



Women within the Legal Profession: A Historical Account of their struggle for recognition in India

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Abstract:

This article discusses about the establishment of women within the legal profession in India. The Legal Practitioner's (Women) Act of 1923 is very important for the establishment of women in the legal profession. However, the Act did not come without struggle. Many women having the degree of law were not allowed to carry on with the practice. In 1916 Regina Guha presented her case before the jury in order to be accepted within the folds of the legal profession. Similarly, Sudanshu Bala Hazra and Cornelia Sorabji also struggled to enter the profession.

Ultimately the Allahabad High Court accepted Cornelia Sorabji as a pleader, thus opening the gates of the profession to the women and helped in the introduction of the Legal Practitioner's (Women) Act of 1923. Nevertheless, we need to think whether the Act was enough to establish women in the legal profession. The lower rates of women practicing law in various courts and firms show that we have a long way to go before women are actually recognized in the profession. However, we cannot deny the vital role played by the women who were the real inspiration behind the inception of women in this profession.

Key Words: *Cornelia Sorabji, Legal Profession, Legal Practitioner's (Women) Act, Regina Guha, Sudanshu Bala Hazra, Women Lawyers*

1. Introduction

The history of legal profession in India has witnessed the struggle from the women as they sought participation in the profession. The struggle for acceptance occurred till the achievement of Legal Practitioners (Women) Act, XXIII of 1923. However, the Act did not transform the position of women; rather it was a mere path to allow women into the profession. The struggle for acceptance continues till date as we have very few examples of women who reached the top of the profession, showing that legal profession was a male domain.

The legal profession has always been held in the highest esteem. Law itself is given preminent place for its significance in maintaining the modesty and respectability while execution of the powers. The significance of law also rests with the fact that it requires detailed understanding, explanation and reflection to make its availability for the society through the hands of learned laureates. In India since the inception of the modern forms of law, under the colonial rulers, women have faced resistance from the male counterparts to carry out the practice of law as a means to serve the nation. However, a proper struggle against these ideas began only in the first half of the 20th century. The thirst for knowledge

made women in India participate in various fields and similar resistance to popular societal perceptions were observed within the legal profession.¹

This paper tries to understand the struggles of the women lawyers, through the help of secondary data, as they tried to establish themselves within the legal profession. The source of information on the struggles are based on the narratives of various cases that women had to register in order to fit in the profession, their biographies and autobiographies, which describe their struggle.

2. Background of the legal profession: the Colonial Era

There were no legal practitioners before the Mayor's Court was established during 1726 in the three Presidency towns. Though these Mayor's courts were established, there were no provisions for the qualifications required of those who would be legal practitioners. It was left to the courts to regulate this matter.² The dissatisfaction with the Mayor's court soon brought in the Charter of 1774. This charter contributed towards the development of the legal profession, and helped in organizing it. This charter helped in establishing a Supreme Court of Judicature in Calcutta, thus abolishing the Mayor's Court.³

The Sudder Courts were established at the 'moffussils'. The Indian lawyers present in the Sudder Court were referred as Indian 'Vakils'. When the High Courts were formed in 1862 the Vakil meant one who had studied law in a university and had passed the High Court Vakils' examination. Later on 'vakil' meant the graduate from a university with the LL.B. degree who as an advocate can handle work without the help of counsel on both the Appellate and Original side.⁴

To improve the quality of pleading in the Sudder Courts the Bengal Regulation VII of 1793 was introduced. This regulation established pleading as a respectable profession. A professional fee was introduced and Vakils were not allowed to accept anything over the sanctioned amount. They were not allowed to practice in any other court except the one where they were appointed. Vakils were expected to execute the 'Vakalatnama' (it is a document that is filled by the party or client to authorize a Vakil who would represent the case on the client's behalf).⁵

