

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

---

Volume 3 | Issue 4

2021

---

© 2021 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at [editor.ijlsi@gmail.com](mailto:editor.ijlsi@gmail.com).

---

# Historical Development of the Modern Legal Profession

---

AJAY PAL SINGH<sup>1</sup>

## ABSTRACT

*The Legal Profession being a noble profession is governed not only by Legal but Ethical considerations as well. In fact, the Preamble to the Constitution of India guarantees justice, "Social, Economic and political" to every citizen. Legal professionals lie at the core of administration of justice. The profession has dynamically and rapidly evolved over a span of several years Nonetheless while Immense strides have been made, there is still ample room for evolution and future development of the profession for benefit of the entire humanity. In this paper, an attempt has been made to trace the history of Legal profession in India throughout the Ancient, Medieval, British and finally the Post-Independence Period, with a brief introductory portion on the origin of this profession in ancient Greece, Rome and the UK.*

**Keywords:** *Legal Profession, Constitution, Justice, Ethics, Ancient, Medieval, British, Post-Independence Period.*

## I. INTRODUCTION

The Legal Profession i.e., profession of law is one of the oldest and noblest professions. From the onset of civilization, administration of justice has remained one of the most important function of the State. The term administration of justice is a very wide term and it includes within its ambit the lawyers, the litigants and the judges. Legal professionals lie at the core of administration of justice. The Preamble to the Constitution of India guarantees justice, "Social, Economic and political" to every citizen.<sup>2</sup> In this paper, an attempt has been made to trace the history of Legal profession in India, with a brief introductory portion on the origin of this profession in ancient Greece, Rome and the UK.

## II. DEVELOPMENT OF LEGAL PROFESSION ABROAD

The genesis of the legal profession can perhaps be traced to Ancient Greece, for it was here that the profession of Orators (skilled individuals who represented other people in their

---

<sup>1</sup> Author is a student at Army Institute of Law, Mohali.

<sup>2</sup> Dr. Neetu Gupta, Professional Ethics Accountancy for Lawyers and Bench-Bar Relation, Pg.2, (2<sup>nd</sup> Edition).

disputes with others) came into existence. However, they were looked down upon by ordinary Greeks, because it was believed that such individuals could acquire great power and become aristocrats. Therefore, the legal profession couldn't grow much in ancient Greece. As far as ancient Rome is concerned, it was known for two categories of legal professionals namely the *Juris consults*, (legal professionals who provided advice to the individuals) and Procurators legally trained professionals who acted and practiced in front of court of law.<sup>3</sup> However, the modern adversarial common law based legal system has its genesis in the UK. During the Middle Ages, a number of legislations and regulations were enacted to regulate the profession. Some of these included Charter of London (1268), Statute of Westminster (1275), London Ordinance (1280) and Ordinance of 1292. Thus, the legal professional gradually became to be formalized in the UK. Initially the profession was demarcated between Sergeants/Serjeants and Attorneys. This distinction still exists as Barristers (legal professionals who can plead for the parties) and Solicitors (legal professionals who can only act for the parties) respectively.<sup>4</sup>

### III. DEVELOPMENT OF LEGAL PROFESSION IN INDIA

Development of legal profession in India can be divided into the following phases/historical eras namely Legal profession in Ancient India, Legal profession in Medieval India, Legal profession in British India and Legal profession in India after Independence.

#### 1) Legal profession in Ancient India

In ancient India, the King was considered as foundation head of justice and was reservoir of judicial powers. In fact, the structure of judicial system rested upon the Principle of Dharma. The King's Court was the highest court of appeal as well as an original court in some important cases. The King was advised by learned people like Brahmins, counsellors, ministers etc. who in turn were guided by the principles of Dharma inscribed in Vedas, Shastras and Samritis. While, there was hierarchy of courts, yet one of the most significant features of the ancient Indian legal system was the absence of lawyers. However, as per evidence found in Manusmriti, Yajnavalkya and the procedure prescribed by Narada, Brahaspati and Katyayana, the profession involved a high level of technicality. Thus, though class of legal representatives existed in ancient India, it was not as organized as in modern

---

<sup>3</sup> The History of Lawyers, West Columbia Lawyer, (Jul. 27, 2021, 2:56 PM), <https://westcolumbia lawyer.com/the-history-of-lawyers>.

