

Representation of Women in the Indian Legal System: A Historical and Contemporary Analysis

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Abstract

The legal landscape in India has evolved significantly over the years, witnessing the gradual inclusion of women in prominent roles within the profession. Despite historical challenges, women have emerged as influential lawyers, judges, and legal scholars. This research paper delves into the historical trajectory of women in the Indian legal profession, spanning from the colonial era to the present day. It scrutinizes the obstacles hindering women's entry into the legal profession, analyzes their struggles, and highlights their substantial contributions to the development of Indian law.

Traditionally dominated by men, the Indian legal profession saw the gradual inclusion of women through prolonged legal battles. The early 20th century marked a turning point with the Legal Practitioner's (Women) Act of 1923, granting women the right to practice law. However, the road to acceptance was fraught with challenges, as demonstrated by cases like Regina Guha's, where archaic views questioned women's eligibility as legal practitioners.

While global influences in the 21st century, coupled with modernism, have expanded educational opportunities for Indian women in law, the gender disparity persisted. The paper explores the journey from the first woman judge, Justice Anna Chandy, appointed in 1937, to contemporary challenges and the underrepresentation of women in the judiciary. Notable figures like Leila Seth and Fathima Beevi shattered gender barriers, rising to become Chief Justices, yet the overall representation of women in the judiciary remains disproportionate.

The study underscores the need for continued efforts to enhance gender equality in the legal profession, proposing measures such as a 33% reservation for women in the judiciary. By

offering a comprehensive analysis of the historical struggles and contemporary dynamics, this paper contributes to the ongoing discourse on gender representation in the Indian legal system.

Keywords: Women in Law, Indian Legal System, Gender Representation, Legal Profession, Historical Analysis, Legal Challenges, Legal Practitioner's (Women) Act, Judiciary, Gender Equality, Contemporary Issues

1. Historical Background

The legal profession in India has a vast and intricate history, and women have played a significant role in its development over time. Women have made significant strides in the Indian legal profession, with many becoming prominent lawyers, judges, and legal scholars despite confronting significant obstacles. This research paper intends to examine the history of women in the Indian legal profession from the earliest days of British colonial administration to the present. It will investigate the obstacles and challenges women have encountered in entering and succeeding in the legal profession, as well as their contributions to the evolution of the field.

Men have traditionally dominated the legal profession in India. Women's admission into the courts was only made possible after protracted legal battles, and even then, female participation in the courts was minimal until the late 20th century. In the twenty-first century, however, the concept of globalization has increased the opportunities for Indian women to pursue legal education and training. Modernism has also moderated the courtroom atmosphere and eliminated traditional masculine chauvinism in the field.

Only in 1846 were all qualified individuals, regardless of nationality or religion, permitted to enter the legal profession. The act governing the practice of law continued to bar women from entering the profession because it made no mention of women. Until the Legal Practitioner's (Women) Act, III of 1923, women were still excluded from the profession and this act formally permitted women to practice law. It ended the prohibition on women practicing law and women in India were permitted the right to choose the legal profession and serve as advocates in courts of law. Cornelia Sorabji initiated this battle.

In numerous instances, justices held that women were not "persons" for the purposes of entering the legal profession. The first woman's case was that of Regina Guha. After acquiring a Bachelor of Law degree, Guha submitted an application to be admitted to the Alipore district court as a pleader. The court considered the application. Regina argued that because, according to the General Clauses Act, "words importing the masculine gender shall be construed to include female," the Legal Practitioners Act regulations, despite referring to men in terms, would include women. In response to civil rights advocate barrister Eardley Norton, the bench stated that at the time the Legal Practitioners Act was passed, "there had never been a case of a woman being permitted to practise in Indian courts." The Legal Practitioners Act made no mention of female attorneys. Hazra submitted an application to Calcutta University requesting permission to participate for the preliminary examination of law as a private candidate. Her application was denied because she had not regularly attended law lectures. Finally, Calcutta University granted her permission to take the preliminary law examination as a private candidate. After earning a bachelor's degree in law from Calcutta University in 1921, she petitioned to become a pleader in the Patna district court. The Patna high court upheld the position in Regina Guha that despite the provisions of the General Clauses Act of 1868 and 1897, a woman was not eligible for a certificate under the Legal Practitioners' Act to function as a pleader due to her gender.

