

History and development of legal profession law general essay

[Law](#)



INTRODUCTIONLegal profession is an important limb of the machinery for administration of justice. Without a well organised profession of law, the courts would not be in a position to administer justice effectively as evidence of favour of against the parties to a suit cannot be properly marshalled, facts cannot be properly uttered and the best legal arguments in support or against the case of the parties cannot be put forth before the court.

MAYORS COURTIn the charter of 1726, which established the mayors courts at the three presidency towns, no specific provisions was made laying down any particular qualifications for the persons who would be entitled to act or plead as legal practitioners in these courts. Presumably, it was left to these courts to regulate this matter by rules of practice which these courts were authorized to frame.[1]No change was affected in the position when new charter was issued in 1753[2]. No organized legal profession came into being in the presidency towns during the period of the mayor's courts. Those who practised were void of any legal training or any knowledge of law. They had adopted the profession in absence of anything better to do. Quite the few of so called lawyers were the dismissed servants of the company[3].

SUPREME COURTSRegulations act 1773, - the first concrete step in the direction of organizing a legal profession of India was taken in 1774 when the supreme court was established at Calcutta. The Regulating act 1773, empowered the supreme court to frame rules of procedure as it thought necessary for the administration of justice and due execution of its powers[4]. The term ' advocate' at that time extended only to the English and the Irish barristers and the members of the faculty of Advocates in Scotland. The indigenous Indian legal practitioner had no entry in this court. The charter of 1774

introduced the British system of legal practice in Calcutta. Similar position obtained in the two other supreme courts at Bombay and Madras[5]. Thus, in the three supreme courts the only persons who were entitled to practise were the British barristers, advocates and attorneys. COMPANY ADALATS Regulation VII of 1793.- In the Company's adalats, the deplorable state of affairs concerning the legal profession has been graphically narrated in the preamble to Bengal Regulation VII of 1793. The lawyers were by and large ignorant of the law and were subject to harassment and extortion from the ministerial officers of the courts. The professional Vakils charged exorbitant fees. Provisions- The Regulation thus laid emphasis on the useful role which a sound legal profession can play in the administration of justice. The Regulation was enacted with a view to strengthen the legal profession in the best interests of the litigant public, the members of the bar serving as trustees of their clients and thus helping in the sound administration of justice. The Regulation, created for the first time a regular legal profession for the Company's Adalats. The Regulation brought order and a measure of quality to pleading and sought to establish practice of law as a regular profession. The provisions of the regulation have already noted earlier[6]. It empowered the Sadar Diwani Adalat to enroll from time to time as many pleaders as it thought necessary for all Company's adalats and to fix the retaining fee for pleaders and also a scale of professional fee based on a percentage of the value of the property. He could not demand or accept any fee, goods, effects or valuable consideration from his clients over and above the sanctioned fees. The ultimate punishment for such a violation was dismissal of the lawyer. Thus, the theory of freedom of contract between the

Vakil and his client was not recognized. The fees of, the pleaders were payable only after the decision, and not before, the Court being practically the paymaster. An interesting provision made was that after a party was retained as a pleader, he was to execute a Vakalatnama constituting him pleader in the cause and authorizing him to prosecute or defend the matter and binding himself to abide by and confirm all acts which pleader might do or undertake in his behalf in the cause in the same manner as if it has been personally present and consenting. This provision is the modern genesis of the modern Vakalatnama[7].

THE LEGAL PRACTITIONERS ACT, 1846It was the first All-India law concerning the pleaders in the mofussil, made several important innovations, namely: (1) The office of the pleader in the courts of the Company was thrown open to all persons of whatever nation or religion, provided he was duly certified (in such manner as directed by the Sadar Courts) to be of good character and duly qualified for the office[8]. Thus, religious test was abolished for enrolment as a Pleader. (2) Every Barrister enrolled in any of Her Majesty's Courts in India was made eligible to plead in the Sadar Adalats subject to the rules of those Courts applicable to pleaders as regards language or any other matter[9]. (3) Vakils were allowed freedom to enter into agreement with their clients for their fees for professional services[10]. This Act is regarded as the " first charter of the legal profession" although it left unsolved the important question of the right of Vakils to practice in the Supreme Courts.