<sup>4</sup> R. Sharma, History of Legal Profession in India, Law Octopus, (Jul. 27, 2021, 3:00 PM), <https://www.lawctopus.com/academike/history-legal-profession-india>.

time.<sup>5</sup>

## 2) Legal profession in Medieval India

Following the collapse of Harsha's empire, India was divided once more into small kingdoms. Nonetheless this did not result in any significant change in the judicial system which had taken roots during the preceding thousands of years. However, the Muslim rulers had a profound effect on the judicial system. During this period, Qazi was the main unit of judicial administration. Although there is no clear evidence of existence of an organized legal profession during medieval times, yet lawyers known as Vakil were appointed to defend civil suits against the State and to assist poor litigants with free legal advice. Still there was very little emphasis on any high legal learning nor stress or the urge for observance of any well laid professional standards of conduct. Further, individuals known as Muftis existed and their assistance was particularly required in criminal cases. They also helped to expounded the law in the light of which sentence was pronounced by the court.<sup>6</sup>

## 3) Legal profession in British India

After the advent of the British rule in the County, first by the East India Company and later by Direct Crown rule a new hierarchy of courts was set up by the East India Company. In fact, the present system of administration of justice owes its origin to the advent of British rule in India. Initially, East India Company was least interested in the organization of legal profession in India. However, when they gradually introduced the British judicial system in India, the institution of legal profession came along with it. For instance, the Charter of 1622 authorized the East India Company to chastise and correct all English persons residing in the East Indies and committing any misdemeanor, either with marital law or otherwise. By a Charter dated 3 April 1661, issued in power was given to the Governor and Council to administer justice also to non-Europeans who lived within the factories of the company. The first British Court in Bombay in 1671 by Governor Gerald Aungier.<sup>7</sup> Some of the subsequent developments and legislations are as follows:

**i) Charter of 1726:** By the Charter Act of 1726, the three Presidency towns of Calcutta, Bombay and Madras were to have Mayor's Court. These Courts were constituted by Mayor and Aldermen with right of appeal to the Governor and his Council and then to the King in Council. The Mayor's Courts derived their authority from the British crown. Although the Charter of 1726 established Mayor's Courts but no specific provision was made laying down

---

<sup>5</sup> Gupta, *supra*, 2.

<sup>6</sup> Ibid.

<sup>7</sup> Gupta, *supra*, 5.

any particular qualifications for the persons who would be entitled to act or plead as legal practitioners in these courts. Thus, it was left to these courts to regulate this matter drafting their own rules.<sup>8</sup>

**ii) Charter of 1753:** This Charter was issued to modify the Charter of 1726. It ignored significant provision for legal training and education relating to legal practitioners. Thus, even after the charter of 1753, the legal profession was not organized.<sup>9</sup>

**iii) Regulating Act 1773 and Charter of 1774:** The Regulating Act defined the powers and authority of the East India Company with respect to its Indian possessions. The Charter of 1774 was passed in pursuance of Regulating Act. This was the first concrete step in the direction of organizing a legal profession in India. Further, the Supreme Court was established at Fort Williams, Calcutta. Under Clause 11 of the Charter, the Supreme Court was empowered to approve, admit and enroll such and so many advocates and attorneys-at-law, as to the Court shall deem fit. The term Advocate at the time extended only to the English and the Irish barristers and the members of the faculty of Advocates in Scotland. The expression "Attorneys" then meant only British Attorneys or Solicitors. Further, Clause 12 of the Charter authorized the Supreme Court to settle the table of fees to be allowed to the sheriffs and other officers, clerks and attorneys etc. The position was similar in the Supreme Court of Madras (established in 1801) and the Supreme Court of Bombay (established in 1823). Thus, the only persons who were entitled to practice were the British barristers, advocates and attorneys and Indians had no right to appear before these Courts.<sup>10</sup>

**iv) Bengal Regulation Act of 1793:** Bengal Regulation Act VII of 1793 provided for landmark changes in the working of Company Courts. Some of its key provisions were:

- The Regulation created a regular legal profession for the Company's Adalat's.
- The Regulation brought some order and measure of quality to pleading and sought to establish practice of law as a pleader and also a scale of professional fee based on a percentage of the value of the property.
- Only Hindus and Muslims could be enrolled as pleaders. Further, the Sadar Diwani Adalat could appoint other proper persons of good character and liberal education.
- Vakils attached to one court were not permitted to plead in any other court without the sanction of the Sadar Diwani Adalat. ‘

---

<sup>8</sup> Sharma, *supra* note 5.

