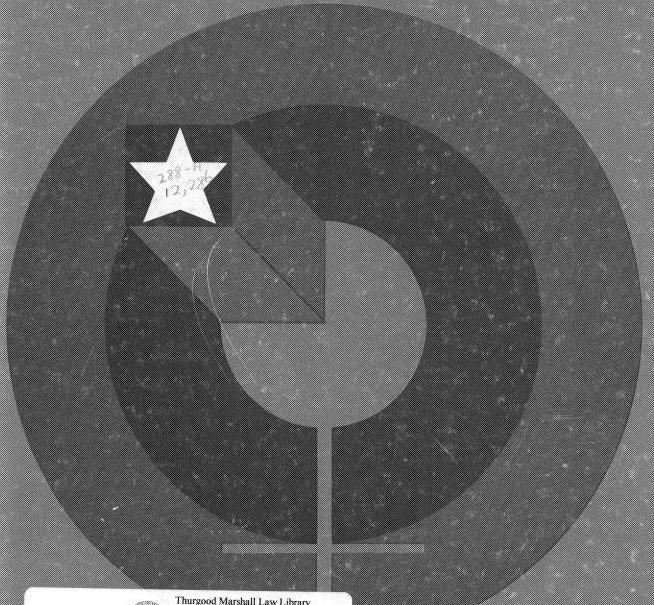


Women's Rights in the United States of America



CR1.10:57

Thurgood Marshall Law Library University of Maryland School of Law Baltimore, Maryland

United States Commission on Civil Rights Clearinghouse Publication 57 March 1979

A REPORT OF THE INTER-AMERICAN COMMISSION OF WOMEN

Women's Rights in the United States of America

A report prepared by the Women's Rights Task Force of the U.S. Department of Justice, at the request of the U.S. Delegate to the Inter American Commission of Women.

Published as a Clearinghouse Document by the U.S. Commission on Civil Rights.

| | | • |
|--|--|---|
| | | , |
| | | |
| | | |
| | | |
| | | |
| | | - |
| | | |
| | | |
| | | |
| | | |

PREFACE

This study was undertaken by the Task Force on Sex Discrimination of the United States Department of Justice, at the request of the United States Delegate to the Inter American Commission of Women.

The Inter American Commission of Women is a permanent, specialized agency of the Organization of American States. Since its establishment in 1928, the Commission has participated in promoting, mobilizing, training, and organizing the Women of the Americas to increase their participation in all fields of human endeavor.

To celebrate its Fiftieth Anniversary in 1978, the Commission recommended to each member State that it publish and disseminate a report on the status of women, which could then provide the basis for a comparative study on the status of women throughout the Americas.

For more information regarding the Inter American Commission of Women write to:

Inter American Commission of Women Organization of American States Washington, D.C. 20006 USA

Special appreciation is extended to the Department of Justice and especially to Ms. Stewart Oneglia, Esq., the lawyer who was instrumental in preparing this document. The assistance of the U.S. Commission on Civil Rights has made this publication possible.

Carmen Delgado Votaw
U.S. Delegate to the
Inter American Commission of Women

| , | | |
|---|--|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | , |
| | | • |
| | | |
| | | |
| | | |
| | | |

WOMEN'S RIGHTS IN THE UNITED STATES OF AMERICA A REPORT OF THE INTER-AMERICAN COMMISSION OF WOMEN

Introduction

The United States of America is a federation of fifty separate sovereign states. The power of the federal government to make laws is limited by the United States Constitution to matters of federal concern. The separate states retain authority to make laws and policies on, among other things, domestic relations, property rights and inheritance, all of which are areas of particular concern to women.

The Fourteenth Amendment to the United States Constitution, ratified in 1868, provides in pertinent part:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This amendment guarantees women in all states the rights of citizens and prevents the states from discriminating against women by denying them legal rights because of their sex. In a series of cases beginning in 1971, the United States Supreme Court has held a number of state laws to be invalid because they used classifications based on sex in violation of this provision. The Court has ruled that states may make legislative classifications on the basis of sex only when the use of such a classification is substantially related to an important government objective. *Craig v. Boren,* 429 U.S. 190 (1976). Unless this standard is met, state laws must treat men and women who are similarly situated in

the same manner. Such a requirement also applies to the federal government under the Fifth Amendment to the Constitution. Subject to this constitutional limitation, the states are free to establish their own laws in most areas, and the laws of the various states are frequently different.

