

## Progressivity of marriage, history and new paradigms in Family Law

*La progresividad del matrimonio, historia y nuevos paradigmas en el del Derecho de Familia*

**Rolando David Andrade Hidalgo**

Universidad Técnica Particular de Loja

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**ABSTRACT:** Traditionally, the family model established in the Ecuadorian state was built on the fusion between Roman marriage and canon law, rooted in this concept since 1563, through the Council of Trent, which imposed the obligation to formalize the relationship between man and woman before the ecclesiastical authority and subject to the rites of that time. The aim of this work will show that today we have overcome these conditioning factors with the evolution of institutions such as the family, which has new perspectives and variations, due to demographic, economic, political, social, and cultural issues, etc.; promulgating the freedom to fully exercise the rights of people, and mainly, of those who make up a family group in diversity. Methodologically, an analytical-descriptive study is carried out of the main institutions addressed, such as the family, filiation, marriage, investigating from their beginnings until culminating with a current approach. After the argumentative development, we will address the conclusions that show specific aspects such as breaking schemes, confronting current situations and accepting with respect and without discrimination the new

forms of family constitution, from the current framework of marriage, thus determining its progressiveness and influence throughout Ecuadorian history in its social, public policy, cultural and other dimensions, in short, the development of our own society.

**KEYWORDS:** Family, discrimination, identity, marriage, sex.

**RESUMEN:** Tradicionalmente, el modelo de familia instaurado en el estado ecuatoriano se construyó sobre la fusión entre el matrimonio romano y el derecho canónico, enraizado este concepto desde el año 1563, a través, del Concilio de Trento, que imponía la obligación de formalizar las relaciones existentes entre varón y mujer ante la autoridad eclesiástica y sujetarse a los ritos de aquel entonces. El objetivo de este artículo evidenciará que hoy en día hemos superado estos condicionamientos con la evolución de instituciones como la familia, la cual tiene nuevas perspectivas y variaciones, que se debe a cuestiones demográficas, económicas, políticas, sociales y culturales, entre otros; promulgando la libertad del ejercicio pleno de los derechos de las personas, y principalmente, de aquellas que integran un grupo familiar en la diversidad. Metodológicamente, se realiza un estudio analítico-descriptivo de las principales instituciones abordadas como la familia, filiación, matrimonio; indagando desde sus inicios hasta culminar con un enfoque actual. Luego del desarrollo argumentativo, abordaremos las conclusiones que evidencian aspectos puntuales como el romper esquemas, afrontar situaciones de actualidad y aceptar con respeto y sin discriminación las nuevas formas de constitución familiar, desde el marco actual del matrimonio, determinando de esta manera su progresividad e influencia a largo de la historia ecuatoriana en sus dimensiones sociales, de políticas públicas, culturales, entre otros, en definitiva del desarrollo propio de nuestra sociedad.

**PALABRAS CLAVE:** Familia, discriminación, identidad, matrimonio, sexo.

**CÓDIGO JEL:** J12, J7

## **INTRODUCCION**

Son múltiples los aspectos a considerar desde el punto de vista de There are multiple aspects to consider from the point of view of family law and its focus on legal institutions such as filiation, voluntary recognition, and the right to an identity that are shown in various studies; the present study will not focus exclusively on the study of families but will establish a timeline of marriage to determine those variations and issues in the conjugal sphere that have given rise to the generation of the family, its typology and diversity.

To open a range of discussions on these issues would entail an endless amount of work, and it is necessary to indicate that we are currently continuing in the approach, discussion, and research from various spheres such as philosophical, dogmatic, research, pedagogical, social, public policy, among others, which from various approaches direct their studies like the present one.

When we refer to the family as the fundamental cell of society, from which several rights and obligations emerge between each of its members, a whole scaffolding of situations is generated that each legal system in a given country has been concerned or is concerned with resolving; nevertheless, the application of its internal regulations is also based on the international regulations of which they form part.

