

**EVOLUTION OF WOMEN AS A “PERSON”  
IN  
THE EYES OF LAW**

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## **ABSTRACT**

*Women' it's not only a word rather, this word is a world in itself, this word when strikes in our psyche, naturally creates a picture of a mother, sister, wife and girl; the criticalness of women in any general public can't be disregarded and the status of women ought not be bargained. When we need our rights, we search for equity and when we search for equity we need to move to law as it is realized that equity is accidental to law. Be that as it may, law can do equity just to the individuals who exist for it i.e. the individuals who are perceived by the law and society as a 'person'. This paper puts a light on long running battle of women for their status and presence, their existence in law to be acknowledged as a 'person'.*

*This paper looks to give a verifiable, philosophical and jurisprudential bits of knowledge, that arrangements with the development of women and their socio-legitimate status in the contemporary world. The paper tries to clarify the subject by righteousness of two divisions, the Feminist Jurisprudence and the development of women's' rights under (i) common law and (ii) Islamic codes, which is further partitioned into sub-areas where the principle issues are raised and cause and impacts of such issues are specified. A comprehension is made with the assistance of contextual analyses.*

**KEYWORDS:** *Equity, Jurisprudence, Person*

*“When, in the course of human events, it becomes necessary for one portion of the family of man to assume among the people of the earth a position different from that which they have hitherto occupied, but one to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes that impel them to such a course. We hold these truths to be self-evident: that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted, deriving their powers from the consent of the governed. Whenever any form of government becomes destructive of these rights, it is the right of those who suffer from it to refuse allegiance to it, and to insist upon the institution of a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness....”*

**T**hese lines are the part of the Declaration of Sentiments, one of the first women's right convention of the modern age.<sup>1</sup> This convention was important not because it was the start of the fight of women for their liberties and their inalienable human rights but it was the start of their long running struggle for their existence- their existence in the eyes of law- the recognition as a 'person'.

When we want our rights, we look for justice and when we look for justice we have to move to law. But law can do justice to only those who exist for it i.e. those who are recognised by the law as a 'person'.

In layman terms, a 'person' in the eyes of law is the one who can seek justice in the 'court of law'. It can be a 'natural person' or a 'legal person'.

The biggest problem for the struggle of women for their rights was that for centuries and even today, in many countries, they were not recognised as a 'person'.

Women- it's not just a word instead, this word is a world in itself, this word when strikes to our mind, automatically produces an image of a mother, sister and wife, the relevance of women in any society cannot be overlooked and the status of women should not be compromised. Hilary Clinton once said *“Human rights are woman's rights and woman's rights are human rights”*.

This paper will deal with the story of struggle of women for their rights and their emergence as a 'person' in the eyes of law in the two major legal regimes- the Common Law and the Islamic Law. The paper will try to explain the subject by virtue of two division the evolution of women's right and the Feminist Jurisprudence, each then further divided into subdivisions.

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<sup>1</sup>The declaration of sentiments was a document prepared and signed in Seneca Fall Convention, New York in the year 1848. It was the first known convention for women's rights held in the modern age.

# 1. THE EVOLUTION OF WOMEN'S RIGHTS

## 1.1 THE ENGLISH COMMON LAW<sup>2</sup> .....

### 1.1.1 EARLY PERIOD

The realm of English Common Law is the largest in the world among all. The history of women's struggle can be traced back to the early English period of Anglo Saxons to the present.

Although common law arrived centuries after the early period of Anglo Saxons or Anglo Normans. But the period can help us to better understand the deterioration of women's legal status.

