The Indian Women Who Fought Their Way Into the Legal Profession

In two important early-20th-century cases, women argued that they too were ‘persons’ under the Legal Practitioners Act.

What do we understand when we identify ourselves as feminist? The Wire’s Histories of Feminisms project is an attempt to emphasise that there is no linear or one way of understanding and experiencing feminism. Through a series of articles, The Wire draws your attention to some of the different narratives and debates that, over the decades, have come to define feminism. For instance, we recall the first generation of feminists in Kerala, the first women lawyers who surmounted formidable challenges to claim their rightful place in the legal system. We shine a light on women authors who pushed the boundaries of feminism in literature, bring before you the perspectives and experiences of feminist Dalit and Muslim women. We talk about how protagonists of many radical movements and uprisings in public memory are usually male. Side by side, we bring you important debates around 19th-century cultural nationalism and gender reform, the discussions around sexual violence, the law and the MeToo movement.

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India, a newspaper published by the Indian News Agency from London, Bombay and Poona city, reported on September 1, 1916, that the “latest attempt on the part of a woman to break her birth’s invidious bar and get within the defences of a strictly guarded profession was made by a Bengali lady at the end of July”.

The citadel that was sought to be breached was the impenetrable legal profession, and the ‘Bengali lady’ was Regina Guha, of Jewish Bengali ancestry, who after completing her MA in 1913 and a Bachelor of Laws in 1916 from Calcutta University, submitted an application to be enrolled as a pleader of the Court of the District Judge of Alipore. The newspaper’s characterisation of Guha’s application as the ‘latest attempt’ was perhaps an allusion to the currents of transnational struggles by women to enter the masculinist public sphere as professional citizens on equal terms.

Indeed, only three years ago, Gwyneth Bebb, along with Karin Costelloe, Maud Ingram (née Croft) and Frances Nettlefold in Britain, after studying law, applied to
the Law Society to appear for the preliminary examination in order to become solicitors. The Law Society barred them from appearing for the examination, stating that as women, they would not qualify to become solicitors in the first place. The four women would challenge this decision in an unsuccessful legal action, *Bebb vs Law Society*, arguing that ‘women’ were ‘persons’ within the meaning of the Solicitor’s Act 1843.

Women in the US and Canada were also attempting to enter the legal profession from the latter half of the 19th century. Some like Myra Bradwell relentlessly pursued her admission to the Illinois bar only to be told by the good judges in *Bradwell vs Illinois* 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”.

A few years later, however, the Illinois legislature permitted women’s admission to the bar and a few other American states followed suit. In Canada, Clara Brett Martin, after a battle with the Law Society of Upper Canada, finally was called to the Bar of Ontario in 1897.

Mary Jane Mossman’s enduring work on early women lawyers has demonstrated that the stories of the first women lawyers reveal the convergence of two 19th century reform projects: the women’s equality project and the legal professionalism project. In the 19th century, a number of legal reforms were achieved in the women’s equality project, from reforms of married women’s property rights, to women’s right to vote in some jurisdictions. Women were also gaining access to higher education. Simultaneously, the rise of modern professions created ripples for the legal profession. This included reforms in legal education, establishment of new professional organisations and an expansion of the idea of legal work. The time was ripe for the emergence of women lawyers as professional citizen subjects.

In India, the story of this emergence is, however, fraught with the dilemma of these women fighting imperialism and demanding equality at the same time. In fact in some cases, like Cornelia Sorabji’s, analytical categories of feminism or nationalism are simply inadequate to understand the complexities of professional citizenship and colonial subjectivity interrogating each other.

Although women’s entry into the legal profession in India followed the somewhat familiar trajectory of their entry into the medical profession, with women doctors as well as women lawyers making a case for their entry to heal Indian women, or to represent the woman in purdah, the challenges of the former were more formidable. While women doctors could argue that the medical profession was an extension of women’s nurturing roles in the private domain or that women doctors would protect the modesty of female patients, the legal profession inevitably was in the public
domain and guarded by the ‘gentleman’s club’ which was quite reluctant to allow the ladies in. 

