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**SOCIAL AND LEGAL STATUS OF US
WOMEN: HISTORY OF THE
XX CENTURY**

Abstract

In the second half of the XX century there was a radical change in the position of American women in society. 200 years after the US War of Independence, a peaceful revolution for women's independence took place. The efforts of several generations were required for the struggle for equality to succeed. Modern young American women can afford to skeptically or negatively speak about feminism, while they are ambitious, striving for social, political and economic positions, fundamentally inaccessible to women 30 years ago.

When creating the American Republic, the Declaration of Independence proclaimed that "all people are created equal and endowed by their Creator with certain inalienable rights, which include life, freedom and the pursuit of happiness".

Keywords: legal status of women, Declaration of Independence, US women

The idea of equality, as taught in American schools, has become part of national identity, an element of the "American dream" that immigrants from other countries seek. Researchers of national culture note that equality is a more valuable category for Americans than even freedom. But the founding fathers, like most of their free-thinking contemporaries of the eighteenth century, by "equality of all people" meant only free men (oilmen). American citizenship did not give women the political rights and freedoms guaranteed by the most advanced Constitution of their time. In the XIX century, the idea of legal equality of both sexes continued to remain very seditious in the eyes of a democratic society. It took the activists of the women's movement more than seven decades to formulate their main political demand - the granting of suffrage - to become a reality. The first policy document of American feminists was adopted in 1848, at a conference in Seneca Falls and was called the "Declaration of Feelings." In his rhetoric, as in the title, he directly appealed to the "sacred" text of American democracy. "All men and women are created equal ..." (*None, 1993, p. 260*)

Following this preamble, the Declaration stated that since governments are created to secure these rights and with the consent of the governed, women are required to demand the abolition of injustice and the usurpation of their civil rights and freedoms. Next, all those rights that women lost as a result of the establishment of the absolute tyranny of male power were listed. The first thing that the women's congress demanded was the right to vote and equal access to education. As the American colonists in the 18th century, with arms in hand, proved the justice of their participation in government, so in the 19th century, women using peaceful demonstrations, pickets and rallies demanded the same thing for themselves.

What argument was used to deny women's suffrage in a democratic republic? The main excuse was based on English customary law, which became the legal basis for the formation of the US legal system in the 18th century. First of all, this concerned married women. "In civilian terms and from the point of view of the law, they were dead," - so figuratively determined the status of women in the "Declaration of feelings" (*None, 1993, p. 261*). In the "Commentary on the Law of England" of the mid-18th century, it was stated that "the husband and wife are one and the same in marriage," one person, therefore, legally, the wife does not exist separately from the husband. Women cannot have a right to vote, as their husbands vote on their behalf, in the name of the interests of the family as a

whole. Women cannot, accordingly, have political interests different from those of their husbands, because the wife is legally part of the husband. "In addition, the woman, of course, was not supposed to be competent in the rational male world of politics (*American Women, 1965, p. 163*).

Under customary law, the citizenship of a married woman depended on the citizenship of her husband. If a foreigner married an American, she automatically received US citizenship, otherwise, when an American married a foreigner, she automatically lost her citizenship and received the status of a "foreigner" in her country.

In the 19th century, along with maintaining the argumentation of customary law, the principle of distinguishing the social roles of men and women was introduced into jurisprudence, allowing the application of the norms of the Constitution in accordance with gender. The US Supreme Court took over the task of consolidating legal inequality, the competence of which since the mid-19th century has included determining whether federal and state laws comply with the provisions of the Basic Law. The theory and practice of the Supreme Court affirms the concept of discrimination, which remained unchanged until the end of the 1960s. Under discrimination, i.e. violation of individual rights meant "unequal treatment of persons in the same position." Since women and men by their biological nature are in an unequal position, the absence of women with the rights that men have does not contradict the Constitution and is not a fact of discrimination.

Despite its significance, equality as a legal category was first introduced into the Constitution in 1868 when the Fourteenth Amendment was ratified. The amendment guaranteed to all persons with citizenship equal protection on the basis of laws, and also that no state could deprive the privileges and benefits of citizens of the United States. The gender-neutral language of the first section of the amendment enabled women to try to use it in the struggle for equality.

