

# Development of Legal Profession In India

---

## **What is Profession?**

In society, people occupy different occupations for their livelihood or for their satisfaction. The occupations may be broadly divided as productive occupation and service occupations. The occupations which require advanced education and special training are called professions. LAW, teaching, architecture, medicine, etc are related to professions. They are intended to serve mankind.

## **What is the legal profession?**

The profession of law is one of the oldest and noblest professions. The person in the legal profession is called an advocate or lawyer. An advocate is an officer of justice and a friend of the court. He has to accept a brief for any man who comes before the courts and do what one can do honorably on behalf of his client. He has to collect legal material relating to the case of his client and argue in the courts to help the judges to deliver judgments. The central function that the legal profession must perform is nothing less than the administration of Justice.

An advocate also serves the public by giving legal advice by explaining the complicated and confusing provisions of different Acts and Rules to citizens who seek his service.

An advocate assists the parties in drafting the economic transactions like contracts, agreements, deeds, wills etc.

An advocate also provides professional services regarding taxation and trade performance.

An advocate should provide free Legal Aid to the poor and deserving people on compassionate grounds.

An advocate has to protect the fundamental and Human Rights in addition to propagating them among citizens.

An advocate is the foreigner of the society. He has to fight for law reforms and social change and at the same time extend his services to maintain law and order.

### **Development of legal profession in India -**

Development of legal profession in India can be divided into three phases are as follows

-

#### **1) Legal profession in ancient India -**

#### **2) Legal profession in medieval India -**

#### **3) Legal profession in British India -**

#### **4) Legal profession in India after independence -**

#### **1) Legal profession in ancient India -**

In India during the earlier period, people live in small groups. The heads of these groups or tribes delivered justice under open sky before all the members. Open arguments were made. There were no specialist like a lawyer during those days. When Kingships was established in the society, Kings delivered justice. In King's Court, the king was advised by his councilors. The law of those days was a rooted in Hindu religion and custom. Dharma was protected by the king. Though there was no Institution of a lawyer, some intellectual people served justice. From the stories of Maryada Ramayana and Vikramaditya, we are well aware of the wise man who solved the critical cases of those days. During those days the legal profession was administered by the administrators. For sometime religious heads dominated the society in administering the justice. During those days, the sufferer presented complaint before the king in his court and thereafter the court summoned the defendant to submit his reply. The

Court then investigated the matter on the evidence. The King took the advice of the religious heads and wise courtier and then delivered the judgment. The same procedure was followed in all cases.

## **2) Legal profession in medieval India -**

During the Muslim period, there was no Institution of the legal profession. But both the parties of the litigation appoints their Vakils. This body decides the case and they were paid a percentage of the amount in the suit. The Court has the power to decide who should be allowed to appear as Vakils. They act as agent for principals but not as lawyers.

The same system was continued in North India even under the rule of East India Company.

## **3) Legal profession in British India -**

During the British period, the model legal system was developed in India. Before 1726, the courts derived their power not from the British crown but from the East India Company. The charter of 1661 has already described the English law.

### **i) Charter of 1726 :**

In 1726 the crown issued the charter of 1726, and the Mayor's Court were established in the presiding towns of Bombay, Calcutta, and Madras. They were the royal Courts. They followed the procedure based on English law. But there were no facilities to get the legal training. Many persons who have no knowledge of law were used to practice before the said Courts. The Mayor's Court has no jurisdiction in criminal cases. The criminal jurisdiction was conferred on the Governor.

### **ii) Charter of 1753 -**

In 1753, another charter was issued to modify the charter of 1726. This charter also ignored significant provision for legal training and education relating to legal practitioner. Even after the charter of 1753, the legal profession was not organized.

### **iii) Charter of 1774**

The Regulating Act, 1773 empowered the British Crown to establish a Supreme Court at Calcutta by issuing a Charter. Accordingly, a supreme court at Calcutta was established by its charter of 1774.

Clause II of the Charter of 1774 empowered the said Supreme Court of Judicature Calcutta to approve and enroll advocates and Attorneys-in-law. They were to be Attorneys of record. They were authorized to appear and act in the supreme court. The supreme court had the power to remove any advocate for Attorney on reasonable cause. Indian legal practitioners were not allowed to enter the supreme court. At that time 'Advocate' means the British and Irish Barristers and member of the faculty of advocates in Scotland. The term 'Attorney' applied to the British attorneys or solicitor.

### **iv) The Bengal Regulation Act of 1793 :**

The Bengal Regulation Act VII Of 1793 permitted qualified Hindu and Muslim persons only to enroll as pleaders and the Bengal Regulation XII of 1833 allowed all the qualified persons of any nationality or religion to enroll as a pleader of the Sardar Diwani Adalat.

### **v) The Legal Practitioners Act, 1846 -**

The legal practitioners Act 1846 allowed all the people of any nationality or religion to act as pleaders. It also allowed attorneys and barristers enrolled in any of Her Majesty's courts in India to plead in the company's Sardar Adalat.

