



WOMEN IN LAW AND LAW MAKING: A STRUGGLE FOR SPACE

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ABSTRACT

Women in India have struggled for years to find acceptance in public life. Even though limited, their participation in law and law making as advocates and elected representatives has improved considerably. The legal profession particularly has been seen as unsuitable for women who have been expected to be committed to a family life. However, this did not stop the women from defying societal expectations. This paper is a tribute to the first women advocates of India who fought for their right to be a pleader and entered a male dominated space despite the judgmental glances and comments. It was after years of legal battles led by few women that paved the way for women advocates. The paper will deal with women who fought their way into the Courts and made space for themselves in a male dominated profession. Until a few years ago, the Bar was considered a Gentleman's club and law was a much gendered profession where only men prospered. While it is trailblazers like, Sorabji who have found enough recognition as the first woman advocate of India and her appointment has been celebrated as a watershed for women advocates, the stories of Regina Guha and Hazra remain lost. Their struggle did not receive the recognition it deserved, for even while these women could not bring justice to themselves, their struggles brought justice to millions of women today. Things are still not hunky-dory for women in the legal profession. Another aspect that this paper analyses is the present disparity between men and women in the legal profession and how one can effectively bridge the gap.

Keywords: *Women, Society, Profession, Expectations, Disparity*

I. Introduction

“The professional and personal challenges that confront women lawyers today did not have their origins in the 1960s, as many have suggested. Rather, they reach back ... to the pioneer generation of women lawyers who were the first to articulate and grapple with the challenges facing women in the legal profession.”¹

For ages, the legal profession has been labelled the ‘old boys’ club’ as it saw little to no participation from women. Be that as it may, and to be fairer to the profession, it is not the only

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¹ V.G. Drachman, *Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club 1887 to 1890* (University of Michigan Press, 1993).

profession to see abysmal participation of women historically. Ironically, what seems basic in the social canvas today, was in fact a luxury a few decades ago. Not to mention, it is only a century ago when women were enfranchised in the west.² So, to say that the legal profession was the only old boys' club is not only a misnomer but a selective amnesia to single out one profession when practically all fields had been the same. However, despite this defence to the past, the discussion of gender parity in the legal field remains of significance not because of its historical footprints but because of its obduration. When the world, especially after waves of feminism, adapted to a more gender inclusive setup - *barring a few rogue examples* - legal profession remained an old boys' club. This is best evidenced by the present participation of women in the bar, the bench and academia. Even in the Indian Supreme Court and High Courts, the presence of women is conspicuous by their absence both in the bar and the bench.

A very important and talked aspect of litigation is long working hours with lower monetary incentives in the beginning of one's career. As unfortunate as it is, in India, longer working hours is considered a man's job. This ultimately leads to family and societal pressures that drive women out of litigation. The solution to this lies in the examples we learnt during the Covid 19 lockdown. During the Covid-19 lockdown, the world has adapted to a flexible working environment where a work from home culture has led to technological innovations and capabilities to work remotely during late hours. Litigation is inherently a field that requires longer working hours and if one fails to put in the extra hours, they are mercilessly driven out of profession.

Therefore, a flexible working environment where a work from home culture (perhaps not entirely but during late hours) will at least relieve the pressures of working late night hours and then travelling back home for many women. Further, a good monetary incentives will not only ensure that the living expenses are being taken care of but also reduce the "compulsory" driving out of not only women but every person in the field.

The legal profession has not been a welcome space for women citing the excuse of the challenges and odd-working hours it poses. Within the legal profession, litigation and advocacy particularly have been seen as "un-lady like" professions and women have been discouraged from pursuing

² *U.S. Const. amend. XIX* (1920).

them. Despite the freedom of choice to pursue any profession³, available today, the number of women found in these roles is disproportionate to the number of men. Even though feminism as a movement has grown and continues to struggle for equal political, social, economic rights for women, the legal profession since antiquity has been dominated by men.⁴ Women, even after completing their law degree were restrained from practicing law and working as a pleader in the Courts of law under the garb of various laws and acts in place. It was after the struggle of women like Regina Guha, Hazra and Cornelia Sorabji that women in India could claim their right to be pleaders.