Virginia Minor was one of many women who brought a lawsuit demanding that state laws that deprive women of their voting rights be unconstitutional under the Fourteenth Amendment. The lack of suffrage, as claimed in the lawsuit, meant depriving women of the privileges of US citizens. The Supreme Court in its famous decision in the case of *Minor vs. Happersett* (1874) rejected the lawsuit, not finding in the denial of the right to vote for women a contradiction to the Constitution. The clarification of the Court

stated that women, like children, can be recognized as citizens without the right to participate in the election process. Since suffrage is the prerogative of state law, if desired, the people will be able to provide women with this right (*Making America, 1992, p. 163*) It should be noted that the political and ideological context of the Fourteenth Amendment left no illusions regarding the legal equality of the sexes. The second section of the amendment (also for the first time in the Basic Law) used gender-articulated terminology, which made obvious the exclusion of women from the electorate. According to this section, the rules of representation in Congress were determined in accordance with the number of male residents. The two sections of the amendment, according to most liberal politicians and lawyers, did not contradict each other.

The equality of citizens before the law, as a legal norm and the main American value, was fully combined with the concept of "differences in social roles' between men and women. In 1898, the Supreme Court approved the "equal but separate treatment of black and white Americans in the southern states. " Twenty years earlier, the Supreme Court had proposed the principle of "equality of distinction" for men and women. In the *Bradville vs. Illinois* (1873) judgment, the Supreme Court gave the classic wording of this doctrine as the unequal legal status of women and men. on the merits, in doing so secured the situation of customary law. The court upheld the law of the State of Illinois, forbidding women to the practice of law. "The natural biological differences, mentioned in the decision, makes women unfit for certain professions in civilian life. Their main area of activity remains household and motherhood. A man is or should be the patron and protector of wives and mothers, including future ones, from unskilled work "(*Sapiro V.,1990, p. 297*). In the next eight decades after this verdict (until the 1960s), the Supreme Court made no adjustments to its policy regarding the status of women.

The theory and practice of differentiating the socio-political status of citizens of the United States according to their gender, introduced into jurisprudence, organically fit into the general patriarchal culture. Conventional gender roles were not questioned in the first half of the 20th century, when the victory of suffragism was achieved.

Since the end of the 19th century, states, under pressure from the women's movement, have gradually changed their legislation, granting women suffrage. The ratification of the XIX Constitutional Amendment in 1920 guaranteed that "the voting

rights of US citizens should not be challenged or restricted by the United States or any state on the basis of sex". The adoption of the amendment successfully completed the first stage of the women's movement, but did not make significant changes to the political culture of America. The concept of a "single legal entity" was weakened, but the dichotomy of roles still left the woman a place mainly in the sphere of private life. This was reinforced by the "culture of republican motherhood" that had been established in the public mind since the 19th century. Women's activity in the public sphere seemed destructive to American values, as it distracted women from their main responsibilities. In response to the demands of suffragists regarding co-education of boys and girls and equal access to professional education, a national discussion was launched on the topic: "Why educate women?" As it turned out during the debate, the claims were unfounded, since they contradicted the theory of various roles and women's special moral duty. If men should have been educated primarily to educate active US citizens, then the role of women came down only to their future moral obligations. Accordingly, they do not need "male" education, and many professions are harmful from the point of view of the country's interests. In 1957, the leader of the Democratic Party, former presidential candidate Edlay Stevenson, found it necessary to emphasize in his public speech that "the role of women as citizens should be limited to their influence on men as wives and mothers" (*Making America*, 1992, p.259).

The correlation of gender roles with the constitutional equality of US citizens has been a key issue of public debate since the 1920s, including debate within the women's movement. American feminism of the first wave, having united around the middle of the 19th century around suffrage, even before the final satisfaction of its demands, found an internal ideological conflict in the framework of resolving the dichotomy "equality - difference". After the World War I, two movements formed in the movement: social and egalitarian feminism. Proponents of the first trend insisted on the need to take into account the fundamental biological differences of the sexes and, together with the unions, demanded protectionist legislation for women. Adherents of the second trend in the dilemma of "equality - differences" of the sexes solved the problem exclusively through equality, interpreting it as the sameness, similarity of the sexes. In their theory and practice, they proceeded from the idea of classical liberalism - the extension to women of those natural rights that men already possessed. At the beginning of the 20th century, the

central requirements were the access to higher education and the provision of equal opportunities for work. The increase in the employment of women in production during the years of World War I, as well as the acquisition of voting rights, led to a decline in female political activity and caused some disappointment in the egalitarian wing of the movement. The opportunity to participate in the elections and the emergence of a significant, but not prestigious "female sector" in mass production did not lead to a real increase in the status of American women and their inclusion in the political process.

