

**I go for all sharing the privilege of government who assist  
in bearing its burdens, by no means excepting women.**

**ABRAHAM LINCOLN.**

# **Laws Discriminating Against Women in the State of New York**

**BY**

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The laws of the State of New York discriminate against women in the following particulars, among others:

## **MARRIED WOMEN.**

### **SERVICES.**

**The services of the wife in and about the household belong to the husband.** This includes taking boarders, nursing the sick, etc.

"It must be admitted that the services of the wife, while in the discharge of her domestic duties, still belong to the husband."

*Brooks v. Schwerin, 54 N. Y. 348.*

"Where a married couple take boarders into their home and the wife takes charge of the house, the profits derived from such business belong to the husband, notwithstanding the statutes relative to married women and their estates."

*Briggs v. Devoe, 89 App. Div. 115.*

**A wife cannot make a binding contract with her husband to pay her for services within or without the household.**

"A contract by a husband to pay his wife for household services is void as against his creditors, and property purchased by the wife with the avails of such contract may be reached by creditors."

*Conger v. Corey, 39 App. Div. 241.*

*Porter v. Dunn, 131 N. Y. 314.*

"A wife is not entitled to compensation for services rendered to her husband although outside of the ordinary duties of the household. When she works for him out of doors upon his farm she is entitled to no compensation, and his written promise to pay her therefor is without consideration."

*Whitaker v. Whitaker*, 52 N. Y. 368.

*Stamp v. Franklin*, 144 N. Y. 607.

"A married woman cannot make a binding contract with her husband for her services having no connection with a separate business and estate, although the same are to be rendered outside of her household duties, and although he cannot require her to perform such duties."

*Blaehniska v. Howard Mission*, 130 N. Y. 497.

**The joint earnings of husband and wife belong to the husband.**

"When a wife works with her husband for another, if there is no special contract that she is to receive the avails of her labor, they belong to him, and he is entitled to recover therefor."

*Holcomb v. Harris*, 166 N. Y. 257.

"When not engaged in a separate business the services of the wife belong to the husband."

*Reynolds v. Robinson*, 64 N. Y. 589

*Holcomb v. Harris*, 166 N. Y. 257-261.

**The husband may recover for services performed by him for his wife, under agreement.**

"A wife's express agreement to pay her husband wages in aid of her separate business may be enforced."

*Maxwell v. Lowther*, 35 N. Y. S. Rep. 767.

## **REAL PROPERTY.**

The wife is entitled to dower, i. e. the **use** for life of but **one-third** of the husband's real property, though she may have helped to accumulate it.

The husband is entitled to curtesy in the wife's real property, i. e. the **use of the whole for life**, if a child has been born alive.

The wife's real estate descends to the husband when she dies leaving no heirs of her blood.

The husband's real estate never under any circumstances descends to the wife, even though she may have helped to accumulate it. In default of heirs of his blood his realty escheats to the state.

## **PERSONAL PROPERTY.**

Under the Statute of Distribution the wife is entitled to **one-half** of the personal property of the husband when he dies intestate and without descendants.

The husband is entitled to **all** of the personal property of the wife when she dies intestate and without descendants.

Furniture, household effects, etc. that cannot be shown to belong absolutely to the wife belong to the husband.

## **DIVORCE.**

In case of a divorce dissolving the marriage contract for the misconduct of the husband, the wife will not inherit any of his personal property, though she may have helped to accumulate it. She is not entitled to dower in realty thereafter acquired.

In case of a divorce dissolving the marriage contract for the misconduct of the wife, she forfeits dower and the benefit of any ante-nuptial contract.

## **WILLS.**

A will executed by an unmarried woman is deemed revoked by her subsequent marriage.

A will executed by an unmarried man is not revoked by his subsequent marriage, unless a child has been born.