The reluctance was spelt out in a series of infamous ‘persons cases’ (like Bebb vs Law Society and Bradwell vs Illinois) where judges determined that women were not ‘persons’ for the purpose of entering the legal profession, even though the relevant legislation under scrutiny would use a gender-neutral ‘person’ instead of a gender specific ‘he’ or ‘him’. Regina Guha’s case was the first ‘persons case’ in India.

Regina Guha’s father Abhijit Guha was an established criminal lawyer in Calcutta who married a Baghdadi Jewish woman and converted to Judaism. Both his daughters, Regina and Hannah would study law, although Regina would be the one to attempt to step inside the hallowed walls of the legal profession, while sister Hannah would pursue a career in teaching, make significant contribution to women’s education and play an important role in the nationalist struggle.

Court records indicate that Regina, after obtaining a Bachelor of Law degree from Calcutta University in 1916, submitted an application for admission to be enrolled as pleader in the Alipore district court, which was subsequently forwarded to the Calcutta high court. Since this was the “first instance of an application by a lady for enrolment as a Pleader”, her application was heard by a special bench for judicial determination of the question of whether the Legal Practitioners Act contemplated women practitioners.

A bench of five judges – Justice L. Sanderson, Justice A. Mookerjee, Justice W. Chitty, Justice Teunon and Justice Chowdhury – heard her application and unanimously came to the conclusion that only men are entitled to be admitted as pleaders.

The arguments placed before the court in support of Guha’s enrolment were similar to those rejected in Bebb vs Law Society. Regina contended that since under the General Clauses Act, “words importing the masculine gender shall be taken to include female”, the rules under the Legal Practitioners Act, although referring in terms to men, would include women.

In response to this argument advanced by Regina’s lawyers, led by the indomitable barrister Eardley Norton, a civil rights advocate and one of the earliest members of the Indian National Congress, the bench responded that at the time the Legal Practitioners Act was passed, “there had never been a case of a lady being allowed to practice in the Indian courts”.

The Legal Practitioners Act made no reference to women, said Sir Ashutosh Mukherjee (née Mookerjee) from the bench, adding that he saw “no escape from the position that the Legislature in this country never contemplated the admission of women to the rank of Legal Practitioners”. The court therefore held that the General Clauses Act was not intended to affect the existing law and practice with regard to the admission of legal practitioners and thus paid obeisance to the general trajectory of the ‘persons cases’.
In another five years, Sudhanshubala Hazra would initiate the second ‘persons case’ in India, which would lead to a series of remarkable events. Hazra was born to Bengali Christian parents and adopted by Madhusudan Das, the architect of modern Orissa, a lawyer himself. She decided to study law and at the advice of her father, she attended law lectures at Ravenshaw College, Cuttack in the evening, while performing her duties as headmistress in the kindergarten department of Ravenshaw Girls’ School.

In September 1917, Hazra applied to Calcutta University, seeking permission to appear as a private candidate in the preliminary examination of law which was scheduled in 1918. She faced the first barrier here. Without informing her, Calcutta University transferred her application to Patna University, which refused to give her permission to appear for the Bachelor of Law examination on the ground that she had not attended regular law lectures.

Hazra, who in her memoir (A Woman at Law) remembers herself as “a timid and nervous girl” in her childhood, fearlessly submitted a fresh application to the registrar of Calcutta University in February 1918, asking for her case to be considered by the syndicate of the university. She argued that she was “a Bengalee by nationality” and therefore had every right to appear in the examination conducted by Calcutta University.

Calcutta University finally granted her permission to appear as a private candidate in the preliminary law examination. She passed her pre-law in 1919 and intermediate law in 1920. In her memoir, she recounts that for her final examination, she was again tested to prove her devotion to the study of law. This time the barrier was the non-cooperation movement sweeping the country. Pickets were posted outside the entrance of examination hall. Hazra was determined to enter the hall to write her exam, which in turn would allow her to enter the field of law. The picketers were equally determined to not allow her to enter.

On the first two days of examination, she could enter the hall with some difficulty, but on the last day, things proved to be tough even for the resolute Hazra. She had to hop, skip and jump over unrelenting protesters lying near the threshold of the door to the examination hall. Her only consolation was that this demonstration of her unladylike behavior was for the greater good, namely the right of women to enter law.

