

# Sexual Harassment and Women in Legal Profession

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*"I never doubted that equal rights was the right direction. Most reforms, most problems are complicated. But to me there is nothing complicated about ordinary equality." HaruGeek ~ Alice Paul quo*

## INTRODUCTION

Legal profession is hailed to be a noble profession. It has a code of professional ethics too to upkeep the notions of professional dignity. The dignity attached to the legal profession is therefore is expected to provide great inspiration for many to join the same particularly for women. However, in the present times the image of legal profession being a noble one is on its decline for a variety of reasons. The legal profession, like every other profession, perhaps far more than any other profession, mirrors the cleavages, fissures and conflicts in society.

The gender differential glaringly visible in the general society is amply reflected in the society of legal profession as well. Therefore, it is not a surprise that women associated with legal profession too are not exempt from sexual harassment.

### Women into Legal Profession - Threshold Ordeal

For a very long time legal profession all around the world remained the forte of men lawyers despite the fact that legal profession being acclaimed as noble profession should have been considered as a perfect mantle for women to be a part of the same. But such was not the social opinion in the earlier days. It took significant time before which women could gain entry into legal profession. It needed arduous battles for women to gain entry to the profession through litigation, lobbying efforts, formal appeals etc. However, with changing times the legal profession too has undergone significant positive change, with rapidly rising numbers of women among its membership. The barriers to women's entry into the legal profession seem to have all but disappeared which can be deduced from the statistics revealing the parity of men and women membership in legal profession. Thus the record of the past two decades

shows that the number of women graduating from law school and practicing law has grown enormously in most industrialized Western societies. Thus whereas in 1970, women comprised only 8% of the total law school enrollments in the United States by 2006 women had achieved near parity with men in law school. Women legal professionals are making inroads to all sectors of practice, elite firm partnerships, the bench, and governance of the bar.

This dramatic influx of women to the legal profession was paralleled across many countries. In India too, the same is the trend. But yet, it is important to go beyond the statistics concerning the increasing number of the women entering into legal profession to see what barriers still the women have to cross.

As on today there is considerable visibility of woman in the legal profession in the sense that the entry of women into legal profession is quite significant. Yet, it cannot be said that by the mere increase of entry into legal educational institutions, Bar or other legal organizations does not mean that women enjoy the advantages which the legal profession offers as a means of livelihood and recognition to its members. Although women qualify in equal proportions to men at the entry point of professional courses (this is particularly true of the premier institutions imparting legal education in the country today), there is a progressive decline in the number of women as one moves up the hierarchy. More than anything woman legal professionals suffer from many maladies for the reason of them being the women.

Sexual harassment at workplace is an evil which many women find the most difficult obstacle to cross so as to pursue their prospects of their work or engagement. Legal profession could be no different if the women professionals have to encounter the sexual harassment at their workplace.

Sexual harassment in institutions of legal education might discourage the students to fare well and even could end up bidding farewell to the institution itself. Even after having entered into any place of work like court or firm or any public office, they may have to

compromise on their career potential in the process of meeting the problem of sexual harassment resulting in the violation of their right to life with dignity, right to livelihood, right to health, right to equality, right to development etc. Studies in different countries have revealed that women in the legal profession do suffer from the consequences of their sex, sexual harassment being one of them.

#### Sexual Harassment of Women in Legal Profession in USA<sup>1</sup> - A Profile

Women in the United States led the way, first entering the legal profession in the 1860s, several decades ahead of women in other countries. Interestingly, the first women to enter the legal profession in the late nineteenth and early twentieth centuries did not bring a flood of women to the profession. Rather, women's entry to law remained a trickle through much of the first half of the twentieth Century.

Women continued to be excluded from several American law schools until the 1960s.<sup>2</sup>The most dramatic increases in women's entry rates took place only since the 1970s.<sup>3</sup> Several studies suggest that substantial numbers of women encounter gender-based bias, disparagement, and sexual harassment at the hands of faculty or male classmates. In response to a survey of students at nine Ohio law schools, 31% of women reported experiencing gender-based discrimination, and 19% said they had experienced sexual harassment<sup>4</sup> In one mid western law school, 43% of female survey respondents reported that their professors treated women according to stereotypes;

In surveys done on several law schools revealed that more than 40% of women reported that their professors used or tolerated offensive humor.<sup>5</sup>

In the labor force as a whole, women largely work in different—and less rewarding—occupations, jobs, and work settings than men do. To what extent does sex segregation exist within the legal profession? Overall, women are somewhat more likely than men to be found in less remunerative and prestigious practice settings. The experiences of practicing law appear to be highly gendered. An array of task force reports and scholarly articles document<sup>6</sup>that many women lawyers face gender discrimination, including sexist behavior, harassment, demeaning comments, and a negative courtroom environment. These experiences are shaped by gender stereotypes and double standards that operate to the detriment of women's professional opportunities.

In addition, gender disparagement undermines women's authority in law practice. These verbal acts draw attention to women's gender and lower women's esteem or standing. Disparagement includes demeaning comments about women<sup>7</sup>; statements about female counsels' dress or appearance that diminish stature as a professional in the eyes of litigants, witnesses, and jurors; expression by judges and fellow lawyers of traditional beliefs regarding the social role and nature of women, repeated interruption of women lawyers while speaking; women addressed by terms of endearment (e.g., “honey” or “sweetie”), while men are addressed by surname or title; and jokes and degrading comments

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<sup>1</sup> For a detailed account see, Fiona Kay and Elizebeth Gorman, *Women in Legal Profession*, Annual Review of Law and Social Science Vol. 4: Dec 23<sup>rd</sup>, 2008, 299-332.

