

Kapustin Aleksei
Russia, Saint-Petersburg
University at IPA EurAsEC
Law faculty
1st bachelor course

Russian Law Codes in XIX - early XX and Women: from gaps and inequalities to legal recognition and legal equality

Summary. The article is devoted to the main problems of overcoming the gaps in women's rights and approving the principle of equality between women and men in Russia in the XIX-early XX. The author comes to the conclusion that the evolution of women's rights in Russia went an original way although it took into account the experience and legislative practice of other countries.

Key words: law codes, women's rights, legal evolution, Russian law history, legal equality

1 Relevance of Studying Gaps in Women's Rights in Russia of the XIX - early XX Century

Research topic of Russian Law Codes and Woman is relevance due to the problem of the woman legal status in XIX - early XX in both theoretical and practical terms. The chronological frameworks of the study are determined by the evolution of the legal status of women in Russia in that period. The XIX century is the period of forming the legal status of women in the Russian Law Codes, especially due to the Russian lawmaking in the 1860s. The equality of women and men was legalized in XX century in the Law Codes of the Soviet Russia.

The women legal status has been formed for a long time in pre-revolutionary Russia. The specificity of the Russian women status was not only the actual, but also the legal inequality of women and men. The actual inequality of women and men arose historically and was fixed initially in the norms of customary law, and then received

legal form in the laws. The legal status of Russian women had been formed under the certain influence of the European legislation, which was based on the provisions of Roman law.

2 The Role of Customs in Shaping Women's Rights

Legal customs had a significant impact on the formation of the concept of the women legal status in Russia in the XIX - early XX centuries. The most of the Russian women lived in the village in that time and they was guided in their lives by the rules of customary law. Usually the legal position of women was characterized by several distinctive features: the right to complain to the court on the husband's behavior, in more severe sanctions imposed by the municipality by the courts for the wives, who did not want to live together with their husbands and the possibility of separation by mutual consent. The property rights of peasants, in contrast to other estates, were determined not so much by kinship relations as by their participation in the management of the common peasant economy. Nevertheless, it should be noted that the legislation affected the legal consciousness of the peasants. By the beginning of the XX century, the peasants' views on the relationship between spouses, the position of women in the family and marriage, and women's property rights largely coincided with the requirements of the law.

3 Evolution of Women's Rights in the XIX Century

A radical change in the evolution of women's rights in Russia occurred in the XIX century. In 1812, the first Russian women's organization appeared - "Women's Patriotic society". In the 1860s, serious legislative and judicial reforms were carried out in Russia. The Code of Laws of the Russian Empire was supplemented by volume XVI. It included the Judicial Statutes of 1864.

The European legislative acts, such as the Civil Code of Napoleon, 1804, The General Civil Code of the Austrian Empire, 1811, the Saxon Civil Code, 1863, the Civil Code of the German Empire, 1896, had the particular importance for evolution of the Russian civil status of women in the XIX-early XX century. Some scholars have noted the significant influence of French legislation on the legal status of women in Russia in XIX century.

The Russian reforms in the second half of XIX century had impact to the legal status of women. According the Russian Laws (1882, 1885), the working in factories, plants and manufactories was prohibited for children under 12 years. There were the legislative protection of children and women in general: the night working for children and women were prohibited; the special benefits for pregnant women were established.

3.1 Women's Right to Education in the XIX Century

Did women have the right to receive secondary and higher education in the nineteenth century? In 1863, a new University Charter was adopted. It extended to five Russian universities: Moscow University, St. Petersburg University, Kazan University, Kharkiv University and Kiev University. According to a new University Charter, women did not get the right to enter universities, but the beginning of higher women's education was laid at this time. There were opened a number of higher women's courses in Russia. The Higher Women's Courses of Professor V.I.Gere in Moscow and the Bestuzhev's Courses in St. Petersburg were the most famous ones. The Professor K.N.Bestuzhev-Ryumin of St. Petersburg University was an initiator of those courses.

