

October 5, 2015; Annulments in the Philippines

The Philippines bears the dubious distinction of being the last country in the world outlawing divorce. Unhappy married couples wishing to live apart from each other only have three options.

Last week we discussed the first two – legal separation and voiding a marriage. With a legal separation, the couple lives apart, divides their property and debts, and determines child custody. However, they remain legally married, preventing both from remarrying. On the other hand, if a marriage is voided, then, in the eyes of the law the marriage never existed. So, the couple may remarry. Today, we discuss the third option, annulment.

As is true in other countries, the Philippines has two different annulment procedures – one religious, the other civil. People often confuse them. In the Catholic faith, a marriage can only be dissolved through an ecclesiastical annulment. This is a declaration that a sacramental marriage was never truly created. In other words, the marriage was fatally flawed from the very beginning and therefore doesn't exist in the eyes of the Church. If the annulment is granted, either party may then remarry in the Church.

The process is rather complex, often expensive, and can take up to a decade to conclude. On September 8th, Pope Francis stated that the Church should take steps to streamline the process and reduce the cost.

In a civil annulment, a Philippine court decides whether to terminate a civil marriage. Similar to a Church annulment, the person applying for the civil annulment must prove that the marriage was defective from the very beginning. A successful civil annulment cannot be transferred over to the Catholic Church to obtain an ecclesiastical annulment. According to Church doctrine, the couple remains married until and unless the Church grants the couple an annulment.

The process for a civil annulment bears some resemblance to the process of having a marriage declared void, but with a major difference. A void marriage can't be restored under any circumstances because, from a legal standpoint, the marriage never existed.

For example, if one spouse was married and then married someone else without the dissolving the first marriage (bigamy), the second marriage is void and will never be recognized as a valid marriage.

In contrast, a marriage that qualifies to be annulled, although also defective from the beginning, is considered valid until legally annulled. The following are examples of acceptable grounds for an annulment: Either spouse suffered from mental instability, psychological incapacity, an incurable sexually transmitted

disease, or permanent impotence; if either spouse married between the ages of 18 and 21 without the parents' permission; or, if a spouse committed fraud.

Hiding a serious drug problem, alcoholism, or homosexuality are examples of fraudulent behavior.

A major criticism aimed at Philippine annulments is the fact that problems arising after marriage can't serve as grounds for an annulment. So, if a spouse becomes a drug addict, engages in an adulterous affair, or becomes physically or mentally abusive during the marriage, the best the non-offending spouse can hope for is to obtain a legal separation.

Many Filipinos consider the annulment laws unfair and particularly discriminatory towards women.

This situation was highlighted a few years ago when two female legislators introduced a bill to legalize divorce. In a lengthy "Explanatory Note" that accompanied the bill the authors wrote:

"Women are traditionally regarded as primarily responsible for making the marriage work and are expected to sacrifice everything to preserve the marriage and the solidarity of the family. While absolute fidelity is demanded of wives, men are granted sexual license to have affairs outside of marriage. Yet when the marriage fails, the woman is blamed for its failure."

The authors went on to say that the inequality and violence that exist in many Filipino marriages undermine and "erode the bases upon a marriage is founded."

In short, the authors believe that under the current law wrongs committed by husbands during the marriage go unaddressed, while wives are expected to be silent sufferers and endure their husband's abuse and/or infidelity. The only legal option currently available to an innocent spouse is a legal separation. Since remarriage isn't permitted under a separation, this often results in a life of loneliness and poverty for the wife, whose earning capacity is frequently much lower than her husband's.

The authors argue that this double standard must end and the law amended to allow for divorce, when appropriate. This will enable both parties to move on with their lives and to remarry.