

Advent of Women in the Profession of Law

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The law will not suffer women to be Attorneys. . . .', 'they are unfit, were the ideas held by eminent Jurists like Lord Coke, in England about 350 years ago. "Women are generally unfitted for the duties of the legal profession. . . . Female Attorneys at law were unknown in England, and a proposition that a woman should enter the courts at Westminster Hall in that capacity or as a Barrister would have created hardly less astonishment than one that she should ascend the Bench of Bishop or be elected to a seat in the House of Commons", [*In re, Bradwell*, (1870) 55 Ill. 5.35]. The three Judges of the Court of Appeal, in *Bobb versus The Law Society*, reported in (1914) 1 Ch. 286, relied on the positive prohibition of Common Law of England, founded on inveterate usage which imposed an absolute and positive prohibition against women practising the profession of law and held that women could not be allowed to be solicitors.

Sex Disqualification and Removal Act of 1919, put an end to such disability in England and women were allowed to enter all professions, including law. A British woman called to the Bar in England, was allowed to practice in India as well, but an Indian woman or a woman who qualified in India was not allowed to practise even in her own country.

The First Regulation VII of 1793 which created, 'The pleading of causes', as distinct profession, laid down that 'Men' of character and education, well versed in Mohammedan and Hindu Law, preferably from Mohammadan College, Calcutta and Hindu College, Benaras, could be admitted by Sudder Dewani Adalat. Then came certain other enactments, and in 1879 the Legal Practitioners' Act was passed.

On 29th August, 1916, a Special Bench of Calcutta High Court, *In re, Regina Guha*, reported in (I. L. R. 44 Cal. 290), consisting of the Chief Justice and four other Judges, refused the enrolment of Miss Regina Guha as a Pleader, relying on the case of *Bobb versus The Law Society*, *supra*.

Late Sri Madhusudan Dass, Vakil, a great patriot and social reformer, encouraged one Miss Sudhanshubala Hazra to enter the profession of Law, but her application for enrolment as pleader was refused on 28th November, 1921 by a Full Bench of the Patna High Court, *In re, Sudhanshubala Hazra*, (I. L. R. 1 Pat. 104), consisting of Dawson Miller, Chief Justice, Mullick and Jwala Prasad, JJ., on the ground that the provisions of the Legal Practitioners' Act, 1879, did not contemplate the extension of the privilege to females.

The use of the word 'Men' in Regulation VII of 1793 although subsequently in all enactments it was replaced by the word 'persons', led to the two decisions aforesaid. Relying on the case of *Bobb versus The Law Society*, it was held in both the aforesaid cases that provisions of the General Clauses Acts of 1868 and of 1897 did not apply and words importing the masculine gender shall not include the feminine, inasmuch as women were never there in the legal profession, either in the Mughal or British days and the Legislature never intended to bring about a change of such magnitude, so momentous and far-reaching by so furtive a process. It was further held that the words 'he', 'him', and 'his', in the subsequent enactments and the Legal Practitioners' Act, 1879, show that they invariably excluded women not by any direct prohibition but inferentially by words appropriate only to the male sex. Following Miss Regina Guha's case, it was held in Miss Hazra's case, "it was not the intention of the Legislature in the Legal Practitioners' Act to reverse the established policy or to introduce a fundamental change in long established principles of law and that to read the sections as including females was repugnant to the subject".

Justice Mullick thus observed in Miss Hazra's case, "If it were permissible to speculate upon the reasons of the legislators, all that can be hazarded is that having regard to the previous history of the relations of the sexes and the general position of women in the country, the Legislature was of opinion that it would be repugnant to ideas of decorum to permit women to join in what I may call the rough and tumble of the forensic arena".

The Allahabad High Court; in spite of the above two decisions, took the lead and changed the history by enrolling Miss Cornelia Sorabji, as the first Indian Lady, Vakil of Allahabad High Court, on 24th August, 1921. This was done by a decision of the English Committee of the Court, consisting of the Chief Justice, Sir Grimwood Mears and other member Judges present. In his judgment Mr. Justice Jwala Prasad had remarked in the case of Miss Hazra, "No doubt the recent admission of Miss Sorabji in the Allahabad High Court might create some anomaly inasmuch as ladies enrolled as Vakils in the Allahabad High Court may claim to practise in occasional cases in the courts subordinate to this Court. This again is a ground for changing the present law".

On 28th November, 1922, Miss Hazra was granted Special Leave to Appeal by the Judicial Committee of the Privy Council against the aforesaid judgment of Patna High Court, upon depositing £400 as security for costs. This sum of £400 amounting nearly to Rs. 6, 000 was beyond the means of Miss Hazra to pay. Mr. Madhusudan Dass, on 8th February, 1923, wrote to Sir William Duke, of the India Office a very forceful and warm letter requesting to fore go the amount of costs. He wrote, "The question relates to permission to lady lawyers to practise in courts. If there is any country where lady practitioners are necessary, it is India. . . where pardah system is stringent and pardah ladies are often parties to the suits. They cannot instruct lawyers of other sex and consequently they become victims to the dishonesty of unprincipled Gomastas". The Secretary of State for India very kindly consented to treat the matter as one of public interest and did not insist on the deposit of costs.