The Right to Vote

The Constitution of the State of New Jersey, adopted in 1776, granted tax-paying women the right to vote. This right was withdrawn, however, in 1807 with the explanation that women voters had not supported the right candidates.* Sixty-two years later, the Territory of Wyoming extended the right to vote to women, and in the following year, the Territory of Utah did the same.** The federal government revoked women's suffrage in Utah Territory by legislation in 1887,*** but in 1896, Utah was admitted to statehood with a constitution guaranteeing women the right to vote. The State of Wyoming had been admitted to the Union in 1890 with a women's suffrage provision in its constitution, after refusing to delete it in the face of strong opposition in the federal legislature.****

In the following years, the women's suffrage movement in the United States fought battles for the adoption of women's suffrage by the individual states and, ultimately, for an amendment to the United States Constitution

^{*} Catt, Carrie Chapman, and Nettie Rogers Shuler, Woman Sufferage and Politics, (University of Washington Press Americana Library Ed., 1969) p. 9

^{**} Id. at 74-85; Flexner, Eleanor, Century of Struggle, (Atheneum, 1974) pp. 159-163.

^{***} Flexner, supra, at 163.

^{****} Catt, supra, at 83-84

^{*****} See generally, Catt, supra, and Flexner, supra.

guaranteeing women the right to vote in all state and federal elections.***** Finally, on June 5, 1919, the federal legislature passed the proposed women's suffrage amendment and submitted it to the states for ratification. It was declared ratified by the necessary number of states on August 26, 1920, becoming the Nineteenth Amendment to the Constitution. It provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

Right to be Elected to Political Position and to Hold Public Office

There are no laws prohibiting women from holding political positions, either elective or appointive, and any such law would clearly be in violation of the Fifth or Fourteenth Amendment to the United States Constitution. However, women remain an insignificant proportion of public office holders. A study by the National Women's Political Caucus shows that between 1776 and 1975, there have been 1,726 United States Senators, of whom 1,715 were men and only 11 were women. All of the 101 United States Supreme Court Justices have been men. In the United States House of Representatives, there have been 9,591 men and only 87 women.

Presently, sixteen of the 435 voting members of the House of Representatives are women, and, of the 100 United States Senators, one is a woman. Two of the 50 State Governors are women.

Authority to Take Part in a Lawsuit; Authority to be a Witness, Guardian, Administrator, Executor

As a result of the various state Married Women's Emancipation Acts, there are no longer

any limitations on the rights of women to sue or be sued or to otherwise participate in court proceedings.

Prior to 1971, the State of Idaho had a statute providing that in the appointment of an administrator for the estate of a person who died without a will, of two applicants with the same relationship to the deceased, a male applicant would automatically be preferred to a female. The State sought to justify this policy by arguing that, in general, men have more business experience than women so male applicants are generally better qualified. According to this argument, the automatic preference for males merely served to avoid a hearing on the applicants' individual qualifications and was, therefore, justified by administrative convenience. In 1971, the United States Supreme Court rejected this argument, holding that the genderbased distinction was "the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment." Reed v. Reed, 404 U.S. 71, 76 (1971).

In 1975, the United States Supreme Court held that the Sixth Amendment to the United States Constitution, which guarantees the right to a trial by a jury drawn from a cross section of the community in a criminal prosecution, was violated by a state jury selection procedure which resulted in almost total exclusion of women from jury panels. *Taylor v. Louisiana*, 419 U.S. 522 (1975). Thus, in the United States, women not only have the right to participate in lawsuits, but also cannot be excluded from the juries before which suits are tried.

Juridical Status of Single Women

The Fourteenth Amendment to the United States Constitution provides that all persons

born or naturalized in the United States are citizens of the United States and of the State in which they reside. Both the federal and state governments are therefore prohibited from denying any rights of citizens to single women because of their sex and marital status.

Domicile, Age and Nationality

Domicile is the place of established or permanent residence of an individual. At the time of birth, the domicile of the child is deemed to be that of the parents—where the parents have established a home in which they reside together as spouses. When the spouses separate, the domicile of the child is deemed to be that of the parent with whom the child resides. The domicile of a child usually continues to be that of one or both parents until the child reaches majority and leaves the parental home.

The age of majority is the age at which a person is entitled to manage one's own affairs and to enjoy civic rights. The actual age an individual must attain varies from state to state and ranges from 18 to 21 years. The United States Supreme Court has recently held that the age of majority must be the same for males and females. Stanton v. Stanton, 421 U.S. 7 (1975), on appeal from remand, 429 U.S. 501 (1977).

In many states, the domicile of a married woman is that of her husband, but the right of a married woman to establish a separate domicile is receiving increasing recognition.

The nationality of a married woman is not determined by that of the husband. A woman who marries a citizen of the United States does not become a citizen of the United States because of the marriage. Conversely, a woman who is a citizen of the United States and marries an alien does not lose her citizenship because of the marriage.

Domestic Relations

There are eighty-four divorced persons for every 1,000 persons married and non-separated. In the seven years since 1970, the divorce ratio has increased 79 percent, compared with an increase of 34 percent during the entire period from 1960 to 1970. Women are more likely to be divorced than men—101 per 1,000 as compared to 66 per 1,000 for men. Of divorced persons under the age of 45, 91 per 1,000 were women compared with 76 out of 1,000 who were men. Generally, women remain divorced longer before remarriage and have a lower incidence of remarriage than men.

