

Marriage and civil partnerships in modern british society essay sample

[Law](#)



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The significance of marriage varies across the world. It is difficult to define marriage in a way that could apply to all marriages, because marriage means whatever the couples marrying take it to mean. It is a matter of perception. The difficulty of defining marriage reflects the cultural, religious and ethnic diversity of our society today. The law in Britain has sought to recognize marriage as a contract or a status symbol. Although civil partnership act provides same-sex couples with similar legal rights that are given to spouses, the symbolic significance of not allowing same-sex marriage is far greater than the legal consequence. Cynics will argue that by not allowing same-sex couples the label of marriage, a homophobic message is sent. While, cohabitants are deemed with a lower status compared to spouses or civil partners, as the law has given them insufficient remedies on separation. Several people are sympathetic with the vulnerable position of cohabitants and want to see fairer outcomes.

However, to a great extent, the disadvantaged treatment of cohabitants can be justified when considering the potential disadvantages of imposing legal remedies. Traditionally, marriage has been seen as the “voluntary union...of one man and one women, to the exclusion of others.” This definition of marriage continues to be significant today, as same-sex couples are still excluded from the statutory right to marry. According to s. 11 (C) Matrimonial Causes Act, parties to marriage must be male and female, otherwise the marriage will be rendered void. The Government recognized the need for change, but instead of extending marriage to include same-sex marriage, they introduced a separate category of civil partnership that can only be entered by same-sex couples (s. 3 (1)). The 264 sections and 30

schedules of the civil partnership act provide same-sex couples with virtually the same rights as marriage, but there are a few differences. First of all, the way the two relationships are formed can be distinguished: marriage is formed through the exchange of vows, while civil partnership begins with the signing of a register; marriage can be formed through a religious ceremony, while civil partnership ceremony cannot include any religious service.

Secondly, civil partnership act ignores issues concerning same-sex activity: the ground for non-consummation and venereal disease are not included in the civil partnership act; adultery does not establish a ground for divorce; and a husband is considered to be the father of a child where the mother receives assisted reproductive services, but a civil partner would not be considered to be the parent of the child. The crucial question is whether these differences are significant enough to deem civil partnership with a lower status than marriage. According to Sir Mark Potter, civil partnership act gave same-sex couples the “ benefits of marriage in all but name”. From this point of view it could be argued that these are minor differences with no significance: nullity is seldom used and a civil partner can gain dissolution on behavioural grounds. The fact that civil partners cannot form their marriage through exchange of vows doesn’t make difference in practice, and those civil partners who want religious blessings may do so after the formation of civil partnership.

However, these differences can be held to be symbolically important.

Arguably, the law wants to avoid the sexual side of relationships between same-sex couples, by avoiding issues such as consummation and adultery.

Furthermore, it can be argued that the Government adopted civil partnership instead of same-sex marriage, to create a separate category from which religion could be excluded. This is reflected by the fact that exchange of vows and religious elements are excluded from the civil partnership ceremony. This was done to avoid opposition from conservative religious groups. Some religious groups, especially some members of the church, are of the opinion that same-sex relationships violate the religious notion of marriage. They regard same-sex activity to be sinful: “ if a man also lie with mankind, as he lieth with a women, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them (Leviticus 20: 30) .”

However, the Government failed to give sufficient consideration to the views of religious groups that support same-sex marriages. In fact, even the Christian Church is divided in relation to their support given to homosexual marriages. In *Wilkinson v Kitzinger*, a same-sex couple claimed for the right to marry, and argued that the conversion of their Canadian marriage into civil partnership was in breach of their human rights under Articles 8, 12 and 14 of the ECHR. Wilkinson argued that civil partnership was merely a “ consolation prize” available for homosexuals and it was “ offensive and demeaning”. Sir Potter recognized that Article 12, concerned with the right to marry, focuses on “ de jure” or “ status issues”. He recognized that the petitioner and first respondent were treated differently due to their sexual orientation, which contravened Article 14 and amounted to discrimination.