The first known empire builders of the British island were the Anglo Saxons.<sup>3</sup> This Anglo- Saxon period from 580 AD to 1066 AD is considered as the brightest for women. "Old English society allowed to women, not only private influence, but also the widest liberty of intervention in public affairs."<sup>4</sup> In ancient times, the land ownership was a significant indicator of a person's status. The Saxon women in this regard exercised same right to same extent as their male counterparts. "It is of the greatest importance that the fair sex should possess high estimation in society; and nothing could more certainly tend to perpetuate this feeling, than the privilege of possessing property in their own right, and at their own disposal."<sup>5</sup> The period showed a greater control by women on their destinies as compared to their male counterparts. They had a status to decide their own destinies including the right to marry and have children. They were able to pursue occupation they want and if the opportunity presented itself, they could rule the kingdoms.<sup>6</sup> A very iconic part of the Anglo Saxon legal system was that of a German custom of *wergild*. Wergild was the monetary value of person's life.<sup>7</sup> The Wergild was in analogy to the person's social rank. The women had the same Wergild value as the man of their rank.<sup>8</sup> In fact, pregnant women were protected both by their own wergild and half the child's wergild which is "in accordance with the Wergild of the father's kindred."<sup>9</sup> Another aspect of the Saxon law was that women were responsible for their own conduct. They were considered as a completely different 'person' from their husbands. In the words of Doris Stanton,<sup>10</sup>

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<sup>2</sup> Indian Legal system itself comes under the realm of the English Common Law but in the paper it will be discussed separately. The present subdivision will deal with the developments in UK and US.

<sup>3</sup> After the Roman Empire withdrew from the British Island, a series of civil war started among different tribes of Briton. The Anglo Saxon originally were the foreign invaders from the German peninsula who settled and started building the empire and spreading its conquest to more parts of the island. It was by around 848 AD that they were able to conquer whole of the Briton Island.

<sup>4</sup> Sheila C. Dietrich, An Introduction to Women in Anglo-Saxon Society, in THE WOMEN OF ENGLAND FROM ANGLO-SAXON TIMES TO THE PRESENT 32, 43 (Barbara Kanner ed., 1979) (quoting Frank M. Stenton, The Historical Bearing of Place-Name Studies: The Place of Women in Anglo-Saxon Society, in 25 TRANSACTIONS OF THE ROYAL HISTORICAL SOCIETY 1, 1-13 (4th ser. 1943), reprinted in PREPARATORY TO ANGLO-SAXON ENGLAND BEING THE COLLECTED PAPERS OF FRANK MERRY STENTON 314, 314-24 (Doris M. Stenton ed., 1970)).

<sup>5</sup> Marc A. Meyer, Land Charters and the Legal Position of Anglo-Saxon Women, in THE WOMEN OF ENGLAND: FROM ANGLO-SAXON TIMES TO THE PRESENT.

<sup>6</sup> Clarke G. Christine, Women's right in early England, BRIGHAM YOUNG UNIVERSITY LAW REVIEW, 1995

<sup>7</sup> Laws of Alfred cl. 9 (871-900), in LAWS OF THE EARLIEST ENGLISH KING.

<sup>8</sup> Laws of Alfred cl. 9 (871-900), in LAWS OF THE EARLIEST ENGLISH KING.

<sup>9</sup> Laws of Alfred cl. 9 (871-900), in LAWS OF THE EARLIEST ENGLISH KING.

<sup>10</sup> Laws of Alfred cl. 9 (871-900), in LAWS OF THE EARLIEST ENGLISH KING.

“The evidence which has survived from Anglo-Saxon England indicates that women were then more nearly the equal companions of their husbands and brothers than at any other period before the modern age. In the higher ranges of society this rough and ready partnership was ended by the Norman Conquest, which introduced into England a military society relegating women to a position honourable but essentially unimportant.”

The Anglo Saxon era was followed by the Anglo Norman era.<sup>11</sup>The end of the Anglo Saxon era was the start of decline in the status of women. This period saw for the first time the elimination of women from the legal system. A women was put under the guardianship of either her father or husband. This was the time when they started losing their recognition as a ‘person’. “The married woman was unable on her own to bring litigation or plead in the courts. Once she was widowed . . . she was allowed this right, but it would again cease if she remarried.”<sup>12</sup>The Anglo Norman women had a very few rights Vis a Vis their Saxon counterpart. They lost their status. Their right to land ownership was transferred to their male guardian. Moreover, they now didn’t have their right over their own destiny i.e. their right over marriage lost.

