In Re: Regina Guha

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Court : Kolkata

Decided On : Aug-29-1916

Reported in : 35Ind.Cas.925

Judge : Lancelot Sanderson, C.J. and ;Asutosh Mookerjee, ;William Chitty, ;Teunon and ;Chowdhury, JJ.

Appellant : In Re: Regina Guha

Judgement :

Lancelot Sanderson, C.J.

1. This matter comes before this Court upon a petition of Miss Begina Guha.

2. The circumstances are set out therein as follows:

1. That your petitioner obtained the Degree of the Bachelor of Law of the University of Calcutta in the year 1916.

2. That your petitioner desiring to be admitted to practise as a Pleader in the District of 24-Perganas paid into the Government Treasury of the said District the fee prescribed by Rule 27 of the Rules framed by the Hon'ble High Court under the Legal Practitioners Act and also presented her diploma, the receipt for the said fee and a stamp paper of necessary value of her first certificate to practise to the learned District Judge of 24-Perganas together with the necessary application for admission.

3. That the learned District Judge of 24-Perganas by a memorandum, dated the 3rd April 1916, forwarded the said application to the Hon'ble High Court for orders as to your petitioner's enrolment.

4. That about the 16th of June 1916 your petitioner received a memorandum from the learned District Judge, being Memorandum No. 912 dated 15th June 1916, forwarding for her information a copy of the communication addressed to him by the Registrar of the Appellate Side of the said Hon'ble Court. The said memorandum is annexed herein to and marked with the letter A.

5. That your petitioner accordingly begs humbly to move your Lordships and prays that, in view of the fact that she is a person duly qualified under the rules to be entitled to enrolment as a Pleader, your Lordships may be graciously pleased to order her to be enrolled as such or pass such other necessary orders as to your Lordships may seem fit and proper.

3. In consequence of the petition this Court was formed for the purpose of hearing this application argued and deciding in a judicial capacity what the law relating to the application is. As it is a matter of considerable importance both to the public and the legal profession, I directed that notice should be given to the Advocate-General and the Senior Government Pleader so that we might have the benefit of their assistance. It should be clearly understood that it is not the function of the Court to express any opinion as to whether it is desirable that women should be admitted as Pleaders in the Courts subordinate to the High Court and that this Court was formed merely for the purpose of deciding the question in a judicial capacity.

4. The question depends upon the true construction of the Legal Practitioners Act (XVIII of 1879), Section 6, and the rules made by the High Court in pursuance thereof.

5. It was argued by the learned Counsel for the applicant

(1) That the words used in the said section are large enough to include both sexes and consequently that women are not excluded.

(2) That the rules do not exclude women.

(3) That if the rules do exclude women, the rules are ultra vires.

6. Chapter XI, Part I, of the General Rules of the High Court contains the rules as to the qualification, admission and certificates, etc., of Pleaders and Muktears in Courts subordinate to the High Court framed under Clauses (a), (b), (c) and (d) of Section 6 of Act XVIII of 1879, and Rules 3 to 6 inclusive are the rules directly in point in this matter. The applicant has obtained the Degree of Bachelor of Law at the University of Calcutta, one of the qualifications specified in Rule 3, and has made her application within a year as provided by the said rule.

7. The first question is, what is the proper construction to be placed on Section 6 of the Legal Practitioners Act, 1879. The language used in Section 7 and following sections, such as the words 'him' and 'his'; point to an intention of the Legislature that it was a male person only who could be admitted as a Pleader of the subordinate Courts, but by the General Clauses Act of 1868 (I of 1868), Section 2, it was provided that in all Acts made by the Governor-General of India in Council after that Act should have come into operation, unless there was something repugnant in the subject or context, words importing the masculine gender should be taken to include females: so that the use of the language above referred to in the Act of 1879 is not conclusive.

8. It is necessary, therefore, to consider what was the subject with which the Legislature was dealing and what was the position of affairs relating to the profession of Pleaders at the time the Legal Practitioners Act of 1879 was passed. It is clear that the Legislature was dealing with a Practitioners which was well known and which had been established for a long time.

9. A summary of the Regulations, setting forth the origin of the profession of the Pleaders in Bengal and the reason for their appointment, is to be found in Harington's Analysis, Volume I,

10. The first Regulation dealing with this matter was Regulation VII of 1793, the preamble to which, after referring to the unsatisfactory state of affairs with regard

to the practice in the Courts, provided 'that it is, therefore, indispensably necessary for enabling the Courts duly to administer and. the suitors to obtain justice that the pleading of causes should be made a distinct profession; and that no persons should be admitted to plead in the Courts but men of character and education versed in Muhammadan or Hindu Law and in the Regulations passed by the British Government; and that they should be subjected to rules and restrictions calculated to secure to their clients a diligent and faithful discharge of their trust.' This was the origin of the 'profession' of Pleaders as recognised by the law and it is to be noted that the Pleaders were to be chosen from 'men' of character and education and that they were to be Muhammadans or Hindus.