<sup>2</sup> Mossman MJ, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions*, Portland, OR: Hart, 2006 cited in Fiona Kay and Elizebeth Gorman, *Women in Legal Profession*, Annual Review of Law and Social Science, Vol. 4, Dec 23<sup>rd</sup>, 2008, p 300

<sup>3</sup> Abel RL. 1985. Comparative Sociology of Legal Professions: An Exploratory Essay. Am. Bar Found. Res. J. 1:5–79 cited in Fiona Kay and Elizebeth Gorman, *Women in Legal Profession*, Annual Review of Law and Social Science, Vol. 4, Dec 23<sup>rd</sup>, 2008, p.300

<sup>4</sup> Krauskopf J, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, J. Leg. Edu, 44 (3), 1994, pp311–400

<sup>5</sup> Banks T., *Gender Bias in the Classroom*, J. Leg. Educ. 38, 1988, pp137–46

<sup>6</sup> Wilder GZ, *Women in the Legal Profession: Findings from the First Wave of the After the JD Study*, Washington, DC: NALP, 2007

<sup>7</sup> *Ibid.*

about women.<sup>8</sup> A small-scale survey<sup>9</sup> of lawyers in a mid western U.S. city, found that women in the private sector, specifically within law firms, were most likely to experience the full brunt of sexism—reporting the coexistence of on-the-job discrimination, disparagement, and harassment.<sup>10</sup>

The study made by Brockman<sup>11</sup> argues that gender discrimination continues not by excluding women but by "discouraging or preventing their full participation within the profession. In her earlier study<sup>12</sup> she accounted that the behavior generally includes unwanted sexual advances; unwanted teasing, jokes, or comments of a sexual nature and even sexual touching by judges and other lawyers. Rhode DL in her study<sup>13</sup> has observed that in many recent surveys, about half to two-thirds of female lawyers, and a quarter to half of female court personnel, reported experiencing or observing sexual harassment. Almost three-quarters of female lawyers thought harassment was a problem in their workplaces. She maintained that it is a problem for which women pay a substantial and disproportionate price. They account for about 90% of reported complaints, and many experience both economic and psychological injuries, such as loss of employment opportunities, unwanted transfers, anxiety, depression, and other stress-related conditions. Many women justifiably fear ridicule or retaliation. Those who complain are often dismissed as humorless and hypersensitive, and are subject to informal blacklisting. As a result, surveys from a wide variety of occupational contexts find that few women,

typically well under 10 percent, make any formal complaint; fewer still can afford the financial and psychological costs of litigation. Yet while the likelihood of complaints is small except for the most serious behavior, concerns about unjust accusations often deter men from mentoring or socializing informally with younger women.<sup>14</sup> In response to the issue of sexual harassment, some scholars advocate that sexual harassers should be disciplined under professional codes of conduct<sup>15</sup>, as is the case in Canada. The data gathered in 1990 by Wave II of the National Survey of Career Satisfaction, by the American Bar Association's (ABA) Young Lawyers' Division revealed that 26% of male lawyers in private practice reported observing sexual harassment of female lawyers, while 66% of female lawyers reported observing sexual harassment of female colleagues.<sup>16</sup>

#### Sexual Harassment of Women in Legal Profession in Canada - A Profile

The Law Society of British Columbia has presented two landmark studies,<sup>17</sup> one on the Women in the Legal Profession (WILP) Subcommittee (1989-1991) and second on the Gender Bias Committee (1990-1992) The WILP study revealed that British Columbia women lawyers were leaving the profession in disproportionate numbers to men and that many women faced discrimination in the practice of law, difficulties accommodating work and career responsibilities and barriers to career advancement. Although women have for many years made up 50% of law school graduates, they still make up only a

<sup>8</sup> Coontz PD. 1995. Gender Bias in the Legal Profession: Women 'see' it, Men don't. *Women Polit.* 15(2):1–22 cited in Fiona Kay and Elizebeth Gorman, *Women in Legal Profession*, Annual Review of Law and Social Science, Vol. 4, Dec 23<sup>rd</sup>, 2008, p 306

<sup>9</sup> Rosenberg J, Perlstadt H, Phillips W, *Now that We Are Here: Discrimination, Disparagement, and Harassment at Work and the Experience of Women Lawyers*, *Gender Soc.* 7(3), 1993, pp 415–33

<sup>10</sup> *Ibid.*

<sup>11</sup> See generally, Joan Brockman, *Gender In the Legal Profession: Fitting or Breaking the Mould*, University of British Columbia Press, 2001, pp 1-272

<sup>12</sup> Brockman J., *Bias in the Legal Profession: Perceptions and Experiences*, *Alta. Law Rev.* 3(3), 1992 a, pp 747–808

<sup>13</sup> Deborah L Rhode, *The Unfinished Agenda Women in Legal Profession*, American Bar Association, 2001, p7-8

<sup>14</sup> *Ibid.*

<sup>15</sup> Meier J., *Sexual Harassment in Law Firms: Should Attorneys be Disciplined under the Lawyer Codes?*, *Georgetown J. Leg. Ethics*, 1990, pp169–88

<sup>16</sup> See, Laband DN, Lentz BF, *The Effects of Sexual harassment on Job Satisfaction, Earnings, and Turnover among Female Lawyers*, *Ind. Labor Relat. Rev.* 51(4), 1998, pp 594–607

<sup>17</sup> See, *Equality Initiatives Elsewhere may Hold Promise for BC Women Lawyers*, The Law Society of British Columbia' available at <http://www.lawsociety.bc.ca/page.cfm?cid=1306&t=Women-in-the-Legal-Profession-Task-Force>

third of all lawyers in the profession. What still is evident from the statistics is that a proportionally higher percentage of women are in part-time practice or hold non-practicing membership (32% of women as compared to 17% of men). The negative experiences of British Columbian women lawyers on issues of discrimination, harassment, career satisfaction, advancement or remuneration identified some years ago appear to be mirrored in other jurisdictions. The 1991 Transitions in the Ontario Legal Profession Report.

