

Defining the Family and Its Constitutional Protection

Li-Ju Lee*

Abstract

Taiwanese families are changing. They have become smaller, egalitarian and diversified. The continuing low birth rates and the high divorce rates have changed the family in size and structure. The patriarchal family has gradually lost its appeal in law as well as in reality. Although the nuclear family, consisting of married couples and their children, remains popular, the nontraditional families, such as single parent households, married couples without children and unmarried cohabitation, have been increasing over the last twenty years. The changing face of the Taiwanese families is not merely a social phenomenon. It raises questions and concerns over the Constitutional protection of the family and the individual's right to family and intimate relationships.

The Constitution does not mention "the family" in its text. Nevertheless, the Grand Justices have rendered a series of important Interpretations addressing the issues regarding the constitutional/legal status of the family, the relations among family members, as well as legal regulations over marriage and family. After examining these decisions, the author suggests that a portrayal of the "constitutional family" has emerged. It was the institution of marital family that enjoyed the special constitutional status and protection. The constitutional protection of marital family is a double edged sword. As the Constitutional Court insisted on preserving and protecting the institution of marital family, the nontraditional families or alternative families have been ignored or suffered. The author calls for the right to family or the freedom of family to be recognized as fundamental, allowing the individual to challenge the monopoly of marital family

* Associate Professor, School of Law, Department of Financial & Economic Law, Chung-Yuan Christian University. J.S.D. Stanford Law School.

E-mail: lijulee@cycu.edu.tw

and the Constitutional Court to review laws and policies in a new framework beyond the traditional marital family. In addition, it is urged to adopt the functional approach in defining the concept of the family to respond to social change, accommodate nontraditional and alternative families, and promote the individual's dignity.

Keywords: right to family, marital family, the institution of marriage, right to marry, freedom of adoption, constitutional protection of the family, nontraditional family