As the British Government took over the territories of the East India Company, in 1858, it removed the separate system of Supreme Court in the Presidencies and Sudder Courts in the moffussils. Instead, they put the High Court at the apex. These High Courts were a merger of the Supreme Courts and the Sudder Courts. Through the Legal Practitioners Act of 1879, the High Court set the standard for admission of Vakils to practice in the High Court and for the Zilla (district) courts standards were laid down in the Regulations for the pleaders, thus distinguishing the Vakils and pleaders. After the establishment of the High Court the legal Practitioners were divided into six grades " a) Advocates, b) Attorneys (Solicitors), c) Vakils of High Courts, d) Pleaders, e) Mukhtars, f) Revenue Agents. The Legal Practitioners Act of 1879 in fact brought all the six grades of the profession into one system under the jurisdiction of the High Courts." The Legal Practitioners Act and the Letters Patent of the

¹ Samaddar P. (2015). Gender biased battleground or smooth pathway: challenges for Women Legal Professionals in 21st century India. *Galgotias Journal of Legal Studies*, 3 (1), 7-8.

² Sharma. R, Banerjee, D. & Mandal, K. (2014, November 13). History of Legal Profession in India. *Academike*. Retrieved 28 February, 2022, from <https://www.lawctopus.com/academike/history-legal-profession-india/>

³ Schmitthener, S. (1968). A Sketch of the Development of the Legal Profession in India. *Law & Society Review*, 3(2/3), 337.

⁴ *ibid.*, p. 337.

⁵ Sharma, R. Banerjee, D. & Mandal, K. (2014). *op. cit.*

High Court's formed the chief legislative governance of legal practitioners in the subordinate Courts in the country until the Advocates Act, 1961 was enacted.⁶

3. The struggle during early 20th Century: Regina Guha and Sudhansu Bala Hazra

Legal profession as a male preserve was challenged in 1916, when Regina Guha, after obtaining a Bachelor of Law degree from Calcutta University, submitted an application to be enrolled as pleader in the Alipore District Court. This application was promptly rejected because; only men were entitled to be admitted as pleaders. The second challenge, for the legal profession came from Sudhansu Bala Hazra in 1921, however, by this time, in the same year; Cornelia Shorabji became the first woman to be accepted as a pleader at the Allahabad High Court. The dual challenge ultimately led to the amendment of the Legal Practitioner's Act bringing in The Legal Practitioners (Women) Act, which was passed in the year 1923. This act removed the ban on women from practicing law.⁷

Two acts are important in this context. The Legal Practitioners' Act of 1879 and The Legal Practitioners' Act of 1884. The Act of 1879 brought six grades of legal practitioners (Advocates, Solicitors [Attorneys], Vakils, Pleaders, Mukhtars and Revenue Agents) into one system under the jurisdiction of the High Courts. The Act of 1884 allowed the High Courts to make rules, with the previous sanction of the Provincial Government, as to the qualifications and admission of proper persons to be Advocates, and subject to such rules could enroll so many Advocates as it thought fit. In this context the Act of 1879 should be brought under consideration. It said that any person who enter as 'vakil' in the High Court, shall also be allowed to practice in the subordinate courts as well as the revenue offices within the local limits of the appellate jurisdictions of such courts. However, it was subjected to the rules relating to the language in which the court and office was to be addressed by the pleaders as well as the revenue agents.⁸

The above excerpt clarifies, where the advocates can enroll and practice. It is interesting to notice that though the Advocate or Vakil are termed as 'person', women were not included within this term. The High Court's held that women were not entitled to be enrolled as Vakils or Pleaders in any subordinate court as the term 'person' included only men. This was the exact ground on which the appeals of Regina Guha and Sudhansu Bala Hazra were rejected by the Calcutta High Court and Patna High Court respectively.

Regina Guha is of Jewish Bengali Ancestry.⁹ After completing her Bachelor of Law from Calcutta University in 1916 Guha applied to be enrolled as a pleader in Alipore District Court. Her application was to be heard by a special bench of five judges, of Calcutta High Court, since this was a first attempt by a lady to enroll as a pleader. Some of the arguments against Regina's cause are important in this context. According to one of the judges, The Legal Practitioners Act did not mention women at all. It was added that the Legislature too did not consider the admission of the women as legal practitioners.¹⁰ From the above argument it is comprehensible that the interpretation of different laws, the position of the legislature and the societal make-up of the country went against the eligibility of Regina Guha. Certain excerpt from the Regina Guha vs Unknown on 29 August, 1916 (the Regina