The institution of the family is undoubtedly a source of inspiration for various studies that lead to situations from

which legal studies emerge in different areas and subjects, given its diverse conformation. The mere fact of thinking that there is only one way of constituting a family, or to consider it as such to the integration of a man, a woman, ascendant children, and descendants, is to ignore its progress and evolution. Nowadays, families are presented in a variety of conformations and an infinity of connotations, which will occupy special attention in this work.

The customs, idiosyncrasies, beliefs, values, etc., of our Ecuadorian people, have instituted a conservative culture in most of its inhabitants; even more so when it comes to the formation of a family. Based on this fact, we ask ourselves, how are families born in Ecuador, what roots do they have? In these times we still allow that imposition, mental schemes and the weight of an absolutist and conservative society do not allow us to open our minds and move forward with the inclusion and acceptance of diversity. These are some of the questions and issues that will be addressed in the development of this article.

Advances in science have given rise to questions that as developing people is difficult for us to understand, but above all, they prevent us from accepting and stagnate us in positions that other legal systems would often consider retrograde and even adverse to the principles of international law; especially those that have to do with the inclusion and acceptance of these new forms in which families present themselves today.

But it is not only the fact of studying the family and its diversity that makes it convenient, for the sake of the development of the present work, to configure the event of the union of couples through the bond of marriage, to then conceive the fact that we are facing the birth of a type of family organization as a product of entering a marriage contract.

This study in the nineties, particularly in Ecuador, would have generated an infinite number of questions because those were times when the stereotype of appearance, good customs, religion, but above all the refusal to accept a situation that is precisely the formation of a couple under the terms mandated by the laws of man and divinity, prevailed. I believe that today this vision as a people is changing and adapting to these new forms in which families are presented.

The passage of time has been the best ally in adapting behavior, overcoming barriers, and allowing the inclusion of what was once considered unacceptable. It can be observed, in a natural way, that they no longer cause astonishment, and the existing social questioning has gradually faded away, which leads us to think that we are becoming an open, inclusive society, willing to adapt to these diversifications, starting even from the conformation of the institution of marriage. The important thing is that this kind of study allows us to know and analyze points of view with which we share or also to generate discussions that give rise to the opening of spaces for dialogue that leads to the proposal of reform initiatives or projects in favor of social improvement that led to peaceful coexistence.

Knowing the institution of marriage leads us to analyze the conformation and acceptance of diverse families in Ecuador, although it is no longer a taboo; however, stigmas and resistance are still perceived, to a lesser extent, but they do exist. We hope that little by little they will be overcome, due to the frequency with which these types of family conformations are presented; supported also by studies on these aspects, preparing ourselves, discussing, promoting debates, contributions, in which the conclusions are beneficial and are also bearers of solutions and initiatives that allow a country such as ours to move forward.

The law is changeable, but it must adapt to the needs and evolution of those it administers, of the principal, the people. But just as the law regulates people's relationships to achieve social peace, this society, in its diversity, must be open to innovation and development, that is, it must allow us to learn about the development of the institution of marriage and the forms of family conformation; although many still do not share or do not practice these conformations because of family customs and moral rules, they are not allowed to ignore them, but to learn about them, to respect them, without confrontation, censure or social scandal.

## **1. TYPOLOGIES OF THE FAMILY**

The development of this work implies starting with a preamble, initially aimed at conceptualizing the family; thus, from the point of view of various doctrinaires, they indicate that it is based on kinship relations, while others consider it as a social institution that orients, regulates and grants cultural and social significance to reproduction and sexuality. It is difficult to agree on a single concept because, depending on the field of study, the social vision, the subject matter, etc., an infinite number of meanings can be given which, on many occasions, will coincide, involving aspects such as biological, social and legal aspects in general, which vary from one culture to another, making it difficult to include the family in a single definition, however, we will try to take as a basis some doctrinal criteria, studies, and essays which refer to it.

The family, as well as other institutions of the Ecuadorian legal system, has presented variations, due to the evolution over time, the circumstances of changes in state policy, the type of government, culture, society, and innovation itself. Globalization has even been a great promoter for the family to

present itself in different forms or types.