### 1.1.2 THE COMMON ERA

The decline which started in the Norman period continued in fact deteriorated in the period of common law. It was only in the very modern time that it came back on track.

Like all its predecessors, the attitude of common law towards women was narrow and riddled, full with prejudices and misconceptions. The common law derive its power from two sources; the case laws or interpretation by the judges and the statute law or the proclamation of the legislature. Later of them was frequently changed with the change in public outlook. So, the legal status of women were much reliant on the assertion of judges, legislators and the society.

The legal status of women was dependant on their marital status. Although common law status of single women very slightly differed by boundaries the status for married women were almost same.

#### **Single Women**

The status of single unmarried women slightly differed from nation to nation. At large remained same. Most of the common law adopted countries didn’t consider single unmarried women as a ‘person’. Their protection were in the hands of their male guardians. While in many countries they had some rights. They had the right of ownership of land, right to contract, and right to operate their own business. But these civic rights were limited.

Although they enjoyed a little right, they were still subject to some prejudices related to their potential and capabilities. It was only by the late 19<sup>th</sup> century that work opportunities for women

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<sup>11</sup>After 1066 AD, the Anglo Saxon Empire came to its decline by the conquest of Anglo Normans who originated from Scandinavia.

<sup>12</sup>JENNIFER C. WARD, ENGLISH NOBLE WOMEN IN THE LATER MIDDLE AGES 9 (1992).

saw an expansion but that was limited to certain sectors which were considered appropriate to “innate abilities” of women.<sup>13</sup> Except in the special case of nuns and perhaps midwives, work for single women was considered by society something to be done only when in extreme need and only while awaiting marriage.<sup>14</sup> Societal pressures also encouraged single women to leave paid employment to care for elderly parents, sick relatives or to help with the rearing of young nieces and nephews - work which carried less status than the work of married women and which offered little or no remuneration.<sup>15</sup>

## Married Women

Women, on the sole basis of sex, were denied of their political economical and legal status. The worst scenario were for those who were married. The discrimination was based on the ‘doctrine of coverture’ or the ‘principle of unity’. The doctrine is well described in the words of the English Jurist Blackstone:<sup>16</sup>

“By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and *cover*, she performs everything; and is therefore called in our law-French a *feme-covert* . . . under the protection and influence of her husband, her *baron*, or lord; and her condition during her marriage is called her *coverture*. . . . For this reason, a man cannot grant anything to his wife, or enter into covenant with her, for the grant would be to suppose her separate existence; and to covenant with her, would only to be to covenant with himself. . . . The husband is bound to provide his wife with the necessaries by law, as much as himself; and, if she contracts debts for them, he is obliged to pay them. . . . If the wife be injured in her person or her property, she can bring no action for redress without her husband’s concurrence, and in his name, as well her own; neither can she be sued. . . . But in trials of any sort they are not allowed to be evidence for, or against, each other: partly because it is impossible their testimony should be indifferent, but principally because of the union of person. . . . But though our law in general considers man and wife as one person, yet there are some instances in which she is separately considered; as inferior to him, and acting by his compulsion. And therefore all deeds executed, and acts done, by her, during her *coverture*, are void. . . . She cannot by will devise lands to her husband, unless under special circumstances; for at the time of making it she is supposed to be under his coercion. . . . These are the chief legal effects of marriage during the *coverture*; upon which we may observe, that even the disabilities which the wife lies under are for the most part intended for her protection and benefit; so great a favourite is the female sex of the laws of England.”

The doctrine killed the mere legal existence of a woman- her recognition as a ‘person’. In simpler words, she became “civilly dead”.<sup>17</sup> All the property which she owned earlier now came under the control of her husband, and the wages she earned outside the home, were belongings of

<sup>13</sup>And justice I shall have: women and legal rights’, 1996.

<sup>14</sup>And justice I shall have: women and legal rights’, 1996.

<sup>15</sup>And justice I shall have: women and legal rights’, 1996.