Domestic relations in the United States is a matter almost exclusively controlled by state law. Therefore, substantive legal issues incidental to a divorce—such as grounds of divorce, legal separation, child custody and support, domicile and property determinations—are controlled primarily by state statutes and case law.

Presently, the majority of states provide for a "no-fault" divorce. A no-fault divorce permits either spouse to obtain a final divorce decree, regardless of fault, after the parties have lived separate and apart for a specified period of time. In addition, most states provide for divorce on a variety of fault grounds, unjustified desertion and adultery being the most common.

The impact of a finding of "fault" is most direct on alimony or support awards. Generally, a finding by the court of fault for desertion or adultery will preclude the guilty party from obtaining an award of alimony or support. Most American states make statutory provisions for alimony to be awarded during separation and upon divorce. Though alimony historically was an award of support to the female spouse, many

states now permit an award of support to either spouse. A number of states still restrict alimony awards to women, though this type of statute is presently under attack before the U.S. Supreme Court in *Orr v. Orr*.

The early American courts declared that the father had absolute custody rights in child custody contests. However, by the end of the 19th century the American courts substantially adjusted this earlier policy by awarding custody of children, particularly those of "tender years," to the mother. Either by statute or case law interpretation, most states still espouse the tender years or maternal preference doctrines, within the broad "best interest of the child" test. The constitutionality of these statutes and presumptions are under attack and have been held in violation of the federal and state Constitutions. *McAndrew v. McAndrew*, 382 A.2d 1081 (1978).

In almost all states, a finding of fault will not prevent the award of child custody or child support unless the court finds in addition that the award of child custody to the faulting party would not be in the best interests of the child. In some states, a parent found guilty of adultery may lose custody of a child because the court will view the adultery finding as an attack on the morality and integrity of the parent having or seeking custody.

Property laws vary considerably from one state to the next, particularly in community property states (see related discussion under Inheritance and Right to Administer One's Assets in Marriage).

Right to Administer One's Assets in Marriage

Most states adopted the English common law system which provided that a husband and wife were one person, and the one was the husband. All personal property owned or acquired by the wife became the property of the husband, and he had the absolute right to control all real property owned by the wife.

In 1809, the State of Connecticut by statute granted married women the right to dispose of property by will. In the following years, all of the common law states passed "Married Women's Property Acts" or "Married Women's Emancipation Acts" giving married women the right to control their own property.

Some of the states originally adopted the European community property system rather than the English common law. In community property states, the "marital property" of both husband and wife is equally owned by both of them. Originally, however, community property laws provided that the husband had the right to control the community property, including that owned or acquired by the wife. Now, all states except Louisiana have amended their community property laws to give wives equal rights to control the property.

Juridical or Marital Authorization for Certain Acts and Contracts

As previously noted, the Married Women's Emancipation Acts eliminated the married woman's common law disability to contract. In addition, a federal statute, the Equal Credit Opportunity Act, (15 U.S.C. § 1691) now prohibits discrimination on the basis of sex or marital status in any aspect of a credit transaction.

Inheritance

In all states, men and women have the right to dispose of their property by will. However, many states provide, for reasons of public policy, that a surviving husband or wife is entitled to some share of the decedent's estate regardless of the terms of the will. These "forced share" provisions prevent married people from disinheriting their spouses.

English common law provided that a wife had a right to "dower," that is, a life estate in one-third of all real estate her husband owned. The husband's analogous right was to "curtesy" a life estate in all the real estate owned by the wife, but only if a child capable of inheriting the property was born alive during the marriage. These common law rights have now been eliminated or modified in all states, and most states now by statute provide the surviving spouse with a right to one-third or one-half of the decedent's estate, without regard to sex.

Education

In 1883, Oberlin College was the first college to open its admittance policy to include women. In 1972, Congress passed Title IX of the Education Amendments, 20 U.S.C. § 1681, which prohibits discrimination on the basis of sex in any educational program or activity which is the beneficiary of federal financial assistance. Title IX affects 16,000 public school systems and nearly 2,700 post-secondary educational institutions. The areas affected by Title IX include admissions, programs and services, i.e., financial aid, athletic programs, scholarships and pension benefits.

Though employment discrimination based on sex in educational institutions is also prohibited by Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000 et seq., women comprise only about 20 percent of the faculties at colleges and universities. The number of women faculty members in higher education is two-thirds of what it was in the 1930's. Most women are

employed in colleges where incomes are lower, not universities. When employed in universities, women are generally located primarily in lower ranks. Women are retained in grade longer and paid less than their male counterparts. For the 1975–76 academic year, women totalled 9.6% of full professors and 17.9% of associate professors. In 1975–76, the salary gap between men and women faculty increased at every level, women faculty earning on the average \$3,096 less than faculty men. Earnings for women with college degrees, in general, are 16% less than men with only high school degrees.