To recapitulate, we will point out a definition by Palacio (2009) which refers to the family as the world par excellence with a diversity of immeasurable feelings, where there is room for the deepest emotions, affections, disaffections, relationships of trust, the certainty of what has been lived, with the treatment of issues that are formed and intertwined in response to the legal, moral, and economic obligations imposed by a parental fabric. In short, it can be argued that the family is one of the most intimate and effective spaces for the development of human beings.

Since the existence of modernity, families in Latin America have for the most part ceased to be traditional (mother, father, and children) and in the case of Ecuador, other models of composition are recognized, whether for economic, social, or gender reasons.

Article 67 of the Constitution of the Republic of Ecuador (2008) recognizes the family in its diversity and promotes its protection as the fundamental nucleus of society, guaranteeing it conditions that fully favor the achievement of its goals. Furthermore, a very important aspect to highlight in this normative article is the provision that families are constituted by legal or de facto ties and are based on equal rights and opportunities for their members.

The fact that a family is constituted by legal or de facto ties means that the Ecuadorian legislator, through this regulation, has sought the full exercise of the rights of persons; In this way, it not only included those who intertwine their relationships contractually but also recognizes de facto relationships, through the provisions of Article 68 of the Constitution, which refers to

the de facto union, which in our country is considered a stable and monogamous union between two people free of marriage and who form a de facto household, which will generate the same rights and obligations that families constituted by marriage have (Constitution of the Republic of Ecuador, 2008).

By the supreme norm, the conformation of families is considered legally, that is, through the institution of marriage, which is only allowed in Ecuador between a man and a woman. Not so the de facto union, given its constitutional provision that it is the union of two persons, which tacitly implies the acceptance of the de facto union of those persons of the same sex.

As we have been arguing, the institution of the family has undergone a legal evolution, mainly since 2008, where it is stated in a supreme norm such as the Constitution, that the family should receive the support, protection, and legal security of the Ecuadorian state for each of its members, so that they can fully exercise their rights and consequently assume their obligations.

The main fact of this evolution of the family, some sociologists such as Dr. Julio Echeverría, consider that the birth of these new family structures is largely due to the existence of alterations in the roles of the members, which has implied the creation of even new identities (Echeverría, 2008).

In addition, circumstances such as migration, levels of schooling, sexual affinities, the emancipation of women, economic situations, are some of the factors that have influenced these new family conformations, according to the same sociologist Echeverría.

At present, it would be a step backward to think only of the “ideal” family, composed of a father, mother, and children. Currently, in Ecuador, there is a prevalence of single-parent families and various types of family formation, which implies that only one of the parents is responsible for raising the children, that new families are formed, or that the care of the children is entrusted to different members of the family. This is related to the divorce figures that exist in our country, which according to the National Institute of Statistics and Census (2016) between 2006 and 2016, marriages decreased by 22.01% from 74,036 to 57,738 nuptials. Meanwhile, divorces increased by 83.45% in the same period, resulting in 1,249 men taking custody of their children compared to 14,669 women (p. 3).

As a consequence of the separation of the parents united through marriage, a new family form is created in this area, or the simple fact that each of the ex-spouses is responsible for the care of one of their children may become evident, or that the complete custody of all the children is agreed to be in the hands of a single parent, the contracting of new marriages and the fathering of children with the current partner, in short, these are some of the different forms of family formation that can be found, but for this study, we will refer mainly to the following: Nuclear,

Extended or complex, Single-parent-Mother, Single-parent-Father, Reorganized reconstituted or binuclear, Homoparental-Gay, Homoparental-Lesbian.

### **1.1. Nuclear family**

Some sciences such as anthropology, psychology, sociology, and other social and related sciences consider this type of family as a hegemonic model, traditionally called to preserve a

structure formed by the father, the mother, and the biological sons and daughters of both; thus those people who submitted to and were involved in another type of conformation were not precisely considered family, assigning them labels such as “unstructured” “lacking in” “non-families”, etc.

The nuclear family in its beginnings was governed by the norms of canon law and Roman law, and its rigidity in its conformation was shaped by the submission of women, the raising of children, and the great presence of patriarchy. It was conceptualized by some critics, sociologists, psychologists, etc., as a family, symbol of the existence and natural coexistence of people, where several dimensions converged, mainly religious and deep-rooted customs prevailed; at that time, the members of a nuclear family were the only ones to be considered as such, regardless of the questioning, especially in the seventies.