⁶ Brief History of Law in India. The Bar Council of India. Retrieved 22 February, 2022, from <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>

⁷ Sen, J. (2019, February 13). The Indian Women who fought their way into the Legal Profession. The Wire. Retrieved 24 February, 2022, from <https://thewire.in/law/women-lawyers-history-india>

⁸ *ibid.*

⁹ *ibid.*

¹⁰ *ibid.*

Guha Case) is significant. It said that the 'person' cause was not important to give admission to women in the courts as pleaders. In this case the General Clauses Act of 1868 (I of 1868) which mentioned that the masculine gender could also include the females, was not taken into consideration. It was put forward that since Legal Practitioner's Act used terms like 'him' and 'his' thus the Legislature only meant that men should be practicing as pleaders. Since women were never allowed to practice as a legal practitioner it was not certain to the court that women were ever meant for this profession.¹¹

Thus, in spite of understanding the etymological soundness of the term 'person' that includes both the genders, the judges were not ready to make any innovations. Three years before the Regina Guha Case, similar incident had already taken place in Britain. The application of Gwyneth Bebb, Karin Costelloe, Maud Ingram and Frances Nettlefold, to appear for the preliminary examinations in order to become solicitors was rejected by The Law Society, simply on the ground that women would not qualify to become solicitors. *Bebb vs Law Society* put forward an unsuccessful challenge that these four women argued stating that 'person' included women in the Solicitor's Act of 1843.¹²

According to Dr Judith Bourne the judgment of the case was totally against women's rights.¹³ The *Bradwell vs Illinois* case (1873) is yet another example of women being safely kept out of the domain of the legal profession; where Myra Bradwell sought permission to enter the Illinois Bar, only to be told by the judges that "natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life" and that "the paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother", rendering the demarcation between private and public life almost a matter of "divine ordinance".¹⁴

These initially unsuccessful challenges soon bore fruit. Within a few years from the *Bradwell vs Illinois* case Illinois Legislature allowed women to enter in the bar, which was followed by other American states. In 1897 the Bar of Ontario in Canada allowed the entry of women into the profession. The same happened for India. Though the initial challenge to the legal profession came in 1916 within five years the legal domain was to face its second challenge from Sudhanshubala Hazra.

Sudhanshubala Hazra studied law at the Ravenshaw College attending the evening lectures due to her duties as the headmistress in the kindergarten department at the Ravenshaw Girl's School. Hazra had a difficult time appearing for her Law examination. In 1917 her first application was transferred by the Calcutta University to the Patna University, without her information, which was promptly turned down. Her second application was however accepted after due consideration by the Calcutta University in 1918. She proved her merit by passing the preliminary law examination in 1919 and intermediate law in 1920. Before the final examination non-cooperation movement had swept across the country. Pickets were posted outside the examination hall of the Calcutta University and Hazra had to cross these hurdles to prove her dedication towards studying law. She felt she had done this for the greater good of the women, who would enter into the profession in future.

However, receiving the Bachelor of Law degree in 1921 was not enough to see her through into the profession. Sudhanshubala Hazra applied to be a pleader at the Patna District Court. Like the Regina

¹¹ Sanderson, L. (1916, August 29). *Calcutta High Court in Re: Regina Guha vs Unknown*. Indian Kanoon. Retrieved 16 February, 2022, from <https://indiankanoon.org/doc/1090509/>

¹² Sen, J. (2019, February 13). *op. cit.*

¹³ Bourne, Dr. J. (2019, April 19). *Gwyneth Bebb: the past explaining the present*. The Law Society Gazette. Retrieved 1 March, 2022, from <https://www.lawgazette.co.uk/gwyneth-bebb-the-past-explaining-the-present/5070047.article>

¹⁴ *Bradwell v. The State*, 83 U.S. 16 Wall. 130 130 (1872). Justia US Supreme Court. Retrieved 26 February, 2022, from <https://supreme.justia.com/cases/federal/us/83/130/>