The Right to Practice a Professional Career

The legal right of a woman to practice a professional career has changed significantly since 1872. It was in that year that the Supreme Court of the United States held that it was constitutionally permissible for the State of Illinois to refuse to grant to Myra Bradwell a license to practice law in the state courts on the sole ground that females were not eligible under the laws of the state. Mr. Justice Bradley, concurring in the judgment of the Court and citing the "law of the Creator," claimed that "The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother." (Bradwell v. Illinois 83 U.S. 130 (1873)).

In 1964, Congress passed a Civil Rights Act, Title VII of which prohibits discrimination in employment on the basis of race, color, religion, sex or national origin. The Equal Employment Opportunity Act of 1972 amended Title VII of the Civil Rights Act of 1964 to include governmental employers within the prohibition's parameters. Under Title VII, it is an unlawful employment practice for an employer to fail to hire, segregate or classify employees or

applicants because of race, color, religion, sex or national origin. The law also prohibits discrimination by employment agencies and labor unions.

One portion of the law allows employers to make distinctions based on religion, sex or national origin where religion, sex or national origin is a "bona fide occupational qualification" reasonably necessary to the normal operation of the particular business. However, this exception has been interpreted very narrowly by the courts and the Equal Employment Opportunity Commission, the federal agency created to enforce Title VII. Stereotyped notions of what females can or should do have not been interpreted as being sufficient to qualify as "BFOQ's".

Today in the United States every person is guaranteed the right to pursue and practice a career, without discrimination on the basis of race, color, religion, sex, or national origin.

Equal Pay for Equal Work

The Equal Pay Act of 1963 amended the Fair Labor Standards Act to add a prohibition against differentials in pay on the basis of sex. Employers are prohibited from discriminating on the basis of sex in setting wages for their employees. This means that women and men must be paid the same wages if they work in the same location, under similar working conditions, doing similar work which requires equal or substantially equal skills, effort and responsibility.

An employee may file a civil suit in federal court to enforce this Act, and the Court may order the employer to change his or her wage practices. In addition, the court may award up to two years of back wages to the employee and, if the discrimination was willful, up to three

years of back wages plus an equal amount as a penalty.

Flexitime

Because women traditionally have assumed responsibility for maintaining the home and family, even when employed at a job outside the home, strictly defined work weeks and hours of work impose a disproportionate burden on women or may severely limit their work opportunities.

A distinction is usually made in the American workplace between full-time jobs and part-time jobs. Certain fringe benefits offered with a full-time job are usually not part of a part-time job. In the federal government, any job worked less than 40 hours per week—whether 2 hours or 39 hours are worked—is considered a part-time job and does not have the full range of fringe benefits accompanying it.

The U.S. Civil Service Commission imposes limitations on the structure of the federal employee's workweek. A full-time job must be 40 hours in length, and the working hours of each day must be the same. In addition, federal agencies are allotted job "slots" that are either full-time (40 hours per week) or part-time (any number of hours up to 40). As agencies may only fill their allotted number of "slots," there is an incentive to get the most number of hours worked for each part-time job.

In 1978, Congress passed the "Federal Employees Fexible and Compressed Work Schedules Act" which sets up a three-year experiment in four-day workweeks, flexible work hours and other variations in workday and workweek schedules.

Studies have shown that altered work schedules increase productivity; reduce employee turnover; reduce overtime costs, tardiness and absenteeism; and increase efficiency and employee morale. More importantly, flexible schedules sometimes make the difference between being able to hold a job or not for a parent, particularly a mother with family responsibilities.

Regulations for Work-Related and Work-Caused Accidents

In 1969 and 1970, when Congress was deliberating on the need for federal occupational and health legislation, more than 14,500 workers were killed annually on or in connection with their jobs, a mortality rate 2½ times greater than that experienced by U.S. troops in Vietnam.

The enactment of safety and health laws had historically been left to the states. However, few states had such laws that could be called modern. Thus, when the Occupational Safety and Health Act of 1970 (OSHA) was passed, it was intended to assure safe and healthful working conditions to 57 million American employees by requiring employers to comply with safety and health standards covering conditions and operations in the workplace and to maintain the workplace free from recognized hazards.

When a state develops and enforces a job safety and health program which is at least as effective as OSHA, it may assume exclusive jurisdiction over health and safety conditions of employees within the state. Enforcement is accomplished through workplace inspections by OSHA compliance officers conducted during regular working hours and without advance notice. Where violations are found, citations are issued and penalties assessed. Criminal penalties are imposed for certain willful violations.