The discriminatory policy on the basis of the principle of "unequal treatment of persons performing different social roles" was rooted, in their view, in the absence of a guarantee of equal rights for citizens of both sexes in the country's Basic Law. In addition, the exclusion of gender differentiation from legislative and judicial practice meant the establishment of real equality. In their opinion, this should have been preceded by the introduction of the category of "gender" in the Constitutional norm, which defines the rights and freedoms of citizens. In the 1920s, supporters of an egalitarian trend came to the conclusion that only a special amendment to the Constitution could provide a basis for reforming the political institutions of society. In 1923, Alice Paul, the leader of the National Women's Party, formulated and introduced the Equal Rights Amendment (ERA) to Congress, which has been the subject of debate for decades. "Men and women should have equal rights in the United States and in all territories under their jurisdiction" - this was the amendment in the first version (*Stetson D., 1991, P. 22*).

Social suffragists did not support the new proposal, seeing in it the danger of eliminating protectionist legislation against working women, introduced in the years of the "progressive era." In their opinion, the combination of civil equality in the field of electoral rights with state protection of the specific role of the mother was in the interests of most women. The recognition by the Supreme Court in 1908 of the constitutionality of the Oregon Law on Reduced Working Hours for Women provided an opportunity to demand new benefits that would really expand access to social work. Opponents from the egalitarian wing insisted that the introduction of an amendment to the Constitution would fundamentally change the status of women in society, thereby eliminating the need for special benefits. The National Federation of Business and Professional Women's Clubs supported the ERA requirement in the 1930s. During the presidential campaign of 1940, the Republican Party made the amendment part of the national platform. The Democratic

Party, more associated with unions that opposed the demand for amendment, was able to do the same only four years later.

During the World War II, there was a radical expansion of female participation in production. Six million women, most of whom were married, began working for the first time in their lives. For four years, women's employment has increased from 25% to 36%. At the same time, in American society at the beginning of the war, a firm belief was prevailing that almost all new female workers would return home after the end of the war. But expectations did not materialize. Opinion polls in 1945 revealed that 80% of women want to stay in their jobs. They were not even embarrassed by the fact that the conservative campaign to return women to the traditional sphere, which had begun, declared all job seekers "neurotic women who lost their gender identity" (*Making America, 1992, P. 261*). At the same time, propaganda of the mass culture of "true femininity" could not but influence the awareness of their interests and rights. Even working due to material circumstances, they felt guilty for "not in their place."

The first debate in Congress over the amendment took place during the World War II. Some politicians thought this move would encourage women to come to the factories to replace the men who had left the army. The Legal Committee of the House of Representatives, with the consent of the author, changed the text of the amendment. Since then, it is consonant with the language of the XIX Amendment on the right to vote for women. "Equality of rights based on laws shall not be challenged or limited by the United States or any state on the basis of sex" (*Major Problems in American Women's History, 1989, P. 422*). The amendment remained on the agenda of several congresses for three post-war decades. The severity of the national controversy was determined by the activity of the women's movement. In the period between the wars and in the years of the liberal "new course", when the influence of women's organizations on politics was reduced to nothing, the focus of the discussion from the problem of "equality and difference" shifted towards the issue of state regulation of the social sphere. According to trade unions and the Women's Bureau under the Ministry of Labor, the constitutional principle of equality of individual rights of men and women undermined the basis of state policy to protect the collective rights of workers, in general, and working mothers, in particular. The thesis of liberal feminists, with the priority of legal guarantees of individual rights, came into conflict with the emerging neoliberal concept of a "social state". As a result of this,

conservatives appeared on the side of egalitarian women. Conservatives from both parties supported the ERA as opposed to the social policy of the government of F. Roosevelt, which, in their opinion, emphasized the mental principles of individualism and competition.

Despite a certain shift in the focus of discussions during the years of the “new course,” the main question of disagreement remained the question: what legal base can really improve the status of American women? Supporters of the ERA were convinced that the equal constitutional status of women would provide the basis for legal elimination of discrimination on the basis of sex in all spheres of life. Appealing to the democratic values of the Americans, they pointed to the example of other countries that included the provision on gender equality in the Basic Law. They did not accept accusations of the symbolism of such a move, rightly pointing out the special role of the Constitution in the US political system. In their conviction, constitutional guarantees in America could not be symbolic, as in other countries. By virtue of established tradition, the text of the Basic Law is a working tool in the United States to annul the decision of the Supreme Court, which takes the force of federal laws.

