

# IPBA Journal

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NEWS & LEGAL UPDATE



INTER-PACIFIC  
BAR ASSOCIATION

# IPBA 2020 SHANGHAI

## 30th Inter-Pacific Bar Association Annual Meeting & Conference

🕒 18-21 April, 2021

🏠 Shanghai International Convention Center



# IPBA 2020

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# IPBA Journal

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## The President's Message

Jack Li  
President



### We Are Together

As the autumn leaves flutter to the ground, we understand that everything is fleeting. After a few months of rest, green leaves will slowly emerge until the tree is vibrant with life once again. We should realise that we are resilient and will come back stronger than before.

#### IPBA Webinars

Five exciting IPBA webinars were held since May for the first time in IPBA history: 'Responding to the COVID Pandemic' on 14 May; 'International Trade in a Time of Crisis' on 7 September; 'Legal Professionals Working from Home due to COVID-19: the New Normal?' on 24 September; 'ICSID & UNCITRAL Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement' on 28 September; and 'Recent Trends in Foreign Investment Control: A Global Perspective' on 22 October. These IPBA webinars were attended by over 400 business lawyers from all over the world who actively participated with high enthusiasm during the interactive sessions. You can find videos of all webinars on the IPBA website in the 'Gallery' section. There are already several webinars being planned for November and December, so be sure to check the 'Events' section of the IPBA website for the latest details.

The COVID-19 virus has been spreading around the world, but the virus cannot stop our mutual communication. The ICSID and UNCITRAL recently released a 'Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement' addressing matters such as independence and impartiality and the duty to conduct proceedings with integrity, fairness, efficiency and civility. I do think the IPBA webinar held on 28 September, which included prominent speakers from private practice, government and the institutions named, will attract more attention among our IPBA fellows. This webinar was very timely, and the

interpretation and comments of experts were helpful for members of the IPBA and other experts to provide valuable suggestions on the improvement of the standards and provide reference and guidance for settlement in investor-state disputes.

Through our tireless efforts, world trade has revived sharply. The China International Fair for Trade in Service 2020 was held in Beijing in early September; the first Shanghai Bund Fintech Conference was successfully held on 24 September; a seminar on legal service for the Shanghai International Financial Centre was successfully held on 29 September; and the third China International Import Expo was held in Shanghai in November. Many mainland Chinese members of the IPBA participated in these events. I am convinced that people will eventually be back on track. I warmly welcome the members and experts of the IPBA to participate in the 30th Annual Meeting and Conference, to be held in Shanghai in April 2021, to share your experiences in providing legal support including international arbitration in international economic and trade activities.

#### We Are Together—the Birth of the IPBA Shanghai Conference Anthem

On 13 October 2019, the IPBA Mid-Year Council Meeting was held in the famous Italian city of Milan. As the then President-Elect, I reported on the progress of the preparations for the Shanghai Conference, when the first annual meeting anthem became one of then President Francis Xavier's motions. Shanghai has become the pioneer in creating such an anthem.

Mr Peng Cheng, a composer who graduated from the Shanghai Conservatory of Music, wrote the composition for the anthem. Peng Cheng is a highly rated pop musician in China and one of the top ten outstanding young people in Shanghai; he wrote the theme song *Young Battlefield* and

the song for the TV program *Come on! Good Man*, among other popular songs. Xu Qian, a well-known lyricist, who also graduated from the Shanghai Conservatory of Music, was invited to create lyrics for the song.

The song was inspired by the establishment of the IPBA in April 1991 under the Spirit of Katsuura. The stone tablet on which the goals and purposes of the IPBA are written still stands in Katsuura, Chiba Prefecture. These include: friendship, ties, candid exchanges of opinions, understanding and tolerance of each other's opinions and providing opportunities to express the Spirit of Katsuura.

Members of the IPBA come from over 60 countries and regions on five continents, which was the basis for the lyrics suggesting, 'You were born in Asia and grew up on five continents. The Pacific Ocean is your nourishment, and your brothers and sisters are your family. IPBA promotes the economy, respects the rule of law, and serves humanity. You are youthful, embrace the Pacific, embrace the world, and embrace brothers and sisters. IPBA, IPBA, IPBA!'

On 29 April 2020, the five-minute anthem *We Are Together* was released. It is expressed by a natural vocal duet in Chinese and English with a beautiful melody and exciting lyrics.

The anthem of the 30th Shanghai Annual Meeting of the IPBA has quickly spread among friends from all over the world. In spite of, or maybe because of, the COVID-19 pandemic, the song touches the hearts of people. Positive comments have already been received from IPBA officers, Council members, past leaders and general members; leaders of the Shanghai Municipal Bureau of Justice; Director of the Legal Work Committee of the Standing Committee of the Shanghai Municipal People's Congress; President of the Shanghai University of Political Science and Law; leaders of the All China Lawyers Association; leaders of the Shanghai Bar Association; and the Shanghai Law Society. Please listen to the song on the IPBA website: <https://ipba.org/about-us/we-are-together/246/>.

The pandemic cannot stop the enthusiasm and passion of our business lawyers from various countries and regions for exchange and mutual learning on the rule of law and civilisation. Nature presents us with beauty after testing us with harsh conditions: a rainbow often appears soon after a storm. We therefore hope and expect the IPBA 30th Annual Meeting & Conference to kick off on the banks of the Huangpu River as scheduled.

Jack LI  
President

## We Are Together

你生在亚洲 长于五洲  
不同血脉却汇聚共同的追求  
Spirit of Katsuura 初心相  
守智慧的手 情相牵  
真诚与爱 伴永久  
You were born in Asia and  
Grown up in the world  
With different blood  
But common pursuit  
Spirit of Katsuura, heart to heart  
Hand in hand in wisdom  
Love and sincere forever

太平洋的风吹动友谊的纽带  
把五湖四海兄弟姐妹聚一起来  
每一次见你都有新风采  
对青春的你 有无限期待  
携手去点亮每一份精彩  
We are the spirit, IPBA  
We are the family, IPBA  
We are forever, IPBA  
We are together, IPBA



## The Secretary-General's Message

**Michael Burian**  
Secretary-General



Dear IPBA Members,

As we approach the close of this tumultuous year, it is time to look back on the events of these past months. Unfortunately, some of our events could not take place as initially planned as this unprecedented pandemic effectively shut down the daily processes in our lives as well as many activities of the IPBA worldwide. Nevertheless, we are proud to say that we were still able to organise interesting and well-attended online lectures, panels and seminars and I want to express my gratitude to everyone who helped organise them. Some events still had to be postponed, such as the 30th Annual Meeting and Conference which is now scheduled to take place on 18–22 April 2021 in Shanghai. As Shanghai has never before hosted the annual conference of an international legal association, it makes it even more special to us, in addition to the fact that we will celebrate the IPBA's 30th anniversary next year. Depending on travel restrictions, we are prepared to hold the conference as a combined on-site/online event. You can already pre-register online or contact our conference organisers if you have questions about the registration or the event itself (<https://ipba2020.medmeeting.org/en>).

As for all of us, 2020 was a very special year with many firsts for the IPBA. After holding the Annual General Meeting completely online in June 2020, on 28 September we hosted a webinar on 'ICSID & UNCITRAL: Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement', organised by the IPBA Investment Arbitration Sub-Committee of the Dispute Resolution & Arbitration Committee, with speakers from Korea, the US, Austria, France and Canada. On 18–19 October, we held our Mid-Year Council Meeting via Zoom in conjunction with a webinar on 'Recent Trends in Foreign Investment Control' on 22 October 2020, presented by members of the Cross-Border Investment Committee. During this webinar, speakers from Germany, India, Japan, Australia and China discussed the impact of tighter controls brought

on by shifting regimes as well as the COVID-19 pandemic. The speakers discussed the most recent and upcoming changes in their jurisdictions' regulatory landscapes, prominent investment control cases and the impact on practices for outbound and inbound M&A transactions. This was followed by a webinar on 10 November focusing on 'Outbound Investment from China into Benelux/Europe - Legal Issues in M&A Practice'. Speakers from China, Belgium and the Netherlands presented the situation from their own jurisdiction's perspective, with an active Q&A session following. These webinars will continue into the foreseeable future, with one in December and at least one planned for January, so check the IPBA website for the latest details.

Although our lives, as well as IPBA activities, will probably continue to be affected by the ongoing pandemic in the upcoming year, we are also committed to staying connected with all of our colleagues—now digitally rather than face-to-face—but we continue to share the same interests and objectives. The past IPBA events show that it is indeed difficult to maintain our usual schedule, but it remains possible if we all work together and take advantage of the available online resources. We all hope that the global economy will be able to climb out of the depths to which it plummeted during the beginning of this year and that we as an organisation will be able to experience a fruitful 30th-anniversary year.

I hope that all IPBA members as well as your loved ones remain healthy and well during these difficult times and I sincerely believe that we can overcome this health crisis if we all look after each other's needs and keep acting responsibly.

**Michael Burian**  
Secretary-General



## Message to the Reader

**Priti Suri**

Chair – Publications Committee, IPBA

Dear Reader,

Welcome to the last and an extremely special milestone issue of 2020. This is the 100th edition of *IPBA Journal* and the first time that the focus is on Women in Law. While women make up increasing proportions of the legal profession globally, their progress differs dramatically and is often shaped both by culture and country. Today, the legal profession stands at an important point. 2020 will be remembered as the year that caused human and economic devastation globally when millions have fallen sick and industries have been crippled or shut down entirely. The unpredictability of the situation is mind-numbing. Overnight, the legal landscape has had to reinvent itself and continues to adapt to the challenges of fighting with an unknown enemy. While reinventing itself, the traditional ecosystem of legal practice is under an increasing pressure to make the profession's commitment to the historical ideals of equality and the rule of law more relevant than ever.

While the number of women joining the legal profession has been on an upward trajectory in recent decades and women lawyers can be found in leadership positions in numerous legal institutions globally, the percentage in top positions is not what it should be and is woefully far below their representation in the profession. While I cannot provide statistics for every country, as an illustration, in the UK over 60 per cent of law graduates are women, and despite vocal support for diversity the numbers of law firm partners have remained below 20 per cent. This problem is not confined to the UK; rather, it remains a global issue. The gap between women who graduate and their corresponding representation at leadership levels needs to be addressed by law firms and corporations alike. Often, this lack of sustainability of women in the legal profession or inability to get to the top is explained due to their need to start a family and the consequential

commitment towards them. But, are organizations doing enough to prevent talented women from leaving the workplace because they want to have a family? And what is the explanation for those who may continue to work as aggressively even after becoming a parent and yet do not reach leadership roles? Clearly, law firms and companies need to look inwards, at their systems, promotion policies and assess if they walk the talk when it comes to inclusion and actually invest in the women who deserve to be promoted. Simply put, it is not entirely true that there is a lot of diversity in the true sense and women can really rise up to the top. It would be correct to state that while there is a lot of good work happening everywhere, a lot more needs to be done. The other greatly debated issues on the topic include bias (conscious and unconscious), mentoring, networking, building and retaining clients, work-life balance and the wage gap. On the last, I have no statistics to support my views but I would imagine, for instance, there are inherent perceptions of what a woman lawyer can or cannot do and such perceptions may determine remuneration.

Women are naturally predisposed to tackle multiple roles at home and at work. They should not wait for opportunities; instead seek and ask for them. Many times, roles can be created or additional responsibilities given. It is necessary to work relentlessly on expanding skill sets and pursue learning opportunities, be it Six Sigma, MBA, finance, etc., that prove useful in taking a holistic view of a business. Increasingly, the common myth that women do not understand business is changing. Then, self-promotion is good promotion. Women naturally expect their work to speak for itself, but that may not suffice. It is necessary to promote achievements and build a network of influencers internally and externally. Women are also able to

diffuse many tense situations in addition to bringing in a strong sense of empathy into the workplace and boardrooms. Relationship building is a skill that comes naturally to women and is instrumental in taking up any business roles and managing stakeholders.

Against that backdrop, in the present edition, the authors have covered vast, significant ground. In the first article titled 'Women in Law in China', Ms Yingjie (Emily) Yang, a Chinese and NY-licensed lawyer, analyses both the legislative and judicial perspective of women lawyers. She notes that discrimination in law threatens women's economic positions, career growth and work-life balance, and while significant progress has been made to ensure protective actions in law and regulations, it is not enough and the two wings of government and judiciary need to do more to protect women lawyers.

The second article is by Ms Anne Durez, a seasoned Paris-based in-house lawyer who is passionate about the topic. 'In Professional Equality Between Women and Men in France: Myth or Reality?', Anne examines how professional equality represents an economic, legal, societal and democratic challenge and how essential it is to shift from a theoretical equality to a real one. This requires, amongst others, a shift away from stereotypical perceptions of what women can and cannot do, and underscores the necessity for women to broaden their strengths and expertise.

The third article, co-authored by Manjula Chawla, Ritika Ganju and Kripa Kathuria, from India is on 'Paving the Growth Path for Constructive Participation of Women: A Step Beyond Feminism'. The authors discuss how women lawyers have faced an upward struggle in a country where the legal profession has been historically a male bastion. Examining some recent legislative changes, they underscore the need to provide creative and functional solutions to sustain women in the law and to create growth opportunities for them.

The fourth article is by Eloisa Hu, a PRC-licensed lawyer who in 'Women in Law: A China Perspective' examines and provides an overview of the historical trajectory of women in the world's most populous country, China. Tracing back to 1926 when the first woman became a lawyer in China to the challenges of present times in Guangzhou, she explores the struggles and assesses what is required for growth and development of women lawyers of the 21st century.

In the final article titled 'Quo Vadis Women in Law?' Melva Valdez, a veteran of the IPBA, provides a perspective from the Philippines on how the global pandemic has impacted women lawyers who are now assuming multi-faceted roles instantly.

It is also for the first time we have introduced what I hope to be a regular feature called Up Close and Personal which will feature short interviews with the women of IPBA. And, I cannot think of anyone better to start with than the two women who are the backbone of our organization – Yukiko and Rhonda! When I approached them with the idea, after some initial reticence, they both jumped in and, I have to confess, the responses gave me so many insights into different facets of their life! I hope everyone enjoys reading these as much as James and I did.

In a year when the world mourns the passing of an iconic, 'notorious' and absolute trailblazer who inspired millions the world over, Ruth Bader Ginsberg, a woman of many firsts, we would do well to remember how she fought tirelessly to dispel notions that an excellent legal mind could also be a loving homemaker, and the two positions did not have to be mutually exclusive. We can be caregivers and yet climb corporate ladders. Personally, I hope at least in my rocking chair days I will have stories to tell about more women rising to positions of leadership and assuming their rightful place, both at the bar and on the bench and even in boardrooms. We should not forget 'Women belong in all places where decisions are being made. It shouldn't be that women are the exception.'

I hope you noticed the cover page of this edition which is a collage of IPBA women, our friends and colleagues, who readily consented to publish their photos. Finally, to commemorate the 100th edition of the Journal it is only appropriate to conduct a webinar on the theme of this edition. Please save the date of 14 January 2021 for the webinar titled 'Covid-19: A Curse or Blessing for Women in Law' Details will follow as will the call for articles for the March 2021 edition. As 2020 draws to a close, both James and I wish you and your loved ones well for the holiday season and hope for a spectacular and a healthier 2021 for everyone.

**Prii Suri**  
**Chair – Publications Committee of IPBA**

## IPBA Upcoming Events

Event	Location	Date
<b>IPBA Annual Meeting and Conferences</b>		
30th Annual Meeting and Conference	Shanghai, China	April 18-21, 2021
31st Annual Meeting and Conference	Tokyo, Japan	April 20-23, 2022
32nd Annual Meeting and Conference	Dubai, UAE	Spring 2023
<b>IPBA Mid-Year Council Meeting</b>		
2021 Mid-Year Council Meeting and Regional Conference	Jakarta, Indonesia	October 9-11, 2021
<b>IPBA Webinars</b>		
Construction Projects: Comparing Legislative Antidotes for COVID-19 conflicts	Zoom	December 9, 2020
How to Defend the Claim for Infringement on Invention Patent or What Countermeasures Can be Taken in Various Jurisdictions?	Zoom	January 11, 2021
COVID-19: A Curse or A Blessing for Women in Law	Zoom	January 14, 2021
International Insolvency Law	Zoom	January 19, 2021
More details can be found on our web site: <a href="http://www.ipba.org">http://www.ipba.org</a> The above schedule is subject to change.		

## Join the Inter-Pacific Bar Association

Since its humble beginnings in 1991 at a conference that drew more than 500 lawyers from around the world to Tokyo, the IPBA has blossomed to become the foremost commercial lawyer association with a focus on the Asia-Pacific Region. Benefits of joining IPBA include the opportunity to publish articles in this IPBA Journal; access to online and printed membership directories; and valuable networking opportunities at our Annual Meeting and Conference as well as 10 regional conferences throughout the year. Members can join up to three of the 24 committees focused on various of commercial law practice areas, from banking and finance, to insurance, to employment and immigration law, and more. We welcome lawyers from law firms as well as in-house counsel. IPBA's spirit of camaraderie ensures that our members from over 65 jurisdictions become friends as well as colleagues who stay in close touch with each other through IPBA events, committee activities, and social network platforms. To find out more or to join us, visit the IPBA website at [ipba@ipba.org](mailto:ipba@ipba.org).