Mr. Madhusudan Dass then tried to explore the possibility of changing the law and he found in Dr. Sir Hari Singh Gaur of Nagpur, who was then a member of the Legislative Assembly, a willing champion of the

cause of women. He requested Dr. Gaur to move a resolution in the Legislative Assembly to charge the inequitable law against women.

On 1st February, 1922, while a resolution proposing amendment of the Legislative Assembly Electoral Rolls to remove sex disqualifications in the matter of registration on the Electoral Roll was moved by Mr. N. N. Joshi, Dr. Sir Hari Singh Gaur moved the following amendment to that resolution:

"And the Government be further pleased to remove the sex bar held to disqualify women from enrolment as legal practitioners in the courts of this country".

Dr. Gaur exhorted emphatically, "I say, Sir that the whole question is a question of justice and not a question of favour. Are you prepared to give justice to your female folk? Sir, if nothing else entitles women of this country to their rights and privileges, it is the great service they have rendered to you and to the nation in the immediate past. And I say, Sir, that even if it was a question of favour and not a question of primary human right, I would still ask the Assembly to remember the service of women in the past and to support their claim".

Maulvi Abdul Kasem of Dacca supporting the amendment said, "Sir, an amendment has been moved by Dr. Gaur, asking that ladies should be permitted to appear as members of the Bar and I see no reason why this privilege should be denied to them. Ladies who pass their examinations are as competent as males to practise at the Bar..... They will be of great assistance to Purdahnashin ladies since they could take up their cases and fight them out without the intervention of a male and a tout".

On 15th August, 1922, a memorial on behalf of Miss Hazra was submitted by Shri Madhusudan Dass to the Viceroy with copies to Sir Frederick Whyte, President of the Legislative Assembly and its members. The enrolment of Miss Cornelia Sorabji by the Allahabad High Court was also cited as a ground in the Memorandum for getting the law amended. On 28th February, 1923 the bill was introduced in the Assembly.

Khan Abdul Rahim Khan (North-West Frontier Province) supporting the bill remarked, "Another thing which has not been brought to the notice of the Hon'ble House is that the presence of ladies as Barristers in courts will make the Judges and the Barristers behave themselves".

A big majority supported the bill and prevailed upon the Assembly to pass the Legal Practitioners' (Women) Act, XXIII of 1923, by which women were allowed to practise as lawyers. Since then, though not in large number, women have joined the profession of law in all the States of India. Women have fully justified this legislative measure, as they have not been found in any manner inferior to men in intelligence, integrity or professional competency.

It may be of some interest to note that in 1931 Sir Hari Singh Gaur sent one of his daughters, Swarup Kumari (now the wife of Mr. Justice W. Broome) to England for legal education. She attended the Inner Temple, where her father had received his legal training, and was called to the Bar. However, on her return to India she did not take to the profession of law, but chose to become a good housewife.

In 1929, Miss Shiam Kumari Nehru, now Mrs. Shiam Kumari Khan, on 26th June, 1931 late Miss Lena W. Clarke (later Mrs. L. W. Banerji) and on 22nd February, 1933 Mrs. Meenakshi Amina Faruki Begum, got themselves enrolled in Allahabad High Court and actually practised for some years. At present there are several women Advocates practising in this High Court as well as in the District Courts of U. P. One of them practicing at Bareilly has been elected a member of the present U. P. Bar Council. The author of this article was elected General Secretary of the U. P. Lawyers' Conference.

Under the Constitution of India discrimination on the ground of sex is prohibited and all venues are now open to women. It is hoped that women will now be appointed in larger number both in the higher and lower judiciary. There is already one woman Judge, viz. the Hon'ble Smt. Justice Anna Chandy, in the Kerala High Court.

Mr. Justice S. S. Dhavan, who recently led a cultural delegation to U. S. S. R., said, during a talk on his return that in Leningrad 70 per cent of the Judges of the Peoples Court are women and that 43 Percent of the Advocates of the Moscow Bar are women; to be exact 430 women Advocates out of total number of 1, 000 Advocates. A woman was appointed a Judge of the Supreme Court of Tajikistan Republic at the age of about 25 years.

The women lawyers in India shall always remember with gratitude and respect the great work done to uphold their cause by pioneers like Miss Sudhansubala Hazra, Mr. Madhusudan Dass, Dr. Sir Hari Singh Gaur and last, though not the least, the High Court of Allahabad, which gave a lead in the matter.