The problem of the average women's education was no less difficult. In 1860, the "Regulation" on women's schools was adopted, according to which General education institutions of an open type were created for incoming students. Women's schools could be opened in all provincial Russian cities, where financial opportunities, both public and private, would be found for this purpose. "Financial opportunities", as always, were difficult.

3.2 Formation of Doctrinal Ideas About the Legal Status of Russian Women in the Second Half of the XIX Century

In the second half of the XIX century there were appeared the first legal literature dealing the legal status of Russian women. It was the result of the rise of the social movement in Russia at the turn of 1850-1860. The main addressed problems were concerned the status of women in the family and marriage, women's inheritance rights, as well as certain issues of civil and criminal law. There was the critical

analysis of articles of the Code of Laws of the Russian Empire in the papers of Russian lawyers. The Russian lawyers were comparing the articles of the Code of Laws of the Russian Empire with foreign legislation. A new stage in the development of critical legal literature on the legal status of women in Russia is associated with the projects creation of new Civil Code. The projects of new Civil Code included the legal provisions that expand women's rights for the first time in the history of Russian law.

The idea of equalizing women's rights with men was actively supported in the Russian society in the 70-90s of the XIX century. A. G. Goichbarg¹, M. YA. Pergament², I. A. Pokrovsky, A. YA. Efimenko, A. I. Zagorovsky³, I. V. Hessen⁴, M. N. Gernet⁵ and other researchers were interesting to legalize the equality between women and men. They formulated the concept of the so-called "women's law" in numerous special and general works on civil and criminal law.

Features of the legal status of women were analyzed by P. S. Efimenko⁶, N. Kostrov⁷, V. V. Ivanov⁸, A. Y. Efimenko⁹ and others. Describing the customs that existed in various provinces of Russia, the researchers noted the features of the usually legal status of women in the period under review. A special place among the studies on customary law is occupied by the fundamental work of S.V. Pakhman "Ordinary civil law in Russia". This work contains a complete description of the civil law institutions according to the peasant customary rules of the various localities of the Russian Empire. S. V. Pakhman argued that according to customs,

¹ Gojhbarg L./".Srvnittel'noe semejnoe pravo. [Comparative Family Law] Moscow, 1927.

² Pergament A.I. Sovetskoe zakonodatel'stvo o pravah zhenshchin. [Soviet Legislation on Women's Rights] Moscow, 1962.

³ Zagorovskij A.I. Kurs semejnogo prava. [Family Law Course] Odessa, 1909.

⁴ Gessen I.V. Vliyanie zakonodatel'stva na polozhenie zhenshchin. [Influence of Legislation on the Status of Women] Pravo 1908. No. 51

⁵ Gernet M.N. ZHenskoe ravnopravie i ugovolnyj zakon. [Women's Equality and Criminal Law] Unspecified Place 1916.

⁶ Efimenko P.S. Sbornik narodnyh yuridicheskikh obychaev Arhangel'skoj gubernii. [Collection of Folk Legal Customs of the Arkhangelsk Province.] St.Petersburg, 1873.

⁷ Kostrov N. YUridicheskie obychai krest'yan- starozhilov v Tomskoj gubernii. [Legal Customs of Old - Time Peasants in the Tomsk Province] Tomsk, 1876.

⁸ Ivanov V.V.Obychnoe pravo krest'yan Har'kovskoj gubernii. [Common Law of the Peasants of the Kharkiv Province] Kharkiv, 1898.

⁹ Efimenko A.YA. Issledovaniya narodnoj zhizni. Obychnoe pravo. [Studies of Folk Life. Customary Law] Moscow, 1884.

as well as by legislation the most important basis for the right of inheritance is kinship. He singled out as a feature of the legal status of the peasant woman the lack of a strong connection with the family, which explained the removal of her from inheritance if there were male heirs.¹⁰

A. I. Zagorovsky, YA.A. Kantorovich, I. I. Yanzhul, and A. Fedorov were interested in the need for legal protection of motherhood and childhood. One of the first factory inspectors I. I. Yanzhul, analyzed the law of 1882 prohibiting work in factories, factories and manufactories for children under 12 years, and noted the importance of legislative protection of labor not only for children, but for women too. He advocated also the prohibition of night work for women and the special benefits for pregnant women.