# Report of the IPBA Investment Arbitration Sub-Committee's Inaugural Webinar on 28 September 2020

## The Investment Arbitration Sub-Committee

With investment arbitration representing an ever more important—but still highly specialised – part of dispute resolution and arbitration in the Asia-Pacific region, we are happy to introduce to you the recently formed Investment Arbitration Sub Committee ('IASC'). While investment protection and investment arbitration concerns substantive and procedural aspects of an overall legal field, most of its exposure results from the disputes that are being conducted. The IASC therefore is a specialised subcommittee under the ambit of the IPBA's Dispute Resolution and Arbitration Committee ('DRAC'), as investment arbitration requires a deep understanding of various aspects of public international law as well as investment laws and international arbitration.

At the 2019 Mid-Year Meeting in Milan, the IPBA leadership approved the formation of the IASC upon the proposal of the DRAC Co-Chairs. It was initially planned to inaugurate the IASC at the IPBA Annual Meeting and Conference in Shanghai in April 2020. As this was not possible, the IASC has taken up virtual activities as of May 2020.

The formation of the IASC goes back to a proposal by Kshama A. Loya and Lars Markert, both of whom serve as the inaugural Co-Chairs of the IASC upon nomination by the DRAC Co-Chairs. The goal of the IASC is to create a continuous platform for the DRAC's members to engage actively with investment arbitration, an ever more important—but still highly specialised—part of dispute resolution and arbitration in the Asia-Pacific region.

Investment arbitration is currently the dominant mechanism to settle disputes between foreign investors and states in which the investments have been made

(often called 'host states'). The framework for investment arbitration is primarily established by bilateral investment treaties between a host state and the investor's home state. There are also multilateral treaties, such as the Energy Charter or the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('CPTPP').

Due to the highly political nature of such disputes, investment arbitration itself has become the target of criticism by various groups and stakeholders with equally varying agendas. This leads to the current status, where possible changes to the existing system of using investment arbitration for Investor-State Dispute Settlement are discussed on a global level. The European Union and some other states, for example, are trying to establish an Investment Court System as an alternative to investment arbitration. Some large economies in the Asia-Pacific region, like Japan, China and South



Korea, seem to have remained in favour of modernising investment arbitration, while others, such as India and Indonesia, are striving for reform.

Investment arbitration is thus highly topical and at the same time a particular form of dispute resolution that merits further attention and investigation. The IASC is committed to delve deeply into the intricacies of the investment arbitration system and endeavours to make a meaningful contribution to the field.

### IASC Initiatives

The IASC envisages initiatives that have the potential to make a legal and practical impact beyond the framework of the IPBA. At the same time, the IASC is to serve as a forum for IPBA members to discuss and explore some of the relevant core topics of investment arbitration. The IASC plans to achieve this end by means of annual meetings and conferences, arbitration days, self-standing events and webinars and specific newsletters (either within the IASC or through the IPBA Journal). Topics allowing for more in-depth study and original proposals from within the IPBA could include: mediation of investor-state disputes, drafting improved provisions in investment treaties and promoting diversity in this specific area.

The IASC strives to serve as a ripe platform for adoption of key initiatives and breakthrough work in this space and at the same time offering newer and better opportunities to engage the world and, hopefully, create impact.

### Inaugural Webinar—Report

For its inaugural webinar on 28 September 2020, the IASC partnered with the World Bank's International Centre for Settlement of Investment Disputes ('ICSID') and the United Nations Commission on International Trade Law ('UNCITRAL').

The webinar's topic was the 'Draft Code of Conduct for Adjudicators in Investor State Dispute Settlement' (the 'Draft Code'), which was recently released jointly by the ICSID and UNCITRAL. The Draft Code endeavours to promote the independence and impartiality of decision makers in investment arbitration and to enshrine their duty to conduct proceedings with integrity, fairness, efficiency and civility. In doing so, it aims to address the criticisms that investor-state dispute settlement lacks sufficient guarantees of independence and impartiality.

The panellists included the ICSID's Secretary-General Meg Kinnear, UNCITRAL's Senior Legal Officer, Corinne Montineri; General Counsel of Canada's Trade Law Bureau, Sylvie Tabet; as well as Kevin Kim from Peter & Kim. These representatives from private practice, government and institutions involved in investor-state dispute settlement represented a broad field of stakeholders, policy-makers and practitioners, playing an important role in discussing changes and reforms of investment arbitration. Moderated by the IASC's Co-Chairs, the participants entered into a fruitful and substantive debate, which generally welcomed the Draft Code, but also touched upon issues in the draft which still leave room for improvement.

The inaugural webinar benefitted from welcome remarks by the IPBA's president Jack Lee and an introduction to the IASC by Hiroyuki Tezuka, past Co-Chair of the DRAC.

### Getting Involved

Already at this point, the IASC can look back at an active and fruitful first half of its inaugural year. Even without having had the opportunity to present the IASC at an in-person event due to the pandemic, the IASC's over 30 dedicated members came together virtually to meet at an IPBA IASC members' meeting to kick off the activities of the IASC.

Prior to the inaugural webinar, the IASC formed a working group to analyse and provide a detailed report on the Draft Code of Conduct from the ICSID and UNCITRAL. The report will be submitted to the ICSID and UNCITRAL that has invited public comments on the Draft Code. The IASC has established a working relationship with the ICSID and UNCITRAL which hopefully provides a platform for meaningful initiatives. The IASC representatives will participate in the deliberations of UNCITRAL's Working Group III, which focuses on Investor-State Dispute Settlement Reform.

The IASC'S Co-Chairs and authors of this short article welcome all interested IPBA members to reach out to us, join the IASC, and together make this another successful initiative by the IPBA.

**Kshama A. Loya and Lars Markert**

# Women in Law in China

This article will analyse Chinese women in law from a legislative and judicial perspective. The Chinese government has made great efforts to protect the status of women through some protective actions in laws and regulations. However, as will be discussed, many shortcomings still exist in some areas of daily life, such as the issues related to collectively owned land compensation, wage discrimination and pensions, among others.



Equality between men and women is an important goal for the development of women in China, which also can be a measure of the development of a society and civilisation. The basic state policy relating to gender equality was put forward by a former President of China, Jiang Zemin, at the opening ceremony of the Fourth World Conference on Women in 1995. Later, at the China Women's Conference in 2003, former President Hu Jintao also called on the whole of society to adhere to the basic national policy relating to gender equality. The relevant laws and regulations, cases and statistics are discussed and analysed in this article.

### Relevant Chinese Laws and Regulations

Equal legal status between men and women is the basis for the implementation of gender equality. After the principle relating to women's legal status was established in the Constitution, the Chinese government promulgated many laws, such as the Marriage Law, Election Law, Inheritance Law, Civil Law and Criminal Law, as well as more than 40 administrative regulations under the Constitution and each local government promulgated more than 80 local rules relating to the provinces with regards to women's rights and interests. Some of the critical laws, regulations and rules are set out below.

#### Constitution of The People's Republic of China

- **Article 48:** Women in the People's Republic of China enjoy equal rights with men in all spheres of life; that is, in political, economic, cultural, social and family life.
- **Article 49:** Marriage, the family and mother and child are protected by the state. Both husband and wife have the duty to practise family planning. Parents have the duty to rear and educate their children who are minors and children who have come of age have the duty to support and assist their parents. Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is prohibited.

#### General Principles of the Civil Law of the People's Republic of China

- **Article 105:** Women shall enjoy equal civil rights with men.

#### Marriage Law of the People's Republic of China

- **Article 2:** A marriage system based on the free choice of partners, on monogamy and on equality

between a man and woman shall be applied. The lawful rights and interests of women, children and old people shall be protected. Family planning shall be practised.

- **Article 9:** After a marriage has been registered, the woman may become a member of the man's family or vice versa, depending on the agreed wishes of the two parties.
- **Article 34:** A husband may not apply for a divorce when his wife is pregnant or within one year after the birth of the child or within six months after the termination of her gestation. This restriction shall not apply in cases where the wife applies for a divorce or where the People's Court deems it necessary to accept the divorce application made by the husband.
- **Article 39:** At the time of divorce, the husband and the wife shall seek agreement regarding the disposition of their jointly possessed property. If they fail to reach an agreement, the People's Court shall, on the basis of the actual circumstances of the property and on the principle of taking into consideration the rights and interests of the child and the wife, make a judgment. The rights and interests enjoyed by the husband or the wife in contracting land management on a household basis shall be protected in accordance with the law.

#### Population and Family Planning Law of the People's Republic of China

- **Article 3:** Population and family planning work should be combined with increasing women's education, employment opportunities, improving women's health and improving women's status.
- **Article 22:** Discrimination against and maltreatment of women who have given birth to female babies and infertile women are prohibited.
- **Article 26:** During pregnancy, childbirth and nursing, women shall enjoy special labour protection and may obtain help and compensation in accordance with the relevant provisions of the state.

#### Labour Law of the People's Republic of China

- **Article 29:** The employing unit shall not revoke its labour contract with a labourer in accordance

with the stipulations in Article 26 and Article 27 of this Law in any of the following circumstances:

1. the labourer has been confirmed to have totally or partially lost the ability to work due to occupational diseases or injuries suffered at work;
  2. the labourer has been receiving medical treatment for diseases or injuries within the prescribed period time;
  3. the labourer is a female staff member or worker during the pregnant, puerperal, or breast-feeding period; or
  4. other circumstances stipulated by laws, administrative rules and regulations.
- **Article 58:** The State shall provide female workers and juvenile workers with special protection.
  - **Article 59:** It is prohibited to arrange female workers to work in mine pits, engage in work with Grade N physical labour intensity as stipulated by the State or other work which female workers should avoid.
  - **Article 60:** Female workers during their menstrual periods shall not be assigned to engage in work high above the ground, under low temperatures or in cold water or to work at Grade III physical labour intensity as stipulated by the State.
  - **Article 61:** During pregnancy, female workers shall not be assigned to engage in work with Grade III physical labour intensity as stipulated by the State, nor to do other work that they should avoid in pregnancy. Female workers seven months pregnant or more shall not be assigned to extend their working hours or to work night shifts.
  - **Article 62:** After childbirth, female workers shall be entitled to no less than 90 days of maternity leave with pay.
  - **Article 95:** Where an employing unit encroaches upon the legitimate rights and interests of female and juvenile workers in violation of the stipulations of this Law on their protection, the labour administrative department shall order it to make corrections and impose a fine. If harm to female



and juvenile workers has been caused, the unit shall assume the responsibility for compensation.

### Law of the People's Republic of China on Employment Contracts

- **Article 42:** An Employer may not terminate an employment contract pursuant Article 40 or Article 41 hereof if the Employee:
  1. is engaged in operations exposing him to occupational disease hazards and has not undergone a pre-departure occupational health check-up, or is suspected of having contracted an occupational disease and is being diagnosed or under medical observation;
  2. has been confirmed as having lost or partially lost his capacity to work due to an occupational disease contracted or work-related injury sustained with the Employer;
  3. has contracted an illness or sustained a non-work-related injury and the set period of

Equal legal status between men and women is the basis for the implementation of gender equality.

medical care therefore has not expired;

4. is a female employee in her pregnancy, confinement or nursing period;
  5. has been working for the Employer continuously for not less than 15 years and is less than five years away from his legal retirement age;
  6. finds himself in other circumstances stipulated in laws or administrative statutes.
- **Article 52:** Enterprise employees, as one party, and their Employer may enter into specialised collective contracts addressing labour safety and hygiene, protection of the rights and interests of female employees, the wage adjustment mechanism, etc.

### The Anti-Domestic Violence Law of the People's Republic of China

- **Article 5:** The anti-domestic violence work should obey the principle of combining with prevention, education, correction and punishment. The anti-

domestic violence work should respect the real will of the victim and protect the privacy of the party concerned. Special protection shall be given to minors, the elderly, disabled persons, pregnant and nursing women, and seriously ill patients who suffer from domestic violence.

- **Article 33:** The offender who executes the domestic violence constitutes a violation of the administrative law, and he/she shall be punished according to the administrative law; if any crime is constituted, he/she shall be investigated and punished according to the criminal law.
- **Article 34:** If the respondent violates the personal safety protection order and constitutes a crime, he/she shall be investigated and punished according to the criminal law; if not constituting a crime, the People's Court shall admonish him/her, and may issue a fine of not more than RMB1,000.00 and impose detention of not more than 15 days according to the seriousness of the case.

### Other Related Regulations

There are some special laws and regulations for women's protection, such as the 'Special Provision on Labour Protection for Female Workers', 'Provisions relating to the Forbidden Labour Scope of Female Workers', 'Regulations on Health Care for Female Workers' and the 'Women's Rights and Interests Protection Law'.

Besides these, there also exist some articles in some laws, rules and regulations, such as the 'Rule of Organisation of the People's Republic of China', 'Election Law', 'Corporation Law', 'Compulsory Education Law', 'Prison Law', 'Rules of Public Safety Management & Penalty' and 'Criminal Law'.

### Civil Code of the People's Republic of China (will be effective on 1 January 2021)

- **Article 4:** All civil subjects are equal as regards their legal status in civil activities.
- **Article 14:** All natural persons are equal as regards their capacity for civil rights.
- **Article 16:** Where a foetus is involved, in the protection of the interests of the foetus, such as inheritance and acceptance of gifts, the foetus shall be deemed as having the capacity for civil rights;

however, if the foetus is dead at birth, the capacity for civil rights shall be deemed as non-existent from the beginning.

- **Article 113:** The property rights of civil subjects shall receive equal protection under the law.
- **Article 1055:** Husband and wife shall have equal status in marriage and the family.
- **Article 1126:** Men and women are equal in their right to inheritance.

In addition, the Chinese government actively participated in international women's human rights activities, signed related women's international human rights and international documents and created the liabilities and responsibilities for enhancing women's human rights, for example, (1) signing the Convention on the Elimination of All Forms of Discrimination against Women in 1980 and issuing the report of the implementation of the Convention to related international organisations on time every year; and (2) the Convention on Equal Payment Between Men and Women Workers for Equal Work, issued by the International Labour Organisation in 1990. Besides that, the Chinese government set up institutions and a network to protect women's rights such as the All-China Women's Federation ('ACWF'), Women's Youth Committee, Group on Women and Children by the judicial committee and the International Working Committee on women and children.

All over the world, discriminatory laws continue to threaten women's economic security, career growth and work-life balance. Such barriers to employment and entrepreneurship at every stage of life limit equality of opportunity, creating a business environment that does not adequately support working women. In the Middle East and North

All over the world, discriminatory laws continue to threaten women's economic security, career growth and work-life balance.

Africa, women have only half the legal rights of men. Although many economies have acted to reduce barriers to women's economic participation over the last 50 years, it is only 75 per cent. Although many economies have acted to reduce barriers to women's economic participation over the last 50 years, the progress made cannot be equated with success.

In contrast, the Chinese government has done a lot of work at the legislative level to protect women's rights and interests.

### Judicial Protection Relevant Cases in 2020

Now, let us consider the level of judicial protection of Chinese women's rights in China. After the author had input the search terms 'Equality of men and women' and '2020' in the Chinese Judicial Cases Website (<https://wenshu.court.gov.cn>), the largest Chinese case search website set up by the Chinese government, up to 12 October 2020 the website showed that there have been 264 cases in China in 2020 relating to the equality of men and women. The specific data analysis is as follows:

The claims include stock rights 105, heritage 84, eminent domain 83, right of disposing of property 57, divorce 55, legal property 39, right to defence 39, financial management 39, personal rights 32, protection of women's rights and interests 29, marriage 29, alimony 22, joint ownership 21, payment 18 and custody 13 (see Figure 1).

Figure 1: Claims

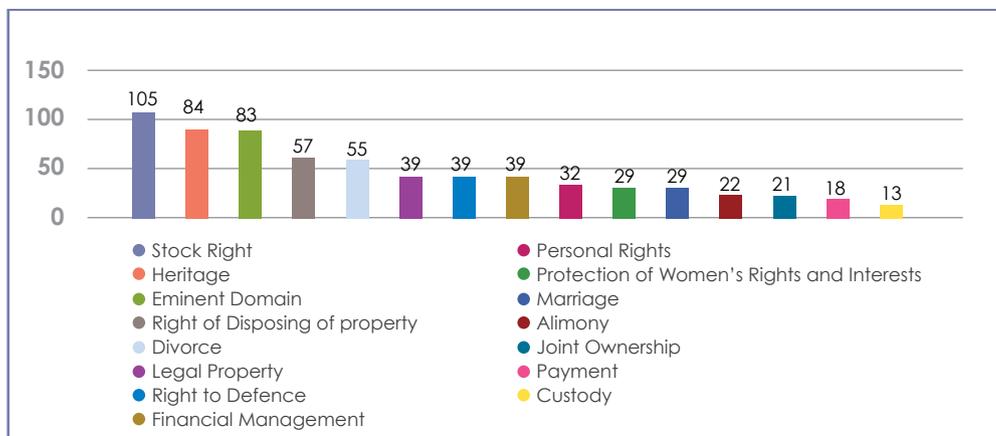
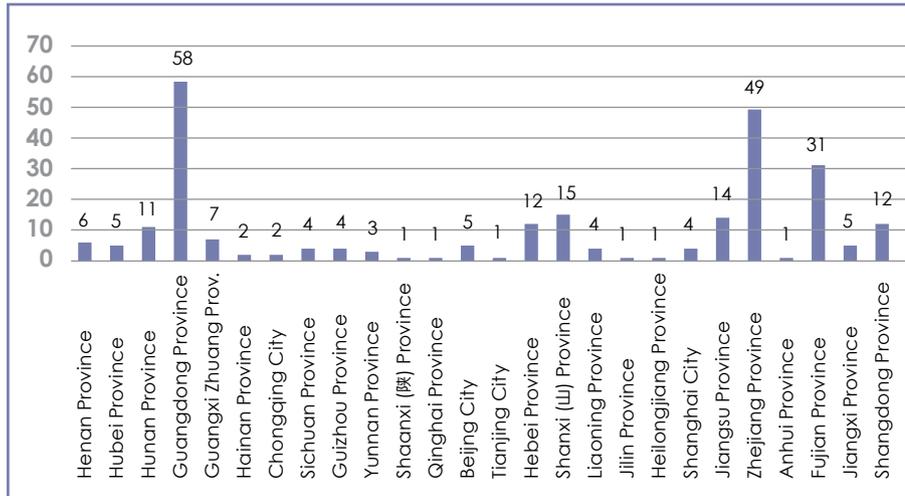


Figure 2: Geographical Distribution



The court hierarchy shows that nine cases were in the High Courts, 71 cases were in the Intermediate People's Courts and 179 cases were in local courts.