11. The Regulation by its various clauses provided for the appointment and selection of Pleaders.

12. Clause II. The Sudder Dewanny Adawlat is empowered to appoint, from time to time, such a number of Pleaders of the Muhammadan or Hindu persuasion, as may appear to them necessary to plead the causes of the parties in suits in the Sudder Dewanny Adawlat, the Provincial Courts of Appeal and the Courts of Dewanny Adawlat in the several zillaas and the cities of Patna, Dacca and Murshidabad,'

13. Clause V. The Pleaders are to be selected from amongst the students in the Muhammadan College at Calcutta and the Hindu College at Benares, who may be qualified and be desirous of being admitted to plead in any of the Courts if the Colleges shall not furnish a sufficient number of Pleaders, the Sudder Dewanny Adawlat is to admit any other persons, provided they be Muhammadans or Hindus, previously, however, ascertaining that they are men of good character and liberal education and giving a preference, in all cases, to persons of this description who have been bred to the study of the Hindu or Muhammadan Law.

14. Various Regulations were subsequently parsed. To these I need not refer. In 1814 however, Regulation XXVII was made for the purpose of reducing into one Regulation with amendments and modifications the several rules which had been passed regarding the office of Vakil or native Pleader in the Courts of Civil Judicature.

Whereas it has been deemed expedient to transfer to the Provincial Courts the control now exercised by the Sadder Dewanny Adawlat in the appointment and removal of Vakils or native Pleaders in the zillah and city Courts and in the Provincial Courts, and whereas the speedy adjustment of disputes may be facilitated by empowering the authorised Vakils to receive certain fees for legal opinions furnished by them and by vesting them with authority to act as arbitrators under the general Regulations, and whereas it will contribute to the public convenience to reduce into one Regulation, with amendments and modifications, the whole of the provisions which will be applicable to the office of Vakil or native Pleader, the following rules have been passed by the Governor-General in Council, to be in force from the 1st of February 1815 throughout the whole of the Provinces immediately subject to the Presidency of Port William

Clause 3(1). The Sudder Dewanny Adawlat and the several Provincial Courts are empowered to appoint to the office of Vakil in their respective Courts, such a number of persons being natives of India and duly qualified for the situation as may from time to time appear to them necessary.

Clause 3(3). In the nomination and appointment of persons to the office of Vakil the Judges of the Sudder Dawanny Adawlat of the several Provincial Courts, and of the zilla and City Courts, are restricted to individuals of the Hindu and Muhammadan persuasion and are required to give preference to candidates who may have been educated in any of the Muhammadan or Hindu Colleges established or supported by Government, provided that such candidates are in other respects duly qualified for the situation.

15. By Act I of 1846 it was enacted that Clause III, Section 3, of Regulation XX 711 of 1814 should be repealed and by Section 4 it was provided as follows:

Clause 4. 'And it is hereby enacted that the office of Pleader in the Courts of the East Indian Company shall be open to all persons of whatever nation or religion, provided that no person shall be admitted a Pleader in any of those Courts unless he have obtained a certificate, in such manner as shall be directed by the Sudder Courts, that he is of good character and duly qualified for the office, any law or Regulation to the, contrary notwithstanding.

16. By this clause the restriction that a Pleader must be a Muhammadan or a Hindu was removed and the office of Pleader was thrown open to all persons of whatever nation or religion.

17. It is to be noted that the word 'persons' is used in the section, but from the context it is clear that male persons were referred to.

18. By Act XX of 1865 so much of Regulation XXVII of 1814 as had not already been repealed was thereby repealed and by Section 4 it was provided as follows:

The High Court is hereby authorised and required, within six months after this Act shall take effect in the Territories in which such Court exercises jurisdiction, to make rules for the qualification, admission and enrolment of proper persons to be Pleaders and Muktears of the Courts in such territories for the fees to be paid for the examination, admission and enrolment of such persons and subject to the provisions hereinafter contained for the suspension, and dismissal of the Pleaders and Muktears so admitted and enrolled. The High Court may also from time to time vary and add to such rules.

19. By this section the High Court is the authority to make rules and the persons to be admitted are 'proper persons,' the same words as there used in the Legal Practitioners Act of 1879.

20. Section 5 provides as follows:

Except as hereinafter provided, no person shall appear, plead or act as a Pleader, on appear or act as a Muktear in any Court to which this Act extends, unless he shall have been admitted and enrolled and shall be otherwise duly qualified to practise as a Pleader or as a Muktear, as the case may be, pursuant to the provisions of this Act and unless he shall continue to be so qualified and enrolled at the time of his practising as a Pleader or Muktear as aforesaid: Provided that every person who at the time at which this Act shall come into operation in any part of British India shall be or shall be qualified to act as a Pleader in any Court in such part by virtue of any law, rule or order in force therein shall be entitled to be admitted and enrolled as a Pleader in the High Court pursuant to the provisions of

this Act, without passing any examination but subject to the conditions of any certificate or diploma held by him as to the class of Courts in which such certificate or diploma authorises him to practise.' It is evident from the language used that the Legislature contemplated the admission of male persons only as Pleaders. This is corroborated by the fact that although Section 2 provides that words importing the singular shall include the plural, etc., and Pleader includes Vakil, there is no mention that words importing the masculine gender should include females.