Guha Case the Patna High Court had to consider Hazra's application. The Patna High Court Judges gave a similar judgement to the Regina Guha Case. From the 'Miss Sudhansu Bala Hazra vs Unknown on 28 November, 1921' (Sudhanshu Bala Hazra case) it is again upheld that only the male was recognized as a pleader. Pleaders were first recognized by the Regulation VII in the year 1793, since then no female has ever been admitted as pleader.¹⁵

However, there were two significant changes that divide the Regina Guha case from that of Sudhanshu Bala Hazra case. The Sex Disqualification (Removal) Act 1919 was passed in England, and with the implication of this act women would be allowed to enter the legal profession. The second was the Allahabad High Court's decision to allow Cornelia Sorabji to practice as a pleader in the year 1921. Though the Patna High Court stood by the Legal Practitioner's Act, it did acknowledge the developments and recognized the need for amending the law.

A rigorous movement to amend the Legal Practitioner's Act began. On the other hand, Cornelia Sorabji deemed it necessary that 'Purdah ladies' require lady practitioners, Sudhanshubala Hazra thought in the same lines. The 'Purdah ladies' inability to instruct male practitioners and thus becoming victims of deceit and corruption, created an adequate ground for lady practitioners to enter the picture. The movement was soon joined by Hari Singh Gour, a lawyer, educationist and social reformer. Hari Singh Gour was also a member of the Central Legislative Assembly. Another member of the assembly Narayan Malhar Joshi, who was a Trade Union Leader and initiated the All-India Trade Union Congress along with Lala Lajpat Rai, was a prime mover behind several ratifications. In February 1922 a resolution was moved by Joshi, to amend the Legislative Assembly Electoral Rules by removal of sex disqualification from registration on electoral rolls. Seeing this as a good opportunity to make further changes, Hari Singh Gour, amended Joshi's resolution by moving another resolution to remove sex disqualification from the Legal Profession. However, on the assurance of Sir William Vincent, the Home Member, that opinions would be taken from local governments, High Courts, Oudh Bar Association, general public and professional bodies regarding the acceptance of women in the legal profession, Dr. Hari Singh withdrew his amendment.

There were mixed opinions regarding the proposal. The Allahabad Bar Library pointed out to the inadequate advancement of women's education, whereas the Oudh Bar Association favored the proposal. There were many arguments put in favor of the proposal. It was said that women were admitted in the Bar in England and other European countries and India should follow suit. Practically the presence of women practitioners was required to represent the 'purdah nashin' ladies (veil clad). However, after several such arguments placed for and against keeping women out of profession of law, the Government of India passed the Bill on 21st March 1923, which became a law on 2nd April 1923. With the Legal Practitioner's (Women) Act it was affirmed that "no woman shall, by reason only of her sex, be disqualified from being admitted or enrolled as a legal practitioner or from practising as such". With the passing of the 1923 Act Hazra was enrolled in the Patna High Court, but Regina Guha did not live to see the Act being passed. The acceptance of Cornelia Sorabji and the passing of the Legal Practitioner's (Women) Act, soon brought about the required change.¹⁶

¹⁵Miller, D. (1921, November 28). Patna High Court in Re: Miss Sudhansu Bala Hazra vs Unknown. Indian Kanoon. Retrieved 24 February, 2022, from <https://indiankanoon.org/doc/1246400/>

¹⁶Mishra, S.K. (2015). Women in Indian Courts of Law: A Study of Women Legal Professionals in the District Court of Lucknow, Uttar Pradesh, India. e-cadernos CES [Online], 24. Retrieved 26 February, 2022, from <https://doi.org/10.4000/eces.1976>

4. First woman to be accepted in Court: the case of Cornelia Sorabji

Though Cornelia Sorabji is the first female advocate in India, her journey into the legal domain had not been easy. Recognising her early academic prowess Cornelia's father encouraged her for higher education. She became the first female graduate from Bombay University. Though she topped her college examination, which should have helped her achieve full scholarship for education in Britain, she was denied the opportunity on the ground of her gender. She had to appeal for funds in writing to the National Indian Association, which met with overwhelming response.¹⁷

