the child is. Under the present law, the marriage of the husband to the biological mother of the child has made him the legal father of every child his wife will conceive and give birth to.

The rule on presumption is understandable when the advent of science was not yet advanced. It is a difficult situation to make the filiation status of the child hanging. Moreover, this presumption is grounded on practicality and convenience in proving legitimacy as a form of protecting the welfare of the child. Why is the legitimacy being protected? Because the law provide them more rights and privileges to legitimate children than illegitimate children which must now be examined because it is obviously violative of the Equal Protection Clause of the Constitution..

The Family Code inherited the legal tradition of favoring legitimacy because of the deep Catholic values to establish and preserve the importance of bearing a child within a valid marriage. Moreover, because the law provides the legitimate child a preferred and superior status over an illegitimate one, it is viewed that the rule on presumption is a “protection” to his welfare and, truly, for his best interest as far as the benefits from his civil rights are concerned, like inheritance, support, use of surnames, among others.

Flowing naturally from the rule of presumption of legitimacy is the concept of legal fatherhood. Because the law favors legitimacy, a husband who refuses or does not act to assail the law’s presumption of paternity will be considered as a legal father of a child even if, in truth and in fact, he is not the biological one. Concepcion (2015) highlighted the intriguing repercussion on the concept of *legal father*. He illustrated the concept with a woman who was made pregnant by her boyfriend, and the woman broke off with her boyfriend when he refused to marry her. While carrying her baby, she met another man, who despite knowing that she was pregnant by another man, married her. The child was born after the marriage. What is the status of the child? [9]

This is an antiquated legal frame. With the advent of science, especially DNA testing, this absurdity of our filiation laws could already be solved. Paternity is a moral issue because it entails obligations to the child. While the reasons and policy of the law could be easily understood in insisting such presumption, when there is a conclusive mean or method to ascertain the truth, why should the presumption be

maintained. Moreover, what is the biological father can give better support, sustenance and parental authority to the child, can he not assert the truth? Or when the child reaches his majority age, should the truth be prevented if it redound to his best interest?

Evidentiary Proofs of Filiation. There is a big disparity on the procedural proofs and period to claim filiations between legitimate and illegitimate as provided for by the Family Code. The right to claim legitimate filiation is transmissible to the heirs, to which cases, can be brought within five (5) years. Unfortunately, the action to claim illegitimate filiation is not transmissible.

Obviously, these legal frames are repugnant to the yardsticks of the Equal Protection Clause of the 1987 Constitution. There is no acceptable reason why legitimate children can avail all the proofs of filiation as provided for by law, or why illegitimate children could they only show proofs during the during the lifetime of the alleged parent, or the illegitimate child's intransmissibility of his claims. As these legal frames are highly discriminatory, they are not compliant to the mandates of Articles 2 and 3 of the UNCRC.

4. Conclusions

Based on the findings of the study, it is hereby concluded that the legal frames of the Family Code dealing on filiation are inconsistent and repugnant with the the equal protection clause of the 1987 Constitution and not compliant and congruent to Article 2 (non-discrimination clause) and Article 3 (best interest of the child clause) of the United Nations Convention on the Right of the Child (UNCRC). It is hereby recommended that the provisions of the Family Code of the Philippines must be immediately revised to cure their legal maladies and errors.

5. References

1. Philippine Supreme Court, GR No. 208912, December 7, 2021 [As per J. Leonen, *En Banc*]
2. US Supreme Court, 406 U.S. 164 (1972), April 24, 1972 [as per J. Powell]
3. Laslett, Peter; Oosterveen, Karla and Smith, Richard. (1980). "Bastardy and its Comparative History." From <http://alanmacfarlane.com/TEXTS/bastardy.pdf> (Accessed March 24, 2024)
4. Philippine Statistics Authority (2017). "Report on Demographic Profiling on Philippine Population." A Country Report submitted to the Asian Development Bank. Manila, Philippines.
5. Social Children Trends International. (2024). "Global Children's Trends: A Statistical Report." <https://sustaindemographicdividend.org/articles/-international-family-indicators/-global-childrens-trends> (Accessed March 26, 2024)
6. Etzioni, A. (1978). "Methods of Policy Research in Law". The American Sociologist, 6, 8–12. <http://www.jstor.org/stable/27701831>
7. Green, Leslie and Adams, Thomas. (2019). "Legal Positivism". The Stanford Encyclopedia of Philosophy (Winter 2019 Edition). Edward N. Zalta (editor). URL = <<https://plato.stanford.edu/archives/win2019/entries/legal-positivism/>>.
8. Coolidge, Grace E. (2007). "A Vile and Abject Woman: Noble Mistresses, Legal Power, and the Family in Early Modern Spain". Journal of Family History. Grand Valley State University in Allendale, Michigan. USA. Volume 32, Issue 3, pages 195-214. <https://doi.org/10.1177/0363199007300205>
9. Concepcion, Danilo. (2015). "Philippine Law on Paternity and Filiation: The Spanish Legacy." A Paper presented to the 2015 Studies on Spanish-Philippine Private Law: Papers of the Private Law of the Philippines and Spain International Scientific Congress. University of Malaga, Spain.