



## HISTORY OF LEGAL PROFESSION IN INDIA WITH SPECIAL EMPHASIS ON BRITISH STATUTES

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*“Law is nothing else but the best reason of  
wise men applied for ages to the  
transactions and business of mankind”  
-Abraham Lincoln*

### Introduction

Law in layman language can certainly be interpreted as a book of rules and regulations imposed within the country by the sovereign, which is to be followed by the populace. It also penalizes contravention of any of its legislation. Profession on the other hand can be construed as a remunerated occupation of a person after achieving the relevant qualification and training per se. Thus, profession which relates to practicing the law in force relates to Legal Profession. The roots of any institutions, traditions and establishments lie profoundly in the past which can also be considered as true for a country's legal history. According to historical school of law, “law is the product of social consciousness”. This school of thought considers the presence of law from the beginning of the society. Although this school of thought majorly focuses a lot on the past but also postulates indirectly the dynamic nature of law. Legal history of India was in a dormant stage during the Bronze Age as one could trace out the basics of civil law system present in Indus Valley civilization<sup>1</sup>, then a sturdy and perpetual

momentum gain in this field started from the Vedic Age. India is recognized as one of the biggest diversified nations among the world, enriched in various socio-political and cultural affairs. Hence, legal profession in India plays a vital role. Though the lines of this profession lie before Independence; it has evolved with the change in the need of society and through this constant evolution we have built an ethical and principled foundation in this profession. Without a well-established and proper legal profession, implementation of justice would be a next to impossible task as facts and evidences pertaining to a case will not be presented properly; also parties to a suit/proceeding will not be represented adequately before the court. Therefore, it is essential to understand and to take into account a brief note on the expansion and development of legal profession in India.

### History of Legal Profession in India

India recognizes the doctrine of separation of power even though it is not present in absolute sense; the three organs of government are considered to be independent of each other's functions. Legislature is independent of Judiciary and executive and same goes for other two respectively. Since, judiciary is independent of legislative and executive functions; a well-established and autonomous legal profession is vital for appropriate administration and implementation of justice. According to the report of law commission a well administered judicial system results in a properly equipped and efficient bar<sup>2</sup>.

#### 1. Mayor's Court

<sup>1</sup> <https://www.lawctopus.com/academike/history-legal-profession-india/>

<sup>2</sup> Law Commission, XIV Report, 556(1958).



Mayor's Courts were established under the Charter of 1726 in Bombay, Madras & Calcutta. There were no specific provisions regarding qualifications or credentials as a prerequisite for a person who'll be authorized to act or plead as legal practitioner. Apparently, it was left upon the discretion of these courts to adjudicate this matter by framing rules and regulations of practice. Legal profession in this period was ill-managed and the ones' who were practicing were lacking legal training and knowledge.

## 2. Supreme Courts

In 1774 Supreme Court was established in Calcutta as per the incorporation of Royal Charter. It was done so because the British were dissatisfied with the functioning of the mayor's courts. Later in 1801 and 1823, two parallel Supreme Courts were introduced in the presidencies of Madras and Bombay respectively. Supreme Court was authorized to incorporate new or amend procedural rules as it deems fit for the proper administration of justice and in due exercise of its powers such as the powers of approvals, admissions and enrollments of advocates and attorneys as a prerequisite for representing the suitors. The charter also entrusted the court with the power of removing a lawyer on reasonable cause and to outlaw practitioners who were not properly admitted and enrolled from practicing in the court<sup>3</sup>. Only Attorneys and Advocates were entitled to present themselves before the Supreme as mentioned under this charter; here, the latter meant only the British Attorneys while the former extended its ambit only to the British and Irish Barristers and for the members of the Faculty of Advocates in Scotland. So, in a nutshell the charter under clause 11

circumscribed any other person whatsoever to represent before the Supreme Court from its origin which was so present to preserve the members of British legal profession while the native Indian legal practitioners were devoid of the right of representing in this court.

## 3. Company's Adalats

### Regulation VII of 1793

This regulation upheld the status of Vakils who were oblivious of the law and were persecuted widely from the ministerial officers of the courts. By the virtue of regulation VII the doors of appointment and enrollment of Vakils for the purpose of representation or to act in the courts of civil judicature were opened. These courts were present in the provinces of Bengal, Bihar and Orissa. The prima facie objective for the incorporation of the regulation VII was to brace the legal profession in the paramount interest of the members of the bar serving their clients and the litigant public. Thus, this regulation laid more importance on the vital role of a legal practitioner in the implementation of justice.

The concept similar to *vakalatnama* was introduced which purported that a party after retaining a pleader, the latter was supposed to draft a *vakalatnama* acknowledging him as the pleader and permitting him to defend or prosecute the matter. This provision acted as the genesis of the present *vakalatnama*. Even so, the Vakils were not given much importance per se, as they were restricted to plead only in one court they were attached with, and if they wanted to appear in before another court a prior sanction by the Sadar Diwani Adalat was mandatory.

