
Why the need to Legalize Divorce in the Philippines**by: A.R.A**

Marriage is traditionally regarded as a sacred and indissoluble union in the Philippines, heavily influenced by religious doctrine and cultural norms. While annulment and legal separation are available, they are often costly, time-consuming, and insufficient to address the realities of broken marriages. The absence of divorce legislation leaves many Filipinos trapped in dysfunctional or abusive relationships, raising urgent questions about individual rights, family welfare, and social justice. This issue is particularly evident in the plight of couples who have been separated in fact for many years yet remain legally bound, creating complex consequences for themselves and their children.

The Family Code of the Philippines (Exec. Order No. 209, 1987) governs marriage and its dissolution. Under Article 55, legal separation may be sought on grounds such as repeated physical violence or drug addiction, but it does not permit remarriage. Article 36 allows annulment on the basis of psychological incapacity, as interpreted in *Santos v. Court of Appeals*, 310 Phil. 21 (1995), and refined in *Republic v. Molina*, 268 SCRA 198 (1997). However, annulment requires stringent proof and is often inaccessible to ordinary citizens due to prohibitive costs.

Thus, while the Constitution (Art. XV, Sec. 2) recognizes marriage as an inviolable social institution, the lack of divorce legislation leaves many Filipinos without effective remedies when marriages irreparably fail.

The right to liberty and security includes freedom from abusive or oppressive relationships. International human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by the Philippines, emphasize the need for legal remedies that protect women and children from violence and exploitation.

Many couples live “separated in fact” for years, sometimes decades, yet remain legally married. This situation prevents them from remarrying and forces them into informal unions. Children born of these common-law unions often suffer legal disadvantages, particularly in matters of legitimacy and inheritance. Under Article 165 of the Family Code, children conceived outside a valid marriage are deemed illegitimate, affecting their rights under Article 887 of the Civil Code on succession. These children may be stigmatized as “illegitimate,” despite being raised in stable households.

Neighboring countries such as Indonesia, Malaysia, and Singapore recognize divorce as a legitimate remedy, balancing religious and cultural values with modern legal needs. These jurisdictions demonstrate that divorce can coexist with strong family values when regulated responsibly. Legalizing divorce does not undermine the sanctity of marriage but acknowledges that some unions irreparably fail. Divorce legislation can be crafted with safeguards, such as mandatory counseling and waiting periods, to prevent abuse of the system while protecting those in genuine need.

Consider spouses who have been separated in fact for ten or more years. Each partner may have moved on, forming new relationships and raising children with their common-law partners. Yet, because they remain legally married, these children are considered illegitimate under Philippine law.

For example, in *Republic v. Court of Appeals and Molina*, the Supreme Court emphasized the strict standards for annulment under Article 36, leaving many couples unable to dissolve their marriages. Consequently, children of subsequent unions are denied full legitimacy, which affects their inheritance rights and social recognition. This perpetuates injustice and undermines the welfare of children who are blameless in the breakdown of their parents' marriage.

The legalization of divorce in the Philippines is not merely a legal reform but a social justice imperative. It recognizes the dignity of individuals, protects vulnerable family members, and aligns the country with international human rights standards. By addressing the plight of couples separated in fact and the children of their subsequent unions, divorce legislation would provide clarity, stability, and fairness in family law. While cultural and religious opposition remains strong, the law must evolve to reflect the realities of modern Filipino families.

The absence of divorce in the Philippines perpetuates inequality, denies fundamental rights, and leaves countless individuals trapped in harmful relationships. Legalizing divorce is necessary to provide humane, accessible, and equitable remedies for broken marriages. A carefully designed divorce law, with appropriate safeguards, would strengthen—not weaken—the institution of marriage by ensuring that it remains a union grounded in mutual respect, love, and dignity. Most importantly, it would protect children from the stigma and disadvantages of illegitimacy, affirming their right to grow up in families recognized and respected by law.