In 1990, the Women in the Legal Profession Committee (formerly the Subcommittee on Women in the Legal Profession) initiated a large-scale survey of the profession's membership. The survey was designed to improve upon the 1989 study. In 1991 the committee published a second report, *Transitions in the Ontario Legal Profession*. The term "transitions" emphasizes the focus of the study upon job changes, promotions, career switches, and departures from law practice. The study focused most closely upon a comparison of the career patterns of women and men in the profession. According to the 1991 study, substantial differences existed between women and men in their respective levels of authority, responsibilities, autonomy, and decision making roles in law practice. The majority of women (70%) reported experiencing sexual discrimination in their work. In contrast, only 7% of men reported that they had experienced sexual discrimination. Participants described sexual discrimination as taking many different forms including denial of opportunities, delayed partnership, and verbal abuse. Other instances assumed more subtle forms through the use of gender-biased language, attention to appearance and dress, isolation from colleagues, and exclusion from informal discussions.

A number of Policy initiatives (1991-96) were introduced by the Law Society of Upper Canada following the release of the *Transitions* report: One of the policy initiatives is the adoption of New Rule of Professional Conduct dealing with sexual harassment. The Rule was adopted by Convocation on July 10, 1992.

The most ambitious undertaking to date is the Canadian Bar Association's Task Force on Gender Equality, which produced a 290 page report. The Canadian Bar Association report, *Touchstones for Change: Equality, Diversity and Accountability* (1993) concluded.

The results of our research and consultations serve as further proof that gender bias exists in all sectors of the profession and on a national basis. Evidence of gender inequality abounds in the restricted nature of employment opportunities available to women, in the limits placed on their career advancement, in the lack of accommodation of family responsibilities and in sexual harassment.<sup>18</sup>

The 1996 *Barriers and Opportunities within Law* Report speaking on sexual discrimination maintained that as with the 1990 survey, women were much more likely than men to perceive sexual discrimination as having happened to them, and somewhat more likely than men to perceive sexual discrimination against others. Seventeen percent of women replied that they had been denied responsibility for a case/file on the basis of their sex, whereas only 6% of men claimed to have had this experience. In contrast, men (86%) were much more likely than women (63%) to respond that they had never been denied responsibility for a case/file based on a client's objection to their sex.

Policy Initiatives 1996 to 2004 includes the initiative of *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms*.

A 2003 Law Society of Alberta study flagged that 92% of the women and 69% of the men surveyed thought that there was some form of bias or discrimination against women in the profession (33% of the men and 14% of the women thought there was discrimination against men). According to that study, sexual harassment is an ongoing problem, and the most common type of discrimination against women and other diversity groups was perceived to be discrimination in career advancement.

The 2004 Report of the Law Society of Upper Canada: *Turning Points and Transitions: Women's*

on Gender Equality in the Legal Profession, Ottawa, Ontario, 1993, at p. 267.

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<sup>18</sup> Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability*, Report of the Canadian Bar Association, Task Force

*Careers in the Legal Profession*.<sup>19</sup> While the study noted some impressive advances in the status and mobility of women lawyers in Ontario since 1990, there were also “sizeable gaps that persist between men and women in remuneration, promotional opportunities and levels of job satisfaction.” Moreover, both men and women faced common challenges in law practice, including balance between career and family, lack of workplace flexibility and benefits.

To address some of the concerns, the Law Society introduced a number of changes:

- A 1992 Professional Conduct Handbook rule that identified discrimination, including sex discrimination and sexual harassment, as a form of professional misconduct;
- a 50% reduction in liability insurance for members in part-time practice, beginning in 1993;
- a non-practising membership category with a lower fee, beginning in 1994;
- active encouragement of women lawyers to stand for election as Benchers;

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<sup>19</sup> F.M.Kay, C.Masuch and P. Curry, *Turning Points and Transitions: Women’s Careers in the Legal Profession- A Longitudinal Survey of Ontario Lawyers 1990-2002, A Report to the Law Society of Upper Canada, 2004, pp1-159*- The survey is part of a larger program of research investigating women in the legal profession. The program began in 1989 with a report on the demographic composition of the Ontario legal profession. This initial report, *Women in the Legal Profession (1989)*,<sup>1</sup> commissioned by the Women in the Legal Profession Committee at the Law Society of Upper Canada, led to a large-scale survey of members of the profession in 1990. The survey sampled over 1,500 lawyers called to the Ontario Bar between 1975 and 1990, a historic period in which women entered the legal profession in sizeable numbers for the first time. This initial cross-sectional survey was later developed into a longitudinal project, following the lives of this cohort of lawyers across time. This same panel of lawyers was surveyed for a second time in 1996. This survey led to the report, *Barriers and Opportunities within Law: Women in a Changing Legal Profession (1996)*.

- reimbursement of reasonable child-care expenses incurred by Benchers and lawyers while on unpaid Law Society business;
- encouragement of law firms to adopt workplace policies on maternity and parental leave, alternative work arrangements, gender-neutral language, employment equity and workplace harassment; and
- retaining an independent Discrimination Ombudsperson (now Equity Ombudsperson) to mediate allegations of discrimination in law firms, with the agreement of all parties.

