A SKETCH OF THE DEVELOPMENT OF THE LEGAL PROFESSION IN INDIA

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THE LEGAL PROFESSION AS it exists in India today had its beginnings in the first years of British rule. The Hindu pandits, Muslim muftis and Portuguese lawyers who served under earlier regimes had little effect upon the system of law and legal practice that developed under British administration. At first, the prestige of the legal profession was very low. From this low state and disrepute the profession developed into the most highly respected and influential one in Indian society. The most talented Indians were attracted to the study and practice of law. The profession dominated the public life of the country and played a prominent role in the national struggle for freedom. "There was no movement in any sphere of public activity—educational, cultural, or humanitarian—in which the lawyers were not in the forefront." [1] However, after independence the relative prestige and public influence of the profession declined.

This paper will attempt to sketch the rise of the profession from its low state during the first hundred years, to explain the sources of its respect and influence, to recount its accomplishments and contributions to the national life and, finally, to suggest some factors leading to its decline.

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1. K. N. KATJU, THE DAYS I REMEMBER ii (1961).

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BEGINNINGS—THE FIRST HUNDRED YEARS

The history of the legal profession in India begins with the establishment of the first British court in Bombay in 1672 by Governor Gerald Aungier.[2] The first Attorney General appointed by the Governor was George Wilcox, who "was acquainted with legal business and particularly in the administration of estates of deceased persons and granting of probate."[3] There was much work of this type at Bombay. Wilcox made provision for parties to be represented by attorneys and fixed the "counciller's fee at a little more than Rs. one."[4]

At the inaugural procession of the Court of Judicature there were "fower [four] Atturneys or Common pleaders on foot."[5] These men were probably Portuguese and Portuguese-Indian,[6] since the Portuguese had ruled Bombay and administered their law there from 1534 to 1668, and Portuguese civil law remained in force under the British until Aungier's administration. One of the four, Simeo Sarrao (Ceron) acted as legal advisor to the Company and dominated the Court since he was the only one who had legal training and experience. "People were forced to use his advice in difficult disputes."[7] He was so learned in law that he confounded the untrained judges with many references and learned opinions which they had no way of verifying.[8] He was finally dismissed by the governor for "Cheats" after a petition had been lodged against him.

Besides these attorneys there were what Malabari calls "a plague of speculative solicitors" in Bombay during Aungier's time. The Governor referred to them in a letter to the newly appointed judge:

> So we would have you take care that vexations [sic] suites and contrivances layed by common Barristers to disturb ye quiet of good people may be discouraged and prevented. And let ye judge know from us that wee expect he maintain gravity, integrity, and authority of his office; and

2. P. B. VACHHA, FAMOUS JUDGES, LAWYERS, AND CASES OF BOMBAY 8 (1962), and C. FAWCETT, THE FIRST CENTURY OF BRITISH JUSTICE IN INDIA 57 (1934), disagree about whether the court functioned before 1677.

3. VACHHA, *supra* note 2, at 8.

4. FAWCETT, *supra* note 2, at 53.

5. VACHHA, *supra* note 2, at 7.

6. FAWCETT, *supra* note 2, at 62. The few Portuguese lawyers who continued under the British were gone before the profession had developed very much, and there is no visible carry-over from Portuguese tradition in later practice.

7. *Id.* at 44.

8. VACHHA, *supra* note 2, at 10.

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> that he doth not bring disrepute on the court of Bombay by lightness partiality, self-seeking, or contenancing common Barristers in which sort of vermin they say Bombay is very unhappy.[9]

Malabari correctly noted that the word "Barrister" was a misspelling for the word "barritor," one who stirs up litigation. These common barritors seemed to find plenty of business and probably acted as professional bond writers and drew up sale deeds, leases, and mortgages.[10] In order to control such barritors and attorneys who claimed to have special knowledge of the law, Aungier requested the East India Company to send a Judge Advocate, learned in law. But the Company turned down his request stating that it would do "more harm than good, especially in the stirring up of strife and contention."[11] The Company tried to discourage the growth of the profession because the directors believed that more lawyers would bring an increase in law suits and foment more disputes in the colonies.[12]

