

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SIXTEENTH CONGRESS
First Regular Session

House Bill No. **1590**



Introduced by BAYAN MUNA
Representatives NERI J. COLMENARES and CARLOS ISAGANI T. ZARATE

**AN ACT RECOGNIZING SPOUSAL VIOLENCE,
INFIDELITY AND ABANDONMENT AS CONCLUSIVE PRESUMPTION OF
PSYCHOLOGICAL INCAPACITY CONSTITUTING A GROUND FOR THE
DECLARATION OF NULLITY OF MARRIAGE, AMENDING ARTICLE 36 OF THE
FAMILY CODE FOR THAT PURPOSE**

EXPLANATORY NOTE

One of the major acts of Pres. Cory Aquino when she became president was the promulgation of Article 36 of the Family Code which allows the annulment of marriage on the ground of psychological incapacity. The law declared that *"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."*

Article 36, in its more than two decades of existence, was then used by spouses, who have long been suffering from marital relations attended by violence, infidelity, abandonment and other acts of humiliation, pain and anguish from their offending spouses. Unlike the no fault divorce in European and United States laws, Article 36 requires that the annulment be justified by psychological incapacity to fulfill "essential" marital obligations. Marital obligations are defined in Article 68 of the same Code as the obligation "to live together, observe mutual love, respect and fidelity, and render mutual help and support."

The proceedings under Article 36, however, have proved to be expensive and discriminatory in favor of the rich and powerful who can afford to hire an array of lawyers, psychologists and psychiatrists and spend for the fees of these professionals for the years that it takes for the petition to be resolved. The proceedings have also become complicated with different judges in different Regional Trial Courts and different psychologists/psychiatrists, depending on whether they are witnesses for the petitioner or respondent, give different interpretations to similar acts of psychological incapacity. Some courts require psychologists while others insist on psychiatrists who charge higher professional fees. Worse, judges exercise so wide a discretion often ruling against an opinion of clinical psychologists/psychiatrists on the basis of their liberal or conservative moral, rather than legal, tenets.

The appeal if one is taken, could take years, taking its toll on the finances of the petitioners

except for the rich executives, movie stars and the wealthy. In sum, the law has become a long, complicated and expensive process rendering it almost inaccessible to the poor who are similarly trapped in a void marital relation with a spouse who cannot fulfill his/her obligation to love, support, cohabit or respect his/her spouse. What Pres. Cory Aquino may have envisioned as a simple law that should allow spouses trapped in a void marriage with a psychologically incapacitated spouse, has become a major, complicated, expensive and discriminatory, therefore unjust remedy.

This bill seeks to make the proceedings accessible and less costly to those who cannot afford the inordinately expensive cost of the petition by simplifying the proceedings and cutting the period of time for resolving the petition. Should the petitioner allege that she or he has been the victim of spousal violence, infidelity and/or abandonment, such allegations are conclusively presumed constitutive of psychological incapacity on the part of the offending spouse unless the latter successfully presents evidence to rebut the same. In that way, the procedure is shortened, saving on cost and expenses.

Additionally, there is a possibility that the hiring of expensive psychiatrists/psychologists is avoided considering that the law already grants the conclusive presumption of incapacity. Lastly, the unbridled and sometimes contradictory discretionary interpretations of judges are reasonably limited due to the conclusive presumption granted by law. Judges who maintain that a spouse who regularly inflict violence on their spouse is not psychologically incapacitated are now limited from exercising such discretion unless the respondent spouse provides ample evidence to rebut the allegation.

Article 36 of the Family Code has not been controversial when it was signed by Pres. Cory Aquino in 1987 probably because many recognized that indeed it is but right to allow freedom to those who are trapped in a marriage with a psychologically incapacitated spouse. The law, which has been in existence for more than twenty years has, however, not fulfilled this legislative intent and has become a remedy mainly for the wealthy and the powerful. Article 36 must be amended if it shall be a just and effective remedy for spouses suffering from the misfortune of taking a psychologically incapacitated person for a lifelong partner.

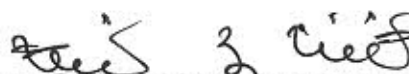
This bill aims to help equalize access to Article 36 by giving both the rich and the poor the opportunity to institute the proceedings at a cost that is not astronomical and for a period of time that should take less than a year.

The bill aims to address the inequality and inaccessibility that has resulted from the remedy granted by the Family Code to be free from a void marriage with a spouse who has committed abusive acts of violence or infidelity or abandoned his or her family.

We ask for your support and immediate approval and that this Bill be immediately referred to the *Committee on Revision of Laws* for appropriate action.

Approved,


Rep. **NERI J. COLMENARES**
Bayan Muna Party-List


Rep. **CARLOS ISAGANI T. ZARATE**
Bayan Muna Party-List

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

Section 1. Article 36 of the Executive Order 209 of July 26, 1987 or the Family Code of the Philippines as amended by EO 227 is hereby amended to read as follows:

“Art. 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. **PROVIDED THAT VIOLENCE COMMITTED BY A SPOUSE AGAINST HIS OR HER SPOUSE, ABANDONMENT OF THE CONJUGAL HOME FOR AT LEAST ONE YEAR, AND THE ACT OF HAVING SEX WITH A PERSON OTHER THAN HIS OR HER SPOUSE SHALL BE CONCLUSIVELY PRESUMED PSYCHOLOGICAL INCAPACITY ON THE PART OF THE OFFENDING SPOUSE.**”

Section 2. Repealing clause—All laws, decrees, resolutions, orders or ordinances or parts thereof inconsistent with this Act, are hereby repealed, amended or modified accordingly.

Section 3. *Effectivity.* – This law shall take effect after fifteen days following its publication for two consecutive weeks in the newspaper of general circulation in the Philippines.

Approved.