THE LEGAL POSITION OF WOMEN IN CO-OPERATIVE SOCIETIES

Prepared for the Committee
International Co-operative Women's Guild

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The Legal Position of Women in Co-operative Societies.

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THE question of women's rights in Co-operative societies is one on which there is a definite difference of view between men and women. Most men are convinced that, in the Co-operative movement at any rate, there is perfect equality between men and women. They look at the rules of societies and at the law which governs them, and see that these contain no discriminating provisions against women. Indeed, if they mention women at all, it is usually to assert their rights. Women, on the other hand, look at the obvious fact that their position in the movement is in practice very different from that of men, and suspect that there are other reasons for this than mere apathy on their part.

It was undoubtedly the intention of the Co-operative movement and its promoters to make no distinction between men and women, for the whole spirit and aim of Co-operation is one of equality. But it is quite a mistake to conclude, from the absence of any special reference to women in the Co-operative law* or the rules of societies, that they therefore have the same rights as men. For their rights are governed not only by Co-operative laws and regulations, but by their civil status and the traditions and circumstances arising from it.

And, in considering the question of Co-operative rights, it must be remembered that these include not merely the right to enter into membership of the society, but the right also to exercise all the functions of membership—to attend and vote at societies' meetings, to be elected as a member of the management board or as an officer of the society, to act, if necessary, as the society's representative, to sign documents on its behalf, &c.

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* Unless otherwise stated the term "Co-operative law" is used in the sense of the law or laws governing the existence and operation of Co-operative societies, which in some countries may be a special law, in others the general commercial laws.

The Civil Law and Women's Rights.

The Old Position of Married Women and Recent Progress.

Men have always possessed civil rights. Even the partial denial and limitations of them imposed by slave or feudal institutions have in most countries long ago been forgotten. But it is substantially true to say that women, or, at any rate, married women, have only attained civil rights at all during the last hundred years, and remnants of their bondage remain as impediments in a hundred ways.

When the Co-operative movement began, in the middle of the nineteenth century, four main types of law governed the civil position of women: (1) the Code Napoleon, which covered all Central and Western Europe and influenced the legislation not only of the French and Dutch Colonies, but of all Spanish and Portuguese America; (2) the English common law, which formed the basis of the legal systems of Great Britain, most of the British Colonies, and the United States of America; (3) the Russian law; and (4) the various systems of Eastern law. Under all these, except the Russian, which was much more advanced in its treatment of women than the others, married women were looked upon as permanent minors always under the guardianship of their husbands. They had no rights of their own. They could not in their own right either hold property, make a contract, sue or be sued in a court of law, or take any legal part in the administration of the family affairs. The property of married persons was theoretically held in common; in effect it belonged to the husband, for he alone could administer and dispose of it. The man alone was the legal representative of the family; he only had authority over its members and its belongings. The law, in fact, acted on the theory proclaimed by the notorious Englishman that "My wife and I are one, and I am that one."

Obviously, while such was her civil status, a married woman could have no rights in a Co-operative society whatever. She could not become a member, for this implied a contract of membership which she could not make. She could not take up her share, for she could neither hold nor dispose of any property. As she could not be sued at law, the society would have no claim against her failure to meet the liabilities of membership. It signified nothing at all that Co-operative societies' rules or the law under which they functioned imposed no specific disabilities; she was already completely disqualified.

Great changes have, however, been effected in these respects by the legislation of the last sixty years. Although the Soviet Union is the only country in which there is complete and

absolute legal equality in every particular between men and women, married women in many countries have advanced a long way on the road to such equality. Legislation with which we are here concerned has taken two main directions: (1) That of giving to the married woman a definite civil status, enabling her to contract obligations and to be held responsible for them; (2) that of securing her certain property rights.

I.—The Acquisition of Civil Status.

In the great majority of countries married women can now freely make contracts and sue or be sued at law. This is so in practically all the English-speaking countries, with the exception of certain states of America and, with some limitations, in Canada, e.g., Quebec (where French law prevails, and married women cannot take legal action). In the Scandinavian countries, Hungary, Czecho-Slovakia, Austria, Poland, and Germany a married woman has also full, or almost full, legal capacity. But France, Holland, Belgium, Spain, and most of the Spanish-speaking American countries are examples of those where it is still necessary, except in specially exempted circumstances, for a married woman to have her husband's consent before entering into a contract. In Japan she is only recognised as having legal capacity if her husband has left her or for some reason has lost or cannot exercise his own legal rights, or if her interests are opposed to his.