The Company's attitude of contempt for the legal profession reflected the disreputable state of the bench and bar in England during the years of the Restoration. The High Court under William Scroggs and Jeffreys had sunk to its lowest depths.[13] The Company not only refused to send a Judge Advocate, but resolved not to send out any attorneys or lawyers' clerks, and instructed the Bombay Council "to encourage litigants to manage their own cases" and "to admit of noe Sollicitors or Atturneys to plead or manage causes in our Courts, but such as you shall first of, upon your knowledge of them to be men of good and honest reputation."[14]

Thus, as early as 1674 we note that attorneys are practicing, that they have a bad reputation, and that their admission (and restriction of their number) is placed in the hands of the Governor and council and not with the court. The usefulness of the profession was not yet recognized, nor was it to be for many years. The charters and rules of the Court of Judicature and the later Mayor's Courts do not mention the profession and so for a hundred years the profession developed haphazardly, without direction, regulation, or proper recognition.[15]

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9. B. M. MALABARI, BOMBAY IN THE MAKING 154 (1910).
10. FAWCETT, *supra* note 2, at 68.
11. VACHHA, *supra* note 2, at 8.
12. FAWCETT, *supra* note 2, at 61.
13. VACHHA, *supra* note 2, at 17.
14. FAWCETT, *supra* note 2, at 61.
15. *Id.* at 171.

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The fact that none of the early attorneys had legal training did not add to the prestige of the profession. Some of those who practiced were members of the clerical staff of the court and acted as agents for parties in the court.[16] Other attorneys seem to have been businessmen. Describing the early courts Charles Lockyer wrote, "[l]awyers are plenty, and as knowing as can be expected from broken linen drapers and other cracked tradesmen who seek their fortunes here by their wits." [17] Probably the most competent of these untrained attorneys were Company servants appointed to act as attorneys. Some of them had studied "something both in Civil and common law." [18] "Although they were no more than ordinary covenanted servants in the beginning appointed primarily to the cases of the Company, they took up individual cases beyond the sphere of their official duty. . . ." [19]

The first man with legal training to be sent to India was Dr. John St. John, appointed by the Company in 1684 to be Judge of the Admiralty Court. For a time he also acted as Judge Advocate of the Court of Judicature. There was much disagreement concerning his powers of jurisdiction and his refusal to subject the ideals of justice to the interests of the Company.[20] After two years he was dismissed by Josiah Child from the post of Chief Justice and replaced by John Vaux, a factor who had no legal training.[21] The Company approved this action and issued a statement that judges should hereafter "behave themselves to the satisfaction of our Generall and Council" or to be replaced.[22] Since the bar usually is improved by a strong, well-educated bench, this serious blow to the court in Bombay was detrimental to the development of the legal profession.

As the courts developed, so did the legal profession. In Madras and Calcutta there were no legal practitioners prior to the establishment of the Mayor's Courts in 1726 although two trained lawyers, John Biggs (1687-89) and John Dolben (1692-94), had served as judges.[23] In Madras, there were four attorneys at the Mayor's Court in 1764[24]

16. *Id.* at 191.

17. J. W. KAYE, THE ADMINISTRATION OF THE EAST INDIA COMPANY 322n (1853).

18. VACHHA, *supra* note 2, at 8.

19. B. B. MISRA, THE JUDICIAL ADMINISTRATION OF THE EAST INDIA COMPANY IN BENGAL, 1765-1782 (1961).

20. FAWCETT, *supra* note 2, at 146.

21. *Id.* at 124-26 and MALABARI, *supra* note 9, at 163.

22. FAWCETT, *supra* note 2, at 145.

23. *Id.* at 211.

24. H. D. LOVE, VESTIGES OF OLD MADRAS, 1640-1800, at 139 (1913).

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and the same number at Calcutta in 1769.[25] Although a great number of Indians took their legal business to these courts, there were no Indian attorneys during this period.