21. In my judgment it is clear that the intention of the Legislature Was to deal with a recognised existing profession, viz., that of Pleaders which up to that time was constituted of men only, and to which men only could belong.

22. In 1868 the first General Clauses Act, already referred to, was passed and it was not retrospective.

23. In 1879 the Legal Practitioners Act was passed. It repealed Act XX of 1865 and it is the Act which is now applicable to this matter.

24. Reading the sections without reference to the General Clauses Act of 1868, they obviously contemplate the admission of a male person only: and the pre-existing disability of women to be admitted as Pleaders was not removed by that Act. The question remains, whether by reason of the application of the aforesaid provisions of the General Clauses Act to the Act of 1879 the Legislature intended to remove the above mentioned pre-existing disability.

25. The subject-matter of the legislation now under consideration was the long established and well recognised profession of Pleaders, which had consisted for over 80 years of men only, and in respect of which it was admitted that no woman had ever yet applied for admission as a Pleader.

26. It is true that the legislation of the past had been to some extent progressive, but only in the direction of removing the restrictions as to the qualifications of men.

27. The provisions of the 1879 Act, upon the matters which are material to this question, were practically a re-enactment of Act XX of 1865 and cannot think that the Legislature in 1879 intended to make such a radical change in the constitution

of the profession of Pleaders as would be caused by the admission of women, merely by the application to the 1879 Act of the provisions of the General Clauses Act of 1868. Further, having regard to the constitution of the profession of Pleaders, existing at the date of the passing of the 1879 Act and to the fact that the whole trend of legislation for a long time had been to confine the profession to men, in my judgment both the subject-matter of the legislation and the context are repugnant to a construction of the Act which would include females.

28. In my judgment, it could not be intended that such a disability as above mentioned should be removed by a mere interpretation clause. This opinion is confirmed by the decision in Bebb v. Law Society (1914) 1 Ch. D. 286 : 83 L.J. Ch. 3363 : 110 L.T. 353 : 58 S.J. 153 : 30 T.L.R. 79. There the disability arose from the Common Law of England, and it was held that the disability could not be removed, even though the Act which was under consideration, itself contained an interpretation clause similar to the one in the General Clauses Act, 1568.

29. In view of the above conclusion, it is not necessary to consider the question as to the applicability of the Common Law of England to this question. I need only mention the reference to it made by the learned Advocate-General, viz., that the Common Law of England obtains in Calcutta and if this is to be taken as a material factor in the construction of the Legal Practitioners Act, 1879, the result might be that there would be a disability upon women in Calcutta and none in the mofussil, a result which could not have been intended by the Legislature.

30. The rules of the High Court in my judgment clearly contemplate the admission of men only as Pleaders in the Sub-ordinate Courts and in view of the conclusion I have arrived at as to the construction of the Legal Practitioners Act of 1879 the rules were made in accordance with, and for the purpose of carrying out the intention of, that Act and are not ultra vires.

31. In my judgment, therefore, the answer to be given to the application must be that as the law now stands Miss Regina Guha is not entitled to be enrolled as a Pleader of the subordinate Courts.

32. We have only to determine what the law is, and if there is to be any change, it is one which must be effected by the Legislature.

Asutosh Mookerjee, J.

33. This is an application by Miss Regina Guha for enrolment as a Pleader in one of the Courts subordinate to this Court, under the rules framed in conformity with Section 6 of the Legal Practitioners Act, 1879. As this is the first instance of an application by a lady for enrolment as a Pleader, her application has been heard by a Special Bench for judicial determination of the question, whether the Legal Practitioners Act contemplated women practitioners. Three questions, consequently, require consideration, namely, first, does the Legal Practitioners Act contemplate women practitioners; secondly, if the Legal Practitioners Act contemplates women practitioners, has the High Court by its rules excluded them; and thirdly, if the rules exclude them, are the rules ultra vires. The applicant contends that as she has been admitted to the Degree of Bachelor of Law by the University of Calcutta she is qualified for enrolment under the rules, although the rules refer in terms to male persons. She relief upon the well-known principle of construction embodied in Section 13 of the General Clauses Act, 1897, that 'in all Acts of the Governor-General in Council and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females'. A provision similar to this, it may be observed, found a place in Section 2. Clause (1), of the General Clauses Act, 1868: 'In this Act, and in all Acts made by the Governor-General of India in Council, after this Act shall have come into operation, unless there be something repugnant to the subject-or context, words importing the masculine gender shall be taken to include females.' This rate of interpretation is not of direct assistance to the petitioner, unless its operation be extended to the construction of statutory-rules. Assume that such extended application is legitimate, still the question remains, whether there is something repugnant in the subject so as to exclude the proposed interpretation. There is thus no escape from the problem, does the Legal Practitioners Act contemplate the existence of women practitioners ?