THE LEGAL PRACTITIONERS ACT, 1879The Act, XVIII of 1879, was enacted to consolidate and amend the law relating to legal practitioners in the mofussil[11]. The Act repealed the Pleaders, Mukhtars and Revenue Agents Act, 1865. At this time, there were

six grades of practitioners functioning in India. Advocates, Solicitors (Attorneys), and Vakils of the High Court: Pleaders, mukhtars and-revenue agents in the lower courts. The High Courts laid down standards for admission of Vakils to practice in the High Court; for Zila courts, standards were laid down in the Regulations which were lower for Pleaders than the High Court Vakils. Thus, Vakils became a distinct grade above the Pleader.

Six Grades Of legal Practitioners The Legal Practitioners Act, 1879, brought all-the six grades of legal practitioners into one system under the jurisdiction of the High Courts. The Act empowered an Advocate or a Vakils on the roll of any High Court to practice in his own High Court, in all the courts subordinate there to, in any court in British India other than a High Court on hose roll he was not entered[12]. There was a proviso however, to this section to the effect that this power would not extend to the original jurisdiction of the High court in a presidency town. The right to practice thus conferred by these provisions included the right to plead as well as to act in the courts.

LEGAL PRACTITIONERS ACT, 1884

The High Court could dismiss any Advocate or suspend him from practice after giving him an opportunity of defending himself, but such an order needed the confirmation of the Provincial Government. The Calcutta High Court held that women were not entitled to be enrolled as Vakils or Pleaders of courts subordinate to the High Court. A similar case came before the Patna High Court. Miss Hazara secured a B. L. Degree of the Calcutta University. She was refused enrolment as a Pleader. She challenged this in the High Court of Patna. The Court ruled that the sections of the Legal Practitioners' Act referred to males and not to females. This was to be

expected as since 1793 no woman had ever been admitted to the roll of pleaders. To remove doubts about the eligibility of women to be enrolled and to practise as legal practitioners, the Legal Practitioners (Women) Act, XXIII of 1923, was enacted to expressly provide that no woman would by reason only of her sex be disqualified from being admitted or enrolled as a legal practitioner or from practising as such. Since this enactment, women began getting enrolled as legal practitioners.

INDIAN BAR COMMITTEE, 1923

From the above description of the condition of the legal profession in India, several things appear to stand out conspicuously. Since the days of the Supreme Courts, the Barristers of England had come to occupy a predominant position in the legal profession. For example, on the Original Side of the Calcutta High Court, only Barristers could practice even though other High Courts had removed the distinction between Barristers and Vakils. On the whole, advocates were treated as somewhat inferior to the Barristers. Since the passing of the Legal Practitioners Act, 1879[13], enormous changes had taken place in the conditions of the legal profession. The legal profession had so far no organization of its own to regulate admission to the profession and to maintain a high level of professional conduct. The Vakils started demanding that all distinctions between them and the Barristers be removed. They started demanding abolition of all statutory reservation of judicial appointments in favour of the particular classes[14]. There was also the demand for abolition of the system of dual agency and the creation of an all-India Bar in the country. Thus, there was a demand by the legal profession for unification and autonomy of the Bar be realized by displacing the several grades of practitioners by a single homogeneous group of

practitioners. In February, 1921, a resolution put forth in the Legislative Assembly recommending legislation with a view to create an Indian Bar, so as to remove all distinctions enforced by statute or by practice between Barristers and Vakils." INDIAN BAR COMMITTEE in response to the pressures thus generated, the Government of India in 1923 appointed the Indian Bar Committee, popularly known as the Chamier Committee under the Chairmanship of Sir Edward Chamier, a retired Chief Justice of the Patna High Court. REPORT AND SUGGESTIONS in its report submitted in 1924, the Committee apparently felt staggered by the variety of legal practitioners entitled to practice in the High Courts and in the courts subordinate to them. [15]On the question of organizing the legal profession on an all-India basis, the Committee came to the conclusion that it did not consider it practicable at the time to organize the Bar on an all-India basis or to constitute an all-India Bar Council, The Committee suggested however that a Bar Council should be constituted for each High Court. But immediately such Bar Councils were to be established for a few and not all High Courts. The Bar Council should have power to enquire into matters calling for corrective action against a lawyer; but that the existing disciplinary jurisdiction of the High Court should be maintained. The High Court should be bound before taking disciplinary action against an advocate to refer the case to the Bar Council for inquiry and report. The Committee proposed that a Bar Council should have power to make rules subject to the approval of the High Court concerned in respect of such matters as inter alia: (a) the qualifications, admission, and certificates of proper persons to be Advocates of the High Court; (b) legal education;(c) matters relating to discipline and professional

