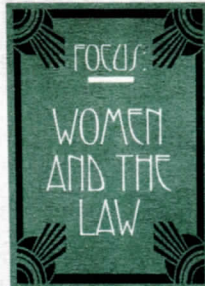


# till Divorce do us Part

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***In Asia, as women become more emancipated and life around the region grows more frenetic, couples are deciding they can't stick together till death do they part. Joyce Moy reports.***



Confucian ethics and Asian traditions decree that you love the person you marry - rather than marry the person you love. Historically, divorce around the region has been a non issue: husbands who did not learn to love their wives took on concubines. As for the women - well, besides being financially and socially dependent on their husbands, their role in this deal was to bear children and bring them up. What's love got to do with it?

Times have changed. Education and economic independence have effected a dramatic turnaround in the status and social well-being of women. As a consequence, rather than suffer in silence, increasing numbers of Asian women are opting for divorce as an end to marital misery. Singapore marriage counsellor Benny Bong observes: "Husbands have to play a dual role these days - both as the head of the household and as a marriage co-partner. But they are not trained for the partnership role. They see negotiating with their wives as a sign of weakness.

"On the other hand, women want recognition that - in addition to being a wife and a mother - they are also working and thinking persons. My husband feels that to ask their wives for an

opinion is to open a can of worms. How much weight should they give to such opinion if it differs from their own?"

The fact is that divorce - once regarded as an illness of a decadent Western society - is on the rise around Asia. Marriages are falling prey, not only to women's emancipation, but also to the stress of coping with the demands of the fast-changing, revved-up pace of

modern urban living. Associate Professor Wimolsiri Jamnarnwej remarks: "Everyone is working to make money. Husbands and wives have no time for each other. They travel separately to work each morning, leave home early, arrive home late; they don't talk."

Horace Lee, a Hong Kong marriage counsellor, agrees: "In Hong Kong, the hectic pace of business demands that both husband and wife spend most of their time working, with only one day out of the week for leisure. If spouses have different priorities and ideas on how to spend this off-day, conflict will inevitably ensue."

Thailand records about 47,000 divorces annually, and the numbers are increasing at the rate of two-and-a-half per cent per year. Taiwan, struggling to cope with the social upheavals brought on by being an economic powerhouse, is clocking more divorces annually than it is building highways - 1.4 percent of all Taiwanese marriages today end in divorce. Hong Kong estimates that one in every 10 marriages break down and Japan's count of broken marriages is 17.9 out of every 1,000.



On the legal front, while divorce legislation around the region has generally taken a great leap forward, each country has its own set of laws. A snapshot survey of the state of divorce around Asia follows.

**THAILAND:** Adultery is the most common cause of divorce here. Adultery is also the conspicuous exception to the principle of equal rights under civil and commercial law, which was granted to Thai women in 1985. In the case of adultery, the cards are stacked in favor of the husband, who can sue for divorce immediately if his wife is unfaithful - one instance provides sufficient grounds. However, the wife can only bring charges of adultery against her husband if he is proven to be living with and supporting another woman.

Associate Professor Wimolsiri, who is also resident of the Women Lawyers Association, explains that deep-rooted traditions endure among Thai men and that, despite the introduction of monogamy in 1935, the practice of the "minor wife" is still widespread.

She would like to see this change. "Adultery should be defined as in the West," she says. "There should be equal grounds for divorce; men should not keep secret wives. The family law from 100 years ago allowed polygamy; but in 1935, after the emplacement of constitutional monarchy, a man was required to register his legal wife. But even today, men have more than one wife."

However, Wimolsiri, who is advisor to the National Committee on Women's Affairs, does not hold out much hope for immediate change - not with 300 men and just 16 women in parliament. "Many MPs have minor wives," says Wimolsiri. "Prime Minister Chuan Leekpai is a good man, but even he has not registered his marriage."

"There are 10 grounds for divorce in Thailand: adultery; bad habits such as drug abuse; criminal activity or prostitution; physical abuse; desertion for more than one year; disappearance, when a spouse has not surfaced for more than five years; lack of support; refusal to have sex; insanity for more than three years; breaking of a written agreement (for example, the spouse promises not to get drunk); and dangerous diseases such as AIDS or any contagious and incurable disease. All apply equally to men and women - except for adultery.

Although child custody is usually granted to mothers with secure jobs, with fathers ordered to pay child alimony, typically women end up with the shorter end of the stick. It is estimated that 80 percent of divorced mothers do not receive child support payments from their ex-husbands.

Supatra Nakhapuew, law consultant with the Women's Friend Group, says: "Most divorced women do not pursue the issue of child support, preferring to struggle on alone. Child alimony currently is not enforced. Divorced fathers often claim their salaries are only enough to pay their own expenses.

**TAIWAN:** In this emerging affluent society, where women executives are multiplying at an exponential rate, a tug-of-war is taking place between emancipated women and tradition, ally-minded men over the age-old practice of keeping ashau lau por (little wife). In addition, women still get a raw deal when their marriages come unstuck. Lawyer Shen Mei-chen laments: "The present laws are backwards and unfair to women."