34. The preamble to the Legal Practitioners Act as also the language used in Section 6 make it plain, what indeed is well known, that the profession of Pleaders was not created by the Legal Practitioners Act. The earliest Regulation on the subject, passed by the Governor-General in Council as a Legislative body, was made on the 1st May 1793 and is known as 'A Regulation for the appointment of Vakils or native Pleaders in the Courts of Civil Judicature in the Provinces of Bengal, Behar and Orissa' (Regulation VII of 1793). The preamble shows that even before the Regulation was made, there was a profession of Vakils in the Courts of Civil Judicature in the British Territories in Bengal, 'Men, who followed the business of a Vakil to obtain a livelihood and appeared in the Courts of Justice or wherever the concerns of their constituents required their attendance.' This is made manifest by an examination of the Regulations for the Administration of Justice made by the Governor-General in Council between the. 21st August 1772 and the 23rd November 1792 and collected by James Edward Colebrooke in his Supplement to the Digest of the Regulations and Laws (1807); to take one illustration only, reference may be made to Sections 46 and 84 of the Regulation for the Administration of Justice passed in Council on the 5th July 1781; these recognize the existence of Vakils, and the context shows that men alone at that time constituted the profession.

35. The preamble to Regulation VII of 1793 describes in vivid terms the mode in which these men discharged their duties, their ignorance of the Laws and Regulations, their lack of regularity and diligence, and their disregard of the interests of their clients. The preamble then proceeds to formulate the necessity for the constitution of a distinct profession and the advantages to the public likely to result from the adoption of such a step: 'it is, therefore, indispensably necessary for enabling the Courts duly to administer and the suitors to, obtain justice, that the pleading of causes should be made a distinct profession; and that no persons should be admitted to plead in the Courts but men of character and education versed in the Muhammadan or Hindu Law and in the Regulations passed by the British Government; and that they should be subjected to rules and restrictions calculated to secure to their clients a diligent and faithful discharge of their trusts.' Later on, the preamble states that in order that 'men of education and respectable character may be solicitous to be admitted as Pleaders in the Courts, their

appointments ought to be secured to them as long as they conform to the Regulations under which they act.' It is beyond controversy, as appears from the language used in the preamble to the Regulation and throughout the various provisions thereof, that the Indian Legislature in 1793 contemplated the admission of men alone as what is described in the Regulation as Public Pleaders.' This was obviously natural, the Legislators themselves had been brought up in a system which knew not women Legal Practitioners and the circumstances of the country intended to be benefited by their legislation rendered it impossible for them to imagine that women could appear in Courts of Justice as Public Pleaders.' This Regulation was repealed and replaced by Regulation XXVII of 1814 passed on the 29th November 1814 for reducing into one Regulation, with amendments and modifications, the several rules which have been passed regarding the office of Vakil or native Pleader in the Courts of Civil Judicature.' The preamble enumerates the changes which were intended to be effected in the pre existing Law on the subject, and it is sufficient for our present purpose to state that there is not the remotest indication of an intention to effect a departure of so fundamental a character as the admission of women into the ranks of Legal Practitioners. On the other hand, we find that throughout the Regulation, language is repeatedly used which is appropriate to men only as Legal Practitioners (see, for instance, Sections 4, 5, 10, 11, 12,13, 14, 18, 20, 21, 22, 30, 35, 37). This Regulation, however, introduced by Section 3, Sub-section 3, the restriction that Pleaders were to be either of the Hindu or Muhammadan religion and that preference was to be given to candidates who might have been educated in any of the Muhammadan or Hindu Colleges established or supported by Government. This restriction was removed by an Act passed on the 7th January 1846 (Act I of 1848, the fourth Section whereof laid down that the office of Pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion,, provided that no person shall be admitted as a Pleader in any of those Courts, unless he have obtained a certificate, in such manner as shall be directed by the Sudder Courts, that he is of good character and duly qualified for the office. Here again, there is no indication that women might be Legal Practitioners; while Section 12 like Section 4 uses, language appropriate only to men practitioners. Before I pass on to the next stage, I may mention that the history of the institution of a legal

