

RESPECTING THE OLD

This article refers to the history and functions of Bar Council as well as duties and traditions of a lawyer.

This speech was delivered on 16.03.2013 in a function organised by Chhattisgarh State Bar Council to felicitate the lawyers completing 50 years of practice.

It is a privilege and honour to preside over a function organised by Chhattisgarh State Bar Council, the ultimate conscious keeper of the lawyers in the State; especially the one to felicitate lawyers completing 50 years in the profession.

Since establishment of first British court in 1672, the legal profession has travelled a long distance. At that time, admission of attorneys was placed in the hands of the Governor-in-Council.

Mayor's Courts were established in the Presidency towns around 1726 with an appeal to Governor-in-Council and then to the Privy Council. They took the right to admit or dismiss an attorney in their own hands.

The Supreme Courts were established in the Presidency towns (1774 in Calcutta, 1801 in Madras, and 1824 in Bombay). The charter establishing the Supreme Court gave them rights to enrol and prohibit advocates and attorneys.

In *Mufasil* towns, the situation was different. Vakils had started appearing in the courts of Nawabs; Bengal Regulation VII of 1793 permitted admissions of persons (pleaders) to plead.

After establishment of the High Courts, six grades of legal practitioners, namely (a) Advocates, (b) Attorneys (Solicitors), (c) Vakils, (d) Pleaders, (e) Mukhtars, and (f) Revenue Agents came about. The Legal Practitioners Act, 1879 brought them under one system, the jurisdiction of the High Courts.

The Legal Practitioners Act 1879 provided only 'person' to be enrolled. As at that time, the courts world over were holding that women were not included in the word 'person', similar interpretation was given to the word 'person' in this Act. The women were not permitted to be enrolled.

In 1916 {*In re Regina Guha* ILR 44 Calcutta 290= 35 IC 925 (29.8.1916)}, a five judge bench of the Calcutta High Court rejected the application of a woman for enrolment.

The Allahabad High Court enrolled a woman named Cornelia Sorabji on August 9, 1921 and became the first court to do so. Nevertheless, a three judge bench of the Patna High Court {In re Sudhansu Bala Hazra AIR 1922 Patna 269 (28.11.1921)} chose to follow Calcutta High Court and not the Allahabad High Court.

The Legal Practitioners (Women) Act, 1923 was enacted to overrule full bench decisions of Calcutta and Patna High Courts. It prohibited discrimination on the basis of sex in the matter of enrolment.

The Indian Bar Councils Act, 1926 required each High Court to constitute a Bar Council. The Bar Council was entrusted to decide all matters about legal education, qualification for enrolment, discipline and control of the legal professionals but the real power lay with the High Courts that retained the power to admit or refuse admission to enrol an advocate. It also provided that a rule be framed that women will not be disqualified to be enrolled as an advocate on the ground of sex alone.

The Advocates Act, 1961 was a step further. It has entrusted the control in the hands of lawyers: they select their own Bar Council that enrolls and disciplines them. Thus, now a great responsibility lies on the shoulders of the Bar Councils to keep up the high traditions of the advocates. It is because of these rich customs that the advocates were able to command respect and play important role in a nation's development.

The lawyers played a major role in our freedom struggle. Mahatma Gandhi, Mohammad Ali Jinnah, Jawarhal Nehru, Sardar Vallabh Bhai Patel, Dr. Rajendra Prasad and Dadabhai Naoroji, were lawyers. Lawyers have also played a prominent role during emergency, the dark period in our independent India. Without them, restoration of liberty was not possible. But this appears to be changing.

Many seem to agree with Jonathan Swift's observation in Gulliver's travels (A Voyage to the Country of the Houyhnhnms) that '*[lawyers are] a society of men bred up with their youth to prove that black is white and white is black accordingly as they are paid.*' At another place he says, that '*[they have] a peculiar cant and jargon of their own that no mortal can understand.*'



Gulliver in discussion with Houyhnhnms (1856 Illustration by J.J. Grandville.) from Wikipedia

The Bar Council has to make efforts to change the public perception and inculcate high traditions. This does not happen, when it calls for boycotting the courts: it rather puts them down. This is how Fali S Nariman, a leading member of lawyers' fraternity explains in his book 'India's Legal System: Can it be Saved ':

'We demean ourselves and our profession when we resolve to strike work, and so paralyse the working of the court, tribunals and statutory authority where public cases and causes demand our expertise, our intercession and assistance.'

The Bar council will do well to amend it ways.

The other guiding principle in changing the mindset of the society and keeping up traditions is to 'encourage the young and respect the old '. I am happy that Chhattisgarh State Bar Council has organised this function to honour the lawyers who have completed 50 years in the profession. They are respecting the old. My good wishes to the Chhattisgarh State Bar Council to successfully bear the responsibilities entrusted to it.

Jai Hind.