**Changing Roles of Spouses in American Institution of Marriage**

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# Executive Summary

This presentation consists of two parts. The first part provides an introduction focusing on the traditional legal nature of the institution of marriage and family in the United States. The details have been provided in the first two sections, i.e., *Introduction* and *Terms of the Traditional Legal Marriage Contract.* The second part three of the most significant changes to the legal regulation of marriage/the family. It consists of four sections namely, *Fundamental Changes in the Legal Regulation of Marriage/Family, Stereotyped Parenting Roles, Transgender Parents,* and *Interracial Marriages.* The concluding remarks to the presentation have been provided in the last section, i.e., *Concluding Remarks.*

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# Section I: Introduction

The marriage contract is different from other regular, commercial contracts. It is a social contract, in which the terms of the contract remain unknown to the contracting parties, penalties are unspecified, and terms and conditions are unwritten. Primarily, the spouses are not informed of the terms, nor are they allowed to make any changes to these terms. As a matter of fact, many scholars and researchers wonder that how many men and women would agree to enter into the contract of marriage today if they are allowed to read the terms and make changes to them. It also gives rise to the situational question that why such an unusual contract still exists in modern day societies.

As a matter of fact, state contains a paramount interest in the continuation of the tradition family institution in the country. However, in the past century, the American society has undergone profound transformations. For this reason, the long-standing legal system supporting the traditional family institution may now appear to be highly anachronistic. Also, the conventional picture of the legal conception of marriage has now been challenged by the recent constitutional interpretations. For instance, in the recent case of Griswold versus Connecticut, the court held that the states have no autonomy in the laws and rules governing marital status. Therefore, it is high time to reconsider, in the light of this new constitutional standard, the state definition of conventional institution of marriage and family.

# Section II: Terms of the Traditional Legal Marriage Contract

Under the doctrine of coverture, the spouses are merged into a single legal identity after the marriage. For this reason, the wife losses ownership and control of her real property and chattels. Her husband becomes entitled to her earnings, if she earns. Additionally, she is not allowed to enter into contracts on her name after getting married. Also, she cannot sue or be sued in her name. Primarily, married women were prevented from her criminal responsibility, i.e., any criminal conduct made by her in the presence of her husband will be considered to have been done by the husband. Moreover, the spouses are not allowed to make contracts with one another while in a marriage.

As the time passed, married women were liberated. Particularly, many of the legal restraints were gradually removed from the married women after the passage of Married Women’s Property Acts in 1839 and 1882. The prime purpose of these Acts was to erase the disabilities and redress the balance for the women in the marital relationships. However, despite the fact that these Acts redefined the property rights among the spouses, today after more than a century many of the fundamental rights and obligations between husband and wife remain fundamentally the same. Although the private practices in modern day marriages may not conform to the conventional traditions but the present case law and statutory rules continue to remain the same.

# Section III: Fundamental Changes in the Legal Regulation of Marriage/Family

Sociological challenges help defining and refining the social policy. A wise social policy must be based on social reality. For this reason, the rule of law is undermined if the law is too divergent from the social reality. An anachronistic, outmoded and arbitrary law makes a mockery of the rule of law. Therefore, a law must keep changing with the changes in societal ideals and norms. The widespread awareness of the conventional institution of marriage’s outmoded nature has resulted in a major reformulation of the legal system in this regard.

# Section IV: Stereotyped Parenting Roles

In the traditional picture of the institution of marriage, husband is considered the head of the family. He is responsible to financially and economically provide for his family. On the other hand, the prime role of the wife in the course of marriage is that of a housewife and mother. However, the sociological and economic data challenge this assumed division of labor. The data on earnings of married women and labor force participation makes the assumption that husband alone is responsible for economically supporting the family, questionable. Over the years, the scale of females in the labor force participation has increased. In a similar fashion, the percentage of young mothers, who have two to three young children at home, in the labor force participation, has increased too. Therefore, the sociological data on increasingly egalitarian and varied patterns of roles within a family questions that assumption of mutually exclusive and strongly differentiated roles of husbands and wives.