#### UK Profile

‘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. The three Judges of the Court of Appeal, in *Bebb Vs The Law Society*,<sup>20</sup> influenced by the social convictions of the then British society and relying upon the absolute positive prohibition of Common Law of England against women practicing the profession of law unashamedly held that women could not be allowed to be solicitors.<sup>21</sup>

As per the records, the first application by a woman to be admitted as a solicitor in the UK was in 1876<sup>22</sup>

Another six years later, in 2002, the Law Society of Upper Canada embarked on a third survey to follow up on the work experiences, career transitions, and challenges confronting this cohort of lawyers. The findings of the 2002 survey reveal impressive advances in the status and mobility of women in the legal profession, but also highlight the sizeable gaps that persist between men and women in remuneration, promotional opportunities, and levels of job satisfaction.

<sup>20</sup>. (1914) 1 Ch. 286

<sup>21</sup> Alexandrine Guyard-Nedelec, *Discrimination against Women Lawyers in England and Wales: An Overview*, Gender Forum, International Journal for Gender Studies, Issue, 17, 2007 available at <http://www.genderforum.org/issues/working-out-gender/discrimination-against-women-lawyers-in-england-and-wales>

<sup>22</sup> See generally, McGlynn, Clare. *Strategies for Reforming the English Solicitors, Profession: An Analysis of the Business Case for Equality*, Women in the World’s Legal Profession. Ed. Ulrike. Schultz

her application was rejected. In 1912 a bill allowing women to enter into the legal profession did not get any support. Around the same time, Gwyneth Bebb's application to be registered as a solicitor was rejected by the Law Society and even her appeal was rejected. Similarly on the grounds that she was not a "person" within the terms of the Solicitors Act 1843. The three Judges of the Court of Appeal, in *Bebb Vs The Law Society*,<sup>23</sup> influenced by the social convictions of the then British society and relying upon the absolute positive prohibition of Common Law of England against women practicing the profession of law unashamedly held that women could not be allowed to be solicitors. For Lord Justice Swinfen Eady, the very fact that women had never been solicitors meant that the law was that women *could not* be solicitors. By 1919 however, with the passing of the Sex Discrimination (Removal) Act which stated that women were persons and that they could hold public office women could formally enter into the legal profession. Of course, the then traditions and customs of the society did not easily accept women's entry into the legal profession.

The first woman solicitor, Madge Easton Anderson, was admitted in Scotland in 1920; England and Wales followed with three women admitted in December 1922.

They were only allowed to practice in restricted areas such as family law, matrimonial and probate work. The number of women solicitors then hardly increased until the 1960s and 1970s: the numbers only tripled in 1973 with 222 women being admitted, which corresponded to 13% of the profession, thanks to a combination of factors. In 2006, 104,543 solicitors held practicing certificates, and 44,393 of these were women, which amounts to 42.5%. Whereas since 1996 the total number of solicitors holding practicing certificates has grown by 53.7%, the number of women holding practicing certificates has more than doubled, having increased by 107.9% (Law Society statistics). Women now amount to 33.4% of the practicing bar with 4,973 practicing

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and Gisela Shaw. Oxford: Hart Publishing, 2003. 159-174

<sup>23</sup> (1914) 1 Ch. 286

<sup>24</sup> Rose, Neil., *Women Lawyers Paid 21% Less than Men*, Law Society Gazette. 2 March 2006

<sup>25</sup> See, *Women Judges in Post: Statistics, Judiciary of England and Wales*, 1st April 2007, 3 May 2007

women barristers out of 14,890 practicing barristers (Bar Statistics, December 2006).

In 1998, allegations of sexual harassment were made against an equity partner, who had sexually harassed four junior female employees at the Christmas party (7). The accuracy of the complaints was not contested and there was pressure within the partnership for this to be dealt with firmly, but the Tribunal found out that it had been "swept under the carpet," which adds another stratum to the discriminatory "culture" of the firm.

Discrimination does take place in the legal profession. Three symptoms of this sex discrimination are most striking: the pay gap, the glass ceiling, and the difficulties related to maternity leave. Despite the fact that the number of women in the profession has increased dramatically since the 1950s, an important pay gap remains. The Women and Work Commission revealed in March 2006 that women lawyers are paid 21% less than men, which is more than the national pay gap of 13%.<sup>24</sup> These official statistics back up earlier Law Society findings and prompted a call for compulsory gender pay audits for all organizations employing female solicitors. In 1995, the Commercial Lawyer Publication surveyed women partners in the top 50 London firms, The gender differential in earnings (pay gap) is paralleled by a differential in status. For instance, when employed in City firms, women are more likely to work as assistant solicitors than as associates or partners. Women barristers are also confronted to the glass ceiling, which is not restricted to solicitors.<sup>25</sup> The legal reform group JUSTICE noted in 1992 that the proportion of women and ethnic minority lawyers appointed to the first ranks of Assistant Recorder and Recorder was smaller than that of men, and similar claims were brought by the Association of Women Barristers to the Home Affairs Select Committee in 1996.<sup>26</sup>

Even though Parliament has enacted a series of Acts, most of them being relevant for all fields of

[www.judiciary.gov.uk/keyfacts/statistics/women.htm](http://www.judiciary.gov.uk/keyfacts/statistics/women.htm)

<sup>26</sup> Alexandrine Guyard-Nedelec, *Discrimination against Women Lawyers in England and Wales: An Overview*, Gender Forum, International Journal for Gender Studies, Issue, 17, 2007

employment, and some of them being specifically oriented towards the legal profession, like the Courts and Legal Services Act 1990 in order to promote equality and put an end to the previously described discriminatory practices — which are not endemic to the legal profession but sadly enough much more broadly spread. Combined with the action led by the Law Society and the Bar Council, and the research undertaken by the Department for Constitutional Affairs, they should help put an end to the discriminatory culture of the legal profession.<sup>27</sup>