<sup>9</sup> Development of Legal Profession in India, SRD Law Notes, (Jul. 27, 2021, 4:00 PM) <https://www.srdlawnotes.com/2016/07/development-of-legal-profession-in-india.html>.

<sup>10</sup> Gupta, *supra*,7.

- Every pleader was required to attend the court to which he was attached punctually and regularly.
- A pleader showing disrespect to the court in open court could be and suspended.

v) **Bengal Regulation XXVI of 1814:** This regulation reduced into one Regulation with amendments and modifications the several rules which were in force regarding the office of Vakil or native Pleader in the Courts of Civil Judicature.<sup>11</sup>

vi) **Bengal Regulation XII of 1833:** It modified the provisions of the earlier regulations regarding selection, appointment and remuneration of the pleaders. The regulation permitted any qualified person of any nationality or religion to be enrolled as a pleader of Sadar Diwani Adalat.<sup>12</sup>

vii) **The Legal Practitioners Act, 1846** - The Legal Practitioners Act 1846 allowed at the people of any nationality or religion to act as leaders. Section 4 of the Act removed the aforesaid religious test. It also allowed attorneys and barristers enrolled in any of Her Majesty's courts in India to plead in the company's Sadar Adalat.<sup>13</sup>

viii) **The Legal Practitioners Act, 1853** – The Act authorized the Barristers and Attorneys of the Supreme Court to plead in any of the Sadar Adalat and other Subordinate Courts established by East India Company, subject to rules in force in the such subordinate courts as regards language or otherwise.<sup>14</sup>

ix) **Indian High Courts Act, 1861** –

Following the Direct British Rule after the Revolt of 1857, the separate systems of Company's Courts in the mofussil and the Royal Courts in Presidency towns were consolidated into a unified judicial system in each of the three Presidencies. This was done by the Indian High Courts Act 1861. Section 9 of the Act provided that the High Courts to be established in each Presidency should have and exercise all the jurisdiction and every power and authority whatsoever in any manner vested in any abolished Court in the same Presidency In pursuance of the provisions of the Act, the Charter for the Calcutta High Court was issued on May 14, 1862. The Charter for the High courts of Bombay and Madras were issued on June 26, 1862 and these courts were inaugurated on the 14<sup>th</sup> and 15<sup>th</sup> August 1862 respectively.<sup>15</sup>

---

<sup>11</sup> History, West Bengal Bar Council, (Jul. 27, 2021, 4:10 PM) <http://wbbarcouncil.org/history.php?page=2>.

<sup>12</sup> Ibid.

<sup>13</sup> Sharma, *supra* note 5.

<sup>14</sup> Ibid.

<sup>15</sup> Gupta, *supra*,12.

- Clause 9 of the Letters Patent of 1865 of the High Court of Calcutta empowered the Court "to approve, admit and enroll so many Advocates, Vakils and Attorneys as to the said High Court shall deem fit." Similar provisions were made in the Charters of the High Courts of Bombay and Madras.
- Clause 10 of the Letters Patent stated the High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be advocates, vakils, and Attorneys-at-law of the said High Court and shall be empowered to remove or to suspend them from practice, on reasonable cause.<sup>16</sup>

Rules were framed for enrolment of attorneys, advocates and vakils. Advocates were mainly barristers of England or Ireland or members of the Faculty of Advocates of Scotland. High Courts other than that at Calcutta permitted non-barristers holding degrees in law from Indian universities to be enrolled as advocates. The vakils were not allowed to act or plead on the Original Side, but they could both act and plead on the Appellate Side. After some time, the Madras High Court altered its rules as well. Subsequently, the rules were relaxed for the High Courts of Calcutta and Bombay as well.<sup>17</sup>

**x) Legal Practitioners Act 1879** - The Legal Practitioners Act 1879 contained the following provisions:

- It brought all the six grades of legal practitioners i.e., Advocate, Vakil, Attorney of any High Court, a Pleader, Mukhtar or Revenue Agent into one system under the jurisdiction of the High Courts.
- The Act empowered an advocate or a vakil on the Roll of any High Court to practice in his own High Court, in all the courts subordinate thereto, in any court in British India other than a High Court on whose roll he was not entered or with the permission of the court in any High Court on whose roll he was not entered.
- The Act conferred power on the High Court not established under a Royal Charter to make rules regarding qualifications, admission and certificates of proper persons to be pleaders and mukhtars with the previous sanction of the Provincial Government.
- A Chartered High Court could make such rules for Pleaders and Mukhtars of subordinate courts without the approval of the Provincial Government concerned.<sup>18</sup>

---

<sup>16</sup> Gupta, *supra*, 13.