However, the trend has changed over the years. The politicians, commentators and courts have been (problematically) perpetuating the sex-stereotyped parenting roles. They have been addressed as ‘father-promotion crusaders’ in a recent article (Meyers, 2011), whose prime purpose is to promote the notion that a child needs a father (figure) in life. These crusaders have been working on contrasting the anti-sex-stereotyping, a realm that took hold of the employment situation in 1989 when a court decided that if an employer acted on the presumption that a female employee must not get aggressive, he has actually acted on the basis of gender (Meyers, 2011). However, despite getting such support from the courts, the norm of anti-sex-stereotyping has had made a far greater impact in the realm of employment than in the spectrum of the home. In this regard, it may be useful to look at the gay fathers, who do not conform to the conventional definitions of a father, challenging the assumptions on which the father-promoting crusaders had based their argument that a child needs a father (Meyers, 2011).

# Section V: Transgender Parents

The conventional spectrum of marriage primarily supports the Judeo-Christian ideal of a heterosexual, monogamous marriage with prohibition of homosexual unions, adultery, bigamy, and polygamy in both case law and statutes. Primarily, this picture of marriage is based on three distinctive components. Firstly, a legal marriage is union of single persons, who are prohibited against bigamy and polygamy. Secondly, the spouses remain loyal to each other; they are prohibited against adultery. Lastly, the spouses must be heterosexual; thus, a marriage license must not be given to a homosexual couple. However, there have been an increasing number of homosexual couples, which want to legitimize their marriages. For instance, in Baker versus Nelson, the homosexual couple argued that marriage must not be restricted to heterosexual couples only because marrying without regard to sex is a fundamental right to all persons. Additionally, there are transgender parents too.

However, if the courts want to treat marriage as a fundamental right without a regard to sex, they must closely scrutinize the state’s interest in maintaining the conventional picture of the institution of marriage. Today, transgender parents are not treated equally. 29-percent of them are restricted or prohibited from seeing their children after a relationship that ended (Cohen, 2017). It indicates that the court judges have been restricting or eliminating their parenting rights for no other reason than the gender identity. Therefore, several movements concerning the fundamental rights of lesbian, gay, bisexual and transgender community have emerged. They work on providing the rights through recognition of a constitutional right to same-sex marriages (Cohen, 2017). The recent decision in the case of Obergefell versus Hodges has proven to be a huge step forward in this regard (Cohen, 2017). However, inequality in the provision of fundamental rights to this community still prevails in the United States. Only fifty states allow same-sex marriages today thus giving rights to the LGBT persons to start a family with a partner of their choosing (Cohen, 2017). Moreover, their parental rights upon separation or divorce are far from protected.

# Section VI: Interracial Marriages

The legal literature has widely discussed the race, class and ethnic bias in the institution of marriage in the United States. The conventional model of universal legal marriage and divorce incorporates an all white, middle-class family. For this reason, it has been called the ‘dual system’ of family law. The legal obligation of staying home and taking care of the children falls heavily on the women of color in comparison to the white wives. The black and minority women have also been facing discrimination and thus subjected to double burdens in the realm of employment throughout the past century. In the 1890, only 4-percent of the married women were involved in work outside their homes. There were two groups: black women and immigrant women. Also, they were offered the same kind of jobs they did in slavery. Thus, the law back then was less appropriate for ethnic groups. It resulted in exclusion and ignorance of special needs and concerns of racial and ethnic minorities.

However, the picture has much changed today. The ban on interracial marriages and miscegenation has been invalidated in the well-known case of Loving versus Virginia. Some of the researchers and practitioners have admired this transformative decision. It delivered the deathblow to the antipathy of race mixing, i.e., Jim Crow segregation (Murray, 2017). Also, it paved the path to end the residue of racial discrimination in the American institution of marriage. The decision has lasting implications in the field of marriage equality. The practical situation, however, suggests otherwise. Although the famous Loving decision invalidated the ban on interracial marriages but the social taboos around the topic, especially between particular groups, still persist (Murray, 2017). Therefore, it can be said that the decision successfully dismantled the legal impediments but failed to eradicate the social impediments in this regard (Murray, 2017). Thus, the loved ones, who want to cross the color line in order to live their lives happily ever after, still have to face remarkably durable norm of racial hegemony.

# Section VII: Concluding Remarks

A law must keep changing to successfully address the changes in societal ideals and norms. If the law is too divergent from the social reality, the rule of law is undermined. For this reason, the conventional model of marriage in the United States has undergone a major reformulation despite the fact that the state contains a paramount interest in the continuation of the tradition family institution in the country.

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