#### Indian Profile

India has the world's second largest legal profession with more than 600,000 lawyers. The predominant service providers are individual lawyers, small or family based firms. Most of the firms are involved in the issues of domestic law and majority work under country's adversarial litigation system. So far as the participation of women in legal profession is concerned, the story is not much different from that of many other countries. For a very long time women were distanced from legal profession. Thus, on 29th August, 1916, a Special Bench of Calcutta High Court, *In re, Regina Guha*<sup>28</sup>, 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 Vs The Law Society*.<sup>29</sup> In tune with this approach, the application of one Miss Sudhanshubala Hazra for enrolment as a pleader to enter the profession of Law was refused on 28th November, 1921 by a Full Bench of the Patna High Court<sup>30</sup>, *In re, Sudhanshubala Hazra* 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 the English 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".<sup>31</sup> Justice Mullick 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".<sup>32</sup>

Just as happened in other countries, Indian women too could cross the cultural barriers that prevented them to gain membership in the legal profession though such changeover is slow. The initial boost for the changeover came from the moral support lent by social reformers like Madhusudan Dass<sup>33</sup> who encouraged Miss Hazra's candidature into legal profession who further took the pains to bring change to the law that erected a barrier to women from entering into legal profession, the active lead taken

<sup>27</sup> *Ibid.*

<sup>28</sup> *I. L. R. 44 Cal. 290*

<sup>29</sup> (1914) 1 Ch. 286

<sup>30</sup> It consisted of Dawson Miller, Chief Justice, Mullick and Jwala Prasad, JJ

<sup>31</sup> Mrs Ramo Devi Gupta, *Advent of Women in Legal Profession*, available at

[www.allahabadhighcourt.in/.../AdventOfWomenInTheProfessionMrsRDGupta.doc](http://www.allahabadhighcourt.in/.../AdventOfWomenInTheProfessionMrsRDGupta.doc)

<sup>32</sup> *Ibid.*

<sup>33</sup> Madusaudan Das in a very forceful and warm letter dated 8th February, 1923 wrote to Sir William Duke, of the India 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"

by Allahabad High Court by enrolling Miss Cornelia Sorabji,<sup>34</sup> as the first Indian Lady, Vakil of not only Allahabad High Court but also of India, on 24th August, 1921 and also the political initiative taken by Dr. Sir Hari Singh Gaur of Nagpur, who was then a member of the Legislative Assembly, a willing champion of the cause of women. It is appropriate here to quote the statements made by the supporters for the amendment moved by Dr. Gaur for the purpose of allowing the entry of women into legal profession.

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".<sup>35</sup>

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 practice 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"<sup>36</sup>.

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".<sup>37</sup>

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 practice 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.

Indian legal profession has now reached a stage where no longer eyebrows would be raised at a woman donning lawyer's attire and defending the cause of justice. Gender parity between men and women lawyers has consistently raised though not to a satisfactory extent. Statistics collected in 2012 reveal that in Andhra Pradesh there are 9605 female lawyers as against 58,147 male lawyers<sup>38</sup> and one woman judicial officer against 29 male judges.<sup>39</sup>

The profile of raising parity of women membership in legal profession cannot however be construed as a significant pathway for the development of women. Many studies conducted on the status of legal profession revealed that on a comparative note women trail behind their counterparts in many aspects. It is apt to say that women being in any profession are perhaps not very different from being in a marriage, in a family, in a community. As long as things are smooth and as long as women conform and are acquiescent, there is no problem.<sup>40</sup>The legal profession, like every other profession, perhaps far more than any other profession, mirrors the cleavages, fissures and conflicts in society. Caste and

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<sup>34</sup> Cornelia Sorabji, was born on 15th of November in 1866 in Nashik, Bombay Presidency, British India to the Reverend Sorabji Karsedji and Francina Ford. She died on 6th of July in 1954 in London, United Kingdom. She became the first woman lawyer of India after admitting to the Allahabad High Court. She also became the first woman of India who graduated from the Bombay University, the first woman who read law at the Somerville College, Oxford University in 1889 and first Indian woman who practiced the law in India as well as Britain.

<sup>35</sup> Cited in Mrs Ramo Devi Gupta, 'Advent of Women in Legal Profession' available at

[www.allahabadhighcourt.in/.../AdventofWomenintheProfessionMrsRDGupta.doc](http://www.allahabadhighcourt.in/.../AdventofWomenintheProfessionMrsRDGupta.doc).

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> <http://www.lawyersclubindia.com/experts/Total-Number-of-Advocates-in-India-38456.asp> (accessed on 11<sup>th</sup> July 2012 cited in Shiva Tokas, *Position of Women in Indian Judiciary*, Internship research paper 2012, Jindal Law school available at [www.socialwatchindia.net](http://www.socialwatchindia.net)

<sup>39</sup> <http://indiancourts.nic.in/sitesmain.htm>

<sup>40</sup> <http://www.asmitacollective.in/shlp.html>

community are important markers. Add to this the fact that although women qualify in equal proportions to men at the entry point of professional courses (this is particularly true of the premier institutions imparting legal education in the country today), there is a progressive decline in the number of women as one moves up the hierarchy. Parallel to this is the progressive decline of professionals as one move down in the caste hierarchy. Is it unreasonable, then, to say that the social profile of the self appointed guardians of honour in the legal profession is predetermined, far from representative, and their capacity to deliver justice severely prejudiced to begin with?<sup>41</sup>

In a research study on ‘Legal Profession for Women: Motivation and Experiences of Women Advocates, an Analysis’<sup>42</sup> the following findings surfaced.