Even though initially, it was only a handful of women advocates who joined the profession, this paved the way for reformative measures and also made way for women to plead for another in the Court of Law.⁵ The Indian Constitution today through Article 14⁶ guarantees the right to equality to all persons living in India. Today, there no restriction or bar on women to enter the legal profession or practice in Courts, this is a result of long struggles by few women who brought justice for all women. Since India was a colony of the British, it was English laws that restricted both British and Indian women from being pleaders. This paper will draw on the struggle of women to enter the legal profession as pleaders.

Even after achieving the right to plead in Courts, the struggle was still not over. It is important to understand the historical position of women in law to understand their present standing, how far we've come and the way we still have to cover. Even though law is one of the oldest professions, little effort has been made in documenting the history of women in law and their influence on law. Also, little consideration has been given to the difficulties faced by the first women entering the field and the challenges and stereotypes they had to encounter.⁷

³ The Constitution of India, 1950, art. 19(1)(g).

⁴ Saurabh Kumar Mishra, "Women in Indian Courts of Law: A Study of Women Legal Professionals in the District Court of Lucknow, Uttar Pradesh, India" 24 *e-cadernos CES* 77 (2015).

⁵ Vina Nair, "Women and their advancement in the legal profession in India since the independence era", *Legal Services India*, available at: <http://www.legalservicesindia.com/article/2285/Representation-of-Women-in-the-Legal-Profession-In-India.html> (last visited Aug. 12, 2025).

⁶ The Constitution of India, 1950, art. 14.

⁷ Joan M. O'Brien, *A History of Women in the Legal Profession in New South Wales* (MA Thesis, University of Sydney, 1986), available at: <https://womenlawyersnsw.org.au/wp-content/uploads/History-of-Women-in-Legal-Profession.pdf> (last visited Aug. 16, 2025).

Objectives of the Paper

Through this research, an attempt has been made for the following:

- i. To understand the gender disparity in the current legal profession by understanding its roots
- ii. To learn about the struggles of the women who fought for equality at a time when the country was already dealing with a brutal colonial government and movements like feminism were neither well known, nor well accepted.
- iii. To analyse the present gaps in the participation of women in the legal field and recommend change to bridge the gap to ensure a more gender inclusive participation of women in the legal field.
- iv. By understanding the way history unfolded, devise ways to diversify the legal profession

Methodology

This research has been conducted in the doctrinal mode or library research using secondary data like books, articles, papers and blogs. Further, case laws have also been referred to wherever required.

II. Women in Law in the UK

In order to understand the history of women in the legal profession in India and the restrictions that bound them, we will have to first understand these restrictions in the UK since India was a British colony and was governed by English laws. It was these English laws that limited English and Indian women alike.

In the year 1913 in the case of *Bebb v. Law Society*,⁸ Gwyneth Bebb and three other women who had outstanding University qualifications applied to be solicitors but the Law Society rejected their applications. In response, Bebb and the other women posed legal challenges to the same. While writing to the press, one of them stated that the desire to change public opinion of women's capacity and to have women being regarded as ordinary human beings was one of the incentives

⁸ *Bebb v. Law Society* [1914] 1 Ch. 286.

for them.⁹ The Court stated that women were not included under “persons” in the Solicitor’s Act, 1843.

The Court held that it has been interpreted from usage that no woman ever has been or tried to be an attorney at law. The Court hence called it a “common law disability” and refused to interfere in the work of the Parliament. A legislative action was felt to be the only solution to this. After this case, various bills were presented to allow women to be solicitors and barristers but all of them failed to pass. It was only after the Sex Disqualification (Removal) Act, 1919¹⁰ was passed that way was made for women in the profession. Ivy Williams became the first woman barrister and recognised that this was not a change of heart of the people, but an action of the Parliament that forced change.¹¹

III. “Persons case” in India

According to section 5 of the Legal Practitioner’s Act,¹² the entry of women in the profession was wholly restricted. It stated –

Except as hereinafter provided, no person shall appear, plead or act as a Pleader, or appear or act as a Mukhtear in any Court to which this Act extends, unless he shall have been admitted and enrolled and shall be otherwise duly qualified to practise as a Pleader or as a Mukhtear, as the case may be pursuant to the provisions of this Act and unless he shall continue to be so qualified and enrolled at the time of his practising as a Pleader or Mukhtear as aforesaid.

