

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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RECEIVED BY:

SENATE
S. B. No. 1254

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The law does not define what psychological incapacity is. The determination is left solely to the courts.

From the Committee deliberations during the drafting of the Family Code, it can be deduced that the absence of definition was intentional. Justice Eduardo Caguioa, the main proponent for the incorporation of Article 36, stated during the deliberations that the Code should not define psychological incapacity, because a definition would straight-jacket the concept.

Unfortunately, Article 36 has become a divorce provision in disguise, often invoked as a ground to terminate a marriage when other grounds provided in the Code are not present. Due to its generic character, it has become an easy way for many parties to sever their ties as husband and wife.

This bill seeks to amend Article 36 in order to preserve the sanctity of marriage as an inviolable social institution.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

THIRTEENTH CONGRESS OF THE REPUBLIC)
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First Regular Session)

'04 JUL -1 AM 1:15

RECEIVED BY: 

SENATE
S. B. No. **1254**

Introduced by Senator Miriam Defensor Santiago

AN ACT
AMENDING THE FAMILY CODE OF THE PHILIPPINES, ARTICLE 36

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled,

SECTION 1. The Family Code, Article 36, is hereby amended to read as follows:

Article 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. SUCH INCAPACITY MUST BE IDENTIFIED AS A PSYCHOLOGICAL ILLNESS TO BE PROVEN MEDICALLY OR CLINICALLY.

ARTICLE 36-A. THE COURT SHALL, IN CASE OF DOUBT, RESOLVE THE CASE IN FAVOR OF THE EXISTENCE AND CONTINUATION OF THE MARRIAGE AND AGAINST ITS DISSOLUTION OR NULLITY

MERE SHOWING OF 'IRRECONCILABLE DIFFERENCES' AND 'CONFLICTING PERSONALITIES' IN NO WISE CONSTITUTES PSYCHOLOGICAL INCAPACITY.

ARTICLE 36 - B. THE INDICATIONS OF PSYCHOLOGICAL INCAPACITY ARE THE FOLLOWING:

1. EXCESSIVE AND PROMISCUOUS SEXUAL HUNGER
2. REFUSAL OF THE SPOUSE TO DWELL WITH THE OTHER AFTER THE MARRIAGE AND TO EXTEND FINANCIAL, SPIRITUAL, MORAL, AND EMOTIONAL SUPPORT WITHOUT FAULT ON THE PART OF THE LATTER
3. CRIMINALITY, DRUG ADDICTION, HABITUAL ALCOHOLISM, LESBIANISM AND HOMOSEXUALITY, RENDERING THE OFFENDER INCAPACITATED TO COMPLY WITH HIS DUTIES AND RESPONSIBILITIES AS PROVIDED IN THIS CODE.
4. MANIFESTATIONS OF SOCIOPATHIC ANOMALIES IN THE OFFENDER, LIKE SADISM, OR REPEATED INFLICTION OF PHYSICAL VIOLENCE
5. LAZINESS OR INDOLENCE
6. SIMILAR BEHAVIOR WHICH RENDERS THE OFFENDER INCAPABLE OF COMPLYING WITH HIS OR HER MARITAL DUTIES AND RESPONSIBILITIES AS SET FORTH IN THIS CODE.

SUCH INDICATIONS MUST EXHIBIT GRAVITY, ANTECEDENCE AND INCURABILITY. THE OFFENDED PARTY SHALL BE WITHOUT FAULT IN ANY WAY. ”

SECTION 2. *Separability Clause* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 3. *Repealing Clause* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provision of this Act is hereby repealed, modified or amended accordingly.

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

Approved.

EPC
07 August 1998