Pursuing of professional courses depends on motivations. Apart from self motivation external sources of motivation too influence the selection of professional courses. The study has revealed that the major source of motivation for pursuing legal studies was from the family members. Relatives too have encouraged the respondent advocates to pursue legal studies to a good extent. Friends, colleagues and others were also responsible for pursuing the profession in case of a few respondent advocates.

Encouragement to Pursue Legal Studies<sup>43</sup>

Age	Family Members	%	Relatives	%	Friends	%	Colleagues	%	Others	%
25-30 Yrs	87	42	10	24	08	36	0	0	07	24
31-35 Yrs	33	16	08	20	01	05	0	0	03	10
36-40 Yrs	28	14	10	24	07	32	0	0	08	28
40-45 Yrs	58	28	13	32	06	27	04	100	11	38
Total	206		41		22		04		29	

Over all Encouragement to pursue Legal Studies<sup>44</sup>

	Respondents	%
Family Members	206	68
Relatives	41	14
Friends	22	07
Colleagues	04	01

Others	29	10
Total	302	100

Encouragement to pursue legal studies comes from very close individuals. It is basically the family members who have profound influence in the choice of professional life.

Women Lawyers Getting Equal Justice in Legal Profession<sup>45</sup>

Years of Profession	Yes	%	No	%	Total
1-4 Yrs	123	55	20	25	143
5-15 Yrs	67	30	48	61	115
16+ Yrs	33	15	11	14	044
Total	223	100	79	100	302

The study has revealed that large majority of 223 women advocates constituting 74% indicated that women lawyers are getting equal justice in legal profession. However, a substantial number of 79 respondent women advocates accounting for 26%

mentioned that women lawyers are not getting equal justice in legal profession. This is really a discouraging trend and indicates the persistence of gender discrimination in our society.

<sup>41</sup> <http://www.asmitacollecive.in/shlp.html>

<sup>42</sup> Dr. M.H.Hullur and dr. Gudaganaver, *Legal Profession for Women: Motivation and Experiences of Women Advocates, an Analysis* Sociology, Vol2, Issue 12, Dec 2013, pp 524-526 The study is based on empirical data (302 women lawyers) collected by

author, from women lawyers practicing, in the twin city of Hubli-Dharwad of Karnataka State.

<sup>43</sup> *Ibid*, Table 1a

<sup>44</sup> *Ibid* Table 1b

<sup>45</sup> *Ibid* Table 2

Women Lawyers Lagging Behind in the Criminal Cases in Legal Practices<sup>46</sup>

Practicing	Yes	%	No	%	Total
High Court	7	6	5	3	12
District Court	10	9	35	19	45
Lower Court	52	44	55	30	106
H-D,H-L,D-:L	27	23	62	34	89
All Above	22	19	28	15	50
Total	117		185		302

The general perception that women lawyers are lagging behind in taking opportunities in the criminal law field of legal practice is not accepted by majority of 185 respondent women advocates (61%).

However, a large number of 117 women advocates have subscribed to the view that women lawyers did lag behind in that field.

Client's Preference for men Lawyers<sup>47</sup>

Education	Yes	%	No	%	Total
B.A.,LL.B	77	50	83	56	160
B.SC.,LL.B	14	09	20	13	34
B.COM.,LL.B	46	30	35	23	81
LL.B.,LL.M	11	07	03	03	14
Phd and Others	05	04	08	05	13
Total	153		149		302

Clients' preference for men lawyers is obvious as men lawyers are believed to have better exposure to legal profession than women lawyers. This general belief leads to women lawyers trying hard to prove their legal proficiency. However, this age old perception is changing gradually in the present environment. This is reflected in the sharp division of opinion amongst the respondent women lawyers.

prime accused, is a senior lawyer who is fairly well known. In addition, Sangeeta left behind a letter addressed to the Chairman of the Bar Council of Andhra Pradesh dated December 1999, complaining of harassment, but did not submit the letter.

Sexual Harassment of Women Legal Professionals in India in the Spotlight

*Sangeeta Sharma Episode*

In 2000, three years later to Vishaka case, Sangeeta Sharma, a young lawyer practising in Hyderabad, Andhra Pradesh has committed suicide on 15 June 2000. In her suicide note she named three lawyers as being directly responsible for her death. The cause: sexual harassment. One of the lawyers named, the

Asmita<sup>48</sup> narrated that<sup>49</sup>

“Before coming to Asmita, she had spoken about the harassment to fellow lawyers, had been asked to "forget it" by the relatively senior men and had received support from a few women. This was not the first time we had received a complaint from a woman lawyer. There have even been instances of women lawyers being physically assaulted in the premises of the High Court. Slander and character assassination have been experiences too common to complain against”.<sup>50</sup>

<sup>46</sup> *Ibid Table 3*

<sup>47</sup> *Ibid Table 4*

<sup>48</sup> *ASMITA* Collective is a Group of Women working in the area of concern to women.

<sup>49</sup> Available at <http://www.asmitacollective.in/shlp.html>.