Provided that every person who at the time at which this Act shall come into operation in any part of British India shall be or shall, be qualified to act as, a pleader in any Court in such part by virtue of any law, rule or order in force there, in shall be entitled to be admitted and enrolled as a Pleader in the High Court pursuant to the provisions’ of this Act, without passing any examination, but subject to the conditions of any certificate or diploma, held by him as to the class of Courts in which such certificate or diploma authorises him to practise.

⁹ E.M. Lang, *British Women in the Twentieth Century* 146–148 (T. Werner Laurie Ltd., 1929).

¹⁰ The Sex Disqualification (Removal) Act, 1919.

¹¹ Mary Jane Mossman, *The First Women Lawyers* 115-117 (Hart Publishing, 2006).

¹² The Legal Practitioners Act, 1879, s. 5.

Further, Section 6 of the Act¹³ empowered the High Courts to make rules consistent with the Act as to proper persons as pleaders. The use of the words, “he”, “him “and “his” led the Court to only make rules allowing men into the profession.

It was the resilience of three women who furthered the entry of women in the profession-

Regina Guha

Regina Guha, after completing her law degree submitted an application to be enrolled as a pleader. The application was forwarded to the Calcutta High Court¹⁴ as this was the first instance of a woman applying to be a pleader. This was also known as the first person’s case. The bench deliberated on the question of whether the Legal Practitioner’s Act included Women practitioners. The bench unanimously decided that only men could become pleaders even if the woman was qualified. The arguments in the case of *Bebb v. Law Society*¹⁵ were reiterated.

In her argument, Regina cited the General Clauses Act¹⁶ which says that, “words importing the masculine gender shall be taken to include female” and hence the Act here though referring to men, should include female practitioners as well. She was told that the legislature never contemplated admitting a lady to the rank of legal practitioner and that when the Legal Practitioners Act was passed; there had never been any case of a lady being allowed to practice in the Indian Courts.¹⁷

The Court also noted that the question of whether a change and inclusion of women would be wise is a question for the legislature and not for the Court. It is unfortunate that while Guha’s fight helped bring justice to many, she did not herself survive to see the passage of the Legal Practitioners (Women) Act 1923.¹⁸

Sudhanshu Bala Hazra

¹³ *Id.*, s. 6.

¹⁴ *In Re Regina Guha*, 1916 SCC OnLine Cal 192.

¹⁵ *Supra* note 10.

¹⁶ The General Clauses Act, 1897.

¹⁷ Jhuma Sen, “The Indian Women Who Fought Their Way Into The Legal Profession”, *The Wire*, available at: <https://thewire.in/law/women-lawyers-history-india> (last visited Aug. 16, 2025).

¹⁸ The Legal Practitioner’s Act, 1879, § 5, No. 18, Acts of Parliament, 1879 (India).

In 1921, the ‘second person’ case¹⁹ came up, five years after Guha’s struggle. Before understanding the case of Hazra, it is important to note that in 1919, the UK passed the Sex Disqualification (Removal) Act²⁰ which allowed women to enter the legal profession.

Hazra was adopted by Madhusudhan Das, who was a lawyer himself. She faced various difficulties in finally completing her education in law due to resistance by the University. When she finally tried to enrol herself as a pleader at the Patna District Court and her application was sent to the Patna High Court for consideration, the Court followed the Regina²¹ judgment of the Calcutta High Court and denied permission to Hazra to be a pleader. That day, many visited the Court to see “the lady Bachelor of Law from Orissa”²² Even though Hazra’s lawyer argued that it would be odd to limit Indian women from entering the profession, while English women can due to the passage of the Sex Disqualification (Removal) Act,²³ the Court recognised that this may be an argument for an amendment, but this was not the work of the Court.