conduct of Advocates etc., (d) the terms on which Advocates of another High Court could appear occasionally in the High Court to which the Bar Council is attached; (e) any other matter prescribed by the High Court. While on some of the questions, e. g., abolition of the dual system, achieving the ideal of a unified bar, composition and powers of the proposed Bar Councils, the recommendations of the Committee fell short of the expectations of the Indians, nevertheless, there were some positive elements therein. 3. 7 THE INDIAN BAR COUNCILS ACT, 1926 To give effect to the recommendations of the Chamier Committee to some extent, the Central Legislature enacted the Indian Bar Councils Act, 1926. The object of the Act, as stated in its preamble, was to provide for the constitution and incorporation of Bar Councils for certain Courts in British India, to confer powers and impose duties on such Bar Councils, and to consolidate and amend the law relating to legal practitioners entitled to practice in such Courts. The purpose of the Act thus was to unify the various grades of legal practitioners and to provide some measure of self-government to the Bars attached to the various Courts. The Act extended to the whole of British, India, but it was applied immediately only to the High Courts of Calcutta, Madras, Bombay, Allahabad and Patna. The Act could be applied to such other High Court as the " Governor-General in Council may, by notification in the Official Gazette, declare to be High Court, to which the Act applied." The Act also achieved some unification of the Bar by eliminating the two grades of practitioners, the Vakils and the Pleaders by merging them in the class of Advocates who were " entitled as of right to practice" in the High Court in which they were enrolled and in any other Court in British India, subject to some exceptions. The duties of the Bar

Council were to decide all matters concerning legal education, qualifications for enrolment, discipline and control of the profession. The Bar Council was authorized, with the previous sanction of the High Court, to make rules to regulate the admission of persons as Advocates^[16] of the High Court. A High Court was authorized to reprimand, suspend or remove from practice any Advocate of the High Court whom it found guilty of professional or other misconduct. The High Court was empowered, of its own motion, to refer any case in which it had otherwise reason to believe that any such Advocate had been guilty of misconduct. The Act of 1926 was an improvement on the pre-existing position in so far as it went but its provisions were not entirely satisfactory and the Indian legal profession was not fully satisfied with what had been achieved by it. The Act failed to satisfy the aspirations of the profession as it merely granted the Bar Councils ineffective powers, much like departments of the High Courts. The Bar Councils were given unreal and abortive powers; they were controlled closely by the High Courts, the real powers being conferred in the High Courts. The power to enroll Advocates continued to remain in the High Courts and the function of the Bar Councils was merely advisory. The rules to be made by a Bar Council were subject to the approval of the High Court. The High Court had effective disciplinary power over the Advocates, the role of the Bar Council being merely advisory. A Bar Council could inquire into a complaint of professional misconduct only when the matter was referred to it by the High Court and even then the findings of the Bar Council were not binding on the High Court. The Act did not in any way affect the Original Sides of the Calcutta and Bombay High Courts. The Attorneys of the Calcutta and Bombay Courts were not in any

way touched by this Act and the enrolment of the Attorneys and the disciplinary jurisdiction over them, therefore, continued to remain vested in the High Courts under their respective Letters Patent. The Legal Practitioners Act, 1879, remained intact and un-amended. The Act left the Pleaders, Mukhtars, etc., practicing in the mofussil courts out of the scope of the Act and the Act did not bring about a Unified Bar. Finally, the right of the Advocates of one High Court to practice in another High Court was not unfettered but was expressly made subject to the rules made by the High Court or the Bar Council. To have an autonomous unified all-India bar having only one grade of practitioners, and autonomous Bar Councils, the legal profession had to wait for over three decades, their long awaited ideals and aspirations fructified only in 1961 when the Indian Parliament enacted the Advocates Act in the Independent India. After Independence it was deeply felt that the Judicial Administration in India should be changed according to the needs of the time. The Law Commission was assigned the job of preparing a report on the Reform of Judicial Administration. In the meanwhile the All India Bar Committee went into detail of the matter and made its recommendations in 1953. To implement the recommendations of the All India Bar Committee and after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration in so far as the recommendation relate to the Bar and to legal education, a Comprehensive Bill was introduced in the Parliament.