As time progressed and the transition from a simple society to a complex one, leaving behind this traditional historical-social formation and moving on to challenging modernity, families changed and showed a transcendental evolution in the nuclear family, reflected in the way of internal coexistence, because they continued to be made up of the same people, the spouses, and biological children, but their dynamism was different; a more democratic, multifunctional structure was observed, with control of property and satisfaction of the reciprocal needs of the people who made up the family.

Thus, the progress of the nuclear family is also seen in Ecuador as a symbol of overcoming not only stereotypes but also of those customs that we had carried over from our ancestors, where women’s space was closed off and children were disposed of in an authoritarian manner. In this and other respects, although the nuclear family comprises a large part

of the Ecuadorian population, it is also true that its modes of functioning have varied due to the circumstances we have mentioned.

## **1.2. Extended or complex family**

An extended family is defined as a family that includes several relatives and/or persons with recognized ties as such. For this type of family, identifiers such as “blood family” or “foster family” are used. Generally, this type of family is made up of different households or nuclei, with different characteristics such as, for example, the cohabitation of members of three or more generations, in short, with collateral relatives, and even multi-nuclear or polygamous models, and even allows the concept to be extended to members of a tribe or clan (Valdivia, 2008).

As can be seen within this type of family, there are sub compositions that form part of what is considered an extended family, placing us before a totally broad dimension, projecting from a vertical axis that includes generations from parents to children and from the horizontal, the various groups formed by collaterals, siblings, their spouses, and children.

Generally, from an exhaustive bibliographical review, sharing the criteria of the writers, they agree that the profile of an extended family is also known as “foster family”, and most of those who carry out this activity are the grandparents of the fostered children, with ages ranging from 41 to 60 years old or over 60 years old, most of whom are unemployed and lack sufficient economic resources. In the face of this, a series of social problems can be observed which we will not go into in this paper, but which are visible, and which should be of concern and should be the focus of public policies on the part of the State (Molero et al., 2007).

Currently, in our country, extended families can be observed very sporadically, because situations of non-acceptance of people who distort the concept of what is known as a natural family persist in our actions, or simply do not show themselves, often as such, and take positions such as hiding or simply not showing themselves, or even worse, accepting the fact that they belong to a type of family such as the extended family.

### **1.3. Single-parent-Mother, Single-parent-Father**

Considered as an event in which only the father or the mother is present, the fact of the presence of only the mother is known as Single Parent-Mother, and the opposite when the family is made up of the father, it is considered as Single Parent-Father (Valdivia, 2008).

This concept appeared in the 1970s when this type of family was referred to as Valdivia (2008) “broken, incomplete or dysfunctional family” (p. 15). Attributable to events such for example the lack of a spouse, widow, or widower, the results of a divorce action, the fact of being a single mother or father, in short, are some of the scenarios that can present this type of family.

The single-parent family brings with it various problems, which arise in the different types of single-parent families, such as the loss of the parental reference point, a complex economic situation, and the consequences of single parenthood itself.

One of the main characteristics is that it tends to be predominantly female, it is associated with a higher level of poverty, lack of the necessary means to subsist, or it is too complicated for a single parent. Access to employment is difficult, especially for women.

Data according to the National Institute of Statistics and Census (2016) of Ecuador show that there are around 8'087,914 women, which represents 50.5% of the country's population, and that 1'069,988 of them are heads of household, which shows a considerable number of single-parent families concerning women. In addition to this, INEC statistics show that of the marriages that divorced between 2006 and 2016, 1,249 men were left with custody of the children, compared to 14,669 women in the same situation, reflecting a high degree of single parenthood among Ecuadorian mothers.

The fact that only one parent has direct custody of the children implies many responsibilities, and this cohabitation also requires comprehensive care given their complex situation which can lead to a myriad of social problems, considering the case that the parent is immersed in vulnerable situations, having to cope doubly as the sole breadwinner, provider, and custodian of the family.