profession in the Courts of the East India Company is lucidly set out in the great work on the Bengal Regulations by John Herbert Harington, for many years Chief Judge of the Sudder Court (See Volume I, First Edition, pasre 1471, which states the law as in 1809. and Volume I, 2nd Edition, page 148, which states the law as it stood in 1821). The next legislation on the subject was in 1865, when Act XX of 1365 came into force on the 10th April 1865. Regulation XXVII of 1814, in so far as it had not been already repealed, as also Act I of 1846, Act XVIII of 1852 and Act XX of 1853 were repealed; it may be stated parenthetically that the language used in those two Acts shows that the Legislature contemplated men alone as Legal Practitioners. There is no indication whatever in Act XX of 1865 that the Legislature had in view a departure from what had unquestionably been the Law from before 1793. On the other hand, Section 5, and the form of certificate to be granted to Pleaders as contained in the Second Schedule, make it manifest that in 1SG5, as in 1793, the Legislature contemplated men alone as Legal Practitioners. It is further worthy of note that this Act contains an interpretation clause; Section 2 enacts that; unless there is something repugnant or inconsistent in the subject or context, words in the Act importing the singular number include the plural and words importing the plural number include the singular. This corresponds with what was subsequently enacted in Section 2(2) of the General Clauses Act (I of 1868); but we miss in Act XX of 1865 what does find a place in Section 2(1) of Act I of 1868, namely, the provision that words importing the masculine gender shall be taken to include females. The omission becomes significant, when we find that in the Indian Penal Code (Act XLV of 1860), enacted on the 6th October 1860, the Legislature had in Section 8 stated that the pronoun he and its derivatives are used of any person, whether male or female. The inference is legitimate that if the Legislature in 1865 had contemplated the admission of women as Legal Practitioners, they would have inserted in the interpretation clause a provision about gender as they did in 1860 in the case of the Indian Penal Code. It is not as if they were oblivious of this point. Take, for instance, Act XX of 1865 (Mufassil Small Cause Courts Act), which came into force on the 15th March 1865, that is less than a month before the Pleaders Act, 1865, came into operation we find in the interpretation Clause (Section 4) a provision that 'words importing the masculine gender include females.' Take again Act X of 1865 (the Indian

Succession Act), which came into force on the 10th March 1865, that is, after the Small Cause Courts Act but before the Pleaders Act; we find in the interpretation Clause (Section 3) a provision that words importing the male sex include females. This occurs along with a provision about number which re-appears in the Small Cause Courts Act and in the Pleaders Act; but the provision about gender, as we have seen, re-appears in the Small Cause Courts Act, but not in the Pleaders Act. It thus looks as if the provision about glider had been deliberately omitted from the Pleaders Act. The contrast is emphasised when we take another Act passed a few days later on the 17th April 1865, namely, Act XXIII of 1865 (Punjab Chief Court of Judicature Act), where, in the interpretation Clause (Section 1), we find provisions about both number and gender. The position, then, is that in 1865, when there was no interpretation Statute, when the Legislature used to insert interpretation clauses in various Acts, we find that in Acts made immediately before and after the Pleaders Act, words indicative of the male sex are expressly stated to include the female sex, but there is no such provision in the Pleaders Act: the inference seems almost conclusive that the omission was intentional, and this conclusion is substantially strengthened when we find that from 1772 onwards men alone as Legal Practitioners were in the contemplation of the Legislators and although the Pleaders Act was amended on the 22nd December 1865 by Act XXIX of 1&65, no change was made in this direction. The Pleaders Act, 1865, was, as we have already seen, repealed by the Legal Practitioners Act, 1879, which was passed on the 29th October 1879. Neither the preamble nor the provisions of any of the sections of the Act afford any indication of an intention on the part of the Legislature to widen the profession of Pleaders by the admission of women into its ranks. I do not overlook the fact that the Act of Incorporation of the University of Calcutta (Act II of 1857), which came into force on the 24th January 1857, authorised the Senate to confer degrees in various Faculties inclusive of the Faculty of Law and that notwithstanding the absence of an interpretation clause, the Act of Incorporation has been interpreted to authorise the University to grant degrees to men as well as to women in all Faculties. There may obviously be weighty reasons why in the University Act words importing the masculine gender may be taken to include females, while in the Pleaders Act no such intention can reasonably be attributed to the Legislature; the subject-matters of the two Statutes

and the historical antecedents thereof are fundamentally different. For the reasons stated, I see no escape from the position that the Legislature in this country never contemplated the admission of women to the rank of Legal Practitioners.