<sup>16</sup>1 William Blackstone, Commentaries

<sup>17</sup> 1848 Seneca Falls Declaration of Sentiments, reprinted in JOAN HOFF, LAW, and GENDER& INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN 383 app. 2 (1991).

him.<sup>18</sup> A man who killed his wife was guilty of murder and could be punished by death or imprisonment, but a woman who killed her husband was guilty of treason against her lord and could be punished by being drawn and burnt alive.<sup>19</sup>

The struggle for women in the common law was not just confined to only their civil or legal rights. This was a struggle even for the right of their being a human- the right on their own body. Marital rape was not considered as a crime because of presumptuous consent of women to her spouse or lord.<sup>20</sup> The interspousal tortious immunity took their right of legal recourse for injuries caused because of the negligence of their spouse.<sup>21</sup>

The whole reasoning behind this immunity of husbands to marital rape was that wife and husband being in the eyes of law are one entity, so like a husband can't rape himself, how can he rape her wife!<sup>22</sup>

The advent of Industrial Revolution was a boon for their struggle for recognition as a separate entity. Although not intended but the revolution, gradually started dismantling this whole doctrine. The industrialisation of society made supremacy of commerce and the stable wealth transition became desired social value. This led to the passing of laws which allowed land ownership to married women,<sup>23</sup> which was done especially for the passage of family property of extremely rich and influential families through their daughter without passing them to their daughter's husband.<sup>24</sup> Once the recognition of these women as separate entity who could sell, own and bequeath properties was on ground, they steadily began to influence the progression of law to recognise them as a 'person' in other areas, 'person who could sue their husbands for personal injury, apply for divorce, gain custody of their children, enter profession such as law<sup>25</sup>, work into any profession or do business or enter into any contract without any guardianship.<sup>26</sup>

The struggle for women for their recognition as a separate entity, to be recognised as a 'person' was a long run. It took centuries for them to be recognised finally as a separate '*person*' in the eyes of law. Today under common law women are separate legal 'person' and discrimination on the name of their marital status is no more.

Although, a few dispensaries like Marital Rape are still on in many common law countries but not on the name of entity but on the name of 'marital privacy'. A strict judicial review is a need of time for it.

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<sup>18</sup> PEGGY A. RABKIN, FATHERS TO DAUGHTERS: THE LEGAL FOUNDATIONS OF FEMALE EMANCIPATION 20(1980).

<sup>19</sup> 4 WILLIAM BLACKSTONE, COMMENTARIES \*203.

<sup>20</sup> Jill Elaine Hasday, Contest and Consent: A Legal History of Marital Rape, 88 CAL. L. REV. 1373, 1391 (2000).

<sup>21</sup> LEO KANOWITZ, WOMEN AND THE LAW 76 (1969).

<sup>22</sup> Jackson, Linda, "Marital Rape: A Higher Standard Is in Order," *William & Mary Journal of Women and the Law* 1 (1994): 183–216.

<sup>23</sup> Reva B. Siegel, *The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860–1930*, 82 GEO. L. J. 2127, 2136 (1994).

<sup>24</sup> Reva B. Siegel, 1930

<sup>25</sup> Women were not allowed to enter into profession like law because they can't be bound to attorney client privilege as they can't contract on their own.

<sup>26</sup> Martha M. Ertman, *Contractual Purgatory for Sexual Minorities: Not Heaven, But Not Hell Either*, 73 DENVER U. L. REV. 1107, 1164 (1996).

## Case Study: Women's rights in India

Although the history of common law in India is not older than two and a half century. But the present legal structure is no doubt a common law. The Constitution of India, which is the supreme law of the land, considers no discrimination on the basis of sex or gender. Article 19 of the constitution has made equality a fundamental right, a right which sees no gender. Women today have their own separate identity and are separate entity or we can say a definite 'person'. The problem in Indian for women is of course not related to their legal personality but is something arriving out of it.

The major problem India today faces is of gender discrimination not in by law but in the society, sexual crime against women, the problem of marital status of women under different religious family laws, adultery, marital rape and many others.