ALL INDIA BAR COMMITTEE 1951

The Government of India took the view that in the changed circumstances of independence, a comprehensive Bill sponsored by the Government was

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necessary. In August 1951, the then Minister of Law announced on the floor of the House that the Government of India was considering a proposal to set up a Committee of Inquiry to go into the problem in detail. The Committee was constituted and asked to examine and report on[17]:

1. The desirability and feasibility of a completely unified Bar for the whole of India,
2. The continuance or abolition of the dual system of counsel and solicitor (or agent) which obtains in the Supreme court and in the Bombay and Calcutta High Courts,
3. The continuance or abolition of different classes of legal practitioners, such as advocates of the Supreme Court, advocates of the various High Courts, district court pleaders, mukhtars (entitled to practice in criminal courts only), revenue agents, and income-tax practitioners,
4. The desirability and feasibility of establishing a single Bar Council for (1) the whole of India and (2) for each State,
5. The establishment of a separate Bar Council for the Supreme Court,
6. The consolidation and revision of the various enactments (Central as well as State) relating to legal practitioners, and
7. All other connected matters[18]

The All India Bar Committee submitted its detailed report on March 30, 1953. The report consists the proposals for constituting a Bar Council for each state and an All-India Bar Council at the national level as the apex body for regulating the legal profession as well as to organize the standard of legal education in India. ADVOCATES ACT 1961

In 1961, parliament enacted the Advocates Act[19] to amend and consolidate the law relating to legal practitioners. And to provide to the constitution of slate bar councils and the all india bar council.[20]

The Act establishes an All-India Bar Council for the first time. The Attorney-General of India and the Solicitor-

General of India are the ex-officio members of the Bar Council of India [13] . It has one member elected to it by each State Bar Council from amongst its members. The Council elects its own Chairman and Vice-Chairman. [14] The Bar Council of India has been entrusted inter alia with the following important functions:(1) To lay down standards of professional conduct and etiquettes for Advocates;(2) To safeguard the rights, privileges and interests of Advocates;(3) To promote legal education,(4) To lay down standards of legal education in consultation with the Universities imparting such education and the State Bar Councils;(5) To recognize Universities whose degrees in law shall qualify for enrolment as an Advocate(6) To visit and inspect the Universities for that purpose;(7) To exercise general supervision and control over State Bar Councils,(8) To promote and support law reform;(9) To organize legal aid to the poor. This Act created a State Bar Council in each State. It is an autonomous body[21]. The Advocate-General of the State is its ex-officio member, and there are 15 to 25 elected Advocates. These members are to be elected for a period of five years in accordance with the system of proportional representation by means of single transferable vote from amongst Advocates on the Roll of the State Bar Council. The State Bar Council has power to elect its own Chairman. The main powers and functions of the State Bar Council are:(a) To admit persons as Advocates on its Roll;(b) To prepare and maintain such Roll;(c) To entertain and determine cases of misconduct against Advocates on its Roll;(d) To safeguard the rights, privileges and interests of Advocates on its roll;(e) To promote and support law reform;(f) To organize, legal aid to the poor. Thus, every State Bar Council prepares and maintains a Roll of Advocates and: an authenticated