However, he held that the Convention only applied to heterosexual couples. For this reason, discrimination could be justified for the purpose of “achieving a legitimate aim” of protecting the “traditional understanding of marriage”. Sir Potter suggested that a substantial number of same-sex couples do not share the petitioners feelings of “hurt, humiliation, frustration and outrage” and are satisfied with the label of civil partnership. In fact, it is true some people chose to form civil partnership only because it is not marriage. Such people want to make a public commitment to each other and share the rights and responsibilities of marriage, without the “patriarchal heritage” of marriage. However, Sir Potter failed to sufficiently address the crucial symbolic difference that lies in the name. Critics argue that by not allowing same-sex partners the title of marriage it is implied that they are not worthy of that title. In *Brown v Board of Education*, the Judge said: “separate but equal is inherently unequal”. In applying this quote to this context, it can be argued that civil partnership act was adopted because the law considers there to be a difference between same-sex and opposite-sex relationships. If civil partnership were considered to be the same as marriage, it would be called marriage.

By not giving them the name, they are deprived of the status of marriage. Civil partnership act may not be the final step. It can be seen as a crucial step that will progress further. There are two potential reforms that can be made in this area of law. One possibility is making same-sex marriages lawful. Recently there is much controversy in relation to this proposal. Cameron has promised to introduce same-sex marriage by 2015, however, whether he will be able to implement this promise despite pressure from

conservative groups is to be seen. The second possible reform is recognizing civil partnership to be equivalent to marriage. This would involve implementing a new type of civil partnership, which could be optionally entered by both same-sex and opposite-sex couples on “equality grounds”. This would be well received by opposite-sex cohabitants who find civil partnership to be discriminatory, as only homosexuals can only enter it. It has been discovered that marriage proves spouses with legal remedies.

For this reason, there has been much speculation over why cohabitants chose not to marry, despite it being advantageous for them. A study discovered that 51 percent of cohabiting couples fail to understand that even though they have lived together for a long time, they do not possess marital rights. As a consequence they often fail to take sufficient measures to protect themselves, and for this reason, both same-sex and opposite-sex cohabiting couples are legally disadvantaged compared to spouses and or civil partners. There are several differences between cohabitation and marriage that render cohabitation with a lesser status than marriage, but the focus will be on the main ones. The financial support provided to spouses and cohabiting couples are different. At the end of marriage, the court has power to redistribute property owned by either spouse. The Family Law Act gives spouses and civil partners home rights. This gives them the right to occupy the matrimonial home. Each spouse can also seek a court order, requiring one party to pay maintenance for the other. However at the end of cohabitation, the court only announce who owns what.

The court has no power to change the ownership of property, or require the payment of maintenance. However, there are other legal rules provided by property law, trusts law, contract and estoppels that can potentially give cohabitants interest in their partner's property. Under Sch 1 of the Children Act, cohabitants can also apply for a court order for the other parent to pay periodical payments, lump sums or transfer of property if they have children. Yet, the current law is " complex, uncertain, expensive and unsatisfactory" and gives rise to " unjust outcomes". Furthermore, although Family Law Reform Act abolished the label of illegitimacy, there are still differences in relation to the legal positions of unmarried and married fathers. Under the Children Act, mothers automatically acquires parental responsibility of the child. Yet, if the father is not married to the mother, he must take the positive steps to gain parental responsibility. Despite the legal remedies offered to unmarried fathers, discrimination against unmarried fathers remains.