## **CHILDREN.**

### **GUARDIANSHIP OF THE PERSON.**

**The father's right to the custody of the child is paramount.**

The statute makes a married woman joint guardian with her husband of the person of her child, but it has been held:

"Where a husband and wife have separated because unable to agree, and there is no evidence that they are not equally fit custodians of their son five years old, the father, by reason of his paramount right in law, is entitled to the custody of the child."

*People ex rel. Sinclair v. Sinclair, 47 Misc. Rep. 230.*

"The natural right of the father to act as guardian for his children will be set aside only where he is not a fit person and the interests of the infants require another appointed."

*Matter of Guardianship of Tulley Infants,  
54 Misc. Rep. 184.*

### **GUARDIANSHIP OF PROPERTY.**

**The guardianship of the property of the children belongs, first to the father. If there be no father, then to the mother.**

### **SERVICES.**

**The father is entitled to the services of the children.**

"The father is chargeable with the care and maintenance of his children, and is entitled to their custody, their society and their services."

*People v. Rubens, 92 N. Y. S. 121.*

### **DESCENT OF PROPERTY.**

The mother inherits no part of the property of the child, if the father be living,—unless the property came to the child through her.

The father is the sole heir and next of kin of the child, and entitled to all of the property of the child.

If there be no father, the mother inherits the ~~use~~ of the real estate for life, and the personalty is divided between the mother and brothers and sisters.

The mother is guardian of the property, and is the heir and next of kin of illegitimate children only, if the father be living.

The mother is not entitled to damages for negligence resulting in the death of her child, if the father be living. The father alone is entitled to such damage.

When the father dies immediately after the death of the child, the mother still has no right of action. The measure of recovery for the father's estate is limited to such damage as the father actually suffered to the time of his death.

In the case of *Mouart v. Hammond, et al.* the facts are as follows: A boy of eighteen was killed in the brick-yards at Dutchess Junction, N. Y. His father brought an action for \$25,000 against the employers. Within four weeks thereafter the father died. The mother, as administratrix, continued the action. The jury were instructed to consider only the damage which the father actually suffered, and they rendered a verdict for \$40, the amount of the boy's wages for four weeks.

The mother, who had six infants to support, had no right of action on her own account.

See also *Pitkin v. N. Y. C. & H. R. RR. Co.*, 94 App. Div. 31.

#### WHEN PARENTS ARE DIVORCED:

One act of immorality on the part of the mother takes from her her child, while the father may continue such conduct without being seriously considered unfit to have its custody.

In *Powers v. Powers*, 119 App. Div. 436, the parents were divorced through the misconduct of the wife, and she was refused permission to see her child.

In *Burritt v. Burritt*, 53 Misc. 24, the parents were divorced through the misconduct of the husband, but the children were awarded to him.

In the guardianship of minors, as between relatives of the same degree of consanguinity, males shall be preferred.

*Domestic Relations Law, Sec. 80.*

In the appointment of administrators of estates, where the persons are of the same degree of kindred, men must be preferred to women.

*Code Civil Procedure, Sec. 2660.*

Great-uncles inherit in preference to great-aunts. Male children of great-uncles or aunts inherit in preference to female children.

*Hunt v. Kingston*, 3 Misc. 309.

The laws of the State of New York further discriminate against women:

In that they are denied the right to the ballot;

In that they are denied the right to participate in the functions of the government;

In that they are denied the right to share the offices of the government;

In that the law makes them a subject class, in spite of the constitutional guarantee of the equality of all citizens;

In that they are compelled to obey laws in the making of which they have no part;

In that they are compelled to contribute to the support of a government in which they have no part;

In that they are denied the right to a trial by a jury of their peers, i. e. people of the same legal status as themselves;

In the selection of the jury, when only men are chosen;

In that they are denied justice when sex and not citizenship is the basis of the right to vote;

In that men are granted special rights and special privileges, although

Equality of privilege is a constitutional right; and

Immunity from discrimination is a constitutional right.

So far as women are concerned, the constitutional guarantee of equal, just and impartial laws is a mere waste of words; they have few more rights than aliens, and their interests would be better protected under a monarchy.