

WOMEN IN THE INDIAN JUDICIARY

By Justice Hima Kohli

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Thank you for inviting me to attend the launch of SOWL India's activities for the year 2011. The subject assigned to me is 'Women in the Indian Judiciary'. On noticing the subject, the first thought that came to my mind is that there can be no women in the judiciary, if there were no women in the legal profession and there can be no women in the legal profession if there were no women in the main stream of our society, who were striving to find a place for themselves under the sun. As on date, Indian women have taken giant strides in almost all professional streams, be it legal, medical, the fine arts, science, technology, commerce or humanities. The aforesaid dynamic change in the selection of career options by women is something that has occurred slowly and steadily over the past couple of decades.

In the legal field in earlier times, law was a profession, which was mostly chosen by a woman, who either had a father or a brother or a husband well ensconced in the legal fraternity. It was therefore relatively easy for the daughter of the house to join the chamber of her father or family member without having to worry about breaking the glass ceiling in a male-dominated profession. It was highly unusual to see a woman without a background of law stepping into this profession and excelling. In fact, most women were discouraged from taking this step by their families. It gives me great pleasure to say that today that is no longer true. Women in all courts big or small, and in all cities across the country are shining with their brilliance and giving a tough competition to their male counterparts.

On a more personal note, in my case, there was none in my immediate family, who was remotely connected with the legal profession. Upon completing my post graduation in history, I had planned to take the Civil Services Examination. I got

enrolled in the LLB course at the Campus Law Centre, while dedicating myself to prepare for the preliminary examination. The aforesaid option was exercised by me mainly because most of my peers and batch mates in college opted to join the Administrative Cadre. However, midway through the law course, when I sat for the preliminary examinations and cleared the same, it dawned on me that I was not really cut out to become a bureaucrat and rather, I was quite enjoying the law course. As a result, I completed the LLB course, got my degree, and went on to enroll myself with the Bar Council of India.

Considering the fact that there was not the remotest connection that I had with anyone in the legal fraternity, it was a rather difficult call to choose litigation practice as a career option. What fuelled my desire to take the said option was primarily the prompting of my mother, an avid reader of the fiction novels written by Earl Stanley Gardner, which were replete with court dramas in criminal cases, with well etched out characters such as the famous Solicitor Perry Mason, his Secretary Della Street and the incisive investigator, Paul Drake. That the courtroom dramas played out in the novels that I was fed on were far from reality, dawned on me only when I actually trotted down to Patiala House Courts to take guidance from a friend of a family friend based there. Nothing could be more stark than seeing those wooden tables chained to each other and set in rows after rows under leaky tin sheds, with touts floating all over the place and stray dogs having a run of the place. Thus came crashing the dream of making criminal practice my forte. Instead, I was packed off to the safe civil side and advised to join a Senior Advocate with a large practice to gain experience under him. It so happened that the "him" turned out to be a "her", as I joined the office of late Mrs. Sunanda Bhandare on the eve of her elevation as a Judge of the High Court of Delhi. Within a couple of weeks of my joining her chamber, she got elevated and I was left high and dry with no senior to work under. It was only when she identified an advocate whose chambers I could join, did I land up in the High Court for the first time. The rest is history.

I have narrated the above just to illustrate the stiff challenge faced by a rank outsider, with no legal background, only to be able to gain a toe-hold in the legal profession. I am certain that my story finds resonance amongst many present here. My

experience also emphasizes the fact that irrespective of where one comes from and what one's background is, what ultimately counts is the attempt on the part of a woman to excel in the field and make a mark, by displaying true grit and sheer tenacity.

The classic example of women in judiciary harks back to the Greek & Roman mythology. Goddess Themis, one of the wives of Zeus, was the Greek Goddess of Justice and she was considered the embodiment of divine order, law, and custom. Dike and Astrea, her two daughters, are also considered as Goddesses of Justice and have often been depicted as carrying scales in poetry and folklore. Of a later origin is *Justitia* or Lady Justice, who was the Roman Goddess of Justice. *Justitia* is most often depicted with a set of scales typically suspended from her left hand, upon which she measures the strengths of a case's support and opposition. She is also often seen carrying a double-edged sword in her right hand, symbolizing the power of Reason and Justice, which may be wielded either for or against any party. It is interesting to see that even modern day representations of justice in courts around the world is of a lady justice carrying a sword and scales, who is often blindfolded to symbolize the fair and equal administration of the law, without corruption, avarice, prejudice, or favor.