36. Reference was made in the course of argument to the fact that under the Common Law of England, women were under a disability to become attorneys or solicitors, and that the disability continued, notwithstanding the interpretation Clause (Section 48) of the Solicitors Act, 1843, which provides that words importing the masculine gender shall extend to a female Bebb v. Law Society (1914) 1 Ch. D. 286 : 83 L.J. Ch. 363 : 110 L.T. 353 : 58 S.J. 153 : 30 T.L.R. 79. The decision just mentioned, no doubt, does not directly assist us in the solution of the question we have to determine; but I think it furnishes valuable aid as to the mode in which the problem should be approached. Cozens Hardy, M.R., referred to Lord Coke (Co. Litt., 128a) to show that women were not allowed to be attorneys, and Lord Coke in his turn relied upon the Mirror of Justices (Book II, Chapter 31)(Selden Society's Edition, page 88; Robinson's Edition, page 137) to show that the law will not suffer women to be attorneys.' The Master of the Rolls then observed that no woman had ever been an attorney-at-law or had applied to be or attempted to be an attorney-at-law. The Solicitors Act, 1843, did not in express terms destroy a pre-existing disability or confer a fresh and independent right; consequently notwithstanding the interpretation clause in the Solicitors Act, 1843, which had to be construed with the previous legislation and the Common Law, it could not be successfully maintained that the Legislature had departed from what had been the constant practice and inveterate usage. [See also the judgment of 'Willis, J. in Chorlton v. Lings 4 C.P. 374 at p. 390 : 38 L.J.C.P. 25 : 19 L.T. 534 : 17 W.R. 284 : 1 Hopw. & C. 1, Co. Litt., 119 (127); 3 Blackstone's Commentary 362; 4 Black-stone's Commentary 395. The line of argument which was unsuccessfully adopted in the case of Bebb v. Law Society (1914) 1 Ch. D. 286 : 83 L.J. Ch. 363 : 110 L.T. 353 : 58 S.J. 153 : 30 T.L.R. 79 has sometimes found favour in the Courts of the United States; but has been on other occasions emphatically repudiated. It is not necessary for my present purpose to review in detail the conflicting principles applied in the different Courts of the United States in the determination of the question; but an examination of their decisions, which are by no means harmonious, discloses that the same difficulty has heen felt there

as elsewhere as to the inference properly deducible from the circumstance that women have not hitherto entered the ranks of the legal profession. In favour of allowing women to practise law under old Statutes which mentioned men only, the Courts have reasoned, first, that every word importing the masculine gender only may extend to and be applied to females [In re Thomas 16 Colo. 441 : 13 L.R.A. 538]; secondly, that Statutes, whenever they might have been passed, should be construed as if they were recently enacted and not with reference to what was in the mind of the Legislature at the time of their enactment [In re Hall 50 Conn. 131 : 47 Am. Rep. 625]; thirdly, that all Statutes are to be construed, as far as possible, in favour of equality of rights, and that all restrictions upon human liberty and all claims for special privileges are to be regarded as having a presumption of law against them [In re Leach 134 Ind. 665 at p. 671 : 21 L.R.A. 701, In re Hall 50 Conn. 131 : 47 Am. Rep. 625]; and fourthly, that the status of women has, in the eye of law and in popular acceptation, so changed as not only to permit their admission to the Bar but practically to demand it. [In re Thomas 16 Colo. 441 : 13 L.R.A. 538], [In re Hall 50 Conn. 131 : 47 Am. Rep. 625]. In refusing to admit women to practise law, the reasoning employed is substantially the opposite of that which favours their admission, to the Bar, namely, first, that words importing the masculine gender cannot be read so as to include women, unless the subject-matter and the context justify such a construction [In re Maddox (1901) 93 Md. 727 : 55 L.R.A. 298]; secondly, that as the Legislature never contemplated the admission of women, as indicated by the history of the profession, words of the masculine gender in the Statutes should not be interpreted to include women [In re Robinson 131 Mass. 376 : 41 Am. Rep. 239, Re Leonard 12 Oreg. 93 : 53 Am. Rep. 323, In re Goodell 39 Wis. 232 : 20 Am. Rep. 42]; thirdly, that an extended interpretation should not be put on Statutes, because women are generally unfitted for the duties of the legal profession [In re Bradwell 55 Ill. 535 at p. 539, In re Lockwood V.U.S. 9 Ct. C. 346]; and fourthly, that if the status of women has altered in the eye of law and in popular acceptation, the proper remedy is legislation and not an alteration of the law in the disguise of judicial exposition of the existing law [In re Maddox (1901) 93 Md. 727 : 55 L.R.A. 298, In re Robinson 131 Mass. 376 : 41 Am. Rep. 239, In re Leonard 12 Oreg. 93 : 53 Am. Rep. 323, In re Bradwell 55 Ill. 535 at p. 539, Ex parte Griffin 71 S.W. 746]. The most