In 1885-1890, A. M. Evreinova, the first Russian woman had received the degree of doctor of law, published the journal "Severny Vestnik" ("Northern Messenger") in St. Petersburg. She was interesting of various legal issues, particularly the problem of the women legal status. As the author of papers "Brief outline of women's rights in the family" and "On the equation of women's rights in inheritance", A. M. Evreinova actively advocated the expansion of women's hereditary rights in Russia. At the beginning of the XX century, the legal status of women became the subject of special study by legal historians and legal practitioners, due to the need to adopt a new Civil Code and the starting of enforcement a new Criminal Code in 1903.

The preparatory works of the State Duma and the State Council in the beginning of XX century contain important analytical material. These documents allow us to determine the reasons for the lack of equal rights women with men in Russian Law Codes at that period. During the discussion of Bills on civil equality, on the woman's right to be jury, on expanding the legal inheritance rights of women, etc. arguments of both supporters and opponents of women's equality were actively expressed. The speech of Professor L.I. Petrazhitsky at the meeting of the I State Duma has the considerable interest. L.I. Petrazhitsky made an attempt to justify the need for equal

¹⁰ Pahman SV. Obychnoe grazhdanskoe pravo v Rossii: YUridicheskie ocherki. [The Customary Civil Law in Russia: Legal Essays] 2 Volumes. St.Petersburg, 1877-1879.

rights for women with men in terms of state and public benefits. The speech of L.I. Petrazhitzky contains an important methodological conclusion about the discrepancy between the concepts of legal equality and actual equality of women and men. According to the scientist, the creation of a legal basis for equalizing women's rights with men's rights should be the first step of the women emancipation. The reason is the stereotypes of attitude towards a woman as an inferior person. Those stereotypes have been historically formed for centuries in the Russian legal consciousness.¹¹

The actual and legal inequality of women and men in Russia of the XIX - early XX century was determined by the indifferent attitude of the state. In accordance with current legislation and existing customs, women were restricted in their rights and freedoms to a much greater extent than men. The Russian concept of legal inequality between women and men was largely shaped by the European legislation based on the provisions of Roman law. At the same time, unlike Western European legislation, Russian civil laws established the principle of separate ownership of property by spouses. That was provided for a certain independence of married women in resolving property issues, and it did not also consider the husband to be the natural trustee of his wife. The institution of separate residence of spouses, provided for by the legislation of a number of European countries, was absent in Russian laws.

The legal status of women entering the civil service was regulated by the Charter on civil service (1896), which provided for benefits in the service and insignia for women who received ranks and titles. The exception was any rights and advantages represented by the public service, for example: production in the rank and awarding orders. The rights and obligations of the lower categories of women employees (servants in institutions) were not defined by law.

In the late XIX - early XX centuries, due to the growth of industrial production and technical improvement of the working process, the proportion of women's labor in factories, plants and craft workshops increased significantly. This has led to a surge

¹¹ Zhenskij vopros v Gosudarstvennoj dume: iz stenograficheskikh otchyotov. [Women's Question in The State Duma: from Verbatim Reports] St.Petersburg, 1906. Pp. 33-35

in interest in issues related to the protection of women workers' rights. There were not provided the leave for pregnant women and the legal protection for mothers with young children in the Russian legislation. The Russian legislation had not established the state support for women in their labor as well as support from the owners of factories and enterprises. These circumstances caused serious concern of progressive public figures and scholars of Russia at that time. I.I. Yanzhul, B.D. Belikov, YA.L. Kantorovich stressed the need for legislative protection of the interests of working women.