The Presidential Commission on the Status of Women, created by D. Kennedy in 1963, agreed with the arguments of ERA supporters in an official report by American women. “Equality of rights by law for all women and men is so fundamental to democracy and the absolute value of the individual that it should be reflected in the fundamental law of the country” (*American Women, 1965, P. 65*). But the Commission rejected the need for a ERA. A special section of the report stated that the V and XIV amendments are sufficient grounds to guarantee equality and the elimination of discriminatory acts through the lawsuit in the Supreme Court. The Supreme Court was charged with enshrining the principle of equality of citizens as a constitutional doctrine. To the role of world leader in the field of human rights, the United States, in the opinion of the Commission, committed their dominant position in the UN. The recommendations also noted that in order to increase the political and civil status of American women, it is necessary to reform the family and property laws of the states, as well as the jury system of duties. The recommendations coincided with the programmatic requirements of the egalitarian wing of the women's movement. The priority goal of this trend was the elimination of the so-called system in the 1960s. "differentiated citizenship."

The formation of the executive's strategy to address the "women's issue" was taking place against the backdrop of the growing stage of the second stage of the mass women's movement. Originating in the United States under the influence of the struggle of black Americans for civil rights, the new wave of feminism made the general theme of legal discrimination and socio-political equality the central theme of the 1960s and 70s. The most influential organization of this period was the National Organization of Women (NOW), which arose in 1964.

Continuing the traditions of egalitarian or liberal feminism, NOW considered the prohibition of the states and courts of all instances to use gender differences as the basis for constructing legal norms as the main direction of reforming American law and policy. "As long as the law divides citizens by gender, women will experience discrimination based on outdated social stereotypes. It is time to end discussions and arguments about the special nature of women that impede the achievement of real equality of opportunity and freedom of choice for women" (*Major Problems in American Women's History, 1989, P. 397*). The principled position was first proclaimed in the "Declaration of Goals" in 1966. The new organization even excluded the term "distinction" from its rhetoric, making it almost abusive. In response, critics from the social wing of feminism accused them of neglecting the interests of specific women in the name of abstract principles of equality. Ignoring the differences and understanding gender equality in the sense of the absolute identity of the interests and roles of women and men meant for them the "invisibility" of women in society. The priority for this group remained the issue of socio-economic status of American women. Enhancing political participation was already a secondary concern. NOW, in turn, considered social and economic problems to be derived from the problem of "differentiated citizenship." In the 50s and 60s, gender roles were inevitably interpreted as biologically determined and hierarchically organized, therefore they did not imply gender equality. The recognition of any differences in this context, according to the "egalitarian", led to the consolidation of the legal inferiority of women, leading the way from customary law.

Having included the ERA requirement in their platform, activists from this wing simultaneously continued the judicial struggle of their predecessors from the 19th century. The fight was aimed at the recognition by the Supreme Court of the fact of legal discrimination on the basis of sex on the basis of the XIV amendment to the Constitution.

Their activities in this direction were successful in 1971, when the Supreme Court adopted the first decision in the Reed v. Reed case. Idaho law giving men an advantage over the right to administer unqualified property was declared unconstitutional on the basis of principle XIV of the "equal protection through laws" amendment. In a court decision, it was announced that a violation of the equality of rights of women relatives cannot be justified by arguments such as "great interest and the ability of men to financial activity" (*Women's Rights in the United States, P. 290*). That is, the Supreme Court for the first time recognized that the use of gender differences and the theory of social roles contradict the equality of citizens guaranteed by the Fourteenth Amendment to the Constitution. The decision was perceived as one of the most significant achievements of the second stage of the women's movement, focused on ensuring full gender equality. The Supreme Court, under the leadership of Chief Justice Earle Warren, became in the 1970s perhaps the most progressive state mechanism to eliminate discrimination based on race and gender. The success of the systematic lawsuit strategy chosen by the NOW and the Women's Rights Project has played a significant role in changing the political climate of the mid-70s. In 1972, after the famous decision of the Supreme Court, the Equal Rights Amendment was passed by both houses of Congress. An eight-year deadline was set for ratification by state legislatures.

The adoption of the amendment inevitably exacerbated the struggle over the interpretation of socio-political gender equality. In its 1966 platform, NOW has advanced a principle that has become one of the main subjects of discussion in the decade after the adoption of the PDP. Like the Presidential Commission, the NOW assigned a special place in its lobbying tactics, the abolition of the so-called "indirect barriers" on the path to equal citizenship. According to the organization, the prevailing legal concept of "differentiated citizenship" was supported by three institutions: family law, jury trials and military service. The demand for equal rights with men could not exist, activists of the movement convinced, in isolation from the demand for equal civic responsibilities. Otherwise, persisted. "legal inferiority" of women, leading their traditions from customary law. In the 20th century, the theory of "equal but separate roles" served as the basis for restricting rights on the basis of gender. In the NOW program, it was stated that women should take on the entire amount of civil responsibility 'as men. The privileges granted to women by

virtue of their “special, natural destiny” were regarded by supporters of the egalitarian wing as a fact of discrimination.