The geographical distribution shows: six cases in Henan Province, five cases in Hubei Province, 11 cases in Hunan Province, 58 cases in Guangdong Province, seven cases in the Guangxi Zhuang Autonomous Region, two cases in Hainan Province, two cases in Chongqing City, four cases in Sichuan Province, four cases in Guizhou Province, three cases in Yunnan Province, one case in Shaanxi (陕) Province, one case in Qinghai Province, five cases in Beijing City, one case in Tianjin City, 12 cases in Hebei Province, 15 cases in Shanxi (山) Province, one case in Jilin Province, one case in Heilongjiang Province, four cases in Shanghai City, 14 cases in Jiangsu Province, 49 cases in Zhejiang Province, one case in Anhui Province, 31 cases in Fujian Province, five cases in Jiangxi Province and 12 cases in Shandong Province (see Figure 2).

Finally, the type of trial shows that 193 were civil cases, 69 were administrative cases, one was a state compensation cases and one was an enforcement case.

### Analysis

Through the research of the above judicial cases, it can be concluded that the main types of cases relating to women's rights are concentrated in the fields of stock rights and family affairs disputes, and that, due to the lack of educational resources in rural areas, local governments still have a problem with gender discrimination, especially in the areas of compensation for expropriation of rural collective land where local governments gave women

no rights or fewer rights compared to men in respect of compensation. Of course, we cannot only rely on the outcome of cases as above to infer some results, despite the main types of cases being stock rights and family affairs disputes, the reason for which could be that the female plaintiffs were generally more highly educated in those cases and they knew how to use the judicial approach to protect their fundamental rights. Meanwhile, it can be noted that even though Guangdong Province and Zhejiang Province have the highest number of cases on gender equality in 2020,

the reason for this could be the awakening consciousness in relation to women's self-protection.

It is worthy to note that wage payment cases occurred in 2020. Meanwhile, from 'Women, Business and the Law 2020' issued by the World Bank Group, we can find low scores relating to payment in the Rating for women's protection in China as follows (see Figure 3, next page).

The World Bank Group considered eight indicators to measure the legal differences between men and women as they transition through different stages of working life. These are: Mobility, Workplace, Pay, Marriage, Parenthood, Entrepreneurship, Assets and Pension. China received a general score of 75.6, including 100 in Mobility, 100 in Workplace, only 25 in Pay, 100 in Marriage, 80 in Parenthood, 75 in Entrepreneurship, 100 in Assets and only 25 in Pension.

We will mainly analyse why China only received a score of 25 in the area of Pay. There are four elements to rate the Pay indicator, which are:

1. Does the law mandate equal remuneration for work of equal value?
2. Can women work the same night hours as men?
3. Can women work in jobs deemed dangerous in the same way as men?
4. Are women able to work in the same industries as men?

**Figure 3: Women, Business and the Law Ratings 2020**

Economy	 MOBILITY	 WORKPLACE	 PAY	 MARRIAGE	 PARENTHOOD	 ENTREPRENEURSHIP	 ASSETS	 PENSION	 WBL 2020 SCORE
Chad	75	75	50	60	60	50	60	100	66.3
Chile	100	75	75	60	100	75	60	75	77.5
China	100	100	25	100	80	75	100	25	75.6
Colombia	100	100	50	100	80	75	100	50	81.9
Comoros	75	75	100	40	40	75	40	25	58.8
Congo, Dem. Rep.	100	100	50	40	80	100	60	100	78.8
Congo, Rep.	50	25	25	40	20	75	60	75	46.3
Costa Rica	100	100	25	100	40	75	100	100	80.0
Côte d'Ivoire	100	100	50	60	80	75	100	100	83.1
Croatia	100	100	100	100	100	100	100	50	93.8
Cyprus	75	100	75	100	80	100	100	100	91.3
Czech Republic	100	100	100	100	100	100	100	50	93.8
Denmark	100	100	100	100	100	100	100	100	100.0
Djibouti	100	100	50	20	60	100	40	75	68.1
Dominica	75	25	50	100	0	75	100	75	62.5
Dominican Republic	100	100	75	80	60	100	100	75	86.3
Ecuador	100	100	100	100	40	75	100	100	89.4
Egypt, Arab Rep.	50	75	0	0	20	75	40	100	45.0
El Salvador	100	100	75	80	80	100	100	75	88.8
Equatorial Guinea	75	25	100	20	60	0	60	75	51.9
Eritrea	100	100	75	60	20	75	100	25	69.4
Estonia	100	100	100	80	100	100	100	100	97.5
Eswatini	100	25	50	40	20	0	60	75	46.3
Ethiopia	100	100	25	80	20	75	100	75	71.9
Fiji	75	100	50	100	60	75	100	75	79.4
Finland	100	100	100	100	80	100	100	100	97.5
France	100	100	100	100	100	100	100	100	100.0
Gabon	50	75	25	20	80	50	60	100	57.5
Gambia, The	100	50	75	100	60	75	60	75	74.4
Georgia	100	100	75	100	60	100	100	50	85.6
Germany	100	100	100	100	80	100	100	100	97.5
Ghana	100	100	50	100	20	75	80	75	75.0
Greece	100	100	100	100	80	100	100	100	97.5
Grenada	100	50	100	100	20	75	100	100	80.6
Guatemala	100	25	50	80	60	75	100	75	70.6
Guinea	75	75	50	20	40	100	60	100	65.0
Guinea-Bissau	75	25	0	60	20	25	60	75	42.5
Guyana	75	100	100	80	40	100	100	100	86.9
Haiti	50	50	100	40	20	75	80	75	61.3
Honduras	100	100	50	80	20	100	100	50	75.0

Source: Women, Business and the Law database.

According to the 'National time using survey in 2019' issued by the State Statistical Bureau, employment working time every day is on average 7 hours and 41 minutes, including 7 hours and 52 minutes for men and 7 hours and 24 minutes for women. From the data released by the research institute of Boss Direct Employment, one of the biggest employment hunting companies in China, in 2018 the average salary of women was RMB 6,497.00, which was 78.3 per cent of men, and the differential increase of men and women's salary in high-income areas led to an increase in the overall wage difference between men and women. The Position, Industry and Working Years are the critical three factors influencing the gender pay difference; however, education plays a positive role in reducing the gender payment difference.

At present, in the most popular positions in the fields of AI, image recognition, architecture and other positions related to these industries and big data industries, women account for less than 20 per cent or even single digits. The low participation rate of women in high-paid technology positions makes the pay difference more and more obvious. In recent years, industry giants have turned to technology-driven areas and the salary of high-tech areas has continued to soar, which further strengthens the salary advantage of high-income men in related fields. The data released by the research institute of Boss Direct Employment shows that the smallest gender pay difference is with new employees: the payment gap between men and women having less than three years of working experience is about 10 per cent. However, with the increase of working years, the payment gap gradually broadens. When working experience is more than five years, women are faced with a lot of obstacles such as marriage, childbirth and family, so promotion in the workplace becomes more difficult, which leads to the pay return rate of working years being significantly lower than that of men.

A case referred to by the World Bank Group in its study was:

Binh lives and works in Vietnam. As a little girl, she liked science and studied hard to get good grades. Her parents were supportive and invested money in her education. The result: she became one of the first female forensic pathologists in her country. But after just a few years of work, she was prohibited from continuing at her job. A new

decree had labelled it an inappropriate job for women, forcing her employer to terminate her.

The 'Binh' story also happens in China and influences the pension problem of Chinese women, directly leading to the difference in pensions between men and women.

## Conclusion and Suggestions

In my opinion, the Chinese government may do more in terms of administrative and judicial progress to protect women in law in China. In terms of administrative enforcement of the law and in judicial areas, the government may build a more transparent, fair ecosystem for protecting women's rights and interests. From a woman's self-perspective, women need to break the influence of gender stereotypes and evaluate their own value correctly. From an employer's perspective, employers should be fully aware of the importance played by the improvement of organisational performance by highly competent women and a diversified management culture. From a social perspective, society should fully affirm a greater attribution for women in terms of childbirth, breast feeding and family work and further strengthen the regulation guarantee to provide women with equal employment rights.

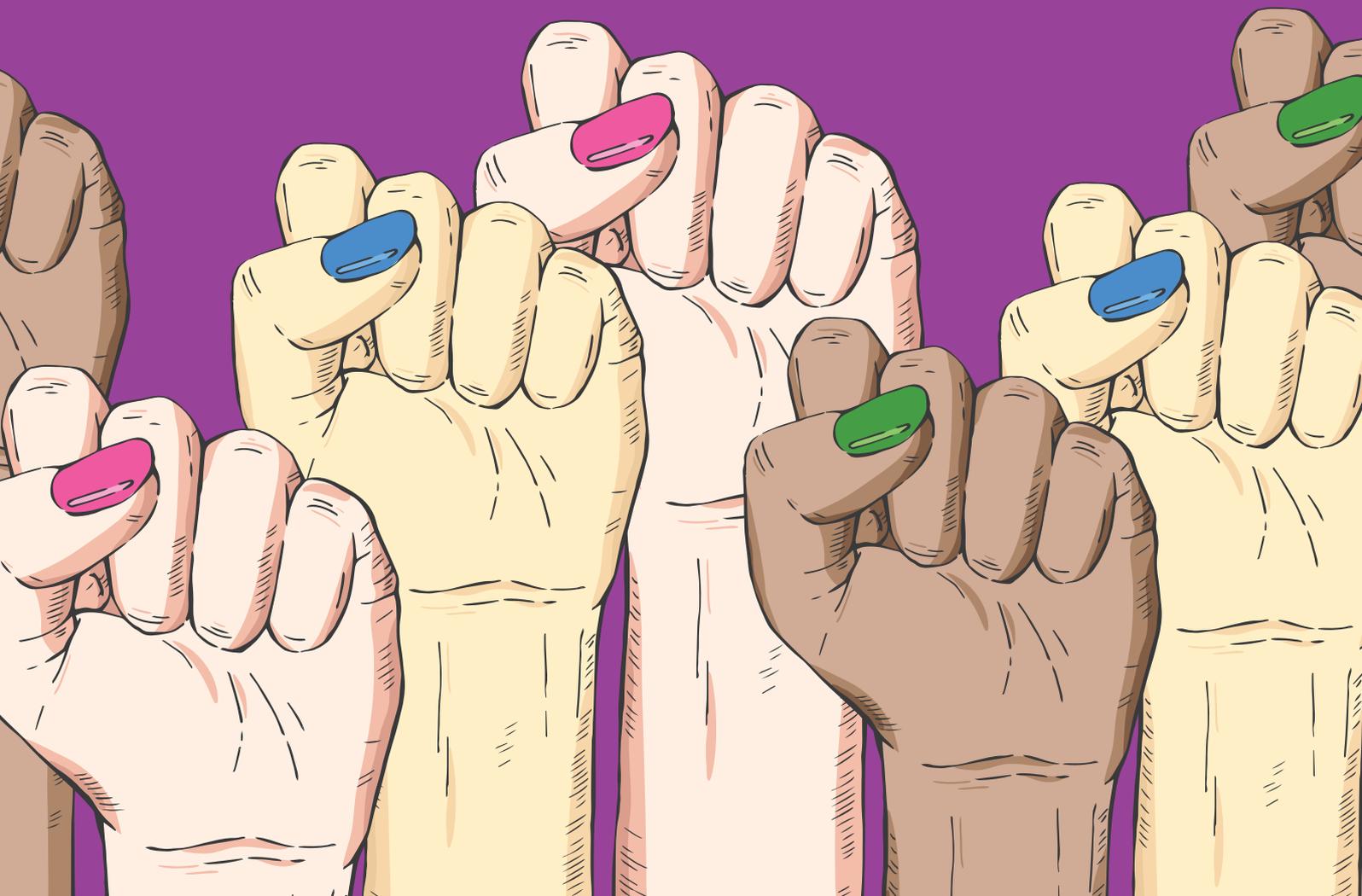


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# Professional Equality Between Women and Men in France: Myth or Reality?

Professional equality between women and men is a major issue in our economies and societies. It represents an economic, legal, societal and democratic challenge. Its legal grounds are clear and yet, despite the undeniable progress made, we are still far from real professional gender equality. The solutions are in the hands of companies, private and public decision-makers and, finally, women themselves.



## Introduction

The end of the Second World War resulted in a shortage of men as they were killed in the War, and this created the need for an abundant workforce to rebuild the country. Consequently, the labour market became highly feminised and today women represent about 48 per cent of the French workforce.

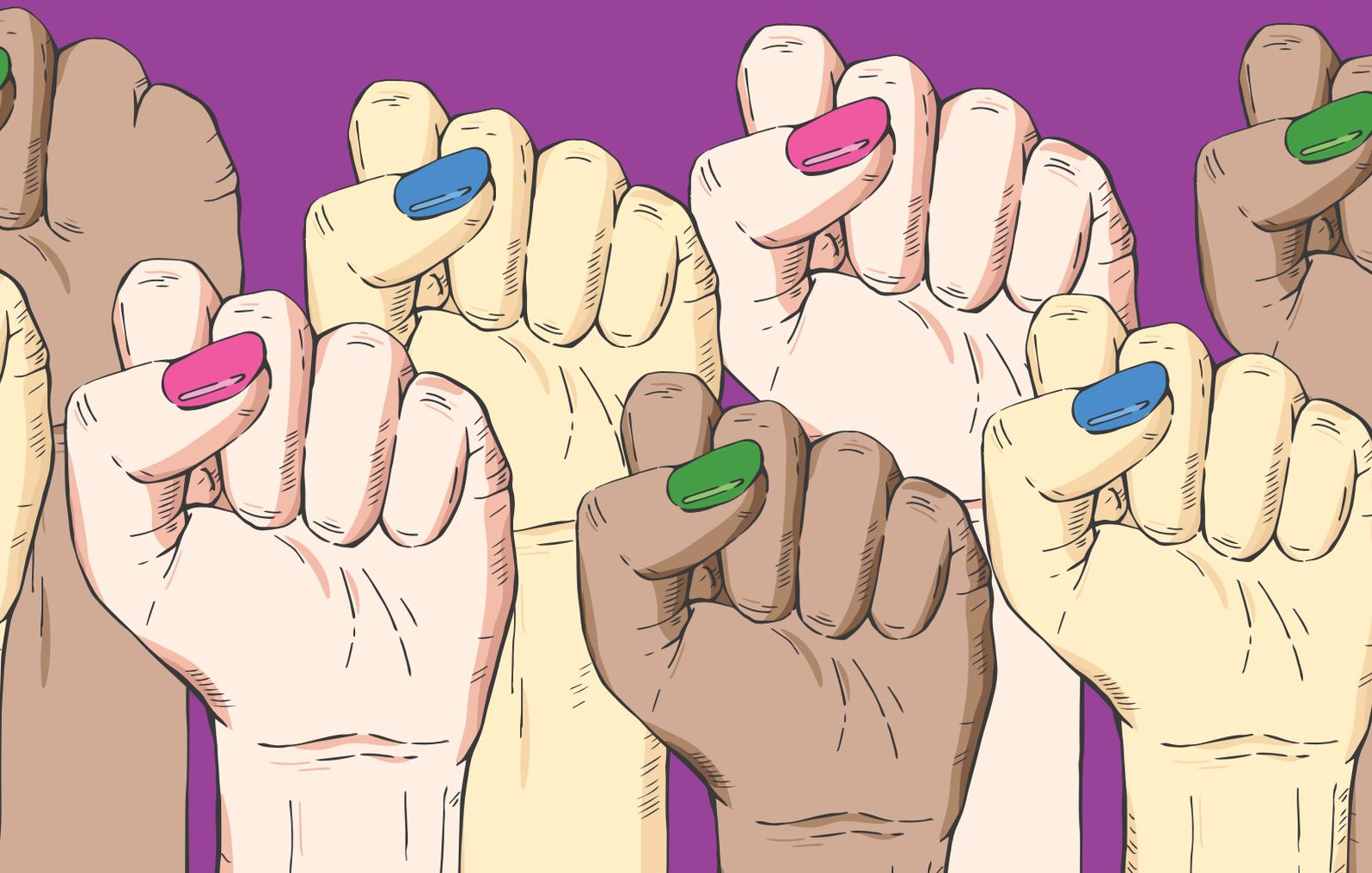
Professional equality between women and men is a major issue in our economies and societies. Indeed, it is one of the conditions for 'empowering women, a global imperative for all those who care about fairness and diversity, but also for the productivity and growth of societies and economies that are more inclusive', as Christine Lagarde, Managing Director of the IMF, pointed out in 2019.<sup>1</sup>

In addition to being an economic issue, professional equality is a legal, societal and democratic requirement. Above all, it is a worldwide requirement for law and justice, including in the most advanced countries in this area, such as Northern European ones. The 1998 International Labour Organization ('ILO') Declaration on Fundamental Principles and Rights at Work clearly establishes the principle of the

elimination of discrimination in respect of employment and occupation<sup>2</sup> and thus enshrines the principle of professional equality between women and men.