powerful opinion in the Courts of the United States against the construction of a Statute in terms applicable to men only, so as to confer a new privilege upon women, is that of Chief Justice Gray in In re Robinson 131 Mass. 376 : 41 Am. Rep. 239, where he emphasised the impropriety of an extended construction of a Statute in the absence of all indications of an intention on the part of the Legislature to reverse the policy of their predecessors or to introduce a fundamental change in long established principles of law. To the same effect are the weighty words of Lawrence, J., in In re Bradwell 55 Ill. 535 at p. 539: 'Female attorneys-at-law have been unknown in England, and a proposition that a woman should enter the Courts of Westminster Hall in that capacity or as a Barrister would have created hardly less astonishment than one that she should ascend the Bench of Bishops or be elected to a seat in the House of Commons.' If it is maintained that a change of so radical a character has been effected in the law it must be shown that there is express legislation to that effect' see also Myra Bradwell v. State of Illinois 16 Wallace. 130 : 21 L.E. 442 and In re Lockwood 154 U.S. 116 : 38 L.E. 116, where the Supreme Court of the United States held that in view of the familiar history of the constitution of the profession, the term 'person' or citizen' in a Statute relating to the enrolment of attorneys and counsellors-at-law could not be deemed to include a woman]. The question was elaborately discussed recently by a Full Bench of the Supreme Court of New Burnswick in the case of Re French (16), and the Court came unanimously to the conclusion that statutory authority in express terms is necessary to enable a woman to be admitted to the ranks of the profession; in other words, that the intention of the Legislature to make a radical change must be made out beyond doubt.

37. It will be noticed that Swinfen Eadey, L.J., in his judgment in the case of Bebb v. Law Society (1914) 1 Ch. D. 286 : 83 L.J. Ch. 363 : 110 L.T. 353 : 58 S.J. 153 : 30 T.L.R. 79 applied to the matter before him the following passage from the speech of Lord Loreburn, L.C in Nairn v. St. Andrews University (1909) A.C. 147 at p. 160 : 78 L.J.P.C. 54 : 100 L.T. 96 : 53 S.J. 161 : 25 T.L.R. 160:

Not only has it been the constant tradition, alike of all the three kingdoms, but it has also been the constant practice, so far as we have knowledge of what has happened from the earliest times down to this day. Only the clearest proof that a

different state of things prevailed in ancient times could be entertained by a Court of Law in probing the origin of so inveterate an usage.

38. It is interesting to investigate the matter from the point of view thus indicated. We have seen that ever since the foundation of British Courts in this country in 1772, women have never been admitted to the rank of legal practitioners. It is by no means easy to determine with absolute certainty whether women w ere recognised as legal practitioners in Hindu or Muhammadan Courts in this country. As, regards Hindu Courts, it is clear that the legal profession existed in the seventh century of the Christian era, when Asahaya wrote his commentary on the Institutes of Narada (see the edition of Narada Smriti, edited by Joly, for the Bibliotheca Indica Series, Book I, verse 6, page 48; Sacred Books of the Ea3t series, volume XXXIII, page 43; see also Introduction, section J I, verse 22, S.B.E. Volume XXXIII, page 29). To the same effect are texts of Vrihaspati, Katyayana and Vyasa quoted by Raghunandan in his Vyavahara Tatwa. It is also fairly clear from Buddhistic books that the profession of lawyers existed in the first century before the Christian era; they were known as 'sellers of' law', 'or traders in law', who 'explained and re-explained, argued and re-argued' [Milinda Panho, Book V, 23, Trenckner's Edition, pages 344, 345; translation by Rhys Davids, Sacred Book of the East, Volume XXXVI, pages 236-238]. There are also references to Pleaders in the Dhammathats or the Laws of Manu [Richardson's Laws of Manu page 50]; Similarly, the Sukraniti (IV, 5, 10, 13, 26, 80-82) mentions Pleaders. It is remarkable that wherever Pleaders or Advocates are so mentioned the reference is to men and not to women. I cannot find any instance where in Hindu or Buddhistic times the jurists contemplated the possibility of women as members of the legal profession. As regards the Courts in Muhammadan times in this country, I have not been able to obtain any information, but I am not unmindful that there are indications that the legal position of women under the Islamic Law, as administered in countries beyond India, was based on very advanced conceptions. Thus, Syed Ameer Ali observes, in his Lecture on the Legal Position of women in Islam (page 21), that Abu Hanifa, the founder of the Hanfia School of Musalman Law had declared in the eighth century of the Christian era, that a woman was entitled to hold the office of Judge or Qadi equally with a man. A'l Suyuti in his History of the Caliphs (Tarikh-ul-Khulafa, page 391) states that Shaab or Shaghab,

the mother of the, Abbasid Caliph-al-Muqtadir (295 A.H. : 907 A.D.) herself presided at the High Court of Appeal, listened to applications surrounded by Qadis and Dignitaries of State and issued edicts in her own writing. In the celebrated Maqamat or Assemblies of Al Hariri (Assembly IX tr. Chenery, and Assembly XL, tr. Steingass, both in the Oriental Translation Fund, New Series), we find instances of women litigants appearing before Qadis and holding their own against their husbands or other male adversaries (see also Kitab-ul-Adhkeya of Ibn-al-Jouzi published in Cairo, which records many instances of women litigants appearing before Caliph Omar, Abu Hanifa, and other eminent doctors of Muhammadan Jurisprudence). Even in Islam, however, there have been rifts and the author of the well known work Al-Ashbah Wa'l-Nazair (Analogies and Precedents, Lucknow Edition, page 507) urges that women should not be invested with the office of Qadi, though it may be lawful and valid for her to hold the appointment, excepting matters of criminal law. The substance of the matter is that no trace of women legal practitioners can be found in Hindu or Buddhistic times, and though the Islamic Law may have tolerated the appearance of women litigants in Court and possibly the appointment of women as Judges, there is no trace of women legal practitioners in the Courts of this country during the Muhammadan period. When the British Courts were first constituted in 1772, the rulers found men alone as Legal Practitioners, and when in 1793, for reasons assigned in the preamble to Regulation VII, the profession was, as it were, re-organised and given a recognised legal status, the Legislators contemplated men alone as members of the profession. There has never been a departure from that policy. It is impossible for us to hold that, on the law as it stands, women are entitled to be admitted to the ranks of the legal profession; when I say this, I do not forget that our duty as Judges of this Court is strictly limited to a declaration of the Law as it is; whether any change in that Law would be wise or expedient is a question, not for the Court, but for the Legislature. In my opinion, there is no possible escape from the conclusion that the application must be refused.