If both parties agree to custody of the children and division of property, divorce is a straightforward matter. A couple can sign a written agreement in a lawyer's office in the morning and have the divorce legally registered in the afternoon. The problem - especially for the woman - starts when there is some dispute or when the husband opposes the divorce.

Shen explains, "The courts will not grant a woman a divorce unless there is proof of beating, from a doctor or a lawyer. Taiwanese generally regard divorce as immoral and therefore are reluctant to be witnesses in such situations."

Current guidelines also require a battered woman to produce no fewer than 10 individual instances of violence. "Being hit once is not enough for the court," says Shen. Even if she is granted a divorce, a woman is unlikely to come out of court with more than the clothes she has on. Maintenance payments are an alien concept. The current law gives automatic custody of any children to the husband. Property, even if it is held in the woman's name or given to her by her family, cannot be disposed of without written permission from her husband. While a 1985 amendment has relaxed the ruling on joint property, this is not retroactive. Hence, all property acquired by the couple before June 3, 1985, belongs automatically to the husband. On the social front, there is still a strong stigma dogging the divorced woman. "If a woman is divorced," says designer Dinny Wang, "a man's family will think there is something wrong with her - that she's not a good wife, not a good mother."

But, as elsewhere in Asia, the climate is changing. Two women's groups - the Awakening Foundation and the Warm Life Association - have launched a signature campaign to petition for a change to the island's divorce laws. They are hoping to get 100,000 signatures to prove to the government that the proposed amendments have popular support. The revisions cover grounds for divorce, required proof of mistreatment and divorce settlements, including fair division of property, maintenance payments and abolition of automatic custody rights to the husband. The bill is expected to take between one and three years to pass through the legislature.

**JAPAN:** Divorce legalities are surprisingly simple, if uncontested divorce boils down to filing the relevant paperwork (which can be completed without a lawyer) and costs Y300 (US\$3). However, social conventions hold sway and still today, divorce is taboo because



it violates Japan's strong family institution.

Divorce is not just two individuals splitting up - rather, it is two families who are shamed socially. A married woman is regarded as the property of her husband's family. Among the various traditional wedding rites, one includes recording the bride's name under the husband's family register, kept at the village temple or city office. A move to de-list her name makes the woman - and her children, if any - a social outcast.

A housewife in her late 40s confesses that although she has often contemplated ending her unhappy marriage, the consequences have held her back. Her children would never see their grandparents again, because in leaving their father, she would have shamed that side of the family. The toll exacted extends even to the next generation: conservative corporate Japan would frown on hiring children from divorced families.

At present, there is no legal separation period after which divorce is automatically granted. A pending revision to the civil code proposes a "living apart" period of five years, after which a divorce is granted regardless of whether the other partner agrees. This, says a member of the Japan Bar Association, will simplify the process even more.

Similarly, social acceptance of divorcees is gaining ground, albeit very slowly. A new television series, *Wedding Bell*, which introduces prospective partners along the lines of a traditional *omiai* (matchmaker), regularly features divorced men and women - often with their children and parents in tow. The tone is positive, promoting the idea that divorce is normal in today's society.

**PHILIPPINES:** With the majority of the population Catholic, divorce is non-existent, although legal separation is an option, remarriage is not allowed.

Now, however, things have loosened up, with the advent of Article 36, an amendment in the family code that provides for civil annulment on the grounds of psychological incapacity. Article 36 relaxes the rules for consenting adults by allowing for a civil annulment. "It's a modified divorce," lawyer Jose Ramo Remollo admits.

The theory behind civil annulment is that you weren't married in the first place, because (and this is admittedly a simplistic interpretation) you didn't understand the marriage vows. So you couldn't be held responsible for fulfilling them. By assuming you weren't married in the first place, the law clears its own conscience neatly and preserves the inviolability of marriage. It also leaves spouses free to remarry.

Psychological incapacity can manifest anytime; theoretically, you can still prove it past your golden wedding anniversary. Couples married prior to the 1988 family code have until 1998 to avail themselves of Article 36. The result, says Remollo is "a rush to the courts."

According to canon law, psychological incapacity includes psychic disorders that "render a spouse psychologically unfit to assume

the essential functions and duties of marriage." Among these are homosexuality, habitual alcoholism, philandering, and - what a wide berth this next provides - emotional immaturity or irresponsibility.

"If a man was a heavy drinker," Remollo notes, "or was womanizing at the time of marriage, he can manifest psychological incapacity by neglecting or abandoning his family."

"Because annulment supposes that no marriage existed, neither party is under any obligation to support the other. Couples may agree to a distribution of property, however, and in all cases the law protects the children."

**HONG KONG:** The courts grant a divorce based on five points: unreasonable behavior; adultery; desertion; uncontested suit after a two-year separation; and five years of separation. Providing that there is no argument over division of assets and custody of children, divorce can be relatively straightforward, dispensing with the need for lawyers.