At the beginning of 1961, the Hoyt v. Florida Supreme Court upheld Florida law, which frees women from the obligation to be members of a jury, unless they specifically express their desire. Judge Harlan substantiated the decision with obvious clarity: “Despite entering into previously inaccessible spheres of public life, women continue to be the center of home and family life” (*Major Problems in American Women's History, 1989, P. 389*). On this basis, the Court considered constitutionally permissible the release of women from civil duties, which could interfere with the performance of their main roles. Fourteen years later, the Supreme Court changed its position. In the Taylor vs. Louisiana case (1975), it was stated that motherhood cannot serve as an argument for denying the civil liability of women, in addition, the composition of the jury must be represented by the entire local population, including women (*Sapiro V., 1990, P. 211*).

The issue of military service turned out to be more controversial than obligations by jury. The organizer and leader of the National Coalition of Opponents of the ERA, Phyllis Schlafly, stated that demanding the same legal status of the sexes, in general, and conscription of women to military service, in particular, would ultimately lead to a real deterioration of the status of women. In 1981, the Supreme Court ruled in a Rostker vs. Goldberg hearing that Congress could recruit men, but not women, for military service. Prior to this, Congress also exempted women soldiers from participating in hostilities.

The clause on whether women should be treated the same as men in military service was one of the main points in the discussion of the ERA. When Congress adopted the amendment and sent it to the states for consideration, the prospects for its early adoption seemed obvious. It was adopted by a ratio of 84 against 8 in the Senate and 354 against 24 in the House of Representatives. The amendment was approved by all post-war presidents from Harry Truman to Jimmy Carter. The optimism that emerged in the first year after adoption, when the legislatures of 22 states ratified the ERA, seemed entirely justified. But already in 1974-75 it became clear that the events around the amendment began to unfold more dramatically. Despite the extension of the ratification until June 30, 1982, none of the 15 states supported Congressional decision. Thus, the amendment to the Constitution remained illegal. By the beginning of the 1980s, it became clear that the principle of

unconditional equality in the meaning of the absolute equality of rights and obligations causes sharp disagreements in the women's movement itself. First of all, the results of the reform of family law on the basis of the proposed feminist concept of marriage as an "equally responsible partnership" were controversial. Gender-neutral norms, on the one hand, made it possible for married women to claim participation in the public sphere along with men. On the other hand, the system of equal obligations of spouses in the legislation on divorce significantly worsened the situation of divorced women with children. Husbands, who now shared equally with their wives material responsibility for children, in many court cases suffered minimal material losses in a divorce. They got the right to demand alimony from their ex-wife, even if she was awarded custody of children. Failure with the ERA and criticism, as well as emerging new problems forced the leaders of the women's movement to review the program settings. The main positive result of the movement was the reform of the American legal system in 1960-1970, which led to the abolition of all legal restrictions on the rights of citizens on the basis of gender. At the same time, the socio-economic situation of American women has changed significantly.

According to the Gallup Institute, in 1962, only one in three women surveyed recognized discrimination against her in the workplace. After eight years, there were already 50% of such women, and by 1974, 70% of women supported the gender equality movement.

Radical changes in the field of normative acts that eliminate discrimination in economic life have already occurred in the early 60s. The Equal Pay Act of 1963 prohibited sex differentiation when paying for labor. According to him, the employer was obliged to equally pay the labor of women and men when they perform the same work in equal working conditions. The fundamental role was played by the Civil Rights Act of 1964. Section VII prohibits discrimination in employment based on sex, as well as race. All aspects of work were clearly defined: hiring, promotion, vocational training, and also dismissal. To implement the law, the Federal Commission for Equal Opportunities in Employment was created, which has become one of the main mechanisms for real overcoming gender discrimination in the economic sphere. Since the mid-60s, the Commission has been inundated with requests for advancing lawsuits on discrimination.

The laws of the 1970s on equality in housing (1968), on equal opportunities in lending (1975), on equality of women in education (1974), amendments to the laws on vocational education and adult education (1976) - all these acts were forbidden to use gender as a basis for infringement or restriction of rights in any field of activity. Each of these laws provided for the creation of a special organizational structure at the state level to monitor the implementation of legislative decisions. In the formation of the anti-discrimination policy in the 1960-1970s, all three branches of state power were involved, which predetermined a radical change in the social and economic status of American women.

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