II.—The Acquisition of Property Rights.

The recognition of married women's property rights in different countries has taken two principal forms:—

(1) *A tendency to separate the property of husband and wife by—*

- (*a*) Securing to the wife the free control and disposal of her own earnings;
- (*b*) Permitting the wife's property to be freed from her husband's control by a contract between husband and wife;
- (*c*) Establishing separation instead of community of property as the general rule.

(2) *A tendency to give the wife a share in the control and disposal of property held in common.*

I.—Steps towards the Separation of Property.

(*a*) In the great majority of countries married women can now freely control and dispose of their own earnings. This right

has been accorded them in most countries by special legislation, and is independent of the form of marriage. But there are several countries where this right is limited or non-existent.

In Switzerland and Mexico a married woman cannot engage in paid employment outside her home, except with the express or implied consent of her husband; in Czecho-Slovakia she cannot open a business without her husband's consent, or, in case it is withheld, by permission of the courts; while in Holland and Spain a married woman can only acquire property of any kind with her husband's consent. In certain Spanish-American states, as well as in Quebec (Canada), even the earnings of a married woman still belong to her husband, and he can collect them.

(*b*) Most countries recognise two forms of marriage—marriage accompanied by some special contract between the pair, and marriage without any contract. These special contracts, where they are allowed by the law, usually relate to the property belonging to a woman before her marriage, and define the extent to which she or her husband is to control it. But the tendency of modern legislation has been greatly to extend their scope, so that in many countries almost any arrangement as to property can be made between husband and wife by contract, which in some countries can include property that may be acquired by way of earnings or otherwise after marriage. This particular development, however, though of great importance from the point of view of the general progress of women, does not greatly affect the Co-operative position, because the system of marriage contracts is designed especially for the protection of propertied women, and the great majority of working-class marriages are marriages without contracts.

(*c*) Everywhere marriage without a contract is the usual form, that with a contract the exceptional. In the great majority of countries the law until quite recently provided that the property of couples married without a contract was to be regarded as common property under the control and administration of the husband; the wife could only secure control of her own share by means of a contract. Russia was an exception to this system, the property of husband and wife having been recognised as separate under Russian law since 1833. And in recent years several countries have reversed the previous position, making separate property the rule where there is no contract to the contrary. Thus in England, in the greater number of the United States of America, and in Austria a married woman has now the same right over her property, however acquired, as a single woman, unless there is a special contract or settlement to the contrary. In Hungary women, whether married or single, have

the same property rights as men. In Mexico and Panama the property of husband and wife is separate failing a contract to the contrary. In Czecho-Slovakia and Austria the wife controls any property she brought with her on marriage, though property acquired during the marriage is regarded as belonging to the husband if there is no proof as to ownership.

II.—The Woman's Control over Common Property.

Community of property, however, remains the general rule in the great majority of countries, and for women who have no earnings or other property of their own there are certain advantages in this system. In recent years women have gradually acquired some share in the control of this common property, either through their power to make a special contract or, in some countries, even when there is no contract. Thus, in Norway, the property is considered as common property, but the wife administers her own share if she has any, and anything she spends to meet the family needs can be charged to the common property. In Germany the wife has what is known as "the right of the keys"—that is to say, she alone is responsible for the management of the household, and can represent her husband in all household matters; he must guarantee any obligation she contracts for the benefit of the household, although he can deprive her of her powers if she abuses them. In Switzerland a similar arrangement prevails. The wife directs the household, and, in providing for its current needs, can represent the family along with her husband, who is responsible for the obligations she incurs in the common interest, but can deprive his wife of her powers if she shows herself incapable or untrustworthy in exercising them. In England, though separate property is now the rule, the wife can, nevertheless, pledge her husband's credit to provide the necessities of life for herself and the family, while in Austria, Belgium, and Czecho-Slovakia the husband is also legally responsible for debts incurred by the wife to meet the family needs, though she has no responsibility for his debts.

In the majority of countries, however, the common property, except for the wife's own earnings, is still controlled entirely by the husband, unless there is a contract to the contrary in such countries as allow this. This is the system in France, Belgium, Spain, Holland, Poland, Roumania, Italy, almost all the Latin-American countries, and some others.