The Mayor's Courts, established in the three presidency towns, were crown courts with right of appeal first to the Governor in Council and, if necessary, over him to the Privy Council. The Mayor's Courts improved the quality of justice and gave more prestige to the pleading of cases. However, the need to have legally trained judges and lawyers was still not realized by the Company. The lack of law libraries and a properly trained profession was often evident. Describing the court at Madras, Wheeler writes "It puzzles the most celebrated lawyers there to find rules in the statute laws."[26] As the mayor and aldermen who sat on these courts had no legal training, were elected to short terms, and were very busy men, they had neither the skill nor time to gain knowledge of the law.

The attorneys seem to have gained more influence than the bench. The Madras Council explained this situation to the Company in 1791:

> As the colony increased with the increase of commerce and of territory causes multiplied and became more complex. The judges now felt the want of experience, and even of time sufficient to go through their duties. New points constantly arose which required legal as well as mercantile knowledge: men who professed or pretended to this knowledge were therefore introduced as attorneys, and obtained considerable influence in Courts where the judges pretended to no legal skill.[27]

During this period two principles concerning the profession were established. The right of an attorney to protect the rights of his client in spite of opposition from council members or the governor was upheld for attorneys in each of the Mayor's Courts. A Mr. Henry Rumbolt, attorney of the Mayor's Court, Madras, had been ordered home to England after acting in cases against the Governor. The Company allowed him to "return to Madras as a Free Merchant and directed that . . . he should be employed as Attorney in all cases where the Company was concerned."[28] A few years later in 1735 John Cleland, an attorney registered with the court at Bombay, conducted a vigorous suit for

25. MISRA, *supra* note 19, at 137 n.1.

26. J. T. WHEELER, MADRAS IN OLDEN TIMES—EARLY RECORDS OF THE BRITISH IN INDIA 127 (1878). *See* VACHHA, *supra* note 2, at 16.

27. FAWCETT, *supra* note 2, at 226.

28. *Id.* at 221-22.

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his client against Henry Lowther, a member of the Governor's Council. In spite of the opposition of council members and a move by the Governor to transfer him to another factory, Cleland stood firm and was supported by the Company which commended him to the Governor: "You must encourage him and all our servants while they behave well in their several places." [29] Several other similar cases occurred. In 1769 Richard Whiteall, attorney at Calcutta, was dismissed by the court without charges or cause. His appeal to the Council was not accepted. But when he appealed to the Company, the directors instructed the Council to hear his appeal. It was heard and accepted.[30]

While upholding the rights of these attorneys the Company did "express their disapproval of the spirit that often led the courts to side against the interests of the Company, 'that affected independency which we are informed has crept in among the young Aldermen and Attorneys in the Mayor's Court.'" [31] Perhaps the most independent of all these attorneys was Charles Bromley of Madras. He was "generally found in opposition to the government." He had opposed the Company's Quit Rent policy.[32] He had aided the commander-in-chief, Sir Robert Fletcher, in deposing Governor Pigot and defended Fletcher and his associates at the trial in 1777.[33] Thus defense of individual rights and an independent, even antigovernment attitude were evident in the profession long before it included any Indians.

The second principle established during the period of Mayor's Courts was the right to dismiss an attorney guilty of misconduct. For example, the Mayor's Court of Madras dismissed Attorney Jones, a troublesome man who had tried to get a monopoly on the fishing trade in Madras and had had his servants assault a competitor. The court charged that he had worked through his employee or *"Dubash"* to encourage litigation, and they took the following action:

> The notoriety of the charges alleged against Mr. Jones, besides his contemptuous Behavior toward the Authority of this Government on a former Occasion, rendered it, in our Opinion, proper to inflict some mark of our displeasure upon him, and at a Court of Appeals held the 19th February We accordingly passed a Resolution incapacitating him from practicing as a solicitor in that court.[34]

29. *Id.* at 221.
30. MISRA, *supra* note 19, at 139.
31. FAWCETT, *supra* note 2, at 223.
32. LOVE, *supra* note 25, at 302.
33. *Id.* at 116.
34. *Id.* at 303.