Chitty, J.

39. This is an application made by Miss Regina Guha under Rule 18 of the rules framed by this Court under Section 6 of the Legal Practitioners Act (XVIII of 1879), praying that she may be enrolled as a Pleader and permitted to practise as such in the subordinate Courts of the 24-Perganas. It is conceded that she possesses the necessary qualifications required by the rules and that she has paid the fees prescribed by Rule 27. The only question is whether, as the law and our rules now stand, a person of the female sex can be admitted as a Pleader. We are not here to say what we think the law ought to be, but what it is. Counsel for the petitioner based his argument on the interpretation to be placed on the word 'person' and the pronouns following it in the Legal Practitioners Act of 1879. By Section 2(1) of the General Clauses Act, I of 1868, which governed the Act of 1879, 'words importing the masculine gender shall be taken to include females.' It was argued that by virtue of this provision the word 'person' in the Act of 1879 must be taken to mean a person of either sex, the pronouns following and referring to that word 'he,' 'him', 'his' being read as 'he' or 'she,' 'him' or 'her,' 'his' or 'hers,' and so forth. The same argument was used without success in the case of Bebb v. Law Society (1914) 1 Ch. D. 286 : 83 L.J. Ch. 363 : 110 L.T. 353 : 58 S.J. 153 : 30 T.L.R. 79 where a lady in England was desirous of being admitted as a Solicitor. Section 48 of the Act of 1843, under which she applied, contained a similar provision. It was, however, pointed out that that section, like Section 2 of the General Clauses Act of 1868, is only to be employed, where there is nothing repugnant in the subject or context. It was held in that case that, inasmuch as there had never been a solicitor of the female sex, the Act of 1843, which neither created a new right nor removed an existing disability, did not contemplate such a contingency. So in the case before us the Legal Practitioners Act of 1879 was not framed to create a new profession but to regulate one which had been in existence for many years. The first Regulation which we find dealing with Pleaders' profession is Regulation VII of 1793. This described them as 'men' and provided, that they must be Hindus or Muhammadans. Successive Regulations and Acts were passed, in which no doubt the class of persons eligible was gradually widened and enlarged, but in which there was never any question as to the sex of the profession. Thus we find Regulation X XVII of 1814, Act I of 1846, Act XVIII of 1852, and Act XX of 1865 all dealing with the subject. Before the passing of the General Clauses Act of 1868 it

was necessary to have a special section providing that words importing the masculine gender should be taken to include females (e.g., Indian Penal Code Act, XLV of 1860, Section 8). No such section is to be found in any of the Regulations or Acts above referred to. Although in India in the matter of Pleaders one may not be able to go back so far as they did in England in the matter of solicitors, we find that the profession of Pleaders has been in existence for over 120 years as a profession, and that never during that period did any woman become enrolled, or, so far as we know, apply to be enrolled, as a Pleader. We may, therefore, conclude that in passing the Legal Practitioners Act of 1879 the Legislature did not contemplate the enrolment of Pleaders of the female sex, and to read the Act to include females would be certainly repugnant to the subject. I feel some doubt whether the General Clauses Act can apply to rules framed by this Court. No doubt in framing such rules under an Act of the Legislature the Court should not use any particular expression or word in a different sense to that applied to the particular expression or word by the Act itself. But this does not mean that in framing those rules the Court must be taken to have framed them for women as well as men. The rules were framed to meet existing circumstances, that is to say, a profession of Pleaders consisting entirely of men, and cannot by implication be read as including Pleaders of the opposite sex. It has not been, and indeed could not successfully be, argued that the rules as they stand are ultra vires. As the Law stands 1 am of opinion that a woman cannot be enrolled as a Pleader. J, therefore, agree that the application should be refused.

Teunon, J.

40. I agree in the judgment that has been delivered by the learned Chief Justice and have nothing further to add.

Chaudhuri, J.

41. I also agree in the judgment delivered by the learned Chief Justice and have nothing further to add.