

THE STATUS OF NON - MUSLIM MARRIED
WOMEN AND THEIR RIGHT TO
MAINTENANCE

BY

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Preface

The aim of this paper is to study the status of women after they are married and in particular their rights to maintenance in Malaysia. With the enforcement of the Law Reform (Marriage and Divorce) Act 1976 on the 1st March 1982, various statutory provisions are laid down for their maintenance whereas previously one has mainly to resort to case law for guidance. This paper concerns solely with the non-muslim married women.

Malaysia, in keeping with the trend going around the world, to review family law, has passed the Law Reform (Marriage and Divorce) Act 1976, which made great changes in the law pertaining to marriage and divorce. Under the Law Reform (Marriage and Divorce) Act 1976, polygamous marriage are prohibited thereby making it illegal for a man to take a second wife while the first marriage is in existence. The second wife will not be a wife in the eyes of law but a mistress and as such do not enjoy the rights conferred by law on the first wife like maintenance, division of joint property and many others. However if the marriage is contracted before the enforcement of the Law Reform (Marriage and Divorce) Act 1976, it will not affect the position of the second wife.

In doing this paper, research was done in the Perpustakaan Tun Abdul Razak and interviews were also being carried out. Due to the fact that the Law Reform (Marriage and Divorce) Act 1976 has recently been in force on the 1st March 1982, difficulty arises in writing

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this paper because not many cases have been decided based on the Act.

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Abstract

Family is a basic social unit which consists normally of a husband and wife and their children. A husband and wife can be considered as constituting a family before the birth of their child or after all their children have left home to marry and establish families of their own.

In writing this paper, concentration was given to the status of a married woman and her right to maintenance. The study was based on the married women and children (maintenance) Act 1950 and Law Reform (Marriage and Divorce) Act 1976. In the first chapter the definition of marriage were discussed. Marriage is treated as an agreement where a man and women enter into a legal relationship which creates and imposes mutual rights and obligations. In contracting a marriage the parties must conform to the capacity and the formalities of a marriage. Parties cannot practice polygamy as it has been abolished and would mean a conviction under the Penal Code.

In chapter two, discussion as to the status of a married woman was made. On marriage, the mutual right and duties arises between the parties. A married woman can still be liable under contract, tort or for a crime as she is still regarded as a feme sole.

Chapter three deals with her right to maintenance. A wife has a right to be maintained not only during the marriage but also when living apart, or after a decree of judicial separation or after a