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THE SUPREME COURT ERA OF BRITISH PRACTICE—1774–1861

Dissatisfaction with the weaknesses of the Mayor's Court led to the establishment in 1774 by Royal Charter of a Supreme Court of Judicature at Calcutta. The Supreme Court enjoyed a wide jurisdiction over civil and criminal matters in the city of Calcutta and a more restricted jurisdiction over cases involving inhabitants of the *mofussil*. With certain exceptions for Hindu and Muslim law in family matters, the law to be applied was the law of England. Similar Supreme Courts were established in Madras in 1801 and Bombay in 1823.[35]

The first barristers appear in India after the opening of the Supreme Court in Calcutta in 1774. As barristers began to come into the courts and work as advocates, the attorneys gave up pleading and worked as solicitors and the two grades of legal practice gradually became distinct and separate as they were in England. Many of the first barristers came as judges, not as lawyers. The first barrister in Bombay was the Judge of the new Recorder's Court set up on 1798. By 1807 there were only two barristers working as advocates in Bombay. One was the first Advocate General, Stuart Thriepland.[36] Madras gained its first barrister in 1778 when Mr. Benjamin Sullivan, who was on his way to practice at the Supreme Court Bar at Calcutta, stopped for a visit and was persuaded to stay on as Government Advocate at a salary of 250 Pagodas per month.[37] The salary was doubled in 1780 since he was not allowed to practice privately: 6,000 Pagodas annually (£ 2,400 or Rs19,200).[38]

The establishment of the Supreme Court brought recognition, wealth, and prestige to the legal profession and brought a steady flow of well-trained barristers and solicitors into Calcutta. The charter of the court required that the chief justice and three puisne judges be English barristers of at least five years standing.[39] The legal profession was recognized for the first time. The charter empowered the court to approve, admit, and enroll advocates and attorneys to plead and act on behalf of suitors. It also gave the court authority to remove lawyers from

35. M. P. JAIN, OUTLINES OF INDIAN LEGAL HISTORY (1952).

36. VACHHA, *supra* note 2, at 25.

37. LOVE, *supra* note 25, at 140.

38. *Id.* at 301.

39. THE LAW RELATING TO INDIA AND THE EAST INDIA COMPANY, 2d ed., at 30 (1911).

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the roll of the court "on a reasonable cause and to prohibit practitioners not properly admitted and enrolled from practicing in the court." [40]

The court itself provided employment for three full-time lawyers with good salaries:[41]

Advocate General	£ 3,000 per annum with allowance of Rs2,500 monthly	= Rs54,000
Company counsel for suits and prosecutions	£ 4,500	= Rs36,000
Company counsel for contracts and conveyances	£ 3,000	= Rs24,000

Besides these full-time posts there were a number of offices held by attorneys who practiced as solicitors, which brought substantial supplementary income. The Register of the court, who was also allowed to practice, earned £ 7,000 (Rs56,000) a year.[42] Each of the judges and the chief justice had a solicitor acting as his clerk. Hickey, who served as clerk for Justice Hyde, said, "I had a fee upon every process issued . . . I never received less than Rs. 500 a month, frequently Rs. 800." [43] The post of Deputy Sheriff was served by a solicitor.[44] Hickey reported that the most he made from that post in one year was Rs25,000.[45] The sheriffs, who could not be lawyers, did much better, the record being Rs130,000 for one year.[46] There were other paying part-time posts open to attorneys, such as: counsel for paupers, £ 810 or Rs7,200; attorney for paupers, £ 540 or Rs4,800; and examiner, £ 450 or Rs 4,000.[47]

The first barrister to practice as an advocate in Calcutta was Mr. Ferrer, who was admitted by the Supreme Court in October of 1774.[48] He acted as advocate for the defense of Nuncomar in 1775.[49] The

40. E. C. ORMAND, RULES OF THE CALCUTTA HIGH COURT 44 (1940).

41. *Op. cit., supra* note 39, at 32. The allowance was not agreed upon by the London office and was ordered to be refunded after three years, but was not.