Some agencies of government and private industries take special precautions for women

employees because of their unique child-bearing capabilities. Such precautions must be scrutinized carefully, however, to ensure that women are not unfairly disadvantaged in the job market because of discrimination disguised as special precautions. For example, the Nuclear Regulatory Commission, an agency of the federal government which licenses the distribution and use of nuclear materials, has promulgated regulations and guidelines to protect pregnant women from possible dangers from radioactive material. These regulations and guidelines had to be artfully drawn so as to provide necessary protection, and at the same time, avoid blanketly precluding all fertile women from access to jobs which may involve some minimal exposure to radiation.

Maternity Leave

The Federal Equal Employment Opportunity Act prohibits discrimination in employment on the basis of sex by any employer with fifteen or more employees. (42 U.S.C. § 2000e). The United States Supreme Court had held that this statute is not violated by the exclusion of pregnancy-related disabilities from an employer's temporary disability insurance scheme. General Electric Co. v. Gilbert, 429 U.S. 125 (1976). However, legislation was passed in 1978 to overturn this holding. The new law establishes that the prohibition against sex discrimination in Title VII of the Civil Rights Act includes a prohibition against employmentrelated discrimination on the basis of pregnancy, childbirth or related medical conditions. The Supreme Court has held, in Nashville Gas Co. v. Satty, 434 U.S. 136 (1977), that an employee cannot be required to forfeit accrued seniority in order to take maternity leave. The Court has also held that an employee may not be

arbitrarily required to take maternity leave for a substantial, fixed period before and after childbirth without regard to whether the individual employee is able to continue working. Cleveland Board of Education v. La Fleur, 414 U.S. 632 (1974).

Child Care

Child care facilities for working mothers are not directly provided by the government, but the government does attempt to offset some of the cost of private child care by reducing federal income taxes for families with children, or other dependents, requiring day care. The family's tax bill can be reduced by up to \$400 for one child or \$800 for two or more children. The amount of the tax reduction is limited to 20% of the first \$2,000 (or \$4,000 if more than one child) of the cost of household services and daycare which are considered employmentrelated. If one parent doesn't work or receives no income, as in the case of volunteers, no tax reduction is allowed because the child care expenses are then considered optional personal expenses instead of expenses necessary for employment.

Women in Agriculture

Though 667,000 out of 2 million farmers in the United States are women, women historically have not been viewed as farmers, but rather, as the farmer's wife. Often, the use of subjective standards, which permit interpretation of a woman's farm experience in terms of what was traditionally viewed as women's work, leads to the treatment of such experience as insubstantial, insignificant and negligible when a woman attempts to establish necessary experience for the purpose of qualifying for an

agricultural loan. In addition, a woman who survives her spouse, may be deprived of her only source of income due to estate taxation laws, regulations and interpretations. "The widow's tax," as it is commonly known, provides that if the husband and wife hold property in joint tenancy and the husband predeceases the wife, the entire value of the property is assumed to belong to the husband and is subject to estate taxes, unless the wife can prove that she inherited part, held an off-farm job to meet payments or made a legally recognized contribution in money or "money's worth."

In a recent decision by the Minnesota Tax Court, Leona Nordby v. Commissioner of Revenue, No. 2385 (Minn. Tax Court, March 17, 1978), the court ruled that a widow who shared farm work with her husband may claim half of the value of the farm as her own, and hence need pay inheritance taxes only on 50% of the estate. The court stated:

The testimony was uncontradicted that the applicant worked equally as hard as her husband toward the acquisition of all joint assets.

She milked cows, cared for the pigs, sheep, turkeys and beef cattle. She prepared meals for farm workers, operated farm machinery, did seeding, treated grain, loaded fertilizer, seed, soy beans and grain, cleaned and repaired equipment and buildings, and helped with the farm bookkeeping and purchasing.

The court's description of the role of the wife in that particular case is probably applicable to most farm wives.

Women farmers are organizing in substantial numbers and lobbying to improve their image and legal status.

Retirement

Private retirement plans in the United States are regulated under the Federal Employee Retirement Income Security Act of 1974 (ERISA). Private pension systems are, in general, a means for transferring income from short-term workers (e.g., those who stay in a particular job for less than 10 years) to long-term workers. The only provision for home-makers is an optional "survivor's" benefit, which the worker can elect not to take and which reduces the amount of the worker's benefit if it is elected. No provision is made for divorced wives, and all survivor's benefits may be lost if the worker dies before retirement. In these areas, Social Security provides much better protection for women than do private pension systems.

Social Security

Ninety percent of all workers in the United States are covered by the Federal Social Security System, which provides disability insurance and retirement benefits. Social Security is intended to provide a floor of income protection, but it must be supplemented by private pensions or investment to fully replace pre-retirement earnings. Benefit amounts are based on the worker's average lifetime earnings, with eligibility beginning at age 62.