<sup>50</sup> *Ibid.*

“And it was the same problem yet again. The women who brought the complaints were unwilling to divulge names or were unprepared to fight the issue publicly. We then sent a letter to the Chairman of the Bar Council of A.P., that in the light of the frequency of complaints, the seriousness of the issue and the Supreme Court decision, the code of conduct of lawyers ought to be amended to specifically include sexual harassment within the definition of gross misconduct, and set up mechanisms for dealing with cases, according to the procedure and modalities laid down by the Supreme Court. We did not receive any response. When we reminded the Chairman of the Bar Council of our earlier complaint after Sangeeta's death, we received a reply, which said that sexual harassment would fall under the general definition of professional misconduct or any other misconduct. We would need to approach the Bar Council of India and ask for a change in the statute for any specific changes.”<sup>51</sup>

A petition is also filed in NHRC for consideration of the issue. The Commission issued notices to the Chief Secretary and DGP, Andhra Pradesh asking for an indication of the current status of the criminal investigation. The Government of Andhra Pradesh submitted a report dated 11 July 2000, which indicated that a case had been registered u/s 306 IPC. The report added that during the pendency of investigation, a writ petition had been filed in the High Court which granted a stay on further investigations being undertaken by the police pursuant to the FIR and anticipatory bail was also allowed to one of the accused. Subsequently, the High Court vacated the stay on 11 July 2000 and further investigations in the case were handed over to the CBI. Meanwhile, NHRC Shocked at the contents of the complaint, the Full Commission met on June 28 and observed that in addition to the specific incident alleged in the complaint, the larger issue of sexual harassment of lady advocates whose number was now considerable throughout the country should be considered. Accordingly, such a Committee was constituted on 21 December 2001, under the Chairmanship of Shri Soli J. Sorabjee in his ex-officio capacity to consider all aspects of the problem of sexual harassment of women in the legal

profession and to make suitable recommendations for the penalisation/punishment for those who may be involved. The Committee was also to consider whether amendments were needed to the Advocates Act, 1961 and the Bar Council Rules.

#### *Tara Episode*

Tara (not the real name), a lawyer who had been working at Public Interest Legal Support and Research Centre (PILSARC), Delhi, as a researcher in A Trust set up in 1987 to “provide legal advice, litigation and research support to activists and social action groups in India”, PILSARC has approached Saheli, A women's Organization with a complaint of sexual harassment against the Director of PILSARC and, who is a well known Senior Advocate of the Supreme Court who has always espoused the cause of secularism and human rights. According to Tara, from the beginning the Director, indulged in unwelcome sexually colored remarks, asking her intimate questions about her private life, passing remarks about her physical appearance and even making suggestions about the clothes she should wear. He would frequently summon her to his office on the pretext of work. But very soon, the conversation would deteriorate and he would make verbal sexual advances and sexually colored remarks to her. He would brush aside her protests by saying that they would not be able to work as a team unless she interacted closely with him and they both got to know each other well. Despite her protests, he would give lurid and sexually explicit details of his relationships both past and present with women.

In Saheli's narration<sup>52</sup>, Tara maintained that in the first few months of Tara's employment at PILSARC, the Director was very pleased with her work and at the weekly meetings publicly appreciated her work. However once she had categorically objected to his conduct and rebuffed his sexual advances, his behavior changed dramatically. He would ridicule her work and humiliate her in the presence of colleagues and the staff members even during weekly meetings. He discriminated against her by allotting projects to her and then arbitrarily withdrawing the work. His conduct caused her immense mental

<sup>51</sup>. Ibid.

<sup>52</sup> Case Of Sexual Harassment In An Ngo No Negotiation On Women's Right To A Safe Workplace, Saheli, Women's Resource Centre available at

<https://sites.google.com/site/saheliorgsite/violence/s-exual-harrasment/case-of-sexual-harassment-in-an-ngo>

trauma and ill health, diagnosed as symptoms of stress. He continued to harass her and made the environment so hostile for her that she had no other option but to leave PILSARC. As she found that there was no avenue through which she could formally make a complaint or seek redressal within PILSARC. She then came to Saheli to try and get justice for what she had undergone.

Saheli struggled against odds and finally it could succeed in forcing the Board of PILSARC to re-look at several organizational issues within the organization. Apparently, some steps have been to try and 'neutralise' the disputed Director's power within PILSARC. It has now been stipulated that PILSARC employees will no longer be expected to go to Rajeev Dhavan's personal office and a Complaints Committee now has been set up within PILSARC.

Prior to the limited success, attempt is made to convince that the issue in question is a private matter of PILSARC and that once the complaint is brought to the notice of the organization, Saheli should nothing to do with it. The prime concern expressed by most Board members to Saheli was "What will happen to PILSARC if any action is taken against the Director?" The Board did not to allow the complainant Tara to present her case despite the fact that she had repeatedly expressed her willingness to do so but instead chose to give an opportunity only to the accused Director. Upon the insistence of various organizations that the Board of Trustees should institute a committee of inquiry as per the Supreme Court Guidelines in Vishaka case.

In the description of Saheli, three weeks after the meeting of the Board of Trustees, Saheli received a "Summary Statement" reporting the result of certain investigations having been conducted "in camera". This is a clear misrepresentation of the facts. Treating Tara's meeting with the Chairman of PILSARC itself as a formal enquiry proceeding and presenting 'the findings of this one-man committee' as conclusive is to blatantly whitewash the reality that PILSARC has failed to conform to the law on sexual harassment at the workplace. The letter also cited Saheli's informal meetings with him and (some of) the other board

members as part of the inquiry proceedings, stating further that "a credible case of sexual harassment" by the accused Director could not be made out on the basis of "these findings".<sup>53</sup>

*In the recent times,*

The unpalatable issue of sexual harassment of women in legal profession, hailed to be a noble profession, has once again come into burning spotlight from the time when allegation of sexual harassment is made against the retired Judge of Supreme Court, A.K. Ganguly by a young intern from the National Law School of Calcutta has come into the open. The intern who had accused Justice Ganguly had said in her blog on November 11 that that she had information that "four other girls face sexual harassment from other judges". . The three judge committee concluded that Justice Ganguly had indulged in unwelcome verbal and non-verbal conduct of sexual nature, but did not suggest any action saying it had no jurisdiction in the case." But Considering the fact that the said intern was not an intern on the rolls of the Supreme Court and that the concerned judge had already demitted office on account of superannuation on the date of the incident, no further follow-up action of is required by the court.' At the time of the issue Justice A.K. Ganguly was the Chair Person of Human Rights Commission of West Bengal. Initially he refused to resign. But subsequently he yielded.