It is not that we don't have laws for them, but what we lack is their implementation. The drastic sex ratio is to be curbed which in my opinion is possible through proper education and awareness among the people on the issue of women importance in the affected regions.

The crime against women, which is now a days, the most lighted up issue can be cured by proper sex education among the masses and strict penalties. Instead of making sex as subject of taboo we need to talk about it openly. And of course stopping the figuration of women as sexual content.

Indian law of course doesn't discriminate women in their civil rights. But the family law does. The problem of divorce in Hindu and Muslim societies, the misogamy in the Muslim society, Parada system prevalent in both the are few of the many problems arising due to lack of a proper law over the family issues in India. Well these were the problems but not the hurdle in the solution. The hurdle is the lack of consensus between judiciary and the legislature. The famous case of ShaBanu begum is unfortunately a good example. The legislature and Judiciary have to come under one roof to deal with issue with strict hand.

Well in my opinion among all these problems, the strangest one is the problem of marital rape. Marital rape in India is no offence. Although now men and women are two different persons the problem of marital rape is still there. The reasoning there is of the marital privacy of husband and wife, really! A strict judicial review is the need of hour.

### 1.2 THE ISLAMIC LAW.....

There are many religions evolved till now and each religion has their own interpretations and connotations as far as the status of women is concerned. The Islamic countries such as Pakistan, Iran, and Saudi Arabia did not had much for the women in their land and the societies were male dominant and had no pace for women in socio-political arena<sup>27</sup>. The social constraints were mainly in marriage related issues and divorce, employment issues and before that education, women were not meant to be educated as their roles In family was restricted just to give birth to new ones.

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<sup>27</sup> Hakim Abdul and AzraAziiz, Social, Religious and political aspect of status of women in Pakistan.

## **Institution of Family**

Family which is meant to be the biggest institution in Islam did not had much for women, the eldest male member in the family occupied the position of paramount authority. The patriarchal authority directed the fate of a family and of all its members. A male child in the family had a dominating position over the female child, a male child was trained, leaving no scope for any loop holes, he was taught to respect elders and his religious leaders and had the liberty to react aggressively if anything detrimental to his religion is expressed to him, such was the training of a male child in almost every Islamic state. The female child was on the darker side as far as her status in a family is concerned. Though the female child was taken care by the family members but they were kept aloof from any kind of interactions, they were not even meant to take some formal education....I guess this is the most fundamental and primary requirement to make some identity among other peer members of the society and every person should have such entitlement for the sake of personal interests.

The prejudice against female section of the society which was experienced in Islamic countries in early stages suggests that women were not considered as a “person” according to the norms set by society. The objectification of women, it was practiced everywhere at one point of time but the practices were of a more degraded form in Islamic states.<sup>28</sup> Women were kept as subjects after the solemnization of marriage, the happiness in their life used to come up after the women in a family fulfil the requirements of the family members, the condition that a women must give birth to a child if she wants herself to be recognized by the other members of the family, a childless wife faced the disgrace shown by her husband’s family members, the disgrace which a wife could bear had no limits, husbands used to marry other women so that they could have kids with their new wife. The disgrace was not just because the wife could not have children, the same distress were faced by those wives who gave birth to a girl child.

However, there has been a lot of frameworks to elevate the interests of women in some Middle East countries such as Iraq, Libya, and Yemen etc. Many countries are coming out of emancipation policies for women, the prime concern is of liberty which the women in Islamic countries were not getting previously and still today many Islamic states do not wish to liberalize the female section as according to them this would violate some fundamentals of their religion.

## **Interpretation of Islam**

Islam interprets every aspect of human life and gives all the indispensable rights to all its believers and followers of Islam, there is no prejudice against women mentioned in Quran. Islam considers women to equal to men, women has been created with a soul of the same nature as that of men<sup>29</sup>

*"O mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him (Adam) He created his wife (Eve), and from them both He created many men and women and fear Allah through Whom you demand your mutual (rights), and (do not cut the relations of) the wombs (kinship). Surely, Allah is Ever and All-Watcher over you."*

There has always been a misconception about the teachings and philosophy of Islam because of the cruel practices carried by few of the Islamic states that has nothing to do with Islam, Islam provides for right to education to all the women but it has been the trend in Islamic states that women were not meant to be educated. Islam says *“To seek knowledge is obligatory on every Muslim”*.