The lawyer also cited the Calcutta University Act, 1857²⁴ where too the pronoun “he” was used, yet the provisions applied to female students as well. While Hazra was not allowed to be a pleader, this case strengthened the argument and created way for the eventual passage of the Legal Practitioners (Women) Act, 1923²⁵ which removed the disqualification of women and said that no woman based only on her sex be barred from being admitted or enrolled as a legal practitioner.²⁶

Cornelia Sorabji

“I am more than ever convinced that the profession I have chosen is nicer than any other, and that women could find in it, as many interests and as much work as would satisfy any ambition and appease any thirst for usefulness....”²⁷

- *Cornelia Sorabji*

¹⁹ *In re Sudhansu Bala Hazra*, 1921 SCC OnLine Pat 20.

²⁰ *Supra* note 12.

²¹ *Supra* note 16.

²² *Supra* note 19.

²³ *Supra* note 12.

²⁴ The Calcutta University Act, 1857.

²⁵ The Legal Practitioners (Women) Act, 1923.

²⁶ *Supra* note 19.

²⁷ Letter to Lady Hobhouse (Feb. 27, 1896) (BL F165/16).

The Allahabad High Court in 1921 allowed the application of Cornelia Sorabji to enrol as a Vakeel²⁸ thereby, making her the first woman advocate of India.²⁹ Sorabji's struggle was a long one too, even after topping the University, the Indian Government refused to fund her Oxford education because she was a woman. She represented Indian women and it was her female clients' need that defined the scope of Sorabji's work. Hence, Gender both confined her and brought her the unique opportunity to work while representing Pardahnashin women. Sorabji identified with imperial administration and consistently made efforts to distinguish herself from the "less" civilised Indian women. Hence, some people's reference to her as a "feminist" might not sit right due to her ignorance of gender.³⁰ Ironically, despite her ignorance of gender, gender played an important role in shaping her life and struggle.

IV. Dual fight of Indian Women

For Indian women, this was not just a fight for equality, but also a fight against imperialism at the same time. Within the group of women, it was the intersections of caste, class and other identities that further exacerbated the situation of particular groups of women. For you need privilege to fight privilege too. Women like Regina Guha who fought the exclusive male herself was the daughter of an established criminal lawyer in Calcutta.³¹

Gradually, there has been a shift in making the law more gender inclusive, and once such example is the Digital Personal Data Protection Act,³² where a person in the act is referred with the female pronoun "she: and as per section 2 (y) of the Act, "*she*" in relation to an individual includes the reference to such individual irrespective of gender". This change, appreciable for its traditional departure, is however not similar to Legal Practitioner's Act. In the Legal Practitioner's act, *his* meant an exclusion of women from the enrolment as a Pleader or as a *Mukhtear*. However, the use of *her* in the Digital Personal Data Protection Act is purely academic without any right or violation

²⁸ "Unveiling of the Portrait of Late Smt. Subashini Arulmozhi, Advocate, Coimbatore", 1 *L.W. (JS)* 70 (2002).

²⁹ Prachi Bhardwaj, "The story of three women and their fight to make "women in law" a reality in India", *SCC Online Blog*, available at: <https://www.sconline.com/blog/post/2020/10/11/the-story-of-three-women-and-their-fight-to-make-women-in-law-a-reality-in-india/> (last visited Aug. 16, 2025).

³⁰ *Id.*, at 10, 237

³¹ Manasvi Sharma, "Looking Back at Regina Guha 104 Years Later: An Indian Vantage Point on Women in Law" (Paper presented at the 'Directions in Legal Education 2020', Online Conference on Teaching and Learning in Law, June 18-20, 2020).

³² The Digital Personal Data Protection Act, 2023 (Act 22 of 2023).

of a right. Nevertheless, the shift in pronoun when most of the laws still use male pronouns, is a step in the right direction.

Another important aspect that needs examination is the participation of women in judiciary. The participation of women in judiciary is abysmally low. India is destined to have its first woman Chief Justice of India as Justice BV Nagarathana is poised to become the 54th Chief Justice of India. However, it may be apposite to point out that as on date, she is the only female judge in the Supreme Court of India which is at its full strength. Although, efforts are being made and will have to be made to ensure larger participation of women in judiciary.