#### **1.4.Rearranged or binuclear reconstituted**

The reconstituted family is that formed by couples, within which at least one of the spouses has a child or several children from a previous relationship. This type of family conformation breaks the hegemonic and ideological scheme of a family model, producing this new form of family integration.

This type of family grouping has been assigned other identifiers by which it is also known, as follows: Gonzalez and Gonzalez (2005) "reconstructed, transformed, reassembled, recomposed, back families, assembled, 2nd round families, etc." (n. p.).

In Ecuador, according to the National Institute of Statistics and Census (2016), the divorce rate between 2006 and 2016

increased by 83.45%, from 13,981 to 25,468, while marriages fell by 22.01%, with 74,036 marriages registered in 2006, compared to 57,738 in 2016. And according to the marital status of the parties before marriage, 11940 persons were recorded as divorced and remarried (p. 8).

The data also show that Ecuador has a high rate of reconstructed families, given its high rate of remarriage; in other words, we are faced with the presence of composite families often made up of two divorced adults, or one of them, who may also be separated or widowed, in which there is room for the minor or adolescent children of each of them.

Among the characteristics that stand out in this type of family is that its integration can go through an initial period of integration that can last between 4 to 7 years, and around two years to reach stability, considering that the first years are the most difficult due to the adaptation and emotions within the family that is about to be reconstituted.

González and González (2005) state other characteristics that are evident in this type of conformation, which we point out below:

1. The reconstructed family has its characteristics and therefore differs from the family of the first marriage.
2. Within this type of family, it takes time for relationships to grow and for affection to develop between family members.
3. The stepmother is seen as evil
4. Statistically, it has been shown that one-third of children do not adapt to this new union, which is why it is advisable to go to therapy.

5. When there is estrangement from the biological parent, the children's relationship with the other parent and their new commitment becomes more difficult.
6. If one parent is widowed and subsequently remarries, family relations are affected, as it is considered a betrayal of the deceased parent.
7. Lack of a family history shared by all family members
8. They are considered as families in transition, which must assume important changes in short periods, different from those of conventional families.
9. There is no clarity, nor can it be established what the relationship between children, adolescents, and the parent's new partner will be (pp. 19 and 21).

La dimensión filial de la persona que integra este tipo de familia llega a trastocarse, por la reconstrucción de la que son parte, por lo que es recomendable solicitar ayuda a profesionales de áreas como la psicología, sociología, etc., para superar los múltiples incidentes que podrían ocasionar la conformación de este tipo de familia.

Como lo pudimos observar de los índices de divorcios y de contraer nuevas nupcias, en Ecuador tenemos un alto número de parejas que deciden divorciarse y también se puede evidenciar los nuevos hogares formados por parejas que tuvieron un estado civil anterior de divorciado o viudo, lo que nos lleva a concluir que es muy común en nuestro país la conformación de este tipo familias; las cuales, eventualmente están siendo consideradas como naturales, y que de presentar inconvenientes en su

convivencia, se cuenta con los mecanismos precautelatorios de protección que coadyuvan a lograr una pacífica y tolerada relación entre sus miembros. Normativa, reglamentos, Unidades de Violencia, Juntas Cantonales de Niñez, Unidades de Asistencia Familiar, etc., son los llamados a garantizar la convivencia pacífica y relaciones afectivas de una familia, cualquiera sea su conformación.

### **1.5. Homoparental-gays, homoparental-lesbianas**

In European countries and some Latin American countries, these types of civil unions and same-sex marriages have been recognized.

According to Corporación Radiotelevisión Española (2017):

Among the pioneers in the Netherlands, with a law passed in September 2000 that came into force on 1 April 2001, the first country to give the green light to same-sex marriage, followed by Belgium (2003), Canada, and Spain in 2005. South Africa (2006); Norway and Sweden (2009); Portugal, Iceland, and Argentina (2010) and Denmark (2012) followed in recognizing same-sex marriages; and in 2013 it was judicially recognized in Brazil and approved by laws in Uruguay, New Zealand, and France. (p. 23)

Society has evolved and lived together under the protection of national and international regulations where the prevalence of and respect for the life options chosen by individuals has in some cases divided it. An example of this is our own country, where the union of people of the same sex has been allowed since June 2015, but it was forbidden, that is, marriage between them was not legalized, until the issuance of sentence No. 0011-18-CN, dated 12 June 2019 issued by the Constitutional Court, which

recognizes “equal marriage”, that is, same-sex couples can access the marriage contract.