The system was designed to provide benefits for the traditional family—one composed of a breadwinning husband, a homemaking wife and dependent children. It provides a basic monthly benefit for a retired worker, plus 50% of that benefit for the worker's wife, if she is 62 or older.

If the worker predeceases the wife, she gets the full amount of the basic benefit as a widow's benefit. Dependent minor children of the worker are also entitled to benefits. If a marriage terminates in divorce after ten years or more, the divorced wife will also be entitled to a wife's benefit based on her former husband's record when he retires and to a widow's benefit when he dies.

If a worker is disabled before retirement age and has worked in covered employment for five out of the ten years preceding the onset of the disability, he will be entitled to a monthly disability benefit, and his wife and children will also be entitled to a monthly benefit. If the worker dies, the surviving wife or divorced wife will be entitled to a benefit if she has a minor child of the worker in her care.

With a few exceptions, benefits comparable to those for wives of male workers are available for the husbands of female workers.

Social Security treatment of women in this country has been criticized in two major areas: the system does not provide disability insurance protection for homemakers; and it fails to provide equitable benefits for working wives. An individual is insured for disability purposes only if he or she has worked in covered employment for five of the previous ten years. As a result, women who are out of the labor force as homemakers or who return to the labor force after a period as a homemaker have no disability insurance.

If a wife works in covered employment, she may qualify for her own worker's benefit. However, if she is also entitled to a wife's or widow's benefit, she cannot receive both. As a result, women frequently get little or no additional benefits as a result of working. Since benefits for a couple are usually based on the earnings record of the spouse with the higher income, couples with two earners get lower benefits than couples with the same total income

all earned by one spouse.

Criminal Law Relating to Women

Most state statutes and the federal criminal code define rape as sexual intercourse by force by a male with a female who is not his wife and without her consent. A few states have statutes which define rape in such a way so as to permit males to also be considered victims. As the statutes are presently written, a wife who is forced to have sexual intercourse with her spouse has no remedy in the criminal law.

Most state statutes as well as the federal code define statutory rape as carnal knowledge by a male of a female who is not his wife and who is below the age of consent. The age of consent varies by jurisdiction. Male children below the age of consent do not have the same protection as female children below the age of consent.

The proposed federal criminal code would improve the present federal criminal law in these two areas. In addition, the proposed federal criminal code would improve current law by eliminating the requirement in a rape case that the victim's testimony be corroborated and by making evidence of the victim's sexual activities, other than with the defendent, inadmissible in most cases.

The proposed criminal code would also prohibit conducting a business for prostitution. This prohibition would extend to male prostitution, as well as female prostitution.

Historically, one spouse could not testify in a lawsuit for or against another and current state statutes do not allow one spouse to testify against another as to matters of confidential communication. This prohibition does not apply, however, to cases involving crimes of domestic violence.

Women Offenders

The data on women offenders are inadequate; however, statistics from the Uniform Crime Report prepared by the Federal Bureau of Investigation indicate that the number of women arrested for committing major crimes increased 278 percent during the 1960–1973 time period. In contrast, the number of men arrested for the same crimes increased only 88 percent during the same time period. The number of women arrested for these crimes remains much lower than the number of men. For example, in 1973, the number of women arrested for burglary was 5,597, while the number of men arrested for the same crime was 107,009.

Women offenders are rarely involved with organized crime, with crimes involving large property losses or with crimes that have endangered large numbers of people.* Women offenders who have been incarcerated tend to be younger than 30 years old, members of an ethnic minority and less educated than women as a whole.**

According to National Prisoner Statistics, of the 204,349 inmates in State and Federal institutions in 1973, 6,684 were women. Approximately 7,000 women were incarcerated in local jails throughout the Country.***

Because of the relatively small numbers of women who are incarcerated, services provided for female offenders are inadequate. Most of the institutions that provide training have programs

^{*} Beckman, Marlene, Chairperson, the Report of the Law Enforcement Assistance Administration Task Force on Women, 1975, page 4.

^{**} Glick, Ruth M. and Virginia V. Neto, National Study of Women's Correctional Programs, June 1977, page xvii.

^{***} U.S. Department of Justice, Law Enforcement Assistance Administration, "Survey on Inmates of Local Jails 1972 Advance Report."

OTHER ISSUES

that instruct women in what is considered "women's work"—cosmetology, sewing, food service and housekeeping.