One such effort that rectified or rather clarified a rule was the Himachal Pradesh High Court's judgment in *Sandeep Sharma v. High Court of H.P.*³³ In *Sandeep Sharma*, the Court clarified that seven years' *continuous* practice is not required for a lawyer to be appointed as an Additional District and Sessions Judge. This judgment enables a lot of women, who come from different social backgrounds, to appear in State Higher Judicial Services' examination. This further ensures that women in motherhood are not compelled to practice continuously for seven years and that they can still appear for the Higher Judicial Services' examination. Therefore, this procedural clarification acts as a much needed step to bridge the gap of gender disparity in judiciary.

Further, it is also worthy to mention that in the recent past, a lot of steps in the right direction are being taken in the bar to ensure active participation of women in litigation. This is conspicuous by the recent designation of senior advocates by the Supreme Court of India. Although, to bridge the disparity gap is a long and onerous process, these steps in the right direction are going to pave way for future actions to be in line with the commitment to ensure active participation from women in the legal field.

V. Few Women in the Legal Field

The Courts even today see few women despite the increasing number of female law graduates. Litigation as a career has been seen as turbulent and more and more women are encouraged to enter the subordinate judiciary instead. Court room sexism faced by women advocates has become a common occurrence, the un-encouraging attitude of society towards women who decide to

³³ *Sandeep Sharma v. High Court of H.P.*, 2024 SCC OnLine HP 3048.

pursue litigation and the scepticism with which they eyes these women as incapable of taking care of their homes is also something that offend drives women away from the profession.

Due to the financial uncertainty litigation poses and the increased chances of women being financially unstable due to being a vulnerable group creates a hindrance for women in the profession. The archaic perceptions that limit women to being homemakers have still not died and despite being working, women are expected to be available for their family. Women professionals are often being looked at as a liability, they are often told off by seniors to not stay in office till late, they are looked at with a prejudicial eye, expected to conform to the conventional roles set by society to limit women.

VI. Conclusion

“The world will never be complete until women are the part of it.”

- Alice Paul, an American Social Reformer³⁴

Trailblazers like Regina Guha, Hazra, Cornelia Sorabji and the likes have since history attempted to destroy the legal profession’s traditional ‘old boys’ club’ notion.³⁵ India is yet to see its first female CJI and many still look at litigation as a “men only” sphere. We’ve come a long way. A long way is still to be covered. Hopefully, the feminist movements and more recently, intersectionality will pave the way for the continued struggle of women until they reach an equal footing as their male counterparts. Until then, let’s not let these arguments die, let’s keep the stories of these women alive.

From the discussion, the question that begs answering is what went wrong in the legal profession and how, everybody can better the situation or at the least, strive to better. It is conspicuous that steps have been and are being taken to ensure active participation of women in fields like litigation and judiciary. These steps include recognizing efforts and rewarding women with senior designation (the bestowing of the silk as it is called) and clarifying that it is not required for a

³⁴ “Famous Women Lawyer Quotes”, *Think Exist*, available

at: <http://thinkexist.com/quotes/top/gender/women/occupation/lawyer> (last visited Aug. 14, 2025).

³⁵ Mahalakshmi Pavani, “She in the law”, *Socio-Legal Literary*, available at: <https://sociolegalliterary.in/she-in-the-law/> (last visited Aug. 16, 2025).

person to be in seven years of continuous practice to sit for the Higher Judicial Services examination.

However, much has to be done to change the legal profession from an old boys' club to a more inclusive and level playing profession. What must be looked into is a decent pay and flexibility in working station *vis-à-vis* a more liberal approach towards working from home. This will not only promote more women in litigation which requires longer working hours but will also take care of their financial needs in metro cities where getting even an accommodation is becoming increasingly difficult.

Therefore, making the legal profession more inclusive can only be achieved by bringing about a change in the mentality and developing *epistemic humility* amongst its members.