In England, the Sex Disqualification (Removal) Act of 1919 had been passed by this time, allowing women to pursue the legal field. Concurrently, the Allahabad high court authorised Cornelia Sorabji's enrollment as a vakil. With the Patna high court's decision, a concerted effort to amend the Legal Practitioners' Act was launched. In 1922, Narayan Malhar Joshi introduced a resolution to amend the Legislative Assembly Electoral Rules to remove sex-based disqualification in the matter of voter registration. As an amendment to Joshi's resolution, Gour introduced a resolution to remove sex-based disqualification in the legal profession. The Legal Practitioners (Women) Act was passed in 1923, removing the disqualification and stating that "no woman shall be disqualified from being admitted or enrolled as a legal practitioner or from practicing as such solely on the basis of her gender." ⁱ

Twenty years were devoted to the grueling efforts of promoting literacy and raising women's awareness of their rights in a country as diverse as India. In the meantime, the Indian Judiciary

encouraged women to enter the legal profession and appointed the first female judge to the Kerala High Court, the Honorable Justice Anna Chandy. In 1929, Justice Anna Chandy began her career as an Advocate, and in 1937, she was designated a Munsiff, making her the first woman judge in pre-independent India. During these two decades, two eminent attorneys entered the legal profession and went on to become the Chief Justices of the Himachal Pradesh and Kerala High Courts, respectively: Leila Seth and Fathima Beevi. The former had been a practising attorney in the Delhi, Kolkata, and Patna High Courts for more than 15 years, whereas the latter had risen from the position of a Munsiff to eventually become a Supreme Court judge. Curiously, the representation of women in the Judiciary has not increased in proportion to the initial number of women judges. In order to achieve equality between the number of male and female judges, there has been a call for a 33% reservation for women in the Judiciary.ⁱⁱ

2. Contemporary Scenario

Now that we've discussed the historical context of women in the legal profession, we can examine the contemporary situation. A research paper by Saurabh Kumar Mishra shows that The increasing number of women in the legal profession indicates a welcome shift in the society's mentality. It is disturbing that the majority of women practitioners do not receive enough cases and, as a result, have low earnings. Second, marriage and rearing a family appear to be significant obstacles for female attorneys. Although a number of women enter the legal field as a first-choice profession, the vast majority leave the field immediately or shortly after marriage. Extremely few women are able to persist after the age of forty, which is shocking. At this point, legal practitioners have acquired experience and are at the pinnacle of their careers. Finally, discrimination against women legal professionals in the workplace is a serious problem. It is important to observe that, in consideration of the sensitivities of women, no separate question on sexual harassment was asked in the survey, and sexual harassment was intended to be included in the category of gender discrimination. This demonstrates that even the legal profession, whose goal is to provide justice to all, is not immune to discrimination and harassment, often of a sexual nature, against its own women fraternity. In fact, eight of the 101 women legal practitioners contacted refused to partake in the survey.ⁱⁱⁱ

3. My Opinion

I believe that in India, the underrepresentation of women in legal careers has significant repercussions for the legal profession and society as a whole. Women are underrepresented in positions of power and influence, despite the fact that their perspectives and experiences are crucial to influencing legal policy and practice. This lack of diversity can contribute to a narrow focus and a limited understanding of the issues affecting women, thereby perpetuating gender inequalities.

Although there are policies and programmes in place to promote gender diversity in legal careers in India, their efficacy has been limited. It has been argued that affirmative action programmes are too narrowly focused and do not address the fundamental causes of gender inequality in the legal profession. Mentoring and networking opportunities have also been limited, leaving women without the support necessary for career advancement.

The perpetuation of gender inequality in legal professions in India is largely due to cultural and societal norms. As discussed above, social expectations regarding marriage and motherhood can and do hinder women's career ambitions and make it difficult to reconcile work and family obligations. In addition, the lack of women in leadership positions in the legal profession can generate an unwelcoming culture that discourages women from pursuing careers in law.

It is essential to address the underrepresentation of women in legal careers in India in order to increase gender diversity and create a legal profession that reflects the requirements and perspectives of all members of society. A comprehensive approach addressing the fundamental causes of gender inequality, such as discriminatory policies, social and cultural norms, and a lack of support structures for women in the legal profession, will be required to achieve this objective.

There are a few recommendations that I have to address these issues. Improving women's representation in the legal profession necessitates a multifaceted strategy. Implementing policies that support work-life balance, such as flexible schedules and parental leave, is one way to achieve this goal. The promotion of women to leadership positions through mentoring programmes and leadership training is another crucial step. As unconscious bias can affect the

hiring, promotion, and retention of women, addressing it is also crucial. Increasing pay and promotion transparency can help ensure that women are paid and promoted fairly. Creating a supportive work environment that encourages diversity and inclusion, networking, and career advancement, as well as combating harassment and discrimination, is also essential. Lastly, increasing awareness of the obstacles women face in the legal profession and providing support through networking events, mentorship programmes, and professional development opportunities can assist women in achieving success and thriving in the field. By implementing these recommendations, the legal profession can foster a more inclusive and equitable environment that promotes the professional development and advancement of women. By doing so, India will be able to establish a more just and equitable legal system that serves the requirements of all its citizens.

4. References

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