<sup>17</sup> Gupta, *supra*, 14.

<sup>18</sup> Legal Practitioners Act 1879, Legislative Department, (Jul. 27, 2021, 4:15 PM), <https://legislative.gov.in/sites/default/files/A1879-18.pdf>.

**xi) Indian Bar Committee 1923** - The Government of India set up Indian Bar Committee, under the Chairmanship of Sir Edward Chamier in 1923. Some of its recommendations were:

- It did not favor the establishment of All India Bar Council. Instead, it was proposed that Bar council should be constituted for each High Court.
- It proposed that in all High Courts; a single grade of enrolled practitioners, entitled to plead, is to be called advocates.
- It proposed that only special conditions are maintained for admission of Advocates entitled to appear on the Original Side and Advocates not so entitled. However, at the same time the Vakils fulfilling certain conditions be admitted to practice on the original Side.
- Finally, it was suggested that Advocates of one High Court should be entitled to practice in another High Court subject to the conditions to be imposed by the Bar Council of the latter court.<sup>19</sup>

**xii) Indian Bar Council 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. Some of the key provisions of this act were as follows:

- Although 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 made provision for a Bar Council for every High Court was to consist of 15 members as follows: Advocate General, four members be nominated by the High Court of whom not more than two may be judges of that Court and ten members to be elected by the advocates of the High from amongst themselves.
- The Act provided that the power to make rules with respect to constitution and procedure of Council was vested in the High Court but the Bar Council may thereafter, the previous sanction of the High Court, add to, amend or rescind any rules made.
- The Advocate General was to have pre audience over all other advocates.

---

<sup>19</sup> Gupta, *supra*,17.

- Thus, the Bar Councils were vested with general power of making rules with the previous sanction of the High Court prescribing the rights and duties of the advocates and their discipline and professional conduct.<sup>20</sup>

#### **4) Legal profession in India after Independence**

**i) All India Bar Committee, 1951<sup>21</sup>-** In 1951, the All-India Bar committee was constituted under the chairmanship of Justice S.R. Das. The committee in its report recommended that:

- The establishment of an autonomous and unified All-India Bar is ideal which must be attained.
- The need to prescribe a minimum qualification to be possessed by Advocates.
- The setting up and maintenance of a common roll of Advocates for all India. A candidate having the minimum qualification may apply for enrollment as an advocate to any State.
- The committee was of the view that the different classes of legal practitioners be abolished. Thus, it was recommended that there should be only one class of legal practitioners, viz., advocates.
- It recommended that the power of enrollment, suspension and removal of advocates be vested in the Bar Councils.

**ii) 14<sup>th</sup> Report of The Law Commission of India:** The Law Commission of India in its fourteenth report, 1958 fully endorsed the recommendations made by All India Bar Committee.<sup>22</sup>

#### **iii) Advocates Act, 1961**

Advocates Act, 1961 was the culmination of a long quest for regulation and reformation of legal profession. The Act repeals the Indian Bar Councils Act, 1926, the Legal Practitioners Act, 1879 and other laws on the subject. The relevant Bar Council Rules enacted from time to time supplement the Advocates Act 1961. The Advocates Act, 1961 contains 60 Sections set out in 7 chapters, namely: -

---

<sup>20</sup> About Legal Profession, Bar Council of India, (Jul. 27, 2021, 4:56 PM), <https://www.barcouncilofindia.org/about/about-the-legal-profession/history-of-the-legal-profession/>.

<sup>21</sup> Ramanuja, Historical Development of Legal Profession, Ipleaders, (Jul. 27, 2021, 5:15 PM), <https://blog.ipleaders.in/historical-development-of-law-relating-to-legal-profession-and-the-bar-in-india/>.

<sup>22</sup> 14<sup>th</sup> Report, Law Commission of India, (Jul. 27, 2021, 5:20 PM), <https://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>.