<sup>3</sup> <http://www.barcouncilofindia.org/about/about-the-legal-profession/history-of-the-legal-profession/>



### Regulation XXVI of 1814

This was by far the lengthiest and the most comprehensive regulation among the previous ones for the purpose of regulating legal profession. Provincial courts were given the power for removal, disciplining and licensing of Vakils which until-now were vested with the Sadar Adalats. Even for the appointment of the Vakil in any court prior approval of the nominated person by the Provincial Court was mandatory. Rules were more elaborated and thorough in regards to the mal-practices which were being observed. The people eligible for the appointment were only Hindu and Muhammadan. Also among them, more preferences were given to candidates who were educated from any Muhammadan or Hindu colleges which were instituted by the government with the proviso that the applicants duly qualify in all the other aspects. A prescribed minimum fee was introduced and the Vakils were entitled to it under this regulation.

### Regulation V of 1831

The prevalent practice of appointment or admission of Vakils on the exclusivity of their religion ended its reign under this regulation. Under Bengal regulation XII of 1833 the provision of selection, appointment and remuneration of pleaders was modified and people of whatsoever nationality or religion were able to register themselves as pleader of the Sadar Diwani Adalat.

### The Legal Practitioner's Act, 1846

Also referred as the "*first charter of the legal profession*" was the first All-India legislation regarding the laws concerning the pleaders in Mofussil. Major improvements which were made were:-

1. Nobody was barred from holding the office of a pleader based on nationality or religion provided that he fulfills every other necessary qualification.
2. Every barrister registered in India was now entitled to represent before the Sadar Adalats subject to the rules of the respective courts.
3. Vakils were now permitted to enter into a contract with their clients in consideration of remuneration for the service provided.

Under this act the barristers were entitled to appear in before the Supreme Courts as well as the Sadar Diwani Adalats while the native Indians Vakils were still barred from their recognition before the Supreme Courts because of the prejudice of the authorities; referring to them as practitioners not having adequate knowledge over the subject and by introducing barristers before the court will help in improving the current deteriorating situation.

### 4. High Courts

The inception of High courts in Calcutta, Bombay and Madras by the Crown was done in 1862; the bench of High Court was intended to syndicate the Supreme Court and Sadar Court traditions. The prima facie objective of this was to provide a union between judicial experience and legal learning of the British barristers with the intimate experience of civil servants in matter of judicial experience. High courts were vested with the powers of framing guidelines for the qualifications for Vakils, advocates and attorneys at bar; with this the exercise of barring the Vakils before the High Courts ended breaking the exclusivity enjoyed by the barristers in the Supreme Courts. Hence, it significantly facilitated the growth and practice of the prestigious Indian laws by giving them equal opportunities like others.



In the non-chartered High Courts, the advocates were generally regarded as the barristers while Mukhtars and Pleaders varied from one High Court to another; the courts below High courts had a different class of legal practitioners. Additional High Courts in Patna, Lahore and Allahabad were instituted in 1916, 1919 and 1886 respectively.

### 5. Legal Practitioners Act, 1879

Under this act the representation of Revenue Agents, Pleaders and Mukhtars was abolished in the lower provinces<sup>4</sup> and by this time a system of six grades of practitioners was operating in India after the incorporation of High Courts:

- Advocates,
- Solicitors (Attorneys),
- Vakils of High Courts,
- Pleaders,
- Mukhtars,
- Revenue Agents.

The Legal Practitioners Act, 1879 incorporated all the six grades of the profession into one system under the jurisdiction of the High Courts. The Legal Practitioners Act along with the Letter Patent of the High Courts formed the chief legislative governance of legal practitioners in the subordinate Courts in the country until the Advocates act of 1961 was enacted. The non-chartered High Courts were given power to frame rules for the advocates under the Legal Practitioners Act of 1884 although such rules were subject to the discretion of Provincial Government and with the coming of the Legal Practitioners (Women) Act in

1923 the eligibility of women in the legal profession was promoted. Since then the participation of women kept on increasing in the field of Legal profession.

### 6. Indian Bar Council Act, 1926

Since the inception of Supreme Courts, the Barristers of England enjoyed a predominant spot in the legal profession. Many differences were prevailing in the system between Barristers and Vakils, the latter were treated as inferior to the Barristers. Till 1926 the legal system had no autonomous organization of its own for regulating all the matters related to admission, removal etc. or to maintain a highly efficient professional conduct in context to legal profession. The courts were solely authorized to perform all these tasks hitherto. This massive suppression of Vakils resulted in their mass agitation. Hence, they demanded for the removal of all the distinctions which were present between the Barristers and Vakils, removal of all types of reservation pertaining to judicial appointments in favor of particular classes. The demand for creating an all-India Bar in the country intensified so that all the discrimination and mal-practices will come to an end and a single body will be governing over the field of legal profession. In 1923 the Government of India appointed The India Bar Committee also known as the Chamier Committee. The committee was organized under the Chairmanship of Sir Edward Chamier, a retired Chief Justice of Patna High Court. Some recommendations<sup>5</sup> of the committee were:

<sup>4</sup> Lower provinces of Bengal, North –Western provinces, the Punjab, Oudh, Central Provinces and Assam.