The respect of people’s rights, considering them as such, has not been affected by the rules that regulate us today, however, the evolution of our society and this new family type conformation, we believe, will open in the future some revolutions that will have their corresponding analysis and study, as was the landmark sentence issued by the High Court.

It is also pertinent to point out that this type of family confirmation is not very accepted in our environment, given the stereotypes that generate resistance, and that on many occasions these families face homophobia, which is still present in a minority of society; and that this could be reflected in a lack of references and situations of discrimination, social, labor, symbolic when accessing certain services on the part of the members of this type of family.

For the time being, these gay Homoparental couples made up of two men and lesbian Homoparental couples, made up of two women, have had their rights recognized in all their forms, and have evolved, breaking schemes and taking unexpected turns with the issuing of the ruling considered a milestone in our country, that of equal marriage; without these couples being able to opt for the institution of adoption, or other similar, to integrate more members for the time being. Figures such as assisted reproduction, surrogate wombs, etc., are currently not regularized or regulated in our legal system, nor is access to adoption, which is forbidden to same-sex couples who are currently allowed access to marriage.

## **2. FILIATION FROM THE DIVERSE FAMILY ENVIRONMENT**

The word filiation traces its origins to the Latin *filius*, *fili*, meaning son. This refers to a descending line that exists between two persons, where one is the father or mother of the other, and consists of the relationship that exists between two beings, one of whom emanates from the other by generation.

We can see filiation from two perspectives, the first as the legal relationship that links a father and/or mother and their child bilaterally, and the second as the position of a person about their society, contained in typified norms. We consider these two substantial elements to point out how these relationships can be evidenced within a family environment and the repercussions they would have from a social point of view.

The fundamental basis for the identification of individuals as such and concerning the family and social group to which they belong has made filiation that reference, which allows dealing with issues concerning divergences and an infinity of situations that could be generated from filiation in diverse families.

According to Larrea Holguín (2008) in his *Manual Elemental de Derecho Civil de Ecuador*, he states that filiation “is not only the physical fact of procreation but also the set of humans, sentimental, economic, etc. links that exist between parents and children, which is regulated by civil law” (p. 94).

Focused on the vision of diversity, when we review the existing family conformations, and other possible and future ones are pointed out, it is an evident sign of progress and evolution of our society; a fact that leads us to imagine soon where it is possible the emergence of other types of families, which will also imply new critical studies. However, in the diversity of today’s world, it is difficult to determine the exact parentage of the groups we have identified.

However, we contribute our position by pointing out that “filiation would correspond in a natural way to the biological relationship between parents and children, but also based on the criterion of the jurisconsult” (Larrea Holguín, 2008, p. 96). This opens other perspectives on this subject, in the sense that filiation is not only considered as a biological bond, but also as human ties, feelings, and economic and social aspects.

Therefore, it is valid to clarify that, in all family conformations, filiation ties will exist in one way or another, and in a more visible way in families such as nuclear, single-parent, reconstituted families, etc. We point out that according to our Ecuadorian legal system, in terms of same-sex families, it will be almost unrecognizable to be able to distinguish filiation as such, safeguarding the fact that there could be couples with previous commitments because of which there are children and by the union with a person of the same sex, a filiation concerning one of them is already evident. However, it is not ruled out that the existing relationship with the new partner of the parent may also begin to show filial relationships.

Now it is arid and complex to enter into an in-depth analysis of the conformation of same-sex couples, due to the lack of a regulation referring to the case, even though there are pronouncements by the Constitutional Court in this regard, mainly regarding the recognition and access to the institution of marriage for same-sex couples. Something different happens with the other family formations, which do not generate major controversy or consternation in society, but rather are commonly accepted, and of which we can determine, given the meaning of filiation, how this institution is presented in each of them.