Unfortunately, at that time England did not allow women to study law. Her mentor, Benjamin Jowett, made arrangements for Cornelia Sorabji to study law from Somerville College, Oxford. Thus she became the first woman to study law at Oxford University, and also the first Indian to study at any British university. Though she passed her examination, she was not granted a degree.¹⁸

She returned to India in 1894 and embarked on a long journey to be accepted as an advocate. Cornelia wanted to take up the cause of the 'purdahnashin', women who were not allowed to communicate with men other than their family. Though she could prepare their cases she could not represent them at court. This made Cornelia take up two consecutive examinations, one was the LLB examinations under the Bombay University; the other was the pleader examination at the Allahabad High Court in 1899. She was not recognized as a Barrister, but in 1904 she was accepted as a Lady Assistance to the court of wards in Bengal. She travelled across the provinces of Bengal, Bihar, Orissa and Assam, fighting on behalf of women and children.¹⁹

Though women were accepted in the legal profession in 1923, Cornelia already got her acceptance in the Allahabad High Court before. However, it was in 1924 that she was enrolled as a Barrister in Calcutta High Court. The movement had set in, though at a slow pace, in the beginning only a few women joined the profession, but the spirit of representing another in the court had lighted many minds. After independence the Indian Constitution meticulously tried to maintain gender equality. Through the various Fundamental Rights and Directive Principles, the Constitution of the country had thrown open the doors of various educational institutions and professions for the women. The absence of basic level of education and lack of awareness on behalf of the women did not allow them to understand or realize these rights.²⁰

5. Discussion and Conclusion

The formidable role played by these women has not only led to the breaking of the glass ceiling, but laid the path for others to traverse. These women have brought remarkable changes within the field of law. They have fought their way into the profession at a time when women were not encouraged to enter the public sphere. They have taken up the study of law at a time when the society not only dispirited them but also rebuked them. They stood their ground and brought changes within the system that did not allow them to practice as advocates. As times changed and women were a common sight, within the profession they have taken the mark of further. Not just limited to the practice as advocates,

¹⁷ Sommerlad, J. (2017, November 15). Cornelia Sorabji: Who was India's first female lawyer?. Independent. Retrieved 27 February, 2022, from <https://www.independent.co.uk/news/world/asia/cornelia-sorabji-india-female-lawyer-first-woman-google-doodle-feminism-oxford-university-a8055916.html>

¹⁸ Sorabji, R. (2010). *Opening Doors: The Untold Story of Cornelia Sorabji-Reformer, Lawyer and Champion of Women's Rights in India*. London: I.B.Tauris. p. 22

¹⁹ibid., p. 121.

²⁰ Shah, A. (2017). *Representation of Women in the Legal Profession*. Legge Rhythms. Retrieved 22 February, 2022 from <https://leggerhythms.org/representation-of-women-in-the-legal-profession/>

women have been accepted as judges, entering the High Courts and the Supreme Court as well. More and more women have been optimistic to enter the profession following such role models.

1970's onwards has seen a surge in the number of women entering the profession as advocates, academicians, legal aid workers or volunteers and draftsperson. The profession has further attracted a number of women in the past twelve years to study law, but the number who enter the study and the numbers who enter into practice is not balanced. Women have still been struggling within the profession, but within these troubled times there have been many who have further inscribed their names within the field.²¹

In the post-independence era large number of Law Firms came into existence. These firms were run by members of one family. For such firms employing women was unimaginable since their talent was not known. Women as a human resource in this field were not recognized as they were associated with childbirth and childrearing. These motherhood duties would stop women from continuing with their work and would make them seek for leaves. Thus, women friendly work culture did not develop.²²

Women wanting to enter the legal field did not have role models to follow. When the new legal course was introduced, it made things understandable for the women. The five-year courses gave training as the legal knowledge could be applied and thus people interested in this profession would know their preferred field of practice according to their aptitude. This allowed women to take up the legal course and also made them think about the changes that they could introduce in the profession.

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²¹Shah, A. (2017). *op. cit.*

²² Representation of Women in the Legal Profession in India. *Legal Services India*. Retrieved 23 February, 2022, from <http://www.legalservicesindia.com/article/2285/Representation-of-Women-in-the-Legal-Profession-In-India.html>

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