At the beginning of the XX century, in the conditions of revolutionary upheavals, the idea of granting women political rights became increasingly popular, which was actively supported by V. V. Vodovozov¹², S. A. Kotlyarevsky¹³, L. I. Petrazhitsky¹⁴, N. Rossov¹⁵, V. M. Khvostov and other lawyers.

4 Evolution of Women's Rights in the XX Century

4.1 Women's Organizations of the XX Century

There were acting numerous women organizations in the revolution conditions 1905-1907. They had played a special role in the evolution of equality between women and men. Women Russian women's mutually charitable society Union of women's equality, Women's progressive party and the League of women voters, sent a delegation to the Commission of the Duma. They considered appeals and petitions defending of women's equality. The women organizations published and distributed speeches of deputies supporting the empowerment of women.

The Legal Commission was created in 1906 under the Union for equal rights of women. The Legal Commission expertised the legislation. The restricted women's rights articles were identified. Then it resulted the Bill "on women's equality" was appeared. The Bill was aimed to changing and adding novelty to laws. It was

¹² Vodovozov V.V. Vseobshchee izbiratel'noe pravo i ego primeneniye v Rossii. Vseobshchee izbiratel'noe pravo. [Universal suffrage and its application in Russia. Universal suffrage] Saratov, 1905

¹³ Kotlyarevskij S.A. Konstitucionnoe gosudarstvo. Opyt politiko-morfologicheskogo obzora. [Constitutional state. Experience of political and morphological review] St.Petersburg, 1907.

¹⁴ Petrazhickij L.I. O zhenskom ravnopravii. [on women's equality] Pg., 1915.,

¹⁵ Rossov N. O vseobshchem izbiratel'nom prave. Vseobshchee izbiratel'noe pravo. [On universal suffrage. Universal suffrage] Saratov, 1905.

discussed at the meetings of the First State Duma in the framework of the civil equality problem.

4.2 Women's Rights in Russian Law Codes: Preparatory Works

The law “on women's equality” consisted of two parts. The first part contained a law of a General constitutional nature, abolishing the restrictions established by domestic legislation for women without a detailed and article-by-article list of them. In the second part, the list of articles of the current law subject to cancellation, addition and change was given, located on volumes of the Code of Laws of the Russian Empire.¹⁶

In subsequent parliaments, the women's issue was no longer raised to this extent. In the context of the decline of the revolutionary situation, the full discussion of the draft law on women's equality becomes impossible. With great difficulty, as a result of the sharpest debates in the state Duma, it was possible to pass laws that only partially expand the rights of women. However, these laws did not grant women equal rights with men. So, in 1909, the Law "On measures to prevent the sale of women for the purpose of debauchery" was adopted. It toughened the punishment for pimping. In 1911, while discussing the Bill on the election of *uyezdnykh zemskikh glasnykh* (district zemstvo vowels), the III State Duma decided to grant women voting rights in the *uyezdnyye zemstvo* (district zemstvos), but without the right to be elected as chairmen and members of the Volost Council.

In the same 1911 Judicial Commission of III State Duma adopted the Bill on the admission of women to the bar, which was being actively discussed from March to June 1912. The Bill "On the Desirability of legislative assumptions about giving females the right to be barristers" was adopted on third reading and transmitted to the Drafting Commission. Then this Bill had been transferred to the State Council, but it was dismissed in January 1913.