Qutab, an Egyptian religious scholar, also maintains that Islam, after acknowledging a perfectly equal status as human beings for both men and women<sup>30</sup>, and treating them as equals, entitles them to equal rights. In Islam woman has been given equal status, economic independence, and the right to participate in social life directly. She has the right to be educated and even to work outside the home<sup>31</sup>

The interpretation of the teaching of Islam gives us an idea that the right of a Muslim women is to be respected for her mind and for her own entity as a ‘person’, but the practical implication is a disturbing issue and it is creating a lot of chaos in the Islamic states and hampering the wealth of the person and distressing them financially and mentally and in turn misinterpreting the real sense of Islam.

The sad part of the story is that the Islamic states over a days has introduced slavery in modern era, the region of Middle East and in countries like Pakistan women are still being sold for their body to the jihadist who are fighting against humanity and every day coming up with new barbaric acts.

There are differences in status of women in different regions, in some Islamic states women have reached to the acme while at some places, women are still restricted to four walls of the home. There are changes that are taking place but the pace is not appreciable, the women on Saudi Arabia had just got the voting rights, although the country is highly developed but still orthodoxy is still prevalent. Women are not allowed to visit every mosque, this deprivation is just not justified. Recently a suit has been filed by a women on this matter in Supreme Court of India, the women protested and demanded her entry into Mumbai’s Hazi Ali Dargah.

For a better law and order situation every country including the Islamic states should come up with new liberation policies and should stop making excuses based on religious connotations. The government should motivate the female section to come up with new and better ideas for themselves, so that an ideal state could be established.

## **Case Study: Status of women in Pakistan**

To study the historical and current status of women in Pakistan, we have to study about the cultural, political and legal aspect of the rights available or as it was available to women and their roles in economy of the country

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<sup>30</sup>Pakistan Institute of Development Economics, 1998

<sup>31</sup>*Ibid.*

The limitations that were imposed on women can be divided into two broad categories. One is the legal restrictions and inequalities as interpreted from the Quran (the holy book of Muslims), the Hadith (sayings of Prophet Mohammad), Sunnah (the act of Prophet Mohammad) and traditional Sharia law (derived from Quran, Sunnah and Hadith). These includes inequalities in policy of inheritance, forced marriages and divorce.

Another type of restriction was imposed in the form of purdah system where women were kept secluded from men, they were not allowed to interact with men other than their family members. Hence, both the types of restrictions resulted factor in women's upliftment which ultimately worsened the status of women in society and created a misbalance in society.

The father of Pakistan Mohammad Ali Jinnah said "No nation can rise to the height of glory unless their women are side by side with them...It is crime against humanity that our women are shut up with in the four walls of the houses as prisoners. There is no sanction anywhere for the deplorable condition in which our women have to live". This saying of Jinnah reflected the ideology of the nation but the practicality of the nation is completely different and contrasting.<sup>32</sup>

Basheer a Bibi, one of the victims of women subjugation in Pakistan said "Pakistan was made only for the powerful and for the men. It was not made for weak and poor women like me. What are we worth and what is our status here? Nothing at all ..."

Islam does not have any ministerial process to train its spiritual leaders and therefore the ulemas, maulvis interprets Islam in the way they want it to be. For instance, the local maulvi who has no idea of theology considers every act to be immoral and not in consonance with Islam which directs itself to have a western outlook and a modern thought. The religious ideas of Maulana Maududi (the leader of a political party in Pakistan jamaat-e- Islami or Islamic party)<sup>33</sup> spread across borders, and his supporters aggressively believed that a true Islamic country is possible when there is complete seclusion and dilution of women. His party believed that women should be confined to their homes and should not involve themselves in policy matters.

