



Changing surnames after marriage: A patriarchal part of the society

Dr. Kavita Dhull

Faculty of Law, M.D. University, Rohtak, Haryana, India

Abstract

By marriage, the husband and wife are one person in last i.e. the very being or legal existence of the woman is incorporated and consolidated into that of the husband under whose wings protection and cover she performs everything and is therefore called in our law-french a female-covert is said to be covert-baron and her condition during her marriage is called her coverture. For this season, a man can't grant anything to his wife or enter into covenant with her for the grant would be to suppose her separate existence and to covenant with her, would be only to covenant with himself and therefore it is also generally true, that all compacts made between husband and wife, when single are waded by the intermarriage.

Keywords: marriage, female, wife

Introduction

'Must a name mean something asks Alice *1 as she travels in wonderland white William Shakespeare *2 famously asked "What is in the name? But it matters a lot in Dinesh Patil V. Nisha Patil*3 where the facts of the case are Dinesh and Nisha married 1995. It was his second Marriage after his first wife died. According to Nisha, in his eight months marriage Patil throw her out of the house and he filled a divorce in 1997 and the family court dissolved in the marriage in 2006 53 years Dinesh Patil.

An assistant Police Inspector with Mumbai Police was asked to pay compensation to his former wife Nisha. Nisha was using the surname Patil after her marriage.

"A woman acquires her matrimonial surname by virtue of her marriage. When the marriage is dissolved the man definitely has the right to take recourse to the law to restrain his former wife from using his name.

Historical background

Traditionally, women after getting married, moved on to their husband's home. They were generally seen as caretakers, home makers to their husbands. They are recognized through their husbands and their family members. It was men who went out to work and earn the bread for the family. A name change is the way to let people know that a woman is married and no longer a single. There are hundreds and thousands of women worldwide. Who don't change their last name after marriage? Some don't feel the need for. Some do not want to go in a legal process but that is when women are outgoing, well-educated, employed and financially independent. That is drive if the woman is not earning that. It may not matter much about the change in the name.

1. *Alice in Wonderland.
2. *William Shakespeare.
3. *Dinesh Patil V.Nisha Patil.

Britain – British hereditary surnames are only 1000 years old. Imported by the French around the time of Norman conquest,

they stabilized throughout much of English society by the 14th century, with cultic regions taking longer to adapt, married women however were perceived to have no surnames at all since the Normans had also brought with them the doctrine nine of converter the legal principle that upon marriage a woman becomes her husband's possession. Her state of nameless men reflected this. In his words of one court in 1340, when a woman took a husband, she lost every surname except wife of "

But around the turn of the 15th century the French doctrine of coverture received a unique English twist. There was another interpretation of coverture available, based on scriptural ideas, which focused not on the husband's power over his wife but on the unity that marriage gave them.

Doctor of coverture – It is a legal doctrine where by upon marriage a woman's legal rights and obligations were subsumed by those of her husband in accordance with the wives legal status of female covert. An unmarried woman, a female role had the right to own property and make contracts in her own name. Coverture arises from the legal fiction that a husband and wife are one person.

Coverture was enshrined in the common law of England for several centuries and throughout most of the 19th century, influencing some other common law jurisdictions. According to Arianee Chernock. Coverture did not apply in Scotland, but whether it applied in Wales is unclear.

After the rise of woman's rights movement in the mid-19th century, coverture came under increasing criticism as oppressive towards woman hindering them from exercising ordinary property rights and entering professions. Coverture was first substantially modified by late 19 century Married women's property Acts passed in various legal jurisdictions as was weakened and eventually eliminated by subsequent reforms.

According to Blackstone By marriage, the husband and wife are one person in last i.e. the very being or legal existence of the woman is incorporated and consolidated into that of the

husband under whose wings protection and cover she performs everything and is therefore called in our law-french a female-covert is said to be covert-baron and her condition during her marriage is called her coverture. For this season, a man can't grant anything to his wife or enter into covenant with her for the grant would be to suppose her separate existence and to covenant with her, would be only to covenant with himself and therefore it is also generally true, that all compacts made between husband and wife, when single are waded by the intermarriage.

Phillippines is the only country

1. William Blackstone : commentaries on the laws of England 18th century.

This has a civil code and which says in title XII about use of surname and Art 364-Legitimate and legitimated children shall principally use the father's surname. Art 365. An adopted child shall use the surname of his adopted father. Art-370- A married woman way use

- (i) Her maiden first name and surname and add her husband's surnames or
- (ii) Her maiden first name and her husband's surnames or
- (iii) Her husband's full name, but prefixing a word indicating that she is his wife such as Mrs.

Art 371- In case of annulment of marriage and the wife is the guilty party, she shall resume her maiden name and surname. She is the innocent spouse she may resume her maiden name and surname. She may choose to continue employing her former husband's surname, unless.

- (i) The court decrees otherwise,
- (ii) She on the former husband is marriage against to another person

Art 372 when legal separation has been granted, the wife shall continue using her name and surname employed before the legal separation.

Art 373 a widow may use the deceased husband's surnames as though he were still living, in accordance with Art 370.

Art 376 no person can change name and surname without judicially authority.

Art 377 usurpation of a name and surname may be the subject of an action for damages and other relief.

Art 378 the unlawful use of another person's surname gives a right of action to the latter.

Changing surnames (Family name) to husband's name after marriage is prohibited in ISLAM. Although it is a common act of changing surnames of father to the husband. But it is not permitted in Islam. As accordingly 1. IBN majah book of punishments 2707.

Whoever calls himself by other name than his father's name shall be caused by Allaah, the angels and all the people.

References

1. Advocate & Spl. P P ,C B I
Email jsrajawat53@gmail.com
2. AIR 1988 SC 1325
3. 2014Cr. L J Page 1
4. 2006 Cr.L.J 4045
5. In the words of a renowned legal philosopher and Scottish politician, MacCormick:
6. American jurisprudence 2d,Vol.20, at page 437
7. Arun kumar Agarwal 2011 Cr L J 4935

8. Arun kumar agarwal (Supra)

9. Glanville Williams in Learning the Law (9th ed. 1973),

10. 1992(4)SCC 363

11. AIR 1974 SC 1596