According to the Ecuadorian Civil Code (2005), the filiation that is established corresponds to the father or mother for having

been conceived in marriage or a de facto union and voluntarily recognized or judicially declared by said father or mother. Furthermore, we can locate these aspects in each of the different forms of family confirmation that we have reviewed and show that, in each of them, we have filiation as such.

### **3. MARRIAGE IS A LEGAL INSTITUTION, ITS PROGRESSIVENESS, AND HISTORY IN ECUADOR**

The search for regularization of institutions that are part of people's daily lives allows the law to evolve and its passage through time to leave its mark on the issuing of regulations that once served the interests of a population.

Moreover, we will focus on history and its progress in the institution of marriage, in this way, we will highlight past eras and the vestiges marked at that time about the figure of a marriage.

Conceiving marriage as a legal institution in our country takes us back in time to the Constitution of the Republic of Ecuador (1884) in which, in Article 13, the religion of the Republic was defined as Catholic, Apostolic, and Roman, excluding any other religious creed. Taking this constitutional antecedent as a basis, we have that the Catholic religion was the basis for the conception of the meaning of marriage.

Thus, in 1889, publications or editions of Ecuadorian civil law converged and precisely in the Civil Code (2005), in its article 81, we find one of the first definitions of marriage, referring to it as a solemn contract by which a man and a woman are united currently and indissolubly for life to live together, procreate, and mutually assist each other. And later, in Article 100 of the body of law, the ecclesiastical authority is empowered to decide on the validity of marriage, granting them the power to pronounce on the existence or not of this conjugal union (Código Civil Ecuatoriano, 2005).

The same definition of marriage was subsequently assumed for several years, and in 1904, divorce on the grounds of adultery was included in the body of civil law, and divorce by mutual consent was also incorporated.

Later in the Constitution of the Republic of Ecuador (1979), Article 22 states that the State shall protect the family as the fundamental cell of society, ensuring moral, cultural, and economic conditions that favor the achievement of its goals. It shall also protect marriage, maternity, and the family, specifying that marriage is based on the free consent of the contracting parties and the principle of equality of rights, obligations, and legal capacity of both spouses. This shows that as early as 1979, the responsibility of the state for the interests of marriage and, consequently, of the family, was enacted.

In 1998, during the presidency of Fabián Alarcón, interim president, after the dismissal of Abdalá Bucaram, the Political Constitution of the Republic of Ecuador (1998) was promulgated in Ciudad Alfaró-Montecristi: Article 37 establishes the recognition and protection of the State towards the family as the fundamental cell of society, guaranteeing the conditions that favor integrally the achievement of its aims; the family will be constituted by legal or de facto links and will promote equal rights and opportunities for its members, marriage, maternity, and the family will be protected, supporting women heads of household.

The Political Constitution of the Republic of Ecuador (1998) maintains the concept of marriage based on the free consent of the contracting parties and the equality of rights, obligations, and legal capacity of the spouses, with a variation, focused on the direct protection of women heads of household. This same constitutional regulation in Article 38 introduces and recognizes

the legal figure of the de facto union, describing it as the stable and monogamous union of a man and a woman free of marriage ties with another person, who form a de facto household, for the period and under the conditions and circumstances established by law, generating the same rights and obligations that families constituted by marriage have, including concerning the legal presumption of paternity and conjugal partnership.

Subsequently, when Rafael Correa Delgado became President, a popular consultation was called and in 2008, through a constitutional referendum, the new Ecuadorian Constitution was established, classified as a guarantor, turning the country into a constitutional state of rights and justice. Article 67 of this legislation recognizes the family in its various forms, the State protects it as the fundamental nucleus of society and guarantees conditions that fully favor the achievement of its goals. These families shall be constituted by legal or de facto ties and shall be based on the equality of rights and opportunities of their members.

As can be seen in the narrative above, over the years the institution of marriage has undergone slight variations, which are more noticeable when the country enacted the Constitution that governs us to this day. As we consider ourselves as a constitutional state of rights and justice, this emblem gave rise to countless petitions in the framework, as an example and referring to our developing theme, we have the LGBTI movement, who through their organization fight to this day for the recognition of their rights, equality before the law and non-discrimination among their main objectives.