Women and the Military

With limited exceptions, the role of women in the American military has been extremely limited until this decade. Although their role was expanded somewhat during World War II, women traditionally have been relegated to health care and administrative occupations. Since 1972, however, with the end of the draft and the institution of the all-volunteer military, women's participation has expanded from 45,000 to 110,000 and from 1.9% of all military personnel to over 5% of the uniformed services. Before the 1972 expansion, only 35% of all military enlisted occupations were open to women, but by 1976, over 80% were open.*

Certain major restrictions still limit the range of roles and the promotion opportunities available to women in the military. Federal law, until 1978, prohibited women from serving on board most ships of the Navy, and still bars them from aircraft engaged in combat missions. Although the shipboard restriction has been eliminated, the policy against the use of women in combat is still in force. As a consequence, all military occupational specialties directly related to combat are closed to women, and the number of positions open to women in the Navy is restricted because of both the shipboard restriction and the need to keep slots available for male naval personnel being rotated from ship duty. Other inequities relate to differing educational requirements for enlistment of men and women, differing opportunities for advancement and differing retirement benefits.

The military service academies and other modes of entry have, in this same transitional

^{*} For a detailed discussion on this entire topic, see Binkin and Bach, Women and the Military, the Brookings Institution, 1977.

period, been opened to women. Again, largely as a result of the statutory restrictions, however, mathematical formulas limit the number of women who may enter the military through these routes. Internal military regulations and procedures prohibit enlistment of pregnant women, and pregnancy provides a woman servicemember with the opportunity to leave the military.

Despite these inequities, the American military can be said to have undergone dramatic changes in attitude and procedure since 1972, and it is anticipated that the theme of these changes will be continued and applied to other aspects of military life.

Veterans Preference

The practice of extending employment preferences to veterans exists in the federal civil service as well as in all state civil service procedures. These preference range from an absolute preference in hiring to a bonus of points added to veterans' scores on hiring and promotional examinations. Since about 98% of all veterans are men, these laws have the effect of excluding women from the most desirable civil service positions and relegating them largely to secretarial and other clerical positions for which men compete less frequently.

In 1944, legislation was passed granting veterans preferential treatment in federal employment to assist the World War II veteran in readjusting to civilian life. In 1976, Congress eliminated veteran's preference—except for disabled veterans—for those entering the military after October, 1976.

For those veterans who began their military service prior to October, 1976, the following preferences are extended:

- Based on examination scores, all federal job applicants are rated on a system of 1 to 100. Non-disabled veterans who achieve at least a 70 score have 5 additional points added to their rating. This is a lifetime preference that can be used any number of times.
- Disabled veterans (and their wives, widows or mothers, under certain circumstances) get a total of 10 points added to their ratings. They are then placed at the top of the job register.
- Whenever a veteran and non-veteran have the same score (with preference points included) the veteran must be selected over the non-veteran, unless an exception is granted by the Civil Service Commission.
- 4. No veteran can be laid off ahead of a non-veteran in a reduction-in-force.

These veterans' preference provisions have an extremely adverse impact on the federal government's affirmative action efforts to hire more women and minorities. Because the system does not distinguish recent—including Vietnam era—veterans from those who left the service years ago, recent veterans, who are more likely to be minority, must compete in a pool of 27 million veterans.

While veterans account for 25% of the Nation's overall workforce, they hold 45% of the federal jobs. Women make up 41% of those who pass the Civil Service Professional and Administrative Career Examination, but they constitute only 27% of those who are hired. Veterans comprise 20% of those who pass the examination, but they account for 34% of those hired.

This year, President Carter proposed modifications in the veterans preference laws as part of the Civil Service Reform Act. These modifications were intended to increase employment opportunities for disabled and Vietnam-era veterans and to reduce the negative impact of veterans' preference on women by limiting the preference for nondisabled veterans to a one-time use within 15 years of discharge. Unfortunately, these modifications were struck from the Act as it was finally passed. Therefore, the present preference system is still the law of the land. However, the conflict between the veterans' preference laws and the Equal Employment Opportunity Act, requiring the federal government to provide equal employment opportunities to all, regardless of race, color, religion, sex or national origin, will continue to draw attention to this disparity.

Federal Income Taxes—the Marriage Tax

The "marriage tax" or the "marriage penalty" is a colloquialism for the combined effect of three provisions in the federal tax code which treat married couples differently from single people. As a result of these three provisions, the "nontraditional" couple (two wage earners) pays considerably more than the total which the individuals comprising it would pay if they had remained single. In contrast, in the "traditional" couple (one wage earner), the couple filing jointly pays less than a single person would. This disproportionate increase in taxes, therefore, is clearly a burden on the second income, which is typically the woman's.

What is not generally understood is that, although the dollar amount of the marriage tax increases with the income, the proportionate increase in the tax the couple pays over that which they would pay if they were single is highest at lower income levels. In fact, 68% of

the total marriage penalty is paid by couples with combined earnings of less than \$25,000, and 83% of all two earner couples whose adjusted gross income is \$10,000 or less pay higher taxes because of the marriage penalty.