In 1912, the State Duma discussed and approved a Bill “On the extension of women's inheritance rights”. On 3 June 1912 Russian Emperor signed the Law “On the rights

¹⁶Voroshilova SV. Proekt zakona o ravnopravii zhenshchin 1906 g. i Gosudarstvennaya дума. СHеловек i право - XXI vek. [Draft law on equality of women in 1906 and the State Duma. Human and law-XXI century.] Saratov: Publishing house of the Saratov state Academy of law, 2011. No. 1 (0.5 p. 1.)

of inheritance by law, the will of women and the law of estates”. It equalized women with men only in the succession of movable property. At inheritance of land property, the share of the sister with the brother made one seventh.¹⁷

In 1914, the State Duma of the fourth convocation made a number of amendments to the marriage legislation, which became the Law on March 12, 1914 “On certain changes and additions to existing laws on personal and property rights of married women and on relations between spouses and children”. Some personal and property rights of married women were legalized: the right to reject the husband's demands for a joint life if it "seems unbearable", the right to be freely bound by bills of exchange, and to receive a separate residence permit without the husband's consent. Married women who live separately from their husbands are no longer required to accept private or public work or to enter educational institutions.

Thus, from the materials of the State Duma, it follows that the issue of women's equality was not considered by parliamentarians as a matter of paramount importance. Most of the Duma deputies did not consider it necessary to solve it immediately. Despite the progressive position of certain factions and deputies, the State Duma's work on legislative regulation of the legal status of women and addressing the issue of gender equality was inert. During the 11 years of existence of the State Duma of four convocations, the issues of granting women equal political and civil rights with men, improving women's working conditions, and legal protection of motherhood and childhood have not been resolved.

Russian legislation regulating the electoral process provides for the passive participation of qualified women in the conduct of elections. Until 1917, they were only allowed to transfer their votes by proxy to male relatives. For the first time, women were given the right to vote in the formation of local self-government bodies in accordance with the new laws on elections to Zemstvos and City Dumas of 1917. In the resolutions of the Provisional Government of July 20, 1917 “On the approval of section I of the Regulations on elections to the Constituent Assembly”, it was

¹⁷ Sobranie zakononij i rasporyazhenij pravitel'stva. [Collection of Laws and Orders of the Government] St.Petersburg., 1912, ed. I, No. 107, art. 914.

stated that "the Right to participate in elections to the Constituent Assembly is enjoyed by Russian citizens of both sexes, who will be 20 years old by the election day".¹⁸

5 The Legal Recognition of Equality Between Men and Women in the XX Century: Overcoming the Gaps in Russian Law Codes

In September 1917, the third (last) section of the Regulations on elections to the Constituent Assembly was approved. According to this act, women were granted the same active and passive suffrage as men. Women's participation in elections characterized their awakening to active social and political life. It meant an important socio-cultural shift in Russian society. Nevertheless, women candidates were very rare in the electoral lists. This situation indicated the traditional Russian stereotypes were continuing in the public consciousness that oriented women to the family, as well as the public distrust of women and their ability to fully solve public policy issues.

In the future, the issue of women's legal status was discussed in the context of the Russian Civil War, and then in the emergency conditions of the Great Patriotic War. At that time, women actually took on women's and men's responsibilities. As a result, women actually proved their equality with men. Traditional ideas about the status of women in society, the family, and politics were finally destroyed. In peacetime, the women rights issue was developed in the 1960s.

The Russian Laws of the 1960s overcoming gaps in legal regulation of the position of women. The woman's freedom to divorce was legally enshrined. The rights of women with children, pregnant women and women in childbirth have been greatly expanded. However, the Laws of the 1960s did not solve the female problems of household inequality, career opportunities and low wages.

¹⁸ Postanovlenie Vremennogo pravitel'stva ot 20 iyulya 1917 g. "Ob utverzhdenii razdela I polozheniya o vyborah v Uchreditel'noe sobranie" [Resolution of the Provisional government of July 20, 1917 "On Approval of Section I of the Regulations on Elections to the Constituent Assembly] [Electronic resource] URL: <https://constitution.garant.ru/history/act1600-1918/5411/> [Access mode: 30.01.2020].

All these legal changes led to the fact that the Constitution of the Russian Federation of 1993 and other Russian Legal Codes enshrined the legal equality of women and men, as well as the so-called positive discrimination against women.

The study concludes the evolution of women's rights in Russia in XIX-XX is a process of overcoming gaps in Law Codes and ensuring legal equality.