Closer home, while we have not followed the practice of having the iconography of the Lady Justice with scales in our courtrooms, but if we revisit Indian mythology, it mentions the goddess Bagla Mukhi Devi enshrined at Pitambara Peeth situated in Datia town near the city of Gwalior in Madhya Pradesh. As per the local folk lore, the blessings of this deity are especially solicited by those in the judicial stream to deliver justice in a free and fair manner. It may also be of interest to some that our Supreme Court building was designed by the architects in a shape to project the image of scales of justice with the Central Wing of the building corresponding to the centre beam of the Scales. It appears that the scales of justice embodied in the architecture of the highest court of justice in India, are none other than those that Lady Justice holds in her hands. Hence, it would be reasonably safe to assume that the presence of lady judges in Indian Courts runs far and deep.

Coming back to women in flesh and blood, the first woman to be appointed to the Supreme Court was Justice Fatima Beevi in 1987. She was later followed by the appointment of Justice Sujata Manohar in the year 1994 and Justice Ruma Pal in the

year 2000. As of now, we have only woman judge in the Supreme Court, i.e., Justice Gyan Sudha Misra. There are around 52 women judges gracing the benches in the High Courts all over the country, out of which 7 are in our own High Court at Delhi. Statistics reveal that as on date, there are around 45 women in the Delhi Higher Judicial Service and 91 in the Delhi Judicial Service, which makes it 29% of the 'in position strength' of both the cadres collectively.

While no discernible trend in respect of gender justice can be ascertained from the judgments delivered by the four women judges in the Supreme Court, it cannot be denied that there are some instances where path breaking concepts in women's rights have been addressed by benches of which they were a part. Justice Sujata Manohar was part of the three judge bench in the landmark case of *Vishaka*, where for the first time the sensitive and increasingly common problem of sexual harassment at the workplace was dealt with. It would be safe to assume that a significant contribution must have been made by her in helping her brother judges in developing an understanding of an area of law which was *res integra* and till then had been neglected by the parliamentarians, as no statutory law for the penalization of sexual harassment at the work place existed at that time. Similarly, Justice Ruma Pal, often considered a tough-as-nails judge, through her judgments in *A. Jayachandra* and *Vinita Saxena*, extensively elaborated on the concepts of 'mental cruelty' in a marriage and 'cruelty as a ground for divorce'. Another significant contribution made by her was in the case of *R.D. Upadhyaya*, while dealing with the sensitive issue of the welfare of children of women undertrials and women convicts, often forced to live with their mothers in the prison. From all this, one can gather that when faced with a case of say rape, or cruelty in marriage, etc. women judges are likely to deal with them in the same manner as a fellow brother judge, yet when faced with a hitherto unexplored area of law, especially where gender justice is concerned, they wouldn't hesitate to stray from the conventional path. As a woman and a judge, I think any initiative taken to improve the status of women in society, be it by a male judge or a female judge, must be appreciated and applauded.

Adding another dimension to the women in judiciary are the Mahila Courts. In Delhi, Mahila Courts were established in 1994, and at present there are 11 Mahila Courts functioning in the capital. At the session level, Mahila Courts deal with cases of

kidnapping, procuring minor girls for the purpose of prostitution, rape and of cruelty by husbands or in-laws. The metropolitan magistrates in these courts are assigned cases relating to molestation, rape, kidnapping, as also of domestic violence. These are courts that truly deal with persons living on the margins of the society and the women judges manning them are the foot soldiers who play a pivotal role in the judicial delivery mechanism at the lowest level. These brave women, who sit day in and day out, and hear cases of abuse and severe mistreatment, and to their credit, do not allow themselves to be prejudiced while attempting to do justice in the most neutral and unpartisan manner, are rendering yeoman service to the institution.

To sum up, it is my belief that the pendulum has swung the other way. Women have arrived centre stage and redefined role models. In the judiciary, whether at the higher echelons in the Supreme Court and the High Courts, or at the District level, they have been successfully negotiating around being women and judges at the same time. Given their immense talent and enterprise and inherent sensitivity, it is not surprising that they have made their mark in the legal profession, and as a natural corollary to that is the inroads made by them in the Indian judiciary at all levels. Permit me to rest my case by stating that I do not propose to preach the converted. Your presence today is a gesture of lending support and strength to this fledgling organization christened, "SOWL". I extoll you to put your heart and soul in taking this Association to formidable heights by becoming catalysts for change wherever you are and in whatever you do.

Thank you.