In Lucknow Court<sup>54</sup> in Dec 2013, a group of junior women advocates on moved Lucknow bench of the Allahabad High Court, alleging sexual harassment by some male counterparts in the court campus. The HC admitted the petition and constituted a committee, as per Vishaka guidelines, to redress their grievances. A Division Bench comprising Justice Devi Prasad Singh and Justice Ashok Pal Singh directed its registrar to preside over the panel, which will also include five members of the elder committee of Oudh Bar Association. The court nominated additional Advocate General Bulbul Godiyal as woman member of that Committee. The Bench directed the registrar to appoint an officer on special duty to receive complaints from women lawyers and women in

<sup>53</sup> *Ibid.*

<sup>54</sup> Ravi Singh Sisodia, 'UP Lawyers Move High Court against Sexual Harassment in Court', TNN |

Dec 6, 2013, 04.27AM IST, <http://timesofindia.indiatimes.com/india/UP-lawyers-move-HC-against-sexual-harassment-in-court/articleshow/26926876.cms?referral=PM>

general with regard to any incident taking place on the high court premises.

As recently as in Mar 2014, a woman lawyer has made<sup>55</sup> similar allegations against a senior advocate that she was sexually harassed by the senior lawyer, who is old enough to be her father and advances from him were very obsessive and sexual. The woman lawyer further alleged that the senior advocate used to call her at inappropriate times and often sent her sexually explicit emails and messages. The woman claimed that such incidents are common in legal fraternity and said she was divided against taking action when she was being harassed. However, she did not complain as in her own words 'I thought it would affect my profession. I have written the blog to bring up the larger issue,' she was quoted as saying.<sup>56</sup>

#### *Few Positive Responses*

The upsurge of complaints of sexual harassment led the Supreme Court to pass sexual harassment specific regulations, namely, Gender Sensitization and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013, the details of which had been provided in the chapter devoted to the description of law relating to sexual harassment in India. Madras High Court too has passed regulations relating to sexual harassment, it is learnt from the reliable sources that High Court of Andhra Pradesh too has drafted the rules on sexual harassment but the same is awaiting notification yet to come into force.

#### *Arguments to be pondered*

Why is harassment in the legal profession so high and so difficult to speak about? A survey undertaken in the late 1990s by several law students regarding problems faced by women lawyers elicited a standard response from women lawyers to several questions: "No Comment."<sup>57</sup> Several have said in private conversation, that not only would they be thrown out

of the office they were working in if they were to complain about harassment or make an issue of it, but an additional issue is that word would spread that they have created trouble. Silence and tolerance of abuse is the price women pay for apprenticeship. For women being in a profession is perhaps not very different from being in a marriage, in a family, in a community. As long as things are smooth and as long as women conform and are acquiescent, there is no problem. "No Comment" then, is an important strategy for survival.<sup>58</sup>

The lawyers feel cornered and clearly uncomfortable with being in the glare of adverse publicity. There is, as a consequence, a concerted attempt to police women who are willing to speak about the problem, or those who see that there is a problem. The argument is that this is an internal matter that concerns the profession and must not be discussed in public. We have been arguing for over two decades now that the family is no longer a "private space" outside the reach of the rule of law. Violence, murder (such as dowry and sati), and abetment to suicide, are all matters that are no longer private or internal matters of families. They are criminal offences, which will be investigated and adjudicated in the courts of law, in accordance with due process, so that there is an opportunity for the aggrieved party to establish and prove guilt. In this context, where does the argument that complains of a criminal nature between members of the legal community are "internal to the community" stand?<sup>59</sup>

#### CONCLUSION

Legal profession adorns the character of being a noble profession for its association with the pious cause of administration of justice. However, it is pertinent to note that the inherent noble character of legal profession did not insulate the profession from reflecting the typical social models of gender. It is squarely for this reason that legal profession around the world remained men's forte where women were denied access for considerable time. With the passage

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<sup>55</sup>Ritesh Shrivatsava, *Woman Lawyer Accuses Senior Advocate of Sexual Harassment, Sending Obscene Mails*, Z News, Wednesday, March 05, 2014, [http://zeenews.india.com/news/delhi/woman-lawyer-accuses-senior-advocate-of-sexual-harassment-sending-obscene-mails\\_890890.html](http://zeenews.india.com/news/delhi/woman-lawyer-accuses-senior-advocate-of-sexual-harassment-sending-obscene-mails_890890.html)

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Asmita Collective raised this argument in the context of the issue of suicide by Sangeeta Sharma, a young lawyer, due to sexual harassment

of time, legal profession has changed in terms of gender proportion with the incremental entry of significant number of women. However, the uneven power equations to which women in general are exposed to in many other fields of work reflect even in the legal profession according to many studies. Therefore, legal profession is not immune to the evil of sexual harassment which fact is established by few studies conducted in other countries. That India is no exception in this regard has come into limelight with few of the recently reported incidents.

In this background, the author who has the advantage of personal experience as a practicing lawyer for some time prior to her entry into teaching field felt the need to conduct an empirical study to assess the perceptions and experiences relating to sexual harassment in legal profession, awareness about the law and the availability of redress mechanism and expectations regarding the same. The data for this purpose is collected from respondents consisting of different groups, namely, women and men lawyers, judicial officers and also the supporting staff of the courts of the District of Visakhapatnam, State of Andhra Pradesh. The following chapters provide the analysis of data and findings from the same.