Equal Rights Amendments

The primary mechanism for ensuring equal treatment for women in the United States would be ratification of the Equal Rights Amendment to the Constitution. The ERA was passed by Congress in 1972, and the legislatures of three-fourths of the states must ratify it before it becomes a part of the Constitution. Thirty-five states have already provided their support, with three more needed. The deadline has now been extended by the 1978 Congress giving the states until June 30, 1982, to ratify.

Section 1 of the proposed amendment provides:

"Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

MAJOR LEGISLATIVE ACTIVITY AFFECTING WOMEN

Education Amendments of 1976 (October 12, 1976, Pub.L.No. 94–482)

Extends and revises the Vocational Education Act of 1963. Mandates elimination of sex discrimination and sex-role stereotyping in vocational education programs receiving federal financial assistance. Requires collection and analysis of data concerning participation by women and studies to identify methods used to eliminate sex bias and stereotyping.

Prohibition of Sex Discrimination Based on Pregnancy

The Federal Equal Employment Opportunity Act was amended in 1978 to reverse the result in General Electric Co. v. Gilbert. The new legislation ensures that the prohibition against sex discrimination in the Civil Rights Act of 1964 includes a prohibition against employment-related discrimination on the basis of pregnancy, childbirth, or related medical conditions.

Civil Rights Attorney's Fees Awards Act of 1976 (October 19, 1976, Pub.L.No. 94-559)

Permits courts to award attorney's fees to prevailing plaintiffs in actions brought under Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs receiving funding from the federal government.

Tax Reform Act of 1976 (October 4, 1976, Pub. L. No. 94–455) Section 1501

Permits establishment of individual retirement accounts for homemakers.

The Act also improves the treatment of surviving spouses under federal estate tax law. It increases the amount allowable as the marital

deduction, and permits the exclusion of certain jointly owned property. Other provisions permit farm or business property owned by the decedent to be evaluated according to its use by the survivor rather than its "highest and best" use, a change that reduces the tax impact on widows.

Social Security Amendments of 1977 (December 20, 1977, Pub. L. No. 95-216)

Eliminates reduction in widow's benefits upon remarriage (Section 336).

Reduces duration of marriage requirement for divorced wives from 20 to 10 years to be eligible to receive benefits on their ex-husbands' records.

Requires study of proposals to eliminate dependency and provide equal treatment for men and women, to be conducted in consultation with the Task Force on Sex Discrimination in the Department of Justice. (Section 341).

Credit

The 1976 Amendments to the Equal Credit Opportunity Act, 15 U.S.C. § 1691, which prohibited discrimination in any aspect of a credit transaction on the basis of sex or marital status, became effective March 23, 1977. The Amendments extend coverage to discrimination on the basis of race, color, religion, national origin, age, receipt of public assistance income, or good faith exercise of rights under the Consumer Credit Protection Act, as well as sex and marital status.

Supreme Court Cases of Note

December 7, 1976. General Electric Co. v. Gilbert, 429 U.S. 125 (1976). Exclusion of pregnancy-related disabilities from employer's

disability insurance plan does not violate Federal Equal Employment Opportunity Act. (42 U.S.C. § 2000e).

December 20, 1976. Craig v. Boren, 429 U.S. 190, 97 S. CT. 451 (1976). Age of majority under state law for purpose of purchasing alcoholic beverages must be the same for men and women.

March 2, 1977. Califano v. Goldfarb, 430 U.S. 199 (1977). Eliminates dependency test formerly applied to widowers but not widows for receipt of Social Security benefits.

June 20, 1977. Beal v. Doe, 45 U.S.L.W. 4781 (1977), Maher v. Roe, 45 U.S.L.W. 4787 (1977). State and federal medical benefits for indigent women need not include elective abortions.

December 6, 1977. Nashville Gas Co. v. Satty, 434 U.S. 136 (1977), Revocation of seniority rights of female employees who take maternity leave does violate the Federal Equal Employment Opportunity Act. (42 U.S.C. § 2000e).

October, 1977. Commonwealth of Massachusetts v. Feeney, No. 76–265. The Supreme Court upheld a Massachusetts law which gives preference to veterans in public employment. The veteran's preference in federal employment is a barrier to the employment and promotion of women, 82% of whom are clustered in the lowest jobs in the government. The Carter Administration has proposed limiting the veteran's preference.

April 25, 1978, City of Los Angeles, Department of Water and Power v. Manhart, 435 U.S. 702, (1978). Requiring women to make larger contributions than men to a retirement fund in order to receive equal monthly benefits is discrimination on the basis of sex and is prohibited by the Equal Employment Opportunity Act, 42 U.S.C. § 2000e.

U. S. COMMISSION ON CIVIL RIGHTS

WASHINGTON, D. C. 20425

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

FOURTH CLASS MAIL POSTAGE AND FEES PAID U.S. COMMISSION ON CIVIL RIGHTS PERMIT NO. G73