<sup>5</sup> <https://www.legalbites.in/legal-profession-introduction-history->

regulation/#:~:text=The%20history%20of%20the%20legal,in%201672%20by%20Governor%20Aungier.&text=In%201791%2C%20Judges%20felt%20the,each%20of%20the%20Mayor%27s%20Courts



- A single grade of enrolled practitioners to be allowed to plead before all the High Courts and to be termed as Advocates,
- The terms Pleaders or Vakils to be abolished,
- Special provisions for admissions to be laid down for the advocates to appear before the original side,
- Vakils duly qualified to be enrolled for practice on the original side,
- Advocates of a particular High Court should be entitled for appearing before any other Higher Court subject to the Conditions of the Bar Council of the latter court.

nor any authority. The major three points which were postulated were:

1. Elimination of every distinctions prevailing between the different classes of legal practitioners,
2. Democratization of Bar Councils by bringing in representative of the Moffusil Lawyers
3. Bar Council to have the power and control over the administration of members of the legal profession which was vested with the High Court hitherto.

For materializing these recommendations purported by the Chamier Committee, The Indian Bar Councils Act, 1926 was enacted for the purpose of incorporating Bar Councils for certain courts in British India. The act of 1926 was in no doubt an improvement on the pre-existing positions but it was not adequate enough and the Indian Legal Profession was still in the pursuit of its prestige.

The power of enrollment of Advocates still remained under the ambit of High Courts and Bar Councils usually served as an advisory board. Rules which were framed by the Bar were subject to the approval of High Court and the Bar Council had the power of holding an inquiry regarding a professional misconduct only after the approval of the High Court. This Act did not affected the original sides of the Calcutta and Bombay High Courts.

#### 7. All India Bar Committee, 1951

Indian Bar Councils Act was not adequate in itself for uplifting the conditions of native Indian practitioners. It served merely as an advisory body having neither autonomous

This struggle came to an end after a prolonged period with the institution of the Supreme Court in the independent India in 1950. Thus a fresh deliberation was given to the call for Unified All India Bar.

In 1951, a committee was formed by the Government of India under the Chairmanship of Justice S. R. Das of the Supreme Court for examining the following matters of concern<sup>6</sup>:

- *“Viability and possibility of a unified Bar for whole of the India,*
- *In continuance with the abolishment of dual system of council and solicitor which obtains in the Supreme Courts and in the High Courts of Bombay and Calcutta,*
- *Abolition of different classes of legal practitioners,*
- *Viability for instituting a Bar Council for each state,*
- *Incorporation of a distinct Bar Council for Supreme Court,*
- *Consolidation and revision of the various enactments relating to legal practitioners”*

<sup>6</sup> <https://www.lawctopus.com/academike/history-legal-profession-india/>



### 8. Advocates Act, 1961

The aim of constituting a unified, autonomous all-India Bar having only a single grade of practitioners for which the Legal Profession waited for so long came to an end after the enactment of the Advocates Act, 1961. The objective of the act was to amend and consolidate the law relating to legal practitioner, it implemented the recommendations of the Bar committee report along with the Law Commission Report of 1958 with some modifications. The Indian Bar Council Act, 1926, along with the Legal Practitioner Act, 1879 got repealed.

The Act established for the very first time an All-India Bar Council making the Attorney-General and the Solicitor-General as the ex-officio member of it<sup>7</sup>. It also instituted State Bar Councils in each state making the Advocate-General of the State as its ex-officio member. The duties and obligation of the State Bar Councils and All-India Bar council are laid down in the act in a detailed manner. Originally, the act did not abolish the dual system, prevailing in the Bombay and Calcutta High Courts. These were scrapped after 1<sup>st</sup> January, 1977. Thus, practice, admission, privileges, ethics and regulations/improvements of the legal professions were all in the hands of the profession itself. So, one could say that the Legal Profession has accomplished its long cherished purpose.

### Conclusion

Legal history and the legal profession can be referred as an organism which is constantly evolving with the needs and change-in society. Legal Profession through countless phases has gained its prestige and social acceptance. The gigantic step which the legal profession took in the post-independence

period is because of the acknowledgement given to the issues by the Government and the Bar-council of India and various states. Also the humongous growth of the population of India provided the momentum which was required in the Legal Profession. Proper importance should be given in the legal education so that the students get adequate understanding in order to deal with the dynamic nature of law which is constantly evolving. It is now quite evident that for a well-organized judicial administration of a country there must be a well-qualified, properly equipped and an efficient Bar as mentioned under the Report XIV of Law Commission. However, there is still some room left for improvement and growth of the Legal profession. What we need is a vision based on philosophy and thence, acts in furtherance of such prophecies if required.

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<sup>7</sup> Section 4 of Advocates Act, 1961