In France, equality between women and men has been a constitutional principle since 1946, as the law guarantees women equal rights with men in all areas, including the professional arena. However, all over the world—and France is no exception to this sad fact—more women than men work part-time or are unemployed, they are paid less than men and they are much less numerous than men in executive or management positions, whether in the private or public sphere.

But professional equality is not only a legal subject, it is also a societal one. Indeed, public opinion and the companies' stakeholders—employees, investors, consumers, public authorities—are now holding corporations accountable when they still practice unequal pay policies. Women's voices have become a global sounding board. Germany's Ursula von der Leyen, President of the European Commission; Isabelle Hudon, Canada's Ambassador to France; and Ilham Kadri, the first woman CEO of the French chemicals group Solvay,



are some of the leading female figures and trailblazers who are paving the way to a greater presence of women in leadership roles and bodies. Of course, these are examples of international women leaders and they are still the exception. In 2020, when Frenchwoman Isabelle Kocher had to step down from her position as CEO of the French energy group Engie, there were no more women at the head of a French CAC 40 company<sup>3</sup> until she was replaced in October 2020 by another woman, scientist Catherine McGregor.

The #MeToo movement has also amplified and freed women's voices. It has helped women gain a resounding voice in the workplace, which they have been using to both denounce and work towards stopping the professional discrimination from which they suffer. These feminist movements—which are established in France, since they began in the 1960s and have been embodied by great female figures, from the writer Simone de Beauvoir to the lawyer Gisèle Halimi, the philosopher Elisabeth Badinter or the former minister Simone Veil—imperatively need to be taken even more seriously today because of social media. Indeed, social media can be used as a tool enabling feminists to massively relay all forms of discrimination. Moreover, the legitimate demands of women in the world are converging and can no longer go unnoticed.

Finally, professional equality is a democratic subject because it reflects a peaceful society. If a part of the population feels that it is experiencing injustice and that its rights are being violated, there is a great risk that conflicts, social tensions and even social destruction will arise.

The reality on the ground is that we will have to adapt our discourse, practices and legislation to achieve professional equality, while taking into account the cultural and political specificities of each country. The progress made in terms of professional equality in France is undeniable, but still insufficient. It is then essential to ask the question of how to go beyond theoretical equality to achieve real equality, as discussed below.

## The Long March Towards Equality The Great Legal Battles

Professional equality concerns all fields related to employment, including recruitment, access to positions and responsibilities, remuneration, career development, professional training and the balance between personal and professional life. Professional equality is a universal

principle, which was later applied at the European level and then at the French national level. At the international level, the ILO and the United Nations are the two main institutions ensuring that gender equality in the workplace is taken into account.

It should be remembered that the ILO was founded in 1919 in the wake of a destructive war, in order to pursue a vision based on the principle that there can be no universal and lasting peace without the decent treatment of workers. 100 years later, in 2019, the Director of the ILO, Guy Ryder, welcomed the decision of the G7 to make the fight against inequality, which he considers to be one of the major challenges of our time, the theme of the G7 summit. The G7 Social Communiqué dated 7 and 8 June 2019<sup>4</sup> declared that:

Gender inequalities remain a major expression of social injustice. While important measures have been taken, the pace of progress remains too slow and women continue to experience discrimination, violence and harassment in the world of work, as well as persistent gender gaps as regards employment, inclusion and pay ... equal pay and work life balance remain among the greatest challenges in the G7 economies.

The G7 called for a multilateral dialogue about the reduction of professional inequalities and for the promotion of international labour standards in a global and open economy.

As for the UN—which celebrates its 75th anniversary in 2020—its founding charter recognises in its preamble the principle of equality between women and men and stipulates, in Article 55, that the effective respect of human rights for all presupposes the absence of discrimination. Among the 17 Sustainable Development Goals ('SDOs') adopted for the period 2015–2030, the UN has included Goal 5, which deals with equality between women and men and particularly aims to ensure the effective participation of women and their equal access to leadership positions at all levels of decision-making in the political, economic and public spheres.

At the European level, equality between women and men is one of the founding values of the European Union. Article 119 of the 1957 Treaty of Rome guarantees 'the application of the principle of equal pay for equal work for men and women'. Since that date, other texts have

been adopted to ensure equal rights and opportunities between women and men in the areas of employment, vocational training and social protection. One example is Directive 76/207/EC of 9 February 1976, which extended the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions,<sup>5</sup> since professional equality is a challenge at all stages of a woman's working life.

In France, professional equality is a constitutional principle, which theoretically gives it considerable scope. Article 3 of the preamble of the 1946 Constitution, which has constitutional value, states that 'the law guarantees women equal rights with men in all areas'. Furthermore, Article 1 of the 1958 Constitution states that 'the law shall promote equal access for women and men to electoral mandates and elective offices, as well as to professional and social responsibilities'.

In the nineteenth century, the first measures to regulate women's work were aimed at protecting 'working mothers', since women were considered primarily as mothers at that time. Thus, the law of 2 November 1892<sup>6</sup> limited women's working hours to 11 hours a day and prohibited night work in the industrial sector.

But it was not until after the Second World War that the law really addressed the issue of professional equality between women and men. The first major law in this respect dates from 22 December 1972;<sup>7</sup> it established the principle of equal pay for equal work between women and men. Then, in the 1980s, the legislation required companies to publish an annual report on the comparative situation of women and men in order to push companies to implement corrective measures to redress the gender pay gap.

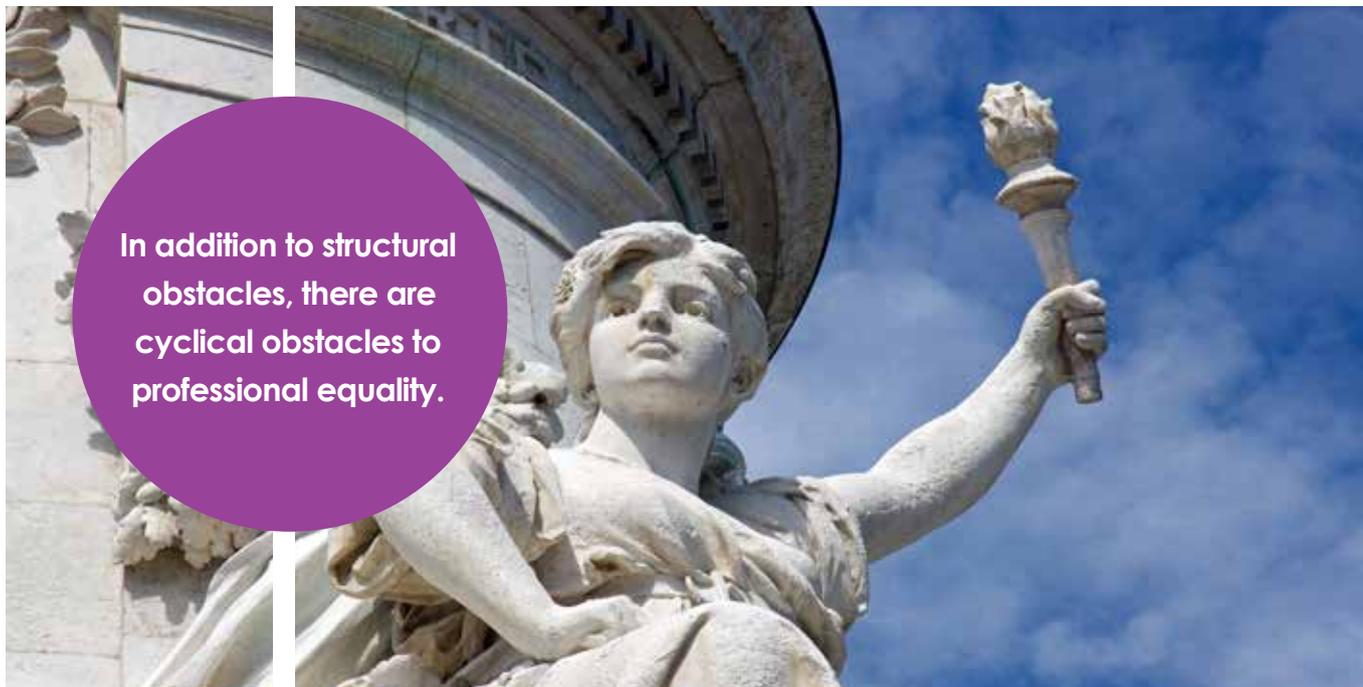
Over the past 40 years, public policies in France have particularly focused on ways to help women better reconcile their private and professional life: for example, through the prohibition of discrimination based on pregnancy and the strengthening of related sanctions,<sup>8</sup> the creation in 2002 of paternity leave, which will be increased from 14 to 28 days on 1 July 2021 with the aim of sharing the parental burden better between the two

parents and remedying the obstacle to women's career development encountered after maternity leave.

In addition, the legislature has shown its willingness to fight even more against the gender pay gap between women and men by requiring companies to publish a certain amount of information on the subject. Since 2018, the 'Index Pénicaud'<sup>9</sup> requires companies with more than 50 employees to publish their 'gender equality index' annually. This index takes the form of a score out of 100, calculated on the basis of four or five criteria depending on whether the company has more or less than 250 employees: (1) the gender pay gap; (2) the gender pay gap for individual salary increases; (3) the gender pay gap for promotions (only in companies with more than 250 employees); (4) the number of female employees who receive an increase when they return from maternity leave; and finally (5) parity among the 10 highest-paid employees. Companies must achieve a minimum score of 75 out of 100 within three years. If their score is less than 75, they will have to implement corrective measures under penalty of financial sanctions of up to 1 per cent of their turnover. Although this index is based on information declared by the companies, it has the merit of making the data clear to observers and investors who are keenly interested in the subject of professional equality, while simultaneously denouncing companies that are less well rated and are therefore encouraged to take corrective measures.

With regard to the presence of women on company boards—the real body of power and control for professional equality policies—the famous Coppé-Zimmermann Law of 27 January 2011<sup>10</sup> introduced gender quotas of up to 40 per cent for the boards of directors of companies with more than 500 employees (the threshold has since been lowered to 250 employees) and revenues of more than €50 million, with strong sanctions that can go as far as the nullity of decisions taken by boards of directors that do not respect the gender quotas. This law has had a real positive impact, with women now occupying 44.4 per cent of board seats in SBF 120<sup>11</sup> companies, which puts France at the top of the podium within the European Union and in second place worldwide, behind Iceland (where 46 per cent of board directors are women).<sup>12</sup>

**The legitimate demands of women in the world are converging and can no longer go unnoticed.**



In addition to structural obstacles, there are cyclical obstacles to professional equality.

It is clear that the legislative texts exist at all levels, but despite the undeniable progress made, the march towards professional equality remains incomplete.

### **An Unfinished March**

Although gender equality has improved in France, and especially in the professional sphere, it is still not enough. In 2020, women are still paid less than men, are still victims of professional discrimination, and are still facing a glass ceiling in business and public spheres.

In the private sector, women earn on average 16.8 per cent less than men<sup>13</sup> for the same amount of time worked, indicating that there is still significant progress to be made. Moreover, the higher you go up the salary scale, the lower the proportion of women present.

In this respect, the presence of women in positions of power (boards of directors, executive committees and management committees) remains very inadequate. Admittedly, the aforementioned Coppé-Zimmermann Law has greatly increased the proportion of women on the boards of directors of the 120 largest French companies and placed France at the top of the European countries in this regard. However, a large majority of SMEs to which this law applies still lag behind with less than 22 per cent of women on their boards of directors, even though these companies represent the vast majority of the economy in France.

A report of the High Council for Equality<sup>14</sup> submitted in 2019 to the French Minister in charge of equality for women's rights—to which 'Femmes de Loi, Femmes d'Exception' contributed by being heard by the HCE—emphasises that quotas produce more effects when their application is controlled, which is not really the case today. The report also advocates the adoption of gender quotas in the comex and the management committees of companies, which would allow women to participate effectively in strategic decisions and would encourage a trickle-down of policies for the promotion of women to other levels of management.

Moreover, the results of the implementation of the 'Index Pénicaud' remain mixed because it is based on simple declarations made by the companies, which are not always verifiable, not to mention the fact that many SMEs probably do not yet apply it due to a lack of resources to deal with this subject.

As for the legal professions, whose mission is to ensure respect for the law, one might expect them to be exemplary, and yet this is far from being the case! While 55 per cent of lawyers, nearly 80 per cent of judges—there is even talk of over-feminisation—and 70 per cent of corporate lawyers are women,<sup>15</sup> the proportion of women who are partners in law firms, who are present in the highest positions of the judiciary as heads of courts, for example, or those who are legal directors of large

companies remains much lower than that of men, for the same reasons as those observed in the corporate world: stereotypes still persist and motherhood remains a serious obstacle to women's careers.

In the public sector, professional equality between women and men is still very theoretical. At all levels of the hierarchy, women face the same glass ceiling as in the private sector, despite legal quotas that exist but that are not applied.

Finally, in the political sphere, inequalities, although persistent, seem to be diminishing: the 2017 legislative elections marked a historic turning point with 38.7 per cent of seats held by women, compared to 26.9 per cent under the previous legislature. But no French woman has yet become President of the Republic!

### Towards Effective Gender Equality

In order to achieve greater professional equality, the challenge is to move from theoretical equality, outlined and confirmed for several decades in the law, to real equality.

#### Obstacles to Overcome

The obstacles to achieving substantive professional equality are well known. They are both structural and cyclical.

Among the structural obstacles, first of all, there are the stereotypes that are deeply rooted in our societies. Some economic sectors are still stereotyped since women are viewed as 'naturally' expected to work in literature, human sciences, paramedics and social training—in other words in the professions of 'care', whereas men are 'naturally' expected to be present in areas such as engineering, natural sciences, artificial intelligence and the digital sector, which all correspond to the professions of the future. In other words, men are more expected in areas where they are better paid than in sectors where the proportion of women is more important. Some consider that highly feminised professions even tend to downgrade! This is an alarming sign that our society remains patriarchal, since it is satisfied to see entire economic sectors 'reserved' de facto for women, who will therefore not compete with men in sectors where they remain in the majority.

Other obstacles to professional equality stem from the still insufficient visibility of women in the professional

world, all sectors combined. Decision-making places are no exception, since despite the progress noted in the boards of directors of major French companies—thanks to the aforementioned 2011 law on gender quotas—the co-opting of men into circles of power still prevails, with rare exceptions.

In addition to structural obstacles, there are cyclical obstacles to professional equality, especially in times of crisis. In particular, the health crisis of 2020 has shown that women have been more penalised than men at the professional level because they often hold lower-paid and part-time jobs. Moreover, studies have highlighted the lower proportion of women experts in the media (25 per cent against 75 per cent of men),<sup>16</sup> underlining once again their lack of visibility. On 5 April 2020, a French daily newspaper put four men on the front page of its edition to imagine 'the world after'!<sup>17</sup> The reactions and accusations of sexism were so vehement that the daily had to apologise and the French government reacted by entrusting a deputy with a mission on the place of women in the media in times of crisis.

If social media plays a relative role as a 'regulator' of professional inequalities, particularly in the media, much remains to be done to make professional equality effective, whether in the economic world or in the public sphere.

#### The Solutions

The solutions relate to the search for the implementation of the binding elements that companies must implement, from the dialogue they maintain with their stakeholders and finally to a real willingness on the part of managers, whether in the private sector or in the public and institutional sectors.

Firstly, the binding instruments exist, but it remains to be checked that the law is being properly applied.

A union recently filed a class-action suit in the French courts to stop wage inequalities at a French bank. This is the first group action in this area, a sign that stakeholders are now paying close attention to the issue of professional equality.

Furthermore, to move from theoretical equality, provided for by law, to real, effective and verifiable equality, companies must send clear messages to their stakeholders and engage in a transparent dialogue with them. This is

a genuine CSR approach that they must implement because the issue of professional equality goes well beyond the law. The credibility of companies' human resources policies and their ability to attract and retain talent are at stake. In a globalised world where talent is in competition, companies must speak clearly to their employees, to unions in the context of social dialogue, particularly on the issue of professional equality, and finally to their shareholders and investors.

The Observatoire de la Responsabilité Sociétale des Entreprises ('ORSE'), a multi-stakeholder organisation that supports companies' CSR strategies, published a guide in 2019 entitled '*Tout savoir sur l'égalité professionnelle entre les femmes et les hommes*' (All you need to know about professional equality between women and men),<sup>18</sup> a proper toolbox designed to guide companies in applying the law. Among the recommendations is the need to train leaders and managers to fight gender stereotypes and to include in their objectives quantified and measurable commitments on the recruitment, training and promotion of women.

Secondly, commitment at the highest level of private and public decision-makers is essential.

In companies, codes of conduct and ethical charters have multiplied and put forward equal rights in women's and men's careers, a sign that leaders are taking up the subject. However, setting an example must also come from the top and company management bodies (executive committees, in which no legal gender quotas are applicable, and boards of directors) should therefore be made up of equal numbers of men and women, which is still not the case in 2020 in the vast majority of French companies.