copy of the Roll is to be sent to the Bar Council of India. An application for Admission as an Advocate is made to the State Bar Council within whose jurisdiction the applicant proposes to practice. The Bar Council of India regulates the content, syllabi, duration of the law degree. Subject to the provisions made by the Bar Council, each University can lay down its own provisions and regulations regarding the law degree. To perform its functions regarding legal education it is assisted by a Legal Education Committee consisting of ten members, five being members" of the Bar Council of India, and five co-opted by the Council who are not members' thereof. The idea is that the co-opted members would mainly be law teachers. The finances of the Bar Councils are essentially met out of the enrolment fees of the Advocates, Twenty per cent of the fees appreciated are paid by each State Bar Council to the Bar Council of India. 9 The Bar Councils may receive donations and grants. The Bar Councils can frame rules for carrying out their functions. The rules made by the State Bar Council have to be approved by the Bar Council of India. The Central Government has been given an overriding power of making rules on any matter. There was no such provision originally. This provision was inserted in the Act in 1964. This provision has been criticized as amounting to a threat to the independence and autonomy of the Bar Councils. The qualifications for admission as an Advocate are: citizenship of India, 21 years of age, and LL. B. Degree from an Indian University. A foreign national can also be enrolled on the basis of reciprocity if an Indian citizen is permitted to practice in that country. Foreign Law Degrees can also be recognized by the Bar Council of India for the purpose. The Act recognizes only one single class of practitioners, namely, Advocates.

An Advocate on the State roll is entitled to practice as of right before any tribunal, or authority in India, or any court including the Supreme Court. Advocates have been classified into Senior Advocates and other Advocates. An Advocate may, with his consent, be designated as a Senior Advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, experience and standing at the Bar he is deserving of such distinction. Senior Advocates are, in the matter of their practice, subject to such restrictions as the Bar Council of India may, in the interests of the legal profession prescribe. Originally, the Act had saved the dual system, i. e. Advocates and Attorneys, prevailing in the Bombay and Calcutta High Courts on their Original Side. It was left to the two High Courts to continue the system or not. These provisions were deleted with effect from 1st January, 1977 and now Attorneys are no longer recognized as a separate class of lawyers. However, since the system prevailed for a long period in the two towns, it continues there still as a matter of practice. Any advocate enrolled with his State Bar Council is now entitled to practice in the Supreme Court irrespective of his standing at the bar. In Supreme Court there exist 3 categories of advocates: Senior Advocates, Advocates and Advocates on Record. A Senior Advocate is one who with his consent may be designated so if the Supreme Court is of the opinion that by virtue of his ability, experience and standing at the bar is deserving of such distinction. An advocate can become an Advocate on record after undergoing one year training with an advocate of record and passing an examination held by the court. He has to have an office in Delhi within a radius of 16 kilometers from the Court House and has to employ a registered clerk. Thus, admission, practice, ethics, privileges,

regulation, discipline and improvement of the profession are now all in the hands of the profession itself. The legal profession has achieved its long cherished object of having a unified Bar on an All-India basis.

CONCLUSION

The advocates Act, 1961 has marked the beginning of a new era in the history of legal profession by vesting largely in the Bar councils the power and the jurisdiction which the courts till then exercised. It has fulfilled the aspirations of those who had been demanding an all India Bar and effecting a unification of the bar in India by the creation of a single class of practitioners with power to practice in all the courts. They are now bound by the rules made under code of conduct laid down by their own of bodies to which members could resort to for the protection of their rights, interests and privileges. Thus, the legal profession can play a vital role in upholding individual rights and efficiently spreading justice while acting as an integrating force in national life. It is now part of the modern legal system which provides both the personnel and techniques for effective rational utility. The responsibility of this profession to the Indian society is indeed great, as has been its history. However all that glitters is not gold. The responsibility that the Indian Bar bears to the society and the challenge that it faces today bear a testimony that the Indian Bar has not risen to the level to discharge its duties. We may not be able to say with any tolerable measure of consensus what ' justice' signifies; but there may be a fair measure of consensus on the idea of ' conditions' of justice, one of which is the construction of public discourse on the nature and limits, legitimacy and legality, of state power. The denial of such discourse often signifies an end to

the very quest for justice. Creation and sustenance of such conditions has been articulated in the code of ethics providing standards for identification and measurement of professional grievance. The lawyers as a profession live and thrive on ambiguity [22] , inherent in, or imparted to words and the professional deviance of lawyers is multifaceted. The highest obligation is to provide free legal aid to the " indigent and the oppressed". This obligation is subject to limits of the advocate's economic condition. But we know that even superstar lawyers whose economic conditions is unconscionably affluent even refuse summarily to see an indigent person with urgent need for legal assistance. Most senior lawyers stay away from legal aid programmes of the state. Unless the leaders of the bar do some introspection and put the profession back on the rails all we will be left with is an occupation and not a profession.