

# The Married Woman In Maltese Law

We are now in 1971 and in this last decade we have experienced what has become known as "Aggiornamento". The changes that we have witnessed were so many and so diverse that one cannot possibly enumerate them all, without running the risk of forgetting a few. One, however, which has struck me as a great step in the right direction is the equality of pay for both sexes in Malta by a target date which is now very near. In the Malta Constitution of 1964 we find in various sections the phrase "without distinction as to sex . . .". So the position of the woman and of the man, very rightly, is becoming, with the development of time, very similar. Suddenly, however, when a woman becomes a wife, she automatically loses several of her rights and privileges and becomes subject to her "beloved". This could have been right in the times when our law was enacted, but to-day when the mentality of husband and wife has changed from that of master and servant to one of equality, to one of companionship, where the wife also has the right to her say in the family, why is it that the wife is still subject to all these incapacities? The reasons may be various, perhaps mainly historical; I propose to deal with the facts as they exist to-day in our law which is definitely in need of reform.

In section 7 of our Civil Code we read that "the wife cannot sue or be sued without the consent or assistance of her husband, or in default thereof, without the authority of the Court of Voluntary Jurisdiction". Why is the right of suing deprived to a woman simply because she chose to marry? Has she contracted to become civilly incapable? Again in Section 9 of the same code we read "Saving any other provision of this Code or any other law it shall not be

lawful for the wife to alienate property, or to contract any obligation or to acquire property under any title whatsoever, whether onerous or gratuitous, without the consent and intervention of the husband." But by section 10 and 11 the wife may obtain what is called a "general authority" but such general authority may be revoked at any time

---

**JOSEPH A. SCHEMBRI**  
**Dip. Not. Public**

---

by the grantor. What authority is this if it may be revoked, I would not say capriciously, certainly, by the court but surely at any time, as the law says? The spouses, perhaps for good measure, are also forbidden from stipulating that any such authority, once granted, would be irrevocable.

All these provisions of the law perhaps find their basis on the other fundamental rule of Maltese Law, which is so often unfortunately the cause of so much trouble between spouses and therefore also a cause for personal separation; namely that the husband is the head of the household. The 20th Century has seen the development of the concept, which to my mind is a good one, of co-operation, understanding, love and respect between spouses rather than the authoritarian, selfish, egoistic husband of the last centuries. To-day the family is based on two and not just "him". If the Maltese Legislature were to amend this provision of the law, namely of giving equal status or dignity to both spouses, then we can really say that the other provisions which follow as a consequence thereof, may be changed.

In section 1008 of the Civil Code we

find under the title "Of the Capacity of Contracting Parties" those persons which are under a legal disability and in subsection (3) we find also the married woman. This subsection in particular is giving particular difficulty to the new residents because by their own personal law, the married woman "enjoys" no such disability and they find it a hard nut to crack. They do not see the reason behind this incapacity; in fact they find it "superfluous", "complicating", "stupid", "ridiculous", "simply beyond me", "childish", "utterly domineering", "frustrating".

In section 1303 of the same Code we read that the husband alone shall have, during the marriage, the administration of the dotal property. Thus the husband is not considered to be the owner of his wife's dowry — she continues to enjoy such right, — but he is her administrator. Whatever the wife brings with her "*ad sustinenda onera matrimonii*" becomes automatically administered by her husband. Although she may have proved to be a very good administrator of her own property, when she was still signing her surname, her marriage puts her in the absurd incapacity of being considered no longer capable to hold such office. Her new status is now incompatible with her former one. The law, admittedly, puts certain safeguards with regard to the husband's administration but they are irrelevant for this article. With or without these safeguards a married woman is no longer capable of exercising her rights of ownership over her own property.

By section 1838 of the same code a married woman is incapable of disposing of or receiving property by donation. So much so that if, notwithstanding this, she does dispose of or receive property, without her husband's consent or without the authority of the Court of Voluntary Jurisdiction (if he

is a minor, absent, insane or interdicted, or if he refuses without just cause his consent) her act is declared null for all purposes of law. So this is another incapacity which is added to "protect" the married woman.

I have only, so far, touched one branch of law. With regard to Criminal Law, sections 206 and 207, referring to the crime of Adultery by wife and by husband respectively, impose different conditions. In the case of the wife it is enough, for her to be convicted of this crime, to have "misbehaved" just once. The fact that she could have been under a mental strain due to the persistent and unbecoming "behaviour" of her husband is no excuse although it might be taken notice of by the judge. But if the opposite were the case, if the husband "misbehaves" once with a woman, this does not amount to adultery, for according to law he must "keep a concubine in the conjugal house or notoriously elsewhere". This difference of criterion might be perhaps due to the consequences which might arise, which are admittedly different for each spouse. But whereas the husband might, for argument's sake, go "to the office" once a week with a different "secretary" — this not amounting to concubinage — the wife may not do so. I am not advocating that husbands and wives should have "secretaries" but if they do have and there is the complaint of the other spouse I do not see why the husbands should enjoy a greater protection of the law!

Going to another branch of Maltese Law, i.e. Commercial Law, we find another incapacity attributed to a married woman "*propter sexus fragilitatem*". A married woman cannot carry on trade without her husband's consent or without the Court's authority (Secs. 12 and 14) and here again this consent, which may be express or implied may be revoked by means of a public deed

duly served on the wife. So here again the wife may have no business of her own, may not be a broker, unless she shall have previously obtained the husband's consent. Someone may say that the place of the wife is at home — to cook and bring up her children. I am not completely against this view but one must admit that not all husbands do earn enough money to keep both ends meeting, especially when they have a family of five or six. The wife should be allowed fairer treatment and freer exercise of her free will.

It might be argued that if we were to allow the wife to go one way and the husband to go another, we would be creating the grounds for trouble. I think that this is not exactly correct for the more one leaves things to be sorted out by agreement, the more it is easier for there to be agreement. Imposition from above merely foments anger and revenge. The spouses would surely agree on what is right for them.

Our generation is finding it difficult to admit these general and various incapacities on a wife, and many have questioned the reasons behinds our provisions of the law. It is a fact that today's wife is not like her mother — completely dependent on her husband. Many work and earn a good income and they continue to work even when they marry. Because of our principle of the community of acquests whatever the spouses earn is, so to speak, "pooled" and then administered by the husband, thereby causing the wife to have to go and ask the husband for whatever she needs. It is true that husbands should be reasonable individuals and satisfy their wives' legitimate requests, but unfortunately not all husbands are that reasonable and by not being so, the wife is thereby placed in the anomalous position of having to go and "beg" him for her needs and for the needs of the family.