In the pipeline is a recommendation by the Law Reform Commission that petitions be permitted after one year of marriage instead of three, and after one year of separation, instead of two.

**SINGAPORE:** To achieve a divorce here, couples must have lived apart for at least three years before initiating proceedings. In addition, they must have been married for at least three years. Lawyers and marriage counsellors say that "living apart" is the most cited reason of divorce - a convenient cover behind which all kinds of dirty linen can be kept from the public eye."

Although the government continually emphasizes family values as a cornerstone of Singapore's society, broken homes are increasingly common. Marriage counsellor Maureen Lim blames the current materialistic society for the breakdown in marriages. "How does a working couple juggle the message to excel and work harder with the message to spend more time with the family? The trade-off used to be less time with the family in order to bring more money. But this trade-off is no longer acceptable," says Lim.

There is no social stigma attached to being a divorced woman, but there are financial disincentives. For example, a new small-families improvement scheme only provides housing and education subsidies to a mother if she stays in her marriage.

For the financially independent woman, this is not a stumbling block, however, lawyers say working wives do not generally seek maintenance for themselves after a divorce. But men are usually required to provide maintenance for children in the custody of their ex-wives.

Interestingly, Singapore is about the only country where divorce laws allow the man to claim a stake of his wife's assets. In a landmark ruling last April, a judge awarded a 56-year-old pastor and self-proclaimed househusband a share of the family flat that his teacher wife



paid for. The flat was valued at S\$355,000 (US\$241,045). The judge ruled that he should receive S\$50,000 on the grounds that he had done most of the housework.

**MALAYSIA:** As Islam is the official religion here, two sets of laws apply - non-Muslims are governed by the Law Reform (Marriage & Divorce) Act 1976, while Muslims subscribe to Syariah laws.

Under the 1976 Act, a non-Muslim couple may file a joint petition of divorce by mutual consent after two years of marriage. This is the fastest and cheapest method to get a divorce, since there is no contest and both the parties have agreed on an amicable division of assets.

Should there be a dispute, either party can file a petition claiming that the marriage has irretrievably broken down, citing adultery, unreasonable behavior or desertion for more than two years.

Before the petition is allowed, both parties are compelled by law to undergo conciliatory proceedings at a marriage tribunal set up by the National Registration Department. However, most lawyers agree that the lack of experts such as marriage counsellors or psychologists at the tribunal makes this provision merely a formality and a delaying tactic.

The divorced man pays maintenance, he must give financial support to his wife until she remarries, and to the children until they are 18. Lawyer Balwant Singh Sidhu calls this reverse discrimination; a woman is required to pay maintenance to her husband only where he is "incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health."

Syariah law is more complicated. According to lawyer Kamar Ainiyah Kamaruzamn, there is no equivalent of an uncontested divorce. One party always initiates the proceedings. There are four types of divorce: talaq, taqliq, fasakh and khuluk. Only the first - talaq - is initiated by the man; the three others filed by the woman.

Under talaq, a man need not justify why he wants a divorce. The court will not look at the cause of the divorce but to the form, i.e., that the divorce is executed fairly in the interest of both parties.

A woman can file a divorce by taqliq if she feels that there has been a breach of a stipulated condition by the husband. Valid reasons include non-payment towards household maintenance, desertion or cruelty.

Under fasakh, a woman can be granted a divorce based on a number of grounds, such as if the husband is imprisoned, impotent, or contracts a sexually transmitted disease.

In khuluk, it is the woman who wishes the marriage to be dissolved and offers compensation to her husband. Marriage is seen as a contract in Islam, whereby a woman offers herself to the man. For the contract to be binding, there must be a form of exchange -

the mas kahwin (marriage gold) comprises jewelry, money and other gifts given by the man to his bride. A woman who files for khuluk must return all the mas kahwin.

Under the talaq, taqliq and fasakh, a woman is entitled to compensation, which may be given in a lump sum or staggered over months or years. She is not entitled to further maintenance after this.

Custody of the children normally goes to the mother for sons aged seven or younger and daughters aged nine or younger. Child support is provided by the father - for boys until they start working for girls until they are married.

Muslim law allows a man to have up to four wives, provided he can adequately support each fairly. However, with financial independence, Muslim women today do not readily accept a polygamous relationship.▲

*Note: (a letter to the Editor of Asia Magazine clarifying the law in Singapore). Under Section 88 of the Women's Charter, there is only one ground for divorce, the petitioner must prove that the marriage has broken down irretrievably. Proving any one of five factors can establish this, i.e., adultery (by the respondent); intolerable behavior (by the respondent); continuous desertion (by the respondent) for two years immediately preceding the petition; the couple has lived apart for at least three years, and the respondent consents to the divorce; and the couple has lived apart for four or more years. Marriage may also be dissolved through annulment or by judicial separation.*