The Legal Practitioners Act, 1853 - This Act authorized the barristers and Attorneys of the Supreme Court to plead in any of the company's subordinate courts to Sadar court subject to rules in force in the said subordinate courts as regards language or otherwise.

#### **vi) Indian High Court Act, 1861 -**

The Indian High Court Act, 1861 empowered the government to establish High Court in Presidency towns. After the establishment of the High Courts, the Civil Courts were organized at different towns. The criminal courts were organized by the Criminal Procedure Code 1898.

#### **vii) Legal Practitioners Act 1879 -**

Under the Legal Practitioners Act 1879 the term 'legal practitioner' means Advocate, Vakil or attorney of a High Court and pleader, Mukhtar or revenue agent, who were non-graduates and matriculates only. All these were brought under the jurisdiction of the high court. Vakils were the persons who had taken the law degree from Indian Universities. Pleaders and mukhtars Were the Indian lawyers but advocate were to be the barristers.

**Section 5** of the Act says that every person entered as an attorney on the role of any High Court would be entitled to practice in all the courts subordinate To Such High Courts and in all revenue offices.

**Section 6** of the Act Empowered the High Court to make rules consistent with the Act as to Suspension and dismissal of pleaders and Mukhtars.

**Section 8** empowered the pleader to practice in courts and revenue offices after enrollment.

**Section 9** empowered the Mukhtar to practice in the courts after enrollment.

According to Section 12, the High Court can Suspend or dismiss any pleader or Mukhtar if he was convicted of any criminal offense and according to Section 13, the high court can suspend or dismiss pleader or Mukhtar guilty of professional misconduct.

**Section 14** of the Act made provisions in respect of the procedure when the charge of professional misconduct was brought in subordinate Court or revenue office.

**Section 17** of the Act deals with the power of chief controlling revenue authority to make rules consistent with this act as to qualification, suspension, dismissal etc. of the revenue agent.

#### **viii) Indian bar committee 1923 -**

A committee called Indian bar committee under the chairmanship of Sir Edward Chaminar was constituted in 1923 to consider the issue of the organisation of the bar on all India basis. The committee did not favor the establishment of All India Bar Council. It was of the view that bar council should be constituted for each High Court.

#### **Indian Bar Council Act 1926 -**

In 1926, the Indian bar council of India Act was enacted to provide a bar council for each High Court. The Bombay High Court and Calcutta High Court allowed non-barrister advocates to practice. Thus the distinction between Barristers and advocates was abolished. The pleaders and Mukhtars practicing in Mufusil Courts were not within the scope of the Indian bar council act 1926.

Even after the enactment of the Bar Council Act 1926, the High Court has the power of enrollment of advocates and the functions of the bar council was the adversary in nature and the rules made by the bar council were to be effective only on the approval of the high court. Section 10 of the Indian Bar Council Act 1926 empowered the high court to reprimand, suspend or remove from practice any advocate of the high court if he was found guilty of professional misconduct or other misconduct.

#### **4 ) Legal profession in India after independence -**

### **All India Bar Committee, 1951-**

In 1951, the All India Bar committee was constituted under the chairmanship of justice S.R.Das. The committee in its report recommended the establishment of an All India Bar Councils and State Bar Councils. It recommended the powers of enrollment, suspension or the removal of advocates to the Bar Council. It recommended the common role of advocates should be maintained and they should be authorized to practice in all courts in the country. It further recommended that there should be no further recruitment of non-graduated pleaders or mukhtars. The similar recommendations Were made by the fifth Law Commission of India in its fourteenth report.

### **Advocate Act 1961 -**

As a result of the report of the "All India Bar Committee Act, 1961 " .the central government enacted the Advocate Act 1961.This Act has been in Force In entire India. It brought Revolutionary changes in the legal profession in India. It was set out to achieve the utility and dignity of the profession of law on an all India basis. The Preamble of The says that the Act amends as well as consolidates the law relating to legal practitioners.

**The Advocate Act,1961 contains 60 Sections set out in 7 chapters.**

**Chapter I** - deals with primary issues such as short title, extent and commencement and definitions.

**Chapter - II** Section 3 to15 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.

**Chapter V** Section 35 To 44 deals with the conduct of advocate.

**Chapter VI** Miscellaneous issues.

**Chapter VII** deals with the temporary and transitional provisions.

The Advocate Act 1961 repeals the Indian Bar Council Act,1926 and all other laws on the subject.

The Advocate Act,1961 provides for an autonomous bar council in each state and All India Bar Council consisting mainly of the representatives of the state bar councils. Under the act, a state bar council is to enroll the qualified person as advocates and a prepare a roll of advocates practicing in the state and thereafter a common roll of advocates for the whole of India is to be prepared by the bar council of India.

The Advocates whose Names are entered in the common roll would be entitled as of right to practice in all courts in India including the Supreme Court.

Advocate Act 1961 amended many times to bring changes with the changing times and to solve the practical problems.