This is because the orders and agreements concerning parental responsibility are not much used. Intestacy is another issue where marriage can be considered more significant. In the event of death, the deceased's spouse or civil partner receives some, if not all, of the partner's estate. Yet, an unmarried partner is not entitled to an intestate state, unless of course the deceased has left a valid will. Then again, this will rarely provide a remedy as only 12 percent of cohabitants have changed their will as a result of cohabitation. In the absence of a will, the unmarried partner can apply under the inheritance (Provision for Family Dependents) Act for an order that would alter the intestacy rules, and give them a financial provision from the

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estate. The Law Commission has proposed reforms to this area in the draft Inheritance (Cohabitants) Bill. It was proposed that partners who have cohabited for five years should gain the right to inherit their partner's estate under intestacy rules. This minimum threshold is reduced to two years where the cohabiting couple have a child living with them in circumstances where one partner dies.

The Law Commission published a report in 2007 that was called, "The Financial Consequences of Relationship Breakdown to Parliament", which considers possible reforms for cohabitation. The law commission proposed providing financial remedies on separation, where the parties had a child. Cohabitants without child responsibilities would have financial remedies where the couple have cohabited for two to five years. The Commission suggested that the aim of the legal remedies should be to address the "economic imbalance" that arises when cohabitants separate. While the Government in England was reviewing this report, Scotland adopted the Family Law Act 2006. The legislation adopted by Scotland and the Law Commissions report contains similar remedies for cohabitants parting ways. Hence why, the Government decided not to take any action until the outcome of the legislation in Scotland would become evident. Those who support the Law Commissions proposals argue that particular groups of people, who cohabit, need more protection.

A popular example is the case of *Burns v Burns*, where a couple cohabited for 19 years and had two children. Despite one party's contributions, she was unable to gain interest in the house on separation. This supports the view

that cohabitants usually find themselves vulnerable when a relationship comes to an end. However, the law should not impose obligations on those couples who deliberately chose not marry. Deech argues that people have a freedom of choice and their rights should be respected. Cohabitants, who are dissatisfied with their unprivileged legal position, can gain legal rights by marrying. Many cohabitants reject the institution of marriage on the basis that it is “merely a piece of paper” or an “unnecessarily legally binding”, however, if they have such disregard for the legal consequences of marriage, then it does not make sense for them to turn to the courts for compensation after separation. Several couples choose to cohabit before binding the knot, to experience living together with their partner.

Surely it doesn't make sense to impose the consequences of a failed marriage on those who chose to cohabit to avoid this very result. Ultimately, this is a question of preserving the freedom of those who chose other forms of relationships over marriage. Today the main focus of Family Law is to protect the wellbeing of the children. Various researches have shown that children born outside marriage are exposed to more “frequent parental separation” and a “higher risk of child poverty”. Therefore, marriages are more desirable. Arguably, if cohabitants would be given remedies on separation, people would find it harder to distinguish between marriage and cohabitation. There is a risk that cohabitations will increase and more children would be born into unmarried families. Taking these findings into consideration, surely the Government wouldn't want to discourage marriage by providing cohabitants with legal remedies. Also, if the Law Commission's proposal was implemented, it could potentially increase non-marital births by

encouraging men to walk out before the minimum qualifying period of two years.

Although currently cohabitants are not automatically provided with sufficient legal remedies on separation, they can enter a binding cohabitation contracts that will determine what will happen to their property on separation. However, opponents argue that although this option is there in theory, it isn't used in practice. Statistics show that extremely few cohabitants safeguard their legal position: out of those who owned property, only 15 percent had a written agreement of their share of ownership, and only 19 percent took advice in regard to their legal position. However, rather than imposing legal obligations, surely the Government can find a more feasible solutions that would encourage cohabitants to make wills and leave their property for their partners.

Government should find more effective ways to explain to those living together that cohabitation does not give rise to legal remedies, so they can be fully aware of their legal position. It can be concluded that marriage is still the referent. Other forms of relationships are still held to be less valuable than marriage, and are consequently given a lesser status. Marriage and civil partnership are equal, yet different. Cohabitants have lesser status than marriage because they are not given sufficient legal remedies on separation, but this is justified. Both cohabitation and civil partnership are being reviewed for possible reforms. Only time will tell, how the law will develop.

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