After the independence, the ulemas held convention in 1951 and 1953 in Lahore and passed a resolution to make Pakistan a complete Islamic state and to include in its constitution the principles as enumerated by Maulana Maududi, he advocated that voting rights should be given only to males and educated females, this in turn implied that women other than the educated women were not be taken or considered as a "person". He expounded that women should not be allotted any post in public office, thus keeping women outside the scope of employment.

Then in later years there was a gradual change seen in the status of women, the government started looking at maulvis with disdain and brought few legislations which gave equal status to women in public sphere. President Ayyub Khan's period (1958-69) was of great reverence and he condemned the orthodox Muslim philosophies of ulemas and other spiritual leaders. He promulgated Family Law Ordinance 1961, this law ensured compulsory registration of marriages which helped women to great extent as then they were not kept in delusion. Under this law inly polygamy was also constrained and men were not allowed to marry second time without the prior consent of his first wife.

Prior to 1975 status of women was never the agenda of any political party. In 1979 Women's Division was established within the cabinet to meet the grievances of the women in the country.

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<sup>32</sup> Bhattacharya S., Status of women in Pakistan

<sup>33</sup> *Ibid.*

In sixth plan 1983-1988, the government targeted the improvement in field of education, development and fertility, the main theme of this plan was based on equality of opportunities for both men and women.

Recently in Pakistan an important bill was passed which protected women from being sexually harassed at workplace. This bill brought changes in penal laws of Pakistan (PPC) and also in Criminal procedure code (CrPC), the punishment has increased after the passing of these laws<sup>34</sup>:

- Maximum of 3 years in prison
- A fine of Rs.5,00,000 from up to one year jail
- An unspecified fine provided in PPC for outraging the modesty of a woman at workplace.

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## **2. CONCLUSION: THE FEMINIST JURISPRUDENCE, Discriminatory attitude towards women.**

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“The law has tended to give woman the right to be the same as men- a goal that is impossible for some and not desired by others”<sup>35</sup>. In 1916 in Canada, a famous case of *Edward V Canada* raised an issue of the status of women in the society, a lawyer argued that women were not considered as ‘Persons’, the judge in this case could not give the judgement in favour of the women and denied of women being a ‘Person’ on the basis of the British North America Act, 1876 which stated that “women were eligible for pains and penalties, but not rights and privileges.”<sup>36</sup> But later on the Council reversed the decision of the Supreme Court of Canada and held that a ‘qualified person’ includes women as well.

In India the same trend was followed as well, to understand it better let us review a case of year 1914, in “*Anuj Garg and others v Hotel Association of India and others.*”<sup>37</sup> Constitution validity of Section 30 was challenged that was restricting the employment of any man below 25 years or “any woman” in any part of such premise in which liquor or any intoxicating material is served and consumed by the public. It was held by the judge in this case that just on a pre-supposition that any men or women will get affected because intoxicating materials are served, there cannot be any restrictions imposed on anyone and the basis of imposing restrictions were also found to be discriminating in nature. Along with this case there were numerous instances where women were subjugated by the biased laws and discriminations.

The adultery laws, rape laws are all examples of male view point laws, the laws of adultery in almost every common law country has a better stand for males, adultery law can be interpreted in a sense that a man will not be charged with adultery if he commits a sexual intercourse with the wife of another man with the consensus and connivance of that man, In this law nowhere

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<sup>34</sup> Status of women in Pakistan, [www.eepa.be/wcm..//Pakistan/](http://www.eepa.be/wcm..//Pakistan/), factsheet women in Pakistan

<sup>35</sup> Feminist Jurisprudence: Why Law must consider woman perspective, Ann Juergensen

<sup>36</sup> *Edwards v Canada*

<sup>37</sup> Appeal (civil) 5657 of 2007

the rights of the wife of a man who is having a sexual intercourse are protected and no where there is any provision in law which safeguards the interest of that wife.

The problems like adultery, marital rape, social struggle of women are just few examples where we find instances of prejudice against women, to curb all such persisting problems there is a need to consider the perspective women and safeguarding their interest as well while framing laws of the land. Legislators should live the customary thoughts about women and should come up with something which is in the best interest of both men and women.

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