But this was not the last of Hazra’s hurdles. In 1921, after obtaining a Bachelor of Law degree from Calcutta University, she applied to be enrolled as a pleader in the Patna district court, which was forwarded to the Patna high court for consideration. A full bench of the Patna high court consisting of Chief Justice Dawson Miller, Justice Jwala Prasad and Justice B.K. Mullick sat together to deliberate on her application. Hazra was represented by Percival Chutter Manuk, a reputed barrister of Armenian descent, and four other respectable names in the bar.

Contemporary accounts indicate that on October 29, 1921, the court room in the Patna high court was packed to capacity and “even some purdah ladies draped in their veils
could be found among the audience”. Everyone came to see the “lady Bachelor-of-Law from Orissa” who had applied to the high court to be enrolled as a pleader. However, it was not just curiosity that marked the atmosphere of the courtroom. There was also a stiff opposition from the majority in the Vakil’s Association of the Patna high court who had staged a protest. Madhusudan Das’s presence in the Patna high court during the hearing helped ease some of these tensions.

The Patna high court judges delivered three separate concurrent opinions on November 28, 1921 upholding the position in *Regina Guha* that in spite of the provisions of the General Clauses Act of 1868 and 1897, a woman, although fully qualified, was not entitled to a certificate under the Legal Practitioners’ Act to act as a pleader because of her sex. She was not a ‘person’.

Two significant developments, however, separated the *Regina Guha* case and the Sudhanshubala Hazra case. The first was the passage of the Sex Disqualification (Removal) Act 1919 in England which by implication would allow women to enter the legal profession; the second was the Allahabad high court taking the radical step of allowing Cornelia Sorabji to be enrolled as a *vakil*. This was done by a decision of the English Committee of the Court consisting of the chief justice and the judges present.

In *Sudhanshubala Hazra*, both these developments were referred to. The court’s response to the first was that while this may be an argument for the amendment of the Legal Practitioners Act, the court was chiefly concerned with the Act as it presently stood. With respect to the latter, the court acknowledged that while this may create some anomaly, it also presented an excellent ground to amend the law.

With the Patna high court judgment, a concerted campaign to amend the Legal Practitioners’ Act began. Madhusudan Das and Sudhanshubala’s sister Sailabala Das made it their business to open the gates of the legal profession to women. In her application to the Privy Council, Sudhanshubala attached a memorandum that strikingly aligns itself with Cornelia Sorabji’s negotiations with the bar to be admitted to the legal profession – working for the women in purdah.

If there is any country, where lady practitioners are necessary, it is India, and specially in those provinces in which the Purdah system is stringent and Purdah ladies are often parties to suit involving decision of rights to properties of immense value. They cannot instruct the lawyer of other sex and consequently they became victims to the dishonesty.

Das found an enthusiastic collaborator in Hari Singh Gour, a lawyer, social reformer and a member of the Central Legislative Assembly, who was also keen to amend the law. So when in February 1922, Narayan Malhar Joshi moved a resolution proposing amendment of the Legislative Assembly Electoral Rules to remove sex disqualification
in the matter of registration on the electoral roll, Gour introduced a resolution to remove sex-based disqualification in the legal profession as an amendment to Joshi’s resolution.

Gour passionately argued that the removal of sex disqualification will not be complete unless the house “stamp out of the Statute Book if it is necessary, a blot which shuts out our female folk from the practice of profession of law”. Hazra also acknowledges that the “magic of all this was performed by the persuasiveness” of her sister, who accompanied her to Delhi and made a case for women’s entry into the legal profession by speaking with members of the house.

The Legal Practitioners (Women) Act was finally passed in 1923, removing the disqualification affirming 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”. Hazra could now enrol as a vakil of the Patna high court in 1923 amidst praises and salutations.

In 1919, Regina Guha’s sisters created an endowment in Calcutta University “in memory of their deceased sister Regina Guha”, indicating that she did not live to see the passage of the 1923 Act. The Calcutta Weekly Notes, while welcoming the decision of the legislative assembly to amend the law, noted that although “Miss Guha has passed away from the land of law courts and lawyers, but we have no doubt that she will be gratefully remembered by all future women lawyers as the first champion of their cause”.

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