The Co-operative Law and Women's Rights.

It is obvious that these differences in the civil status of married women in different countries greatly affect their Co-operative status, and that, while in some countries there is no

legal difficulty in a married woman becoming a member of a Co-operative society, though there may be traditional or practical difficulties, in others there are distinct obstacles in the way of women's membership.

In some cases the Co-operative law has seen and tried to remedy some of the disabilities imposed by the civil law. Thus, the Co-operative law of the Argentine specially provides that married women are entitled to become members of Co-operative societies without their husbands' consent, while the Dutch Co-operative law entitles them to assume that the husband's consent has been given, and the Argentine law further lays it down that they can personally dispose of their holding in the society. But even here all the obstacles imposed by the civil law have not been realised, and in most countries the Co-operative law has not intervened. Only in one case has the Co-operative law itself imposed disabilities: in the provision, namely, of the German law that allows a society by rule to exclude women members from its general meetings. In practice, however, this provision is almost obsolete.

Societies' Rules and Women's Rights.

The only evidence of societies deliberately restricting the rights of women appears to be in their occasional exercise in Germany of the power just mentioned. This practice also prevails in a few societies in remote parts of Switzerland.

Restriction of Family Membership.

What has actually, however, proved the greatest of all disabilities for women is the rule which prevails in the societies of so many countries of admitting only one member from a family. In considering what justification there is for such a rule it will become clear that a great many different factors have to be taken into account.

Societies are bound to satisfy themselves, as far as they can, that those whom they admit to membership are both legally and actually capable of fulfilling the obligations of membership. They must, therefore, take account both of the Co-operative law and of the civil law in framing their rules, and this rule probably had its origin in the fact that the civil law regarded the family as a single unit, of which only the husband was the legal representative, only the husband held the property, and only the husband could be sued for debt. In the comparatively few countries where these conditions still prevail and married women are entirely subject to their husband's authority, where they can neither sue nor be sued in a law court, cannot control their

own earnings, and cannot make a contract without their husband's consent, these reasons for the rule still hold good. But in most countries the legal—though not necessarily the economic—grounds for such a rule have either wholly or largely disappeared.

Modification of Legal Grounds for Restriction.

(1) They have disappeared altogether in those countries where married women have acquired legal capacity and where separation of property between husband and wife is the rule, e.g., Russia, England, and U.S.A. For here a wife has the same control of her property and the same power to incur and be held responsible for obligations as her husband.

(2) In those countries, again, where a married woman is entitled, either under the civil law or by a special provision of the Co-operative law, to enter into the contract of membership with the society, there is no longer any reason to exclude from membership married women who are themselves wage-earning or professional women with free disposal of their own earnings, as they have now in the majority of countries. For in such cases, too, a society would have the same remedy against a woman as against a man if she failed to meet her obligations.

(3) Moreover, in Germany, Switzerland, and Norway, where the obligations contracted by a married woman in the family interests can be met out of the common estate of husband and wife, there is again no difficulty in admitting the wife to membership, even if she has no earnings of her own.

On the other hand, in countries where the husband is the sole representative of the family and administers its property, the position is different, for the society can only take action against the husband, and would have no remedy against debts contracted by the wife except as his agent.

In Austria and Czecho-Slovakia the wife has free disposal of her own means and earnings. The husband cannot dispose of his wife's income. On the other hand, the husband is responsible for debts incurred by his wife to meet the needs of the household, though the wife cannot be held responsible for any obligation which the husband incurs. For this reason many men who are made bankrupt first transfer part of their estate to their wives in order that it may remain in the family. If the woman were the member of the society and her husband were to buy goods he did not pay for the society could not proceed against him.

Effect of Limited Sales and Liability.

But here other factors enter. The question of the power to recover debts for sales only has a bearing upon the question of

women's membership in those countries—of which Germany, Czecho-Slovakia, Austria, and Denmark are examples—where Co-operative societies are only allowed to sell to their own members, and each additional member means additional sales and the possibility of additional risks. In the many countries where sales to the general public are permitted the risk is the same whether the purchaser is a member or not. Moreover, it does not obtain at all where cash payment is enforced. Thus, the position of women in the movement may be affected by the law or custom prevailing with regard to sales to non-members and the giving of credit.