42. 4 A. SPENCER, MEMOIRS OF WILLIAM HICKEY 359 (1925).

43. *Id.* at 48.

44. *Id.* at 210.

45. *Id.* at 211.

46. *Id.*

47. MISRA, *supra* note 19, at 202.

48. H. E. BUSTEED, ECHOES FROM OLD CALCUTTA 72 (1897).

49. [*I.e.*, the celebrated trial for forgery of Maharaja Nandakumar (Nuncomar) before the Supreme Court at Calcutta in 1775, leading to his execution and to a controversy, touching all concerned, that has lasted for almost two centuries. Among the recent literature is L. S. Sutherland, *New Evidence on the Nandakumar Trail*, 72 ANTE 348-65 (1957); J. D. M. Derrett, *Nandakumar's Forgery*, 75 ENG. HISTORICAL J. 223-68 (1960); B. N. PANDEY, THE INTRODUCTION OF ENGLISH LAW INTO INDIA (1967).]

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counsel for the crown in that case was Mr. Durham, who proved to be so weak that the judges did most of the questioning for the prosecution.[50] However, in a short time the bar became stronger as the great volume of legal business and high fees attracted many to the city. William Hickey reported that when he returned to Calcutta in 1793 there were nine barristers including the Attorney General.[51] In his diary for the period 1790-1809 he mentions seventeen barristers and fifteen attorneys and solicitors (including himself).[52] In Calcutta in 1861 there were thirty-two advocates, and sixty attorneys, proctors, or solicitors of whom four were Indians.[53]

As the other Supreme Courts were opened in Madras (1801) and Bombay (1824) many lawyers came to share in the great opportunities opened to the profession.[54] In Bombay, at the end of the Supreme Court era (1861) there were thirteen advocates and thirty solicitors and attorneys on the rolls of the court.[55]

Besides the British, a great number of Indians made use of the courts, preferring the Royal English justice of the presidency towns to the Company's in the *mofussil.* Fees were very high.[56] Even a new practitioner could begin earning large sums almost immediately. Hickey writes of his first practice "having within a week after I commenced business twelve actions and three equity suits to prosecute or defend." [57] Mr. Farrer, the barrister, retired after four years of practice with a fortune of £60,000.[58] Hickey reported that he paid out Rs12,600 for

50. BUSTEED, *supra* note 48, at 76.

51. 3 SPENCER, *supra* note 42, at 149.

52. 2 *id.* at 127; vol. 3, at 146-49, 311; vol. 4, at 2, 8, 46, 55, 57, 181, 203, 259, 272, 275, 382.

53. MISRA, THE INDIAN MIDDLE CLASSES: THEIR GROWTH IN MODERN TIMES (1961), at 327.

54. Even before the Supreme Court there were two barristers and eleven other legal practitioners practicing in the Recorder's Court at Madras. (J. C. GOPALRATNAM, A CENTURY COMPLETED—A HISTORY OF THE MADRAS HIGH COURT, 1862-1926, at 96 [1962].) One of the barristers, Benjamin Sullivan, became a puisne judge of the Supreme Court; the other, Mr. Ansthruther, became the Advocat General. *Id.* at 88, 97.

55. VACHHA, *supra* note 2, at 29.

56. Regulation VII of 1793 had attempted to limit fees:

Value of Suit (rupees)	Fees	Value of Suit (rupees)	Fees
1,000	5%	25,000	2%
5,000	4%	50,000	1%
10,000	3%	100,000	¾%

57. 2 SPENCER, *supra* note 42, at 134.