Bibliography

- Efimenko A.YA. Issledovaniya narodnoj zhizni. Obychnoe pravo. [Studies of Folk Life. Customary Law] Moscow, 1884.
- Efimenko P.S. Sbornik narodnyh yuridicheskikh obychaev Arhangel'skoj gubernii. [Collection of Folk Legal Customs of the Arkhangelsk Province.] St.Petersburg, 1873.
- Gernet M.N. Zhenskoe ravnopravie i ugovolnyj zakon. [Women's Equality and Criminal Law] Unspecified Place 1916.
- Gessen I.V. Vliyanie zakonodatel'stva na polozhenie zhenshchin. [Influence of Legislation on the Status of Women] Pravo 1908. No. 51
- Goyhbarg L./". Sravnitel'noe semejnoe pravo. [Comparative Family Law] Moscow, 1927.
- Ivanov V.V. Obychnoe pravo krest'yan Har'kovskoj gubernii. [Common Law of the Peasants of the Kharkiv Province] Kharkiv, 1898.
- Kostrov N. Yuridicheskie obychai krest'yan- starozhilov v Tomskoj gubernii. [Legal Customs of Old - Time Peasants in the Tomsk Province] Tomsk, 1876.
- Kotlyarevskij S.A. Konstitucionnoe gosudarstvo. Opyt politiko-morfologicheskogo obzora. [Constitutional state. Experience of political and morphological review] St.Petersburg, 1907.
- Pahman SV. Obychnoe grazhdanskoe pravo v Rossii: Yuridicheskie ocherki. [The Customary Civil Law in Russia: Legal Essays] 2 Volumes. St.Petersburg, 1877-1879.
- Petrazhickij L.I. O zhenskom ravnopravii. [on women's equality] Pg., 1915.

- Pergament A.I. Sovetskoe zakonodatel'stvo o pravah zhenshchin. [Soviet Legislation on Women's Rights] Moscow, 1962.
- Postanovlenie Vremennogo pravitel'stva ot 20 iyulya 1917 g. "Ob utverzhdenii razdela I polozheniya o vyborah v Uchreditel'noe sobranie" [Resolution of the Provisional government of July 20, 1917 "On Approval of Section I of the Regulations on Elections to the Constituent Assembly] [Electronic resource] URL: <https://constitution.garant.ru/history/act1600-1918/5411/> [Access mode: 30.01.2020]
- Rossov N. O vseobshchem izbiratel'nom prave. Vseobshchee izbiratel'noe pravo. [On universal suffrage. Universal suffrage] Saratov, 1905.
- Sobranie zakonov i rasporyazhenij pravitel'stva. [Collection of Laws and Orders of the Government] St.Petersburg., 1912, ed. I, No. 107, art. 914.
- Vodovozov V.V. Vseobshchee izbiratel'noe pravo i ego primenenie v Rossii. Vseobshchee izbiratel'noe pravo. [Universal suffrage and its application in Russia. Universal suffrage] Saratov, 1905
- Voroshilova SV. Proekt zakona o ravnopravii zhenshchin 1906 g. i Gosudarstvennaya дума. Chelovek i pravo - XXI vek. [Draft law on equality of women in 1906 and the State Duma. Man and law-XXI century.] Saratov: Publishing house of the Saratov state Academy of law, 2011. No. 1 (0.5 p. 1.)
- YAnzhul I.I. Ocherki i issledovaniya. Sbornik statej po voprosam narodnogo hozyajstva, politiki i zakonodatel'stva. [Essays and Research. Collection of Articles on National Economy, Politics and Legislation] Moscow, 1884. Vol. 1.
- Zagorovskij A.I. Kurs semejnogo prava. [Family Law Course] Odessa, 1909.
- Zhenskij vopros v Gosudarstvennoj dume: iz stenograficheskikh otchyotov. [Women's Question in The State Duma: from Verbatim Reports] St.Petersburg, 1906. Pp. 33-35