- **Chapter I - deals with primary issues such as short title, extent and commencement and definitions.**
- **Chapter - II Section 3 to 15 deals with the bar councils.**
- **Chapter III Section 16 to 28 deals with admission and enrolment of advocates.**
- **Chapter IV deals with the right to practice.**
- **Chapter V Section 35 to 44 deals with the conduct of an Advocate.**
- **Chapter VI Miscellaneous issues.**
- **Chapter VII deals with the temporary and transitional provisions.**<sup>23</sup>

The salient features of the Act are<sup>24</sup>:

1. It defines the term Advocate as an advocate entered in any roll under the provisions of the Act.
2. It provides for the establishment of the State Bar Councils and the All-India Bar Council which have since been established. The State Bar Councils are inter alia empowered to admit persons as advocates on their rolls, to prepare and maintain such rolls, to determine cases of misconduct against advocates on their roll, to make rules regarding a course of practical training in law and the examinations to be passed for admission as an advocate on their rolls.
3. The Act provides for constitution of various committees like disciplinary committee, enrolment committee, executive committee, legal aid committee etc. to enable the State Bar Councils and Bar Council of India to perform their functions effectively.
4. The Act confers power upon the Bar Councils to visit and inspect universities imparting legal education to check the basic infrastructure required by the law students.
5. The Act confers powers upon the Bar Council of India to lay down standards of professional ethics and etiquette to be followed by the advocates.<sup>25</sup>
6. The Act provides for common roll of advocates and any advocate whose name is entered in the common roll; he can practice in any court throughout India
7. Bar Councils are vested with disciplinary powers under the Act to punish any advocate who is found guilty of professional or other misconduct.<sup>26</sup>

---

<sup>23</sup> Development of Legal Profession in India, SRD Law Notes, (Jul. 27, 2021, 4:20 PM), <https://www.srdlawnotes.com/2016/07/development-of-legal-profession-in-india.html>.

<sup>24</sup> Gupta, *supra*, 21.

<sup>25</sup> *Ibid*.

<sup>26</sup> Gupta, *supra*, 22.

#### IV. CASE LAWS

Some of the relevant case laws include:

1. *In the Matter of the Petition of the Attorneys*<sup>27</sup>: The Madras High Court held that the rules permitting the vakils to appear, plead and act on the Original Side of the High Court were not *ultra vires* the High Court's Act. These rules were framed under Clauses 9 and 10 of the Letters Patent of 1865.

2. *Namberumal Chetty v. Narasimhachari*<sup>28</sup>: The Madras High Court observed that "the High Court is one and indivisible, that the old barriers, between the Supreme Court and the Sadar Court are broken down and if an advocate has the right of audience in one side of the High Court, he has necessarily on the other.

3. *Kandaswamy Mudaliar v. The Province of Madras & Anr*<sup>29</sup>: It was observed that under Section 9 of the Indian High Courts Act 1861 that the High Courts established in each Presidency should have and exercise all the jurisdiction and every power and authority whatsoever in any manner vested as in any abolished Court within the same Presidency.

4. *In the matter of Regina Guha*<sup>30</sup>: The Calcutta High Court had upheld that women otherwise qualified were not entitled to be enrolled as a Vakil. Later the Legal Practitioners (Women) Act, 1923 was enacted to expressly provide that no woman would by reason only of her sex disqualified from being admitted or enrolled as a legal practitioner or from practicing as such.

#### V. CONCLUSION

The Legal profession is a Noble profession. Therefore, it is governed not only by Legal but Ethical considerations as well. Over the years the Legal Profession has developed and evolved in a rapid manner. In India its growth and development can be traced throughout the Ancient, Medieval, British and finally the Post-Independence Period. Today, this profession is flourishing not only in India but across the world. The Legal profession is extremely vital for the administration of justice. Nonetheless while Immense strides have been made, there is still ample room for evolution and future development of the profession for benefit of the entire humanity.

\*\*\*\*\*

---

<sup>27</sup> In the Matter of the Petition of the Attorneys, ILR (1876-78) 1 Mad 24.

<sup>28</sup> Namberumal Chetty v. Narasimhachari, (1916) 31 MLJ 698.

<sup>29</sup> Kandaswamy Mudaliar v. The Province of Madras & Anr, (1947) 2 MLI 146.

<sup>30</sup> In the matter of Regina Guha, (1922) 1L R 1 Pat 104.