58. BUSTEED, *supra* note 48, at 72.

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counsel in the defense of his friend, Mr. Hunter.[59] Montreau, a barrister in Bombay, received £3,000 as a retaining fee in the Opium Wager Case.[60] A report in 1823 revealed that fees charged in Bombay were "seven times as great as those usually received in England."[61] The Indian Law Commissioners' Report of 1844 revealed "the rate of bar fees being two, three—five times what it is in England."[62] The average cost of a defended cause for each side was Rs1,200.[63] The commission compared fees for comparable services in India and England on the basis of figures taken from advocates' account books:[64]

Service	England	India
a. Pleading fee showing cause and moving to make rule absolute	£1-3-6 to 2-4-6 2-17-6	£3-8-0 to 5-2-0 8-2-0
b. Consultation	3-10-6	5-2-0
c. Defended cause	2-2-0 to 4-4-0	8-10-0 to 23-16

In reference to the high fees charged the Law Commission noted that whereas in England the legal profession was open and competitive, "here it is a monopoly which officers, barristers, and attorneys mutually endeavored in a former times to make as productive to one another as possible."[65] Besides controlling the amount of fees in this way the senior members of the bar had all the small, incidental business as well, "which in England would go to the junior counsel."[66]

The bar vigorously resisted any attempt to limit or restrict the high fees they earned. In 1823 in Bombay when the new Advocate General, Mr. Norton, tried to introduce an even higher scale of fees, the Recorder, Sir Edward West, decided against him and the barristers, and directed fees be charged as in England, or be decided upon by the Master in Equity, a court official. To this the barristers wrote a bitter memorandum making unfounded libelous attack upon the court. For this improper conduct the five barristers were suspended for a period of six months.[67]

59. SPENCER, *supra* note 42, at 164.
60. VACHHA, *supra* note 2, at 10.
61. F. G. D. DREWITT, BOMBAY IN THE DAYS OF GEORGE IV 63 (1935).
62. 6 CALCUTTA REVIEW 530 (1846).
63. *Id.* at 526.
64. *Id.* at 528.
65. *Id.* at 529.
66. *Id.* at 530.
67. DREWITT, *supra* note 61, at 65.

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The bar at Calcutta was more successful in protecting its income. The Supreme Court in 1798 had passed a resolution limiting retaining fee of counsel to only five gold *mohurs* (Rs80) and prohibiting refresher fees. Mr. Burroughs led the bar protest pointing out the unconstitutionality of the action. When he openly told the court that he would ignore the new rules and collect fees as usual, the Chief Justice promised to have his name struck from the advocates' roll of the court if he defied the new rules. After two days the judge backed down and revised the rules so that only attorneys were prohibited from giving or sending to barristers a retainer exceeding five gold *mohurs,* or refresher fees. This simply led to the practice of clients paying fees directly to the advocates instead of through the attorneys as previously.[68]

The legal practitioner cannot be blamed for charging high fees in those days. There was great wealth and trade in all of the factory towns. Traders were making and sometimes losing fortunes. There was a great deal of heavy investment and extensive borrowing and speculation.[69] There were risks, too. Many ships were lost to storms or pirates. There were many very "opulent" Indian traders and moneylenders as well. Promissory notes passed from merchant to merchant as legal tender. In such large trading cities as Calcutta suits often involved very large sums. Fees were high, but the incomes of lawyers were probably no higher than those of the traders. One writer defends the high income of the lawyers as follows:

> Sharing the generous fortune of the society in which they lived, many of our Solicitors like their wealthy clients might lay claim to the title of "Nawab," but although there was possibly no table of fees in existence to limit and control their charges, it is improbable that any of them ever acquired the wealth of our opulent merchants.
>
> They established a tradition, . . . and like their polished and often scholarly clients conducted their business with the lofty dignity of men whose means were generous and ample and who were in a position to regard their honour and their reputation as things of some importance.[70]

The expense of living as a gentleman attorney was often greater than the lucrative income of legal practice. William Hickey gives us a fairly clear record of what it cost him to move with the best society (the judges, councilmen, lawyers, and military officers) of Calcutta. To get

68. SPENCER, *supra* note 42, at 207.

69. C. MOORE, THE SHERIFFS OF FORT WILLIAM, *1775-1926,* at