Another way in which the custom adopted by societies may affect the question of women's membership is connected with the liability of the shareholders. And it is only in this connection that ability to recover debts from married women may also affect it in societies which sell to the general public. Societies in different countries can be divided into those that limit the liability of their shareholders and those that do not limit it. Those which limit their shareholders' liability, moreover, vary considerably as to the basis of limitation adopted. In some countries members are liable only for the shares they actually hold in the society, provided they have paid up the minimum number required by the society's rules. In other countries they are liable for a specific sum. In others, again, they are liable in the first instance only for the shares they hold or for a specified sum, but can be called upon under certain circumstances for a further sum, usually of the same amount, which is known as additional or guaranteed liability. Where the liability of members is not limited they are responsible with the whole of their property. For the most part the unlimited liability basis is to be found in the agricultural Co-operative movement, though it is also found in the consumers' movement, as in Denmark, where unlimited liability is the general rule. There are also many countries which adopt a limited liability basis for both agricultural and consumers' societies. In several countries these different forms of societies exist side by side, all being allowed under the Co-operative law.

Now, it is evident that the more definitely the member's liability is limited the easier it is for a married woman to become a member. Where she is responsible only to the extent of her share or some definite sum both she and the society know exactly where they stand, and once the required sum is paid the society holds its security. But societies whose members are liable for more than their share-holding may well hesitate to take a married woman if debts cannot legally be recovered from her, or if she has neither earnings nor property of her own.

Where the shareholder's liability is unlimited the position of the married woman is still more difficult. For, in joining the society, her husband has already made himself responsible to the whole extent of the common property of the family, with certain exceptions in some countries, and the wife cannot give any additional security to the society if she joins it in her own right unless she has earnings of her own.

It is clear, then, that there are many countries where legal reasons still remain for restricting the number of members admitted from a family—reasons arising partly from the civil and economic status of the married woman and partly from the particular form and custom adopted by societies. On the other hand, its maintenance in several countries, e.g., in Switzerland, in many German societies, and in some societies in Great Britain, where open membership generally prevails, seems to be due to a conservative tradition illustrating how the idea of women's disability persists even after it has legally disappeared.

Rules extending Women's Rights.

In some cases societies have made special attempts in their rules to overcome the disabilities of women. In Norway, for instance, some societies have a provision in their rules permitting both man and wife to vote on the man's membership; that is to say they have in effect a system of dual membership on one share. In Switzerland a system of alternative membership prevails in many societies, the rules providing that both the man and wife can attend the meetings of the society, and either, but not both, can exercise the vote. The Basle Society has carried this principle of alternative membership to its logical conclusion by providing that either husband or wife, but not both, can also be elected to the governing bodies of the society. In the Basle Society, moreover, the women's commission is a statutory part of the machinery of the society, its constitution and duties being laid down in the society's rules; but this is exceptional.

In Belgium, where the law appears to permit only one member from a family to become a shareholder, and, save in exceptional circumstances, a married woman can only do so with her husband's consent, the Liége Society has devised a quite peculiar system in order to secure certain rights for women. Its rules provide for the creation, in addition to share capital, of accessory capital to be subscribed voluntarily by the wives or daughters of shareholders, but guaranteed by the shareholders themselves. The holders of this accessory capital form the local Women's Guild. They are admitted with the shareholders to the society's general meetings, and are represented on the branch

committees in the proportion of two for every hundred holders of accessory capital, and, by a recent amendment, have also secured representation on the management committee.

In Austria a representative of the women's organisation is included by rule on the governing bodies of both the Wholesale Society and Union, and exercises full rights.

Influence of Practical Circumstances on Women's Position.

These provisions are the outcome of the growing recognition among the societies that practical considerations make the membership of women desirable, for, whether as agents for their husbands or in their own right, they are the actual spenders of the money which builds up the consumers' movement, and they are indispensable workers in the agricultural movement. For practical reasons, therefore, there is a tendency to give women the benefit of the doubt when their legal eligibility for membership or position in the society is not clear, or even in cases to overlook the law in their favour.

