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Feminist Movement Opened A Divorce 'Pandora's Box'

By CELESTE DURANT
Los Angeles Times Service

There was a time when popular divorce folklore told of ex-wives strolling off to the Riviera with whopping divorce settlements while their ex-husbands were trundled off to nearby poor houses.

Today, at least in divorce court circles, the talk has changed.

It is now the wives who are the victims — tossed out into the cold without resources, training or enough time to acquire either while their husbands trot off to new lives on "50-50" property settlements that really are more than equal.

SOME CALL it "the liberation backlash in the courts." Others just talk of swinging pendulums but both attorneys and family law court officials agree that the change sprang from a pandora's box opened by the feminist movement.

As feminists began asking for equal opportunity, equal pay and equal responsibilities and more and more women entered the job market, the courts began taking women at their word by passing out "50-50" divorce settlements.

However, critics say these liberated settlements are being given to women who are not completely liberated and are therefore unfair.

The California Family Law Act that took effect in January of 1970 and changed divorces into dissolutions and alimony into spousal support, established the concept of no-fault divorce. This meant the court no longer is concerned with who committed what grievous act and who was blameless.

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Until a few years ago, most women could expect alimony until death or remarriage, even if they had only been married a few years.

"The courts and the law were necessarily concerned with determining fault and then administering punishment in the form of alimony," said Harry Fain, a prominent divorce attorney and one of the framers of the new legislation.

"THE OLD law said if you are guilty you lose more of the community property."

So under the old system, women got more than 50 per cent of the community assets because, in most cases, they were considered the innocent party.

Attorneys say this situation led to abuses by some women who used alimony as a sort of permanent pension that allowed them the luxury of never having to support themselves.

But, say feminists, it also provided a means of support for many more women who had never been in the job market and who had no saleable skills after years of homemaking and helping husbands with their careers.

UNDER THE new law, which does not distinguish between wives and husbands (they are called spouses), the court usually puts a limitation on the number of years a spouse can receive support payments.

The court considers the duration of the marriage and the ability of the spouse to support himself or herself.

Some court officials say they will consider arguments of how the marriage has diminished a spouse's ability to support himself or herself.

But critics said there also are abuses under the new system.

FOR EXAMPLE, one lawyer said, after 14 years of marriage and one child about 9 years old, a couple filed for dissolution. The husband had an annual salary of $35,000. The wife had held only sporadic jobs. She had attempted to start a business, but it had failed.

After a trial, the court divided community property equally and awarded the wife three months of spousal support. The court said the woman was young, attractive and there were lots of jobs available. All she needed, the court reasoned, was time to get one.

But even in the unlikely event she could get a job within three months, it almost certainly wouldn't pay $35,000 a year, her lawyer, Martin Pachter, said. So, even though she got what could be termed a "50-50" settlement, Pachter said, she really didn't make out as well as her husband.

"EARNING ability, at least to me, is the most important community asset a couple can have," said Dorothy Davis, one of the attorneys that helped design the new law.

"There are very few real assets in the general middle class family. People aren't accumulating property for their old age any more. Husbands don't worry about acquiring property because jobs are more secure."

Thus, with little community property, the middle or lower-income divorcee often finds herself with no option but to go on welfare, according to Riane Eisler, a feminist lawyer.

For upper-middle class women, no-fault is a psychological trauma, Ms. Eisler said. "She is not going to live as well as her mommy told her and if the divorce wasn't her idea — and very often it wasn't — she is devastated and will never recover."