The struggle to undertake a socio-cultural normative change for the sake of the vindication and recognition of rights made this LGBTI group, with the support of other types of feminist

organizations, social collectives, among others, raise several actions in the constitutional sphere; And, in this framework, as a result of the action for protection, the Court of the Criminal Chamber of the Superior Court of Justice of Pichincha consulted, based on the action for protection, whether Advisory Opinion OC24/17 of the Inter-American Court of Human Rights, which recognizes the marriage of same-sex couples, is compatible with Article 67 of the Constitution, which establishes that marriage is between a man and a woman. In this regard, the Constitutional Court analyses the legal value of the Advisory Opinion interprets the constitutional norm and establishes the legal effects of this constitutional interpretation.

The Constitutional Court issued a decision on this consultation, and thus, with 5 of the judges voting in favor and 4 against, same-sex marriage was recognized in Ecuador. The Court determined that there was no contradiction between the constitutional text and the conventional text (Advisory Opinion), but rather complementarity. And consequently, by the most favorable interpretation of rights, the right to a marriage recognized for heterosexual couples is complemented by the right of same-sex couples to marry. The Constitution, according to Article 67, and the American Convention on Human Rights, according to Articles 1.1, 2, 11.2, 17, and 24 of the Convention, as interpreted by the Inter-American Court of Human Rights through Advisory Opinion OC24/17, recognize the right to marriage between a man and a woman and the right to marriage between same-sex couples; and thus with the issuance of this resolution by the Plenary of the Constitutional Court, as of 12 June 2019, access to marriage for same-sex couples is considered and is in force.

This shows that the social construction of developing people determines the functionality of legal institutions and thus

generates and makes room for new forms of recognition and creation of legal figures that were impossible to access at other times. As discussed in this section, in our beginnings we belonged to an absolutist and conservative society, with time we have witnessed changes that involve the recognition, adaptation, and respect of the rights that are recognized through the Constitution and pronounced by its highest body, the Constitutional Court.

We will be watching these advances in the regulatory system since the development of our society requires contributions, studies that involve rethinking our legal system as we have known it, which with the passage of time aims not to be left out of technological advances, social development, and creative involvement in all sectors; seeking the inclusion of all of us who submit to and form part of a constitutional state of rights and justice.

## CONCLUSIONS

During the last forty years, the family has undergone profound and convulsive changes, breaking the traditional pattern that had been maintained, with the appearance of many models of family constitution, which have altered the parameters with which family life was conceived.

In Ecuador, the most recognized family has been the “conjugal” family, instituted biologically and in the union of a heterosexual couple, whose purpose is procreation.

The UN differentiated between household and family, stating that the family is defined as nuclear, i.e. the natural conformation assigned to it and within it made up of persons who establish a private household. That is, those who make up a family could be spouses, a father or mother with an unmarried child, or an adopted child, a married or unmarried couple with

one or more unmarried children, or a parent with an unmarried child, among others (United Nations, 1987).

Democratic countries, such as ours, have accepted their reality and through their legislative body have modified the laws in such a way that women and men are treated equally, and child protection is ensured.

There is a break with the old-fashioned conception of the family, treating women's and men's rights and responsibilities in childcare and care equally and equitably.

Any change generates resistance, but it is necessary to democratize institutions such as the family, marriage, among others, so that they contribute significantly to their coexistence, and undoubtedly improve personal relationships, thus obtaining families that are recognized, but above all protected by the State.

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**Rolando David Andrade Hidalgo:** Lawyer from the Universidad Técnica Particular de Loja. Master's in civil law and Civil Procedural Law from the Universidad Técnica Particular de Loja. Main Professor of Family Law and Civil Procedural Law at the Universidad Técnica Particular de Loja.

**Email:** rdandrade@utpl.edu.ec

**City:** Loja

**Country:** Ecuador

**ORCID:** <https://orcid.org/0000-0001-7778-4868>