Thus, the United States of America, in reply to a question on the point, state that, while the position of women under the civil law might vary in different states, it is safe to say that, if there are any discriminations, the Co-operative societies themselves tend to disregard the enactment and to provide for absolute equality under the rules of the society itself. Czecho-Slovakia and Austria report the same position, but the different legal position of husband and wife, as regards liability, hinders the active recruiting of women members. Norway reports that societies admit married women as members without examining the law and its possible provisions, and, while the rules of societies provide that only members are eligible for the committee, many societies disregard this provision and elect the wives of members. In Belgium also there are societies which admit both husband and wife to membership without regard to the law, or allow the wife to attend and vote at the general meetings on her husband's share. These irregularities, however, may give rise to difficulties where matters of administration are concerned—as Belgium has experienced.

From the woman's standpoint, however, practical circumstances are often an additional disability. For the outstanding economic fact in the lives of most married working women is that they have no money of their own, and, though they may be legally eligible for membership, the paying up of a share constitutes a very practical difficulty. Where the woman is herself a wage-earner the money for the share can be found. But the majority are not wage-earners. Where, again, the woman is not a wage-earner, but has some share in controlling the common

property of the marriage, as in Germany and Norway, money for the share can be found from this source if she joins the society in the interests of the family. But the tendency of modern legislation is away from common property towards the separate property of husband and wife.

The complete separation of property is almost the last stage in the recognition of the individual rights of a married woman, and the curious position thus arises that, as the legal difficulties in the way of her Co-operative membership grow less, her practical difficulties tend to become greater, unless she is herself a wage-earner; for Mexico seems to be the only country where the law contemplates an assignment by the husband of a definite part of his earnings to the wife if she has no income of her own. In England the wife's power to pledge her husband's credit, the remains of the traditional idea of community between them, partly gets over the difficulty, and perhaps accounts for the general practice in the British movement of a woman enrolling herself in the society and paying up her share out of the dividend on the family purchases. In Russia, on the other hand, where there is no such tradition of common property, this procedure is by no means the accepted rule, and special steps have been devised to facilitate the payment of the woman's share, especially among the peasant women, including the right to pay in kind or in equivalent service to the society, payment from the husband's dividend if he consents, and the lowering of the minimum share required, not from women, but from any second member of the family.

CONCLUSIONS.

Though it has been impossible in the space available to present anything like an exhaustive account of the legal position of Co-operative women in different countries, the facts given are enough to show that the existing inequality of women in the movement is not due primarily to their own inactivity, but to a combination of legal and practical obstacles which have made Co-operative activities for women very difficult. The situation is indeed summed up in a report from Japan, which, after explaining how the relics of feudal custom in the home and social life of women, and particularly of married women, have hindered their progress in the Co-operative movement, continues: "In our Co-operatives, according to the international principle, women's position is the same as men's. This privilege—properly speaking, of course, not a privilege, but justice—cannot, however, be sufficiently fruitful by reason of the above-mentioned restraints. In a word, without the emancipation of women from economic and political inferiority none of the rights given them in the Co-operatives can be used effectively."

To establish a position of real equality action in four directions seems necessary:—

(1) Rules of societies must be examined to see if they do, in fact, accord to women as large a measure of right as the Co-operative and the civil law make possible, or whether they still maintain restrictions upon membership which adversely affect the position of married women, and which changes in the civil law have made obsolete.

(2) Where a special Co-operative law exists consideration must be given to the possibility in any future amendment of it of seeking to remedy the disabilities imposed by the civil law. If it is possible in Holland and the Argentine to over-ride the obstacles placed by the civil law on the entry of married women into membership, it is possible in other countries. And, if it is possible to make a special provision as to their entry into membership, it is possible also to secure them the exercise of full membership rights, including that of acting as officers of a society. Indeed, there are precedents in the Co-operative law of one or another country which would seem to make it possible to get over all legal obstacles, even that of recovery of debt, by means of special provisions in the Co-operative law.

(3) Co-operative women, and indeed the Co-operative movement as a whole, cannot remain indifferent to a civil law which places married women, who exercise the purchasing power of the family upon which the whole consumers' movement rests, in a position of inferiority, and guildswomen must, of necessity, turn their attention to securing the necessary reforms in the Civil Code.

(4) Practical steps have to be devised for enabling the woman with no earnings of her own to pay her share in the society, and hence the wider problem has to be faced of how to obtain for married women who have gained full civil status and separate property rights an income which will give them economic independence. But this encroaches upon another and still larger subject, which is to receive its own discussion.

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