Finally, professional equality will make real progress if employers' organisations commit themselves to this goal and if our private and public decision-makers also commit themselves to encouraging young girls to choose careers in the scientific and digital sectors, which are still not sufficiently feminised, so that women are more represented in managerial and executive positions in these sectors of activity.

What is true for the private sector is also true in the public sector and in the political sphere. In 2017 the President of the Republic, Emmanuel Macron, declared equality between women and men 'a great national cause'. The objective of this voluntarist French equality policy is to translate the principle of equality enshrined in the laws of the Republic into reality.

Outside its borders, France, like other countries such as Canada and Sweden, promotes the application of feminist diplomacy, which aims to implement France's domestic objectives at the international level and to integrate gender into all aspects of French diplomacy, in its political, economic, influential, cultural, educational and development cooperation dimensions.

Several major international events will be an opportunity for France, in 2021 and 2022, to reaffirm its commitment to equality between women and men. First of all: (1) International Women's Day on 8 March 2021, then (2) in the first half of 2021 in Paris to celebrate the twenty-fifth anniversary of the Beijing Declaration<sup>19</sup> and Platform for Action during the global gathering of decision-makers and civil society stakeholders (businesses, NGOs, academics and influential individuals), and then (3) in January 2022 during the French Presidency of the European Union.

These are meetings that France cannot miss, if only because the institutions must carry the voices of the entire French social body and show that they are a driving force in making proposals so that equality between women and men, particularly in the professional sphere, is finally a reality.

### **Fieldwork is an Absolute Necessity**

Finally, it must be emphasised that laws and corporate commitments, although indispensable, are not enough without concrete work in the field, as close as possible from the organisations, their decision-makers and especially women, who are the most concerned in the quest to overcome the structural obstacles that often prevent them from playing on an equal footing with men.

Numerous professional women's organisations have been created to support women in their career

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development and to make them aware that they are key players in their professional development if they want to reach management or executive positions or if they want to join a board of directors.

That is why, within 'Women of Law, Women of Exception',<sup>20</sup> we have set up a leadership program for our members, which includes a series of meetings with inspiring women leaders from the legal world (Dominique de la Garanderie, the first female President of the Paris Bar), the economic sphere (Mercedes Era, CEO of Havas Worldwide) and the institutional arena (Ministers Nicole Guedj and Michèle Alliot-Marie, and Member of European Parliament Nathalie Loiseau) to exchange on leadership issues and give our members the keys to successful professional advancement. Indeed, we are convinced that soft skills, which are not taught in our universities or in our law schools, must be worked on in-depth to enable women who aspire to be appointed to executive positions to achieve this ambition, not only by preparing for it, but also to last in these roles once they fill them. Therefore, this program provides a unique opportunity for our members to share their professional and institutional experiences with our guests, of instances where they found themselves in exceptional situations where they have had to express their leadership qualities, manage conflicts, deal with crises of an industrial or diplomatic nature and interact with multiple stakeholders at a high level. We also address the question of the leader's vision and how his or her strategy fits into the investment or development choices of a company, a law firm, a government or a country.

In other words, the technical skills of lawyers are not sufficient to assume executive responsibilities at the same level and with the same remuneration as men. For this, it is essential to broaden our field of expert skills and to acquire other skills such as the ability to interact with a board of directors, as we do at the IPBA, to understand financial, operational, institutional and geopolitical issues, to adopt the posture of the decision-maker who arbitrates and not only that of the expert who advises, to communicate, to be resilient and to find our own leadership style.

In a world that is in the midst of a crisis and that is rapidly changing, women obviously have a major role to play and this role is not reserved for just a few of us. Since lawyers are by essence committed women, they are legitimate actors in the fight to advance professional equality and to assume the highest positions.

## Notes

<sup>1</sup> Christine Lagarde, IMF Managing Director, 'Finance and Development—Women and Growth', March 2019, available at [www.imf.org/external/pubs/ft/fandd/fre/2019/03/pdf/fd0319f.pdf](http://www.imf.org/external/pubs/ft/fandd/fre/2019/03/pdf/fd0319f.pdf).

<sup>2</sup> 1998 ILO Declaration, available at [www.ilo.org/declaration/thedeclaration/textdeclaration/lang-fr/index.htm](http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-fr/index.htm).

As the only 'tripartite' UN agency, the ILO brings together representatives of governments, employers and workers from 187 member states to set international standards, develop policies and design programmes to promote decent work for all men and women worldwide.

<sup>3</sup> The CAC 40 is made up of the 40 largest listed French companies.

<sup>4</sup> G7 Social Ministers' Meeting, Thursday 6 and Friday 7 June 2019—G7 Social Communiqué, available at [www.elysee.fr/admin/upload/default/0001/05/a014c309854467aff0880b1fd3a20d25bc707dd2.pdf](http://www.elysee.fr/admin/upload/default/0001/05/a014c309854467aff0880b1fd3a20d25bc707dd2.pdf).

<sup>5</sup> Directive 76/207/EEC of 9 February 1976, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31976L0207>.

<sup>6</sup> [https://travail-emploi.gouv.fr/IMG/pdf/Loi\\_du\\_2\\_novembre\\_1892.pdf](https://travail-emploi.gouv.fr/IMG/pdf/Loi_du_2_novembre_1892.pdf).

<sup>7</sup> Law No. 72-1143 of 22 December 1972 on equal pay for men and women.

<sup>8</sup> Law n°2006-340 of 23 March 2006 relating to equal pay between women and men—Law n°2001-397 of 9 May 2001—known as the 'Génisson Law'—Law n°83-635 of July 13, 1983—known as the 'Roudy Law'.

<sup>9</sup> On behalf of the Minister of Labour of 2018.

<sup>10</sup> [www.egalite-femmes-hommes.gouv.fr/dossiers/egalite-professionnelle/la-mixite-dans-les-conseils-dadministration/vous-etes-une-entreprise-a-la-recherche-dadministratrices/loi-de-2011-votre-entreprise-est-elle-concernee/](http://www.egalite-femmes-hommes.gouv.fr/dossiers/egalite-professionnelle/la-mixite-dans-les-conseils-dadministration/vous-etes-une-entreprise-a-la-recherche-dadministratrices/loi-de-2011-votre-entreprise-est-elle-concernee/).

<sup>11</sup> The SBF 120 corresponds to the 120 largest listed French companies.

<sup>12</sup> Crédit Suisse Research Institute: 'The CS Gender 3000 in 2019: The Changing Face of Companies'

<sup>13</sup> INSEE study of 18 June 2020 covering the year 2017, available at [www.insee.fr/fr/statistiques/4514861](http://www.insee.fr/fr/statistiques/4514861).

<sup>14</sup> HCE Report No. 2019-12-10-PAR-41 of 10 December 2019, available at [www.haut-conseil-egalite.gouv.fr/IMG/pdf/rapport\\_parity\\_gouvernance-20191217.pdf](http://www.haut-conseil-egalite.gouv.fr/IMG/pdf/rapport_parity_gouvernance-20191217.pdf).

<sup>15</sup> Study Francis Lefebvre 2018, available at [www.efl.fr/actualites/affaires/themes-divers/details.html?ref=r-60ca5620-7bcf-4848-b74c-d3f76cd65fe8](http://www.efl.fr/actualites/affaires/themes-divers/details.html?ref=r-60ca5620-7bcf-4848-b74c-d3f76cd65fe8).

<sup>16</sup> [www.lemonde.fr/actualite-medias/article/2020/06/24/coronavirus-la-crise-a-conforte-la-place-desequilibre-des-femmes-dans-les-medias\\_6044058\\_3236.html](http://www.lemonde.fr/actualite-medias/article/2020/06/24/coronavirus-la-crise-a-conforte-la-place-desequilibre-des-femmes-dans-les-medias_6044058_3236.html).

<sup>17</sup> [www.europe1.fr/medias-tele/quatre-hommes-pour-raconter-le-monde-dapres-le-parisien-sexuse-pour-une-une-jugee-sexiste-3960037](http://www.europe1.fr/medias-tele/quatre-hommes-pour-raconter-le-monde-dapres-le-parisien-sexuse-pour-une-une-jugee-sexiste-3960037).

<sup>18</sup> [www.orse.org/nos-travaux/guide-tout-savoir-sur-legalite-professionnelle-entre-les-femmes-et-les-hommes-2eme-edition](http://www.orse.org/nos-travaux/guide-tout-savoir-sur-legalite-professionnelle-entre-les-femmes-et-les-hommes-2eme-edition).

<sup>19</sup> This visionary program defined how to remove the systemic barriers that prevent women from participating equally in all areas of life, whether in the public or private sector.

<sup>20</sup> <http://femmes-de-loi-femmes-dexception.com/>.



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# Paving the Growth Path for Constructive Participation of Women: A Step Beyond Feminism

Even with the transformation in social thinking and evolution of law which have ensured a place for women in the workplace, there remains a need to offer bespoke and functional solutions to women lawyers for healthy sustenance and growth in the profession.



## Introduction

Women all over the world have faced a long drawn-out struggle in establishing themselves as part of the workforce. In the Indian context, this struggle has been primarily due to deep seated issues such as gender inequality and the age-old patriarchy, which exists both at a personal and professional level. However, the situation for women in India has not only evolved over time but has also significantly improved. For urban women in India, the service sector has become increasingly significant, with women's share in employment rising from 35.7 per cent in 1977–78 to 60.7 per cent in 2017–18.

Gradual changes in the social position of women and a shift in the mindset of society has encouraged women to not only take up unconventional roles, but also to aim to reach positions of leadership and compete alongside their male counterparts. In fact, according to Grant Thornton's *Women in Business: Beyond Policy to Progress Report*, there has been a steady growth in women in leadership positions in India from 17 per cent in 2017 to 20 per cent in 2018.

The scenario has not been very different for women who have aspired to participate in the legal workforce as lawyers and judges. For women lawyers it has been a constant but upward struggle, from a complete bar on practising law approximately 100 years ago to now when a good number of women occupying top positions in law firms and as arguing counsel and judges in courts. Even the number of women graduating from law colleges in India and entering the profession is on the rise. For years, the legal profession has been dominated by men, which rarely allowed opportunities for women to seep into the little space that was left to be occupied in the profession. But it calls for a big pat on the back of the women lawyer fraternity that it has been able to withstand many odds and break through stereotypical thoughts on women's ability to participate, compete and succeed in the field of law, which was perceived to be a men's profession in India.

Having said the above, there still remains a wide gap in the opportunities which come the way of women lawyers as opposed to their male counterparts and women certainly have a long way to go. Some of the statistics measured today, even years after women have been part of the legal profession, are staggering. As of February 2020, there are only three women judges out

of 34 judges in the Supreme Court of India and only 74 in State high courts. On the law firms front, a survey conducted on the data available from 30 law firms in India revealed that the average percentage of women making up the partnership at these firms stood at 30 per cent, and of the top 100 corporate dealmakers only around 25 per cent are women.

From our experience, the gap in opportunities between women and men lawyers cannot be attributed to one reason, but is a complex mix of several social norms, practices and, at times, even the courage and strength of women themselves. A good number of women lawyers continue to face hardships in carrying on with their practice in law firms or in courts due to strong patriarchal influences in their families which demoralise, family and social obligations, unsupportive male colleagues in their workspace or even a lack of policies ensuring the participation of women. In fact, we have observed at certain times that women end up succumbing to the pressures of dealing with social obligations and the demanding hours and efforts involved in the legal profession. It is seldom, but we have also seen some women giving in very easily to such pressures with a mental reconciliation that the legal profession remains a male-dominated arena. These factors could either affect the length of a career in isolation or, as in most cases, a combination of these factors tend to impact the career graph of women lawyers.

The government has over the years taken steps and introduced statutory reforms to encourage women to overcome the abovementioned shortcomings which hold them back and even companies/organisations have internally implemented policies to make the working environment of their female employees competitive and safe.

This article discusses the evolution of statutory changes in India which paved the way for women lawyers to practise in India and also other key legislation which has developed over time to encourage women to not only join the legal fraternity, but also continue to remain a part of it and ensure their steady growth. These certainly continue to pave the growth path for women lawyers in India.

## Evolution of Law for Women Lawyers in India

As discussed, the path for women in India to practise law has not been free from hurdles and has only evolved over time. Approximately more than a 100 years ago,

the Legal Practitioners Act 1879 did not recognise women as 'persons' to be enrolled as a pleader in the courts of India. A few years later in 1916, one Regina Guha<sup>1</sup> submitted her application after attaining her degree in bachelors of law, which was forwarded to the Calcutta high court and heard by a five-judge bench. Despite having justified that the General Clauses Act determines the nature of the term 'person' to be gender neutral, the Court denied women the right to be enrolled. The Court held that there was 'no escape from the position that the Legislature in this country never contemplated the admission of women to the rank of Legal Practitioners'.

Thereafter, in 1921, even though the Allahabad High Court decided to enroll a woman, in the same year the Patna High Court followed the suit of the Calcutta High Court regime and refused to enroll a female lawyer. This led to the launch of discussions and campaigns to amend the archaic Legal Practitioners Act 1879 and to include women in the legal profession of India. After numerous applications and amendment proposals, the Legal Practitioners (Women) Act of 1923 was finally passed to remove the disqualification of women from enrollment as a pleader, which permitted them to freely practise law in India.

Finally, the Advocates Act of 1961 ('Advocates Act') was introduced post India's independence, which repealed the Legal Practitioners Act, 1879 and the Legal Practitioners (Women) Act 1923. It also repealed most provisions of the Indian Bar Councils Act 1926, in order to implement the suggestions recommended in the Law Commission Report of 1958 to provide autonomy to the state bar councils. The Advocates Act established the All India Bar Council which was given the authority to lay down the standards of professional conduct and etiquette. Each State now has its own bar council which authenticates applications received from law graduates, both men and women alike.

### Other Key Legislative Changes

The Advocates Act may have evolved over time to pave the way for women to practise law in India, but there is other legislation in India which have also aided women in maintaining and thriving in their position as valuable resources of the workforce. Certain key legislation introduced amendments to either provide for the inclusivity of women at the workplace or for their safeguards at work, which are discussed below.



The path for women in India to practise law has not been free from hurdles and has only evolved over time.

### The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

Prior to 1997, there were no specific provisions for safety of women in the workplace. Women facing issues had no option but to file a complaint under the Indian Penal Code 1860 for outraging or insulting the modesty of a woman. In the matter of Rupan Deo Bajaj v K.P.S. Gill,<sup>2</sup> an IAS officer filed a first information report upon being sexually harassed by the most senior officer of the state police and sought redress under the Indian Penal Code 1860. Despite acknowledging the same, the Court did not find the provisions adequate for granting recourse to Ms Bajaj, the petitioner in the matter.

Some relief came in 1997, when the Supreme Court of India, while passing a verdict in the landmark judgment of Vishaka & Ors v State of Rajasthan,<sup>3</sup> issued guidelines and norms to be followed in order to immediately put a stop to any acts which might be construed as sexual harassment towards women at the workplace. The Supreme Court, while setting out the guidelines, took reference from various international treaties and conventions to define the scope of sexual harassment and lay down the conditions qualifying as harassment at the workplace, while putting the burden on employers to ensure adherence until specific legislation was passed.

Finally, in 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ('POSH Act') was introduced to clearly lay down



**Indian female lawyer talking with male advocate in an office room at high court premises in Katni**

mandatorily appoint at least one woman director. These class of companies include listed companies and certain public companies having the prescribed threshold of share capital or turnover.

Based on the provisions of the Companies Act 2013, the Securities Board of Exchange also amended its listing obligations and disclosure requirement regulations to bring it in line with the Companies Act and provided for every listed entity to mandatorily have at least one woman director on the board.

This minor but crucial provision has encouraged women to equally participate in the decision-making process of companies alongside men. In fact, a lot of family-run businesses, which were primarily run by the male members of the family for generations, have now been encouraged to provide for participation of the women in the family. According to the Credit Suisse Gender 3000 report, India's female representation on boards has been ranked in 23rd place out of 56 countries. India may rank the third-lowest and second-lowest in the Asia Pacific region with only two per cent women CEOs and one per cent women CFOs respectively but the rise in women representation in senior management has noticeably increased from 6.9 per cent in 2016 to 8.5 per cent in 2019.

the instances which qualify as sexual harassment, the procedure for a woman to file a complaint and the redress available against such inappropriate behaviour at the workplace. The POSH Act also provides for the requirement for every place of work to mandatorily constitute an internal complaints committee. Such internal complaints committee must have a presiding officer, two internal and one external member and at least one-half of the members must be women. Such mandates not only encourage women employees to deal with any inappropriate behaviour at work but also ensure that sexual harassment complaints at the workplace are treated fairly. In fact, the presence of an external member goes the extra step in making sure that no bias remains towards any complaint and/or the person against whom the complaint has been alleged.

The POSH Act has been essential in instilling confidence in women to not undergo harassment at work or push such instances under the carpet. The legislation has been fairly successful in the last seven years to allow women to have a sense of safety and security at their workplace, act as a deterrent and has led to male colleagues to interact with their female counterparts in a more respectful manner.

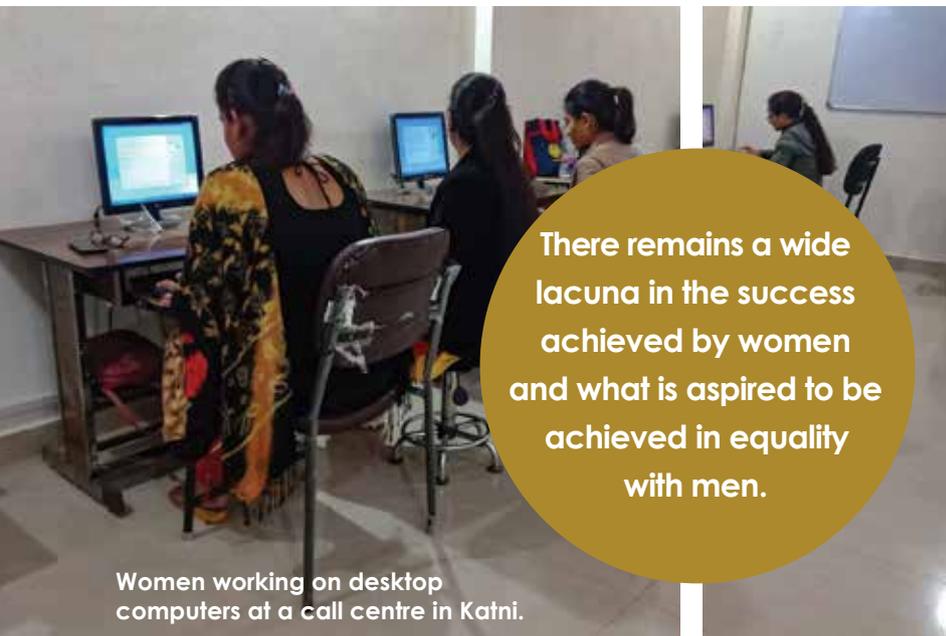
### **The Companies Act 2013**

The new Companies Act introduced in 2013 recognised the need for the participation of women at the managerial level. The provisions of the Companies Act 2013 provide for certain class of companies to

### **The Maternity Benefits Act 1961**

Although the Maternity Benefits Act 1961 was introduced a long time ago, it was only in 2017 that amendments implemented via the Maternity Benefits (Amendment) Act 2017 ('Maternity Amendment Act') were made in the statute to provide for a longer period of comfortable maternity leave. The amendment in 2017 increased the period of paid maternity leave for women employees having less than two surviving children, from 12 weeks to 26 weeks. The amendment also changed the time period of leave which can be availed by women prior to their delivery date from a maximum of six weeks to eight weeks before the expected delivery date of the child.

The amendment also makes provision for an opportunity to work from home after the maternity leave of 26 weeks, in a case where the job profile or the work assigned to such woman employee can be managed by working from home based on conditions mutually agreed between the woman employee and the employer. In fact, another vital provision which was introduced in the Maternity Amendment Act provided that establishments having 50 or more



Women working on desktop computers at a call centre in Katni.

There remains a wide lacuna in the success achieved by women and what is aspired to be achieved in equality with men.

is an extremely positive step towards encouragement and satisfaction of women employees.

Even in the telecom sector, companies like Airtel have included women-friendly programmes in their employee policies. For instance, it conducts a special mentoring program which is specifically designed for high-potential management female employees. This mentoring program involves sessions between the mentor and the mentee in order to encourage healthy, flexible interactions to allow women employees to reserve their place in the top management. This benefit was introduced by Airtel to ensure a higher ratio of women employees in their management.

employees will be required to provide crèche facilities and the employer must permit the concerned woman employee to have four visits a day to the crèche. These changes have gone a long way in ensuring the continuity of women in an organisation as the increase in the statutory leave period has comfortably allowed women to transition back to work after they have given birth, while the crèche facilities aid women in nuclear families to remain in their employment without compromising on raising their children.

### Internal Corporate and Organisation Policies

In addition to these statutory changes, several companies have internally adopted and implemented policies specifically for women which have provided a safer and more supportive work environment for women.

Recently, in August 2020, Zomato, a leading Indian restaurant aggregator and food delivery start-up, introduced period/menstruation leave as a part of its internal policy for all its women employees. In fact, this triggered various debates, where some agreed that such a progressive change was long due, while others argued that period leave may be discriminatory and anti-feminist. The policy allows women to avail themselves of 10 days of extra paid leave, as compared to men, each year, during their period of menstruation while they undergo physical discomfort due to it. Such an attempt to support biological issues in an era where big firms usually have stringent leave policies

Following the suit of companies, law firms have also taken similar steps and introduced policies which strive to bring about a change in the circumstances and situations of women lawyers. For instance, most law firms now offer flexi-hour policies to their lawyers who have been working for a few years in the firm and, depending on the circumstances, work from home for a few days of the week is also now being provided as an option. In addition to such progressive policies, some law firms have gone a step further to support their female lawyers and have created crèches or day-care centres.

### Hardships and the Way Forward

Despite these wins in favour of women and advancement in the statutes in India, there remains a wide lacuna in the success achieved by women and what is aspired to be achieved in equality with men. One of the primary factors continues to remain the deeply embedded practices and thought processes on the segregation of gender-specific activities. The cause of equal partnership in maintaining household chores may have been fuelled by the talk around feminism, however, practically only a small percentage of families have adopted and implemented such practices. Eventually, it has been observed that the responsibility of managing the household still largely remains dependent on women.

Instances of women quitting the profession, taking up less leadership-oriented roles in the legal profession or even taking a break during their 'child-bearing and

raising' years is not uncommon. Even if women are determined to sustain their careers as legal professionals while multi-tasking with other familial responsibilities, discouragement from family members and insensitivity of male colleagues unfortunately causes them to abruptly shorten their career graph.

Although nowadays most law firms in India have policies and plans in place which encourage their female associates to nurture their growth at the workplace, some women lawyers still struggle with issues such as exclusion and unempathetic attitudes. Such reasons cause discouragement and also leave women to assume that it is for the reason of her being a woman, who is perceived to have a lot more family and social obligations than her male colleagues, that she is not considered a trustworthy and reliable resource to take over important and big-ticket assignments and deals.

In fact, just implementing policies may not be enough; Indian law firms can take advantage of their size and offer bespoke solutions to their associates, women and men alike, which provide them the comfort to boost their careers within the workplace while not compromising on other obligations.

While women may have journeyed a long path to reach this place where equal opportunities are not just a theory, there is still a gap to be covered where the distinction between 'male lawyers' and 'female lawyers' diminishes and lawyers are viewed uniformly as valuable resources for their concerned workplace. Just as the iconic Justice Ruth Bader Ginsberg said: 'Women belong in all places where decisions are being made. It shouldn't be that women are the exception.'

Women are not looking for circumstances and situations to be unfairly tipped in their favour; they are more than willing to put in the work as long as the playing field is levelled and whimsical advantages are not served on a platter to the other gender. Indian women in law have come a long way in the growth chart. The growing aspirations of women lawyers along with the enhanced support of society and statutory reforms do make us believe that the figures for the participation of women in legal practice will certainly improve for the best.

## Notes

<sup>1</sup> *In re Regina Guha* ILR (1917) 44 Calcutta 290.

<sup>2</sup> *Rupan Deo Bajaj v K.P.S. Gill* AIR 1996 SC 309.

<sup>3</sup> *Vishaka & Ors v State of Rajasthan* (1997) 6 SCC 241.



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# Women in Law: A China Perspective

This article aims to provide a glimpse of the historic development trajectory of women in law in China. From the first female lawyer in 1926 to the modern female lawyers in Guangzhou, south of China, the author intends to show the changes and different facets of Chinese women in law; the challenges and struggles they are facing; and explores what is needed for a better tomorrow for China's female legal professionals.



## Introduction

On 18 September 2020, the demise of Justice Ruth Bader Ginsburg saddened the whole world. The passing of such a legendary character, the second female Justice in American history, who had dedicated her whole life to the law and women's rights, makes us reflect on the current status of women in law and how far away is it for

us to narrow, if not close for good, the gender gap in the legal and other professional fields.

On the other side of the ocean, here in China, female legal professionals appeared much later than in the western world. And yet, Chinese women in law have their own trajectory of struggle and development.

## First Female Lawyers in China—A Symbol of Rebellion

*'History serves as a mirror to tell the fall and rise'*  
— Emperor Li Shimin, Tang Dynasty, 643 C.E.

In China, where for around 2,000 years the dominating traditional mentality regarding women was 'lacking intelligence is a virtue of a woman' or 'obedient to your father before marriage, obedient to your husband after marriage and obedient to your son when you are old', the first woman lawyer did not appear until 1926. Her name was Zheng Yuxiu. From childhood Zheng showed rebellious traits compared to her female peers: disliking girly games but fond of the story of Mulan;<sup>1</sup> fighting against the foot-binding<sup>2</sup> imposed on her; rejecting an arranged marriage by asking her 'fiancé' to go to Europe and study with her, something that she knew he would never agree to; and being part of the assassination team against Yuan Shikai, even carrying out two unsuccessful assassination attempts.<sup>3</sup>

In order to be safe after the two failed assassination attempts, Zheng went to France in 1915. In 1925, she obtained a doctorate degree in law from the University of Paris and became the first ever female to earn a doctorate degree in law in the history of China. Unfortunately, at that time, the law of the Republic of China only allowed males to practise law, so she got lawyer licences in the public concession and French concession in Shanghai and became the first ever female practising lawyer in the history of China. Later she was appointed by the National People's Revolution Government as the first ever female judge in the Shanghai temporary court in July 1926. In November of the same year, she became one of the only two congresswomen and was one of the five who worked in the committee in charge of drafting of civil law, which was published in 1931 by the Nanjing government.<sup>4</sup>

Another Chinese female icon in the legal field in the first half of the twentieth century was Shi Liang, the first Minister of Justice of the People's Republic of China.



**Women and women's organisations play an increasingly important role in legislation, state and local governance.**

Born in 1900, in the late Qing dynasty in a humble family of eight children, Shi did not have the chance to go to school until the age of 14. Before that she just received home education from her father. She was a rebellious and tenacious child: at the age of seven, when she found out that her parents had arranged a marriage for her to a rich family, she went on a hunger strike to force her mother to cancel the arrangement.

In 1923, Shi was admitted to the Shanghai Law and Politics University and studied law. Four years after graduation she started practising as a lawyer and provided a defence to the communist revolutionists against political persecution. After she was appointed as Minister of Justice in the People's Republic of China, she dedicated herself to the stipulation of the Marriage Law, which freed Chinese women at that time from the suppression of the feudalist marriage system, where monogamy and freedom to marry and divorce were not possible for females. Not only did she work extensively on the legislation, she also spent great efforts in its implementation, making sure that the law was not just a piece of paper with empty promises, but an actual weapon that women could use to protect themselves. Under her campaign, the modern concept of marriage was promoted among the general public and illegal trials of marriage cases that prejudiced women's rights greatly decreased and were punished.

As extraordinary examples of the first generation of females who 'awakened' from the feudalist mentality and fought against the barriers imposed on women, advocating gender equality, both females presented and implemented their rebellion against all things that were supposed to be in line with the expected 'female image': craving for knowledge despite ignorance being deemed as a virtue for a girl; demonstrating traits such as bravery, tenacity and persistence instead of satisfying the traditional expectation for girls to be obedient, soft and delicate; and fighting against arranged marriages and picking their life partners for love, not for social status or wealth. They were like lightning that tore the darkness under which the majority of Chinese women were living, suffering and yet lacking the chance and ability to make a change. They did all the things women at that time were not supposed to do and greatly challenged the stereotype for females formed thousands of years ago. They not only changed their destiny through their effort and bravery, but also showed to their female peers and females from subsequent generations that the cage that

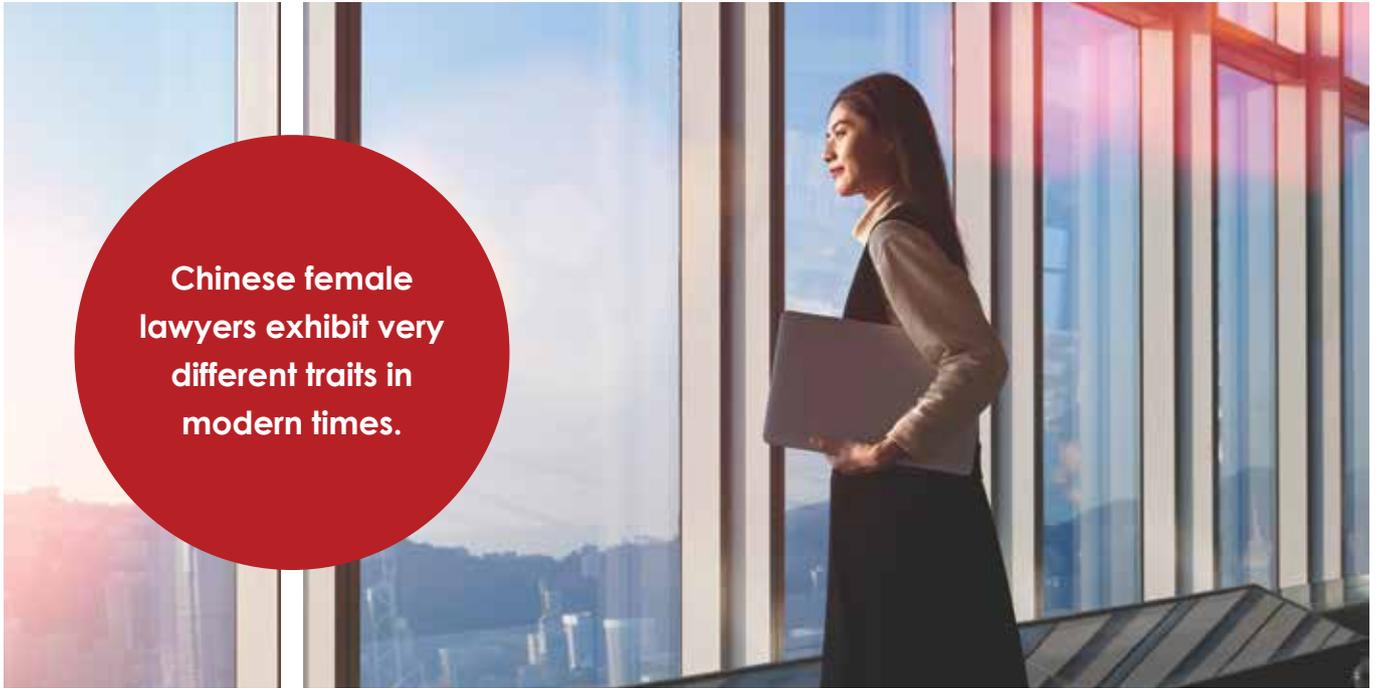
imprisoned women was meant to be broken.

## Female Lawyers in Modern Times—Further Aspiration

*'One spot from the leopard hints the visualisation of the whole' – Nan Dynasty, circa 450 C.E.*

Taking a great leap from the early twentieth century to the present day, Chinese female lawyers exhibit very different traits in modern times, which is in line with and thanks to the remarkable development of women's rights during the past 100 years in terms of access to education, and economic and social status, for example. Based on 'Equal Development and Sharing: The Development and Progress of Women's Cause in New China in 70 Years', the White Paper issued by the China State Council News Office in September 2019, the percentage of undergraduate female students in universities reached 52.5 per cent and post-graduate female students reached 48.4 per cent in 2017. On the other hand, women and women's organisations play an increasingly important role in legislation, state and local governance. Females now account for more than 50 per cent of the new recruitment of officials in central government and subsidiary departments and institutions. In the judicial system, the percentage of female prosecutors is 32.6 per cent, with an increase of 23.6 per cent, compared to 1982. Women's associations, in the representation of females, participate in the stipulation of laws that most concern women's rights and interests by providing legislative proposals to the National People's Congress and their committees and supervising the implementation of the law.

Take the example of Guangzhou,<sup>5</sup> the place where the author was born and is currently living and practising law: the aspiration of female lawyers can be demonstrated from the activities organised by the local bar association. The Women Lawyer Committee is one of 16 committees under the Guangzhou Bar Association, which includes in its mission: to encourage interactions and exchanges among female lawyers inside and outside China; to promote the social influence of female lawyers; and to elevate their professional level.<sup>6</sup> From a professional perspective, there are seminars, conventions with certain topics in which female lawyers and partners gather and talk about the challenges they encounter in the area and exchange their professional opinion regarding certain legal matters. For example, each year the Women Lawyer Committee organises the gathering of female partners in



Chinese female lawyers exhibit very different traits in modern times.

which they exchange experiences and opinions on law firm management and legal hot topics.<sup>7</sup>

Besides personal development, public interest is always kept in the mind of Guangzhou female lawyers. The Women Lawyer Committee of the Guangzhou Bar Association dedicates itself to the promotion of basic legal knowledge to the general public in order that they may better use the law for their own protection. For example, in 2017 on International Women's Day, the Committee, together with support from Guangzhou Justice Department and the collaboration of local media, held a free legal counsel session for the public regarding women and child rights protection, where female lawyers provided professional counsel on marriage, inheritance, real estate and labour issues.<sup>8</sup> On International Women's Day in 2019, the Committee visited the Provincial Womens Prison where they donated books and provided legal counsel for the inmates.<sup>9</sup>

In the spirit of making the best of sensitivity and empathy, which are generally considered female strengths, there are also campaigns launched by female lawyers with a charitable purpose, such as donations to children in less developed areas to help them obtain education, and donations of pandemic materials to hospitals. On the other hand, there are activities to help female lawyers find a balance between work and general life, such as

yoga courses, painting workshops, photography contests and gatherings with topics regarding baby care and parenting.

On a provincial level, the Guangdong Bar Association also gives its attention to the growth of the female lawyers within the province by offering training and organising activities that encourage networking among female lawyers. In 2019, the Bar provided a training course free of charge to female lawyers, not only for legal knowledge and reasoning, but also for other important soft skills such as leadership, image management, public relations with the media, emotional intelligence, etc., hoping to provide integral formation to female legal professionals.<sup>10</sup>

### Some Thoughts on Female Legal Professionals in China

*'Learning without thinking leads to confusion and thinking without learning leads to uncertainty' – the Confucius Analects*

There is no doubt that Chinese women have achieved quite extraordinary developments during the past 200 years in areas such as access to education, social status and economic income. A similar achievement is reflected in the field of law. The first superior education in law in contemporary China started in October 1895 in Bei

Yang University, where the admission of female students was prohibited.<sup>11</sup> In 2019, in Guangdong Province,<sup>12</sup> around 30 per cent of practising lawyers are female and in some cities of Guangdong Province, the percentage reaches around 40 per cent.<sup>13</sup>

However, it is way too early to say that we have achieved gender equality in Chinese society, and much less in the field of law, where the majority of law firms are running under the command of male lawyers and the percentage of female partners is still quite low. Certain stereotypes that society has—or let us say, the traditional expectations that society has—for women are still there. In a study of the winners of Touching China<sup>14</sup> from 2005 to 2017, the number of male winners was three times the number of female winners.<sup>15</sup> In addition, the female winners obtained the prize because of their achievement in professional careers such as teachers and artists, which are traditionally believed to be 'appropriate' professions for women, as well as for their great sacrifices for their husbands, children and family, whereas no male has won the prize because of their roles in the family.<sup>16</sup> Obviously, this does not represent an exhaustive study on the gender equality status of China and the focus of the study is pretty narrow, but it does indicate that, despite how advanced women are in terms of academic achievement and professional success, being a caretaker and making sacrifices for the family is still considered to be the prime virtue of a woman, which 'touches' the whole country more than other traits found in females.

Therefore, logically this results in 'working mother' anxiety, in which professional women with a family are aspiring to 'have it all'. The time that women were proud for their professional achievements only seems to have passed. New words like 'alpha woman'<sup>17</sup> and 'female man'<sup>18</sup> are some of the shallow phrases, yet evident proof that, deep down in the mind, the social recognition of a woman requires much more than professional success, but the balance of both their work and personal life. Women with professional aspirations, such as female lawyers, are facing the double challenge of not being allowed to fail at either. In an interview the Guangdong Bar Association Female Lawyer Committee Chair, Mrs Hu Ningke, expressed that professional growth and finding a

balance between work and family were the two topics of most concern for female lawyers and also what the Provincial Bar Association was trying to provide more support regarding.<sup>19</sup>

Another challenge that females in law are facing is the biological difference between men and women in temperament and character, which causes the low presence of females in the field of law. It is considered that men are more aggressive and more capable of making an objective judgment and therefore are more suited to participate in social activities and be an entrepreneur, organiser and leader. Women however, are generally considered to be more sympathetic, more easily affected by emotions and not able to reason and exercise judgment, and therefore are more suitable for taking care of the family and children.<sup>20</sup>

However, these traits of females in temperament do not necessarily contradict legal reasoning and thinking. In fact, female sensitivity and empathy would actually give women advantages in resolving disputes:

'Women may be more suitable for dispute resolution procedures that informally end infringements.'<sup>21</sup>

'The continuous strengthening of women's voices in the legal profession may turn the confrontation system into a more cooperative, less fighting, and communication system between the parties in the litigation. In this system, the problem is the mutual consensus. The conclusion to be resolved is not ordered by outsiders, nor is it imposed by the winner on the loser.'<sup>22</sup>

In fact, day by day we do see stronger involvement of female professionals in the dispute resolution system. In 2017 in China, female judges accounted for 32.7 per cent of all judges, which has increased by 21.7 per cent since 1982.<sup>23</sup> Two major commercial dispute mediation centres in South China—namely the Benchmark International Mediation Centre, which is also the first professional institution in China which provides service in foreign law ascertainment, and the Belt and Road Initiative International Commercial Dispute Mediation Centre Zhuhai Branch—have female legal professionals

**There is no doubt that men and women are biologically and mentally different, but this implies no superiority or inferiority.**

as the director of the institution. These are good signs of increasing recognition of the ability and capacity of female legal professionals in their work, but of course there is still a long way to go to narrow the existing gender gap in the legal profession in China.

In legal circles there is this joke: Why do you want to be a female lawyer? Because I cannot be a male lawyer. The lack of gender equality in the legal sector is the elephant in the room, that will be foolish to ignore. As Justice Ruth Bader Ginsburg said: 'A gender line...helps to keep women not on a pedestal, but in a cage.' There is no doubt that men and women are biologically and mentally different, but this implies no superiority or inferiority. Even sensitivity and empathy, traits that are considered to be weak points that 'prejudice' reasoning and logic, can be useful in the context of dispute resolution. We just need to find the right way to make the most of our own characteristics and, in this way, everyone can contribute their part. If all light were of the same wavelength, there would be no rainbow; if all musical instruments played at the same pitch, there would not be orchestra.

As a young Chinese female lawyer I am happy about the social atmosphere I am in and proud of all the efforts and measures taken by the Bar Association to keep making it better and better for female lawyers to overcome the gender gap and pursue achievement no less than our male peers. But at the same time, I am also aware that more should be done and that the very first step always starts from the inside: we female lawyers should cross the invisible gender line that confines our mind. Not every one of us is Justice Ruth Bader Ginsburg, but we should all have a Ruth Bader Ginsburg in our hearts.

## Notes

<sup>1</sup> Hua Mulan, the female character from the Chinese legend dating back to the Nan Bei Dynasty (420 CE–589 CE), who pretended to be a boy and enrolled herself in the military to spare her elderly father from being enlisted.

<sup>2</sup> An old Chinese custom dating back to around 960 CE and abolished by law after the Qing Dynasty was overthrown. It is a practice in which cloth was used to wrap females' feet since the age of 4 or 5 to stop them from growing.

<sup>3</sup> Yuan Shikai (16 September 1859 – 6 June 1916) was a Chinese military and government official who rose to power during the late Qing Dynasty. He was elected president of the Republic of China in 1913 and in 1915 he self-proclaimed to be the Emperor.

<sup>4</sup> NanJing National Government (18 April 1927 – 20 May 1948), the central government of the Republic of China after Chiang Kaishek took over Kuomintang.

<sup>5</sup> Also known as 'Canton', a city located in the south of China. The

population of permanent residents in 2018 was 15.3 million and GDP in 2019 was 2.36 trillion RMB (34.7 billion USD).

<sup>6</sup> [www.gzlawyer.org/special-committee/39470ee2d9ed4ecba15b687bc19c802a](http://www.gzlawyer.org/special-committee/39470ee2d9ed4ecba15b687bc19c802a).

<sup>7</sup> [www.gzlawyer.org/info/b0b88e1c02634ccc8aa203f7d4340253](http://www.gzlawyer.org/info/b0b88e1c02634ccc8aa203f7d4340253).

<sup>8</sup> [www.gzlawyer.org/info/ceb2f232bb1e4a459093295a25856446](http://www.gzlawyer.org/info/ceb2f232bb1e4a459093295a25856446).

<sup>9</sup> [www.gzlawyer.org/info/c423a910668f4f50bee00f202e63bd51](http://www.gzlawyer.org/info/c423a910668f4f50bee00f202e63bd51).

<sup>10</sup> [www.gdla.org.cn/index.php?c=content&a=show&id=1607](http://www.gdla.org.cn/index.php?c=content&a=show&id=1607).

<sup>11</sup> China Legal Education Study, 2009, Liu Xiaonan, China University of Politics and Law, p132.

<sup>12</sup> Province in the south of China, near Hongkong, Macau. The permanent resident population was 115 million, GDP was 10.7 trillion RMB in 2019.

<sup>13</sup> [www.thepaper.cn/newsDetail\\_forward\\_5174257](http://www.thepaper.cn/newsDetail_forward_5174257).

<sup>14</sup> It is an annual award/ceremony held by China Central Television, where they nominate some individuals for the achievements they have had in the year. Subject to the public votes, they give the prize to those most voted by public.

<sup>15</sup> Analysis of the profile of female winners of Touching China (《感动中国女性获奖者形象分析》), Hao Yue, Media and Society, ed. 101, February 2019.

<sup>16</sup> Ibid.

<sup>17</sup> In Chinese, "女强人", usually used to refer to women with professional success, but with a negative connotation.

<sup>18</sup> In Chinese, "女汉子", usually used to refer to a female that does not have the traits that traditionally women have, such as being tender, delicate, but presenting toughness, bravery 'like' a male.

<sup>19</sup> [v.qq.com/x/page/w0670maejxq.html](http://v.qq.com/x/page/w0670maejxq.html).

<sup>20</sup> Science, Culture and Gender—Interpretation of Feminism, Wu Xiaoying, China Social Science Editorial, 2000.

<sup>21</sup> Before the Law, John J. Bonsignore and others, Huaxia Editorial, 2002.

<sup>22</sup> Ibid.

<sup>23</sup> 'Equal Development and Sharing: The Development and Progress of Women's Cause in New China in 70 Years', White Paper issued by China State Council News Office in September 2019. [www.gov.cn/zhengce/2019-09/19/content\\_5431327.htm](http://www.gov.cn/zhengce/2019-09/19/content_5431327.htm).



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Ms Eloisa Hu is PRC licensed lawyer who practises in the areas of intellectual property (trademarks), labour laws, dispute resolution, corporate compliance and foreign direct investment projects, with a client portfolio of which the majority are international clients. She speaks fluent Spanish, English, Mandarin and Cantonese. Her prior study and work experience in Spain and Latin America gives her a solid cultural and social understanding when offering professional services to foreign-related clients.

Ms Hu is also active in legal seminars and activities organised by foreign chambers of commerce and consulates in Canton and has been a speaker on various legal topics in different seminars, such as foreign investment law, Chinese labour laws and intellectual property. Ms Hu is also a mediator of the Trade Dispute Complaint Station set up in the Canton Fair with collaboration with the Shenzhen Court of International Arbitration.



Quo  
Vadis  
Women  
In Law?

The year 2020, which is largely defined by a global pandemic, has been tough for all, including women law practitioners. This is a reality which triggered uncertainty in most aspects of life—creating fear and anxiety.

For the dynamic movers and pioneers in the legal field who have been in practice for many years, we try to assure ourselves that we have seen it all. We remain flexible to our client's needs and adapt to their demands in a timely way. For young practitioners, we pride ourselves on our multi-tasking skills, our innate sense of creativity and our resourcefulness.

As much as we think that our profession has instilled such confidence and strength, nothing can really compare to the kind of crippling uncertainty brought about by the effects of the global pandemic.

There is a certain shock brought about by a sudden shift in how one gets through the day. As a professional, the usual hustle has become a normal part of our lives. Constantly surrounded by people, meetings to and fro, court appearances, shifting through endless paperwork—at least two of those things mentioned can occur at least once a day. By the time you get home, you decompress and adjust to different, but nevertheless more challenging roles of being a wife, a daughter, a partner or a mother.

Although it can be said that modern times here in the Philippines have moved forward and supported the notion of a working mum, the 'mum' part of it seems to have been always founded on what is 'traditional'. This means there is a whole set of 'work' involved in taking care of your family and your home. There is a slew of societal demands and pressures that go along with it, separate and distinct from being a professional.

So, when we are immediately forced to work at home in a complete lockdown scenario with minimal to zero contact with other people, we are faced with a unique challenge that does not really resolve itself. When your professional and personal lives are now confined in what may be a safe space at home, new boundaries are certainly difficult to establish. This largely affects the mental headspace and causes even more stress than

what working professional women lawyers have been experiencing on a day-to-day basis.

As a mum, the instinct is to protect your family, keep them healthy, and create a safe and clean space at home. This may seem like a no-brainer but the actual everyday work of figuring out how to purchase your groceries or daily household essentials, consistently cleaning up after your family's mess and dealing with an erratic internet connection can take a huge toll on one's psyche. While we deal with the home and the family, we cannot have a blind eye or ear to the woes and challenges that our clients face. Like us, their businesses, projects and personal legal troubles are also affected. As counsel, we provide that soundboard and advice to appease, empower and resolve their conflicts in this very unique situation. Thus, the daunting task of facing these personal and professional challenges at home, while coming to terms with such uncertainty caused by the pandemic, has affected the mental health of many women.

**As a mum, the instinct is to protect your family, keep them healthy, and create a safe and clean space at home.**

As a woman partner of a law firm who has been in practice for a long time, the new circumstances have forced us to adjust to unique ways of managing, delegating and monitoring. Communication plays a vital role within the firm—the exchange of ideas, intense discussions and the professional mentoring dynamics now have to happen in a remote or digital environment. As a partner, the responsibility of keeping it all together and maintaining productivity while your colleagues are mostly working from home poses a very difficult but necessary challenge. It means being able to utilise technology in a way that you may never have done before. It can be overwhelming to adjust to these new changes that require learning new skills and methods of doing things in such a short amount of time. This is done in the comfort of your home, while trying to balance your time to fulfill significant duties as a mum of a young adult and a wife of another professional, while they face their own personal challenges.

As the months went by and protocols were slightly relaxed to allow the economy to function, COVID-19 cases in the Philippines has remained steadfast. The illness slowly starts to hit closer to home as we hear about how it has taken beautiful souls of relatives



Women in all professional fields are now trying to take on multi-faceted roles in an instant.

and friends. In the Philippines, we hear about the devastating economic impact of COVID-19. As a practising lawyer, these harsh realities are never too far away from the emails and calls received and the numerous video conferences attended since the beginning of the pandemic.

While we make changes at home, the rest of the government and the legal community try to make their own respective changes. As lawyers, we now not only try to keep abreast of new laws or jurisprudence, but we have to keep track of all the new issuances, practices, schedules, etc., that all branches and offices of government and the judiciary release from time to time as a response to the pandemic. There is a lot of frustration that comes with the new protocols, the inevitable delays and the uncertainties of knowing that some applications, cases and rulings are put on hold because of this 'new normal'. It is obvious that the government and the systems in place here in the Philippines are struggling between preserving its renowned (and controversial) traditional system and the mounting pressure for it to modernise and keep up with the huge technological advances of the society that it serves. Although the adjustments may not have been thoughtful responses to the situation, as practising lawyers, we have no other choice but to find a way to adapt and communicate to our clients about these new changes.

It has been months now of adjusting, not only to a new working environment, but also to a new way of doing almost everything. As women, we are both emboldened and vulnerable to our emotions. In the workforce, we do not have a choice but to try and let this be a powerful driving force and a source of sheer strength, whether in the boardroom or the courtroom. These emotions allow us to build and nurture important and meaningful relationships with our colleagues and our clients. It enables us to let our instincts resurface and trust ourselves to know what to prioritise during the most harrowing times.

Women in all professional fields are now trying to take on multi-faceted roles in an instant. If that means efficiently timing your pressure cooker for dinner just in time to put on a decent face before a Zoom meeting, we are able to pull out the stops. It means being able to take a quiet moment and put an off-switch after answering numerous client calls and discover a new series to watch with your daughter and husband. It is being able to be a master of delegation, coordination and remote communication.

The legal field is a community and women practising lawyers, although choosing to work in a solitary situation out of necessity, does not mean that it cannot come together to face this challenge in unity. In fact, the crisis has greatly influenced everyone to speak about mental health issues and exercise compassion and empathy

to their peers. We have resorted to new hobbies, new ventures and even some new goals.

To some women, the workplace is a refuge compared to a possibly difficult home situation. There are legitimate dangers in being forced into isolation and solitude. The best way to respond to this crisis is to understand that everyone is dealing with a unique set of realities. As lawyers, we need to be mindful of our roles and our advocates. As women lawyers, we need to learn to allow ourselves to recognise the various roles we take and hold on to what we value the most every time we are faced with a challenge.



**Melva E Valdez**  
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*Author assisted by Pearl Margaret Ganzon-Alcantara.*

## Publications Committee Guidelines for Publication of Articles in the IPBA Journal

We are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. From time to time, issues of the Journal will be themed. Please send: (1) your article to both **Priti Suri** at p.suri@psalegal.com and **James Jung** at jjung@collaw.ac.nz; (2) a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme; (3) a photo with the following specifications (File Format: JPG or TIFF, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)); and (4) your biography of approximately 30 to 50 words.

The requirements for publication of an article in the *IPBA Journal* are as follows:

1. The article has not been previously published in any journal or publication;
2. The article is of good quality both in terms of technical input and topical interest for IPBA members;
3. The article is not written to publicise the expertise, specialization, or network offices of the writer or the firm at which the writer is based;
4. The article is concise (2500 to 3000 words) and, in any event, does not exceed 3000 words;
5. The article must be written in English (with British English spelling), and the author must ensure that it meets international business standards;
6. The article is written by an IPBA member. Co-authors must also be IPBA members; and
7. Contributors must agree to and abide by the copyright guidelines of the IPBA. These include, but are not limited to
  - a. An author may provide a link on the website of his/her firm or his/her personal website/ social media page to the page of the Journal on which the first page of his/her article appears; and
  - b. An author may not post on any site an entire PDF of the Journal in which the article authored by him/her appears.

## Up Close and Personal: Rhonda Lundin



*International Wolf Symposium 2018.*

### **Tell us about your years growing up, such as interests, hobbies and causes that you are passionate about. What are some of the childhood experiences that shaped you?**

I grew up in a quiet suburb of Minneapolis, Minnesota, USA. Tennis and skiing were my two passions; I was co-captain of the girls' tennis team and even played on the boys' team until competing schools complained and I got kicked off. During the winter months I could be found on the local ski slopes every night after school and on the weekends; I still live to ski (yes, 'live', not just 'love') and hit the slopes every weekend and holiday.

Being shy and a bit of a loner, I immersed myself in schoolwork, particularly foreign languages and cultures: I studied German, Spanish, and Russian from junior high school through university, and to hone my skills I participated in exchange student programs to Chile and Russia. This fascination with all things foreign was

undoubtedly because I grew up in a dual-culture home: while my father was a native Minnesotan, my mother is from Kyoto, Japan.

Our neighbourhood was not culturally diverse, so my siblings and I got teased and mildly bullied due to our Japanese heritage. Fortunately, we all have a strong sense of identity and we laughed off the ignorantly incorrect racial slurs. Once the bullies realised that their words had no effect, they gave up their insults and we became friends. This experience taught me how important it is to embrace our differences, to try to understand other points of view, to learn from them and appreciate them. We are all human beings with the same basic need to be recognised and included and common ground can often be found if you just take the time to listen to each other. This is pretty much the same as the IPBA philosophy, which is why I love my job so much!

A cause about which I am now passionate is wolves. Although I grew up in Minnesota, which has the largest gray wolf population in the US, I had no idea that wolves were a thing until five years ago when I was asked to interpret for the world's foremost expert on wolves, L. David Mech, when he came to Japan to speak at a series of symposia held by the Japan Wolf Association (JWA). Since then, I've been active in the JWA and the newly formed Wolf and Forest Research Institute by organizing at least one seminar each year with experts from the US and Japan that educate the audience on how the Japanese Wolf was hunted to extinction just over 100 years ago, causing the deer and wild boar populations to skyrocket. Without a natural predator, deer in particular decimate the foliage in the deep forest to a near-irreversible level, then venture down into fields and destroy farmers' crops.

Experienced hunters are aging out, and there are not enough new hunters to cull the numbers needed to control the deer population. Through myth-busting and proper education, the ultimate goal of both organizations is to convince the government to reintroduce wolves into Japan to help bring back a balance to nature. Someone once approached me at a park in another town asking if I was "The Wolf Lady", so I am happy that at least I have increased awareness of this important movement!

**What did you do before you joined IPBA? Why and how IPBA? What learnings, if any, from previous roles that stayed with you or were handy over the years?**

Prior to moving to Japan, I worked for the now defunct Northwest Airlines in Onboard Services. When the first Gulf



*My home office.*



A meeting of the town's administrative district heads.



A seminar on bears organized as part of my administrative district duties.

War negatively impacted the travel industry, in 1992 I took my final free flight privilege to travel first class to Japan. Initially I taught English conversation in Osaka; it was the peak of the English language business and the easiest way to earn a living. The school at which I taught transferred me from Osaka to Tokyo to open 21 branches in the Kanto area. Whew! That company unsurprisingly went bankrupt due to overexpansion. I took a stopgap job before having my son, and when he was nine months old I wanted to return to the work force but in a completely different field. A friend introduced me to a relocation consulting agency that provided support services for expats transferred to Japan, which is where I met Midori Hirano, who is surely remembered by long-term IPBA members as being 'The' IPBA Secretariat for 20 years until her retirement a few years ago. To support my skiing habit, my then-husband and I bought a plot of land and built a house in Nagano Prefecture. I loved it so much that I enrolled my son in the local middle school and started living there with him full time in 2009. Because I would no longer be able to do the in-person work required for expat relocation, Midori asked me to support her with the IPBA as it could be done completely online from anywhere. So, here I am!

I learned the most by far doing expat relocation, which requires understanding of the real estate market and contract issues; immigration laws and procedures; administrative regulations pertaining to banking, tax and insurance; international education; and managing daily life in Japan. This was before having internet access with information at your fingertips 24/7, so work was accomplished through the use of printed maps, books, fax machines, and—gasp!—the telephone. The service

industry requires anticipation of client needs, thorough research of a topic from all angles in order to provide proper consultation and follow-through to ensure the desired result. I strive to apply those principles in my work for the IPBA, too. My Japanese language skills most definitely improved and I was able to use what I learned at work in my personal life as well. It was exhausting, challenging, educational, confidence-building and satisfying.

**What are the challenges women professionals face in Japan? What is the biggest challenge you have faced till date and how did you overcome it?**

The glass ceiling is more like a concrete ceiling in Japan, with very few women in management positions compared to other developed countries. Varying statistics can be found, but according to the Japanese Government's 2018 Cabinet Office White Paper on Gender Equality, women make up 43.8 per cent of the workforce but only 13.2 per cent hold management positions. During job interviews, women are questioned regarding their marital status and whether they have children, as male employers believe that this will have an impact on their long-term ability to work. It is not uncommon for women who take maternity leave to come back to a lower position than they held before.

The biggest personal challenge I've faced was balancing family and work life. The existence of few childcare facilities and a strict application process hinders many women who want to work; you need to have a job before applying for childcare, but you can't work unless you have childcare. It's a Catch-22. I was very lucky that my son was accepted

right away into a facility while others had waited years for acceptance. With a 90-minute commute, I was often forced to drop what I was doing at work in order to catch the train in time to pick up my son; this situation got worse when he developed asthma and I sometimes had to leave work early to take him to the hospital. Without a reliable support system, I was overwhelmed and felt the only way out was to quit work, so I submitted a resignation letter to my employer, Midori. She had already noticed that I was stressed and suggested that I primarily work from home and come to the office when needed. I eagerly accepted.

**How would you describe gender diversity and inclusion in Japanese society? Have you faced gender-related challenges in your career? If so, what have they been and how have you overcome the adversities?**

Fortunately, on a professional level I have not experienced gender-related challenges because most of the owners or managers of companies at which I've worked have been women! They understand the struggles women face and support and provide opportunities that women would not get at traditional Japanese companies with men at the helm.

However, in general society: don't get me started! Sexism is everywhere, in the form of unintended microaggressions as well as blatant expressions without contrition. From women not being able to keep their family name after marriage, to DIY products being advertised as 'so easy, even a woman can do it', to being told that a woman's hands are small so that she can iron her husband's shirts ... These types of comments are not just from men; women also suppress themselves without realising it. The town I live in—a small farming town with two mountain resort areas—is divided into 39 administrative districts; for the past three years I have been the head of my district. Since the town was established in 1955, I'm only the second woman to hold this position and was always the only woman at official meetings until the first female

department head at the town office was appointed last year. I think one reason people in my district have asked me to extend a normally one-year term twice is that I am not shy to speak up about issues, whereas the Japanese tend to be reticent in expressing their thoughts, especially when it might rock the boat. Some people have been encouraging me to run for Mayor. Stay tuned!

**What advice or tips you can provide, on managing a work/life balance, especially for women in law?**

Work/life balance is a challenge for women no matter the profession. A strong support system is needed, be it a spouse or partner, family, friends, neighbours. Don't be afraid to ask for help!

**The pandemic changed the world as we know it—everyone working from home and a general heightened state of anxiety. How has this disrupted your work/life balance and how have you overcome those challenges?**

There has been only one case of COVID in my town so we do not feel the impact as much as in larger cities. Most businesses have operated smoothly with contact tracing, temperature taking, mask wearing and hand disinfection; small local events are now starting up again. For administrative district duties, mine



*Three boundary-breaking women in the same family.*



*Sometimes unexpected guests fly in for a visit.*

is a geographically large area spanning 10 kilometres from north to south with many members over the age of 70, so we are reluctant to meet in person and have our meetings on Zoom instead, or we pass out bentos instead of having a barbecue. The permanent residents in my district are concerned about tourists coming from cities with a large number of cases, so during peak tourism periods we tend to stay at home more.

I have been telecommuting for almost 20 years, so my daily work life has not been disrupted at all. Prior to the pandemic, it was normal for me to go days without seeing another human being and I only ventured into town when I had at least three errands to do in order to make it worthwhile to drive that far. This year I made it a challenge to see how many days I could make it before my next supermarket trip: 12 days is my record.

Pre-COVID, I often had overnight guests or large gatherings so it has been lonely without people around. My son, who lives and works in the Tokyo area, has come home only twice this year but I talk to him as often as possible. My friends and I have had a weekly Zoom party without fail since April and we talk until 2:00 or 3:00 am every time. This shows how much we all miss each other! For busting stress I run several times a week, play table tennis, workout with my boxing bag and chop firewood for my wood-burning stove.

### **What do you think other people should know about the IPBA?**

The IPBA is a very friendly and welcoming association. Due to our small size, it is easy for our members to

develop long-lasting, personal relationships with each other. While still upholding the basic principles outlined by the IPBA's founders almost 30 years ago, the changing demographic of our members brings changes for the better through fresh perspectives and modern initiatives. What will the IPBA be like in the next 30 years? Stick around to find out!

### **Who has inspired your life and why?**

My father. He was kind to every living thing, a very hard worker, witty, creative, offered his time to help out others in need, kept strong ties to the local community and was a great listener. He was very calm and laid back on the outside, but in reality he was a brave and strong pioneer who stuck to his convictions. He passed away 17 years ago. I miss him a lot.

### **If you were the leader of a country of your choice, what would you do?**

I sometimes stand at one corner of my plot of land, open my arms and say to myself, 'I am Queen of all I survey!' (Population of All I Survey: 1.) Seriously, though, no matter the country, I would lead with sincerity, understanding, willingness to learn, willingness to admit mistakes and take measures to correct them, and be open minded to opinions and thoughts that do not coincide with my own. I'd surround myself with people who are smarter or more experienced, and really listen to them in order to make informed decisions. However, for now I will stick to just being head of an administrative district in a small farming town.

### **Finally, some quick questions...**

#### **What is a motto you live by?**

'It doesn't matter if you walk; you are still moving forward!' This was written on a sign of encouragement posted along the course of a running event, but the philosophy can be applied to all aspects of life.

#### **What would you say to your 20-year old self?**

Wear sunscreen.

#### **Cats or dogs?**

Dogs! I'm allergic to cats.

#### **If I could be a superhero, I would be...**

Wonder Woman, of course!

# Up Close and Personal: Yukiko Okazaki



**Tell us about your years growing up, such as interests, hobbies and causes that you are passionate about. What are some of the childhood experiences that shaped you?**

Growing up as a history and mystery lover, my favorite place in my childhood was the attic of our old house where I could dig into my family's history from over 100 years ago. The most memorable treasure that I found was a love letter addressed to my late grand uncle! The spirit of a treasure hunter is still within me but my 'play area' has now moved to antique auctions. I also enjoy playing the piano, Japanese drums and Flamenco dancing. I still have a passion for all of them, although I am no longer a good player!

**What did you do before you joined IPBA? Why and how IPBA? What learnings, if any, from previous roles that stayed with you or were handy over the years?**

After I graduated from university where I majored in international law, I followed my passion in the healthcare industry and was involved in the management of an anti-aging clinic in Tokyo and London. I also obtained the qualification of a beauty therapist during this time. Although I never became a professional therapist, that knowledge and skills still help me to maintain my physical and mental health. Coming back from London upon completion of my project role, my interest in law revived again and then I met the IPBA!

**What are the challenges women professionals face in Japan? What is the biggest challenge you have faced to date and how did you overcome it?**

Many women are still forced to leave their work when they need to take care of kids or family members

due to lack of social support or understanding in workplaces. And when they try to come back to their career, they encounter difficulties in finding positions that are commensurate with their abilities.

Nine years ago, my father was found to have stage four cancer and the shock caused my mother to suffer depression. I feared that I might have to give up my job to support them. Fortunately, my company and colleagues were understanding and supportive and I managed to come through that very difficult time with my family without leaving my job.

**How would you describe gender diversity and inclusion in Japanese society? Have you faced gender-related challenges in your career? If so, what have they been and how have you overcome the adversities?**

According to the recent ILO report, Japan has only 12% females in management-level positions, which is the worst level among G7 countries. I think we need to enhance support measures for female professionals continuing their career even after some leave periods for childcare, etc.

When I was hunting for a job as a new graduate, a company's male interviewer asked me whether I was willing to keep working after marriage. Were any male candidates asked the same question? I am lucky that I have been able to work with many talented female leaders throughout my career so far.



### What advice or tips you can provide on managing a work/life balance, especially for women in law?

Most women are too busy with their roles both at work and home. I think it is important for us to have a third place where we can have some time on our own. For me, this includes Japanese tea ceremony lessons and yoga.

### The pandemic changed the world as we know it—everyone working from home and a general heightened state of anxiety. How has this disrupted your work/life balance and how have you overcome those challenges?

As many of you may have experienced, the biggest struggle I encountered in the first few weeks of working from home was how to separate work and private time while staying at home all day. Then I made a tearoom (for tea ceremonies) in my house. My first purpose was to enjoy my stay-at-home time, but it turned out to be an effective way to switch my mode on/off from work and concentrate my mind on what I should do.

### What do you think other people should know about the IPBA?

Rhonda and I often discuss if we should wear 'We love IPBA' T-shirts to show our hearts are with the IPBA.

### Who has inspired your life and why?

Beryl Marcham, an English-born aviator, racehorse trainer and author. Her memoir 'West with the Night' was eye-opening for me in high school. Her story taught me that

a woman's life can be so colourful, adventurous, yet elegant. I started horseback riding after being influenced by her.

### If you were the leader of a country of your choice, what would you do?

If I were a leader of Japan, I would shift my country's energy policy to zero nuclear power.

### Finally, some quick questions...

#### What is a motto you live by?

Learn from yesterday, live for today, hope for tomorrow.

#### What would you say to your 20-year old self?

No worries, you will get to love your life when you reach your 30s.

#### Cats or dogs?

Definitely dogs!

#### If I could be a superhero, I would be...

I would be a female 007 and battle with dark powers that conceal the true nature of global warming.

# IPBA New Members September to November 2020

We are pleased to introduce our new IPBA members who joined our association from September to November 2020. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

<b>Australia</b> , Rodolphe Ruffie <i>Clifford Chance</i>	<b>Ghana</b> , Cynthia Quarcoo <i>CQ Legal &amp; Consulting</i>
<b>Australia</b> , Bronwyn Lincoln <i>Corrs Chambers Westgarth</i>	<b>Hong Kong</b> , Heung Ming Stephen Chu <i>China Ping An Insurance (Hong Kong) Company Limited</i>
<b>Australia</b> , Christopher Dale <i>Christopher Dale Solicitor</i>	<b>India</b> , Kunwar Chandresh <i>CORDATUS LAW CHAMBERS</i>
<b>Australia</b> , Gwynette Govardhan <i>College of Law</i>	<b>Japan</b> , Masayuki Yamanouchi <i>Anderson Mori &amp; Tomotsune</i>
<b>Belgium</b> , Xiufang Tu <i>Monard Law</i>	<b>Korea</b> , Joon Woo Lee <i>Yoon &amp; Yang LLC</i>
<b>Canada</b> , David Ward <i>Miller Thomson LLP</i>	<b>Korea</b> , Tehyok Daniel Yi <i>Yulchon LLC</i>
<b>Canada</b> , Anthony Baldanza <i>Fasken Martineau</i>	<b>Malaysia</b> , Lai Ling Tong <i>Raja, Darryl &amp; Loh</i>
<b>Chile</b> , Manuel Blanco <i>Aninat Abogados</i>	<b>Singapore</b> , Ying Shuang Wang <i>Rajah &amp; Tann Singapore LLP</i>
<b>China</b> , Carol (Yeping) Zhu <i>Zhong Lun Law Firm, Shanghai Office</i>	<b>Singapore</b> , Chester Toh <i>Rajah &amp; Tann Singapore LLP</i>
<b>China</b> , Yang Zhou <i>Zhong Lun Law Firm</i>	<b>Singapore</b> , Elodie Dulac <i>King &amp; Spalding</i>
<b>China</b> , Simon ZHU <i>Tian Yuan Law Firm</i>	<b>Singapore</b> , Vincent Amiot <i>Airbus Singapore</i>
<b>Cyprus</b> , Elena Hajiroussou <i>Elena Hajiroussou LLC</i>	<b>Thailand</b> , Julian Male <i>Synercorp International</i>
<b>United Kingdom</b> , Cathryn Hopkins <i>CMS Cameron McKenna Nabarro Olswang LLP</i>	<b>United States</b> , Preston Pugh <i>Crowell &amp; Moring LLP</i>

## Members' Notes

### Arya Tripathy



Arya Tripathy is an India-qualified business lawyer and an IPBA member since 2019. She was promoted to a Partner at PSA, a full-service Indian law firm in October 2020. Arya practises in the areas of general corporate, M&A, employment and data protection law and has advised Fortune 100 and 500 companies across a spectrum of areas. During the pandemic, she worked pro-bono with 23 social and technology organisations to create a specialised COVID-19 taskforce that provides telehealth services to India's marginalised communities. She is also a member of ITechLaw Association and was nominated as Junior Vice-Chair of its I-WIN Committee, which consists of women tech lawyers from different jurisdictions. Arya lives in New Delhi.

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### Steven Howard



After more than eight years with Sony companies in Singapore and Tokyo, Steven Howard, Regional Coordinator for Hawaii & the Northern Pacific Islands, has recently joined the Fiskars Group as its first legal team member for the Asia-Pacific region. Based in Tokyo, Steven is responsible for all APAC legal matters for Finland's oldest company, which includes such iconic brands as Wedgwood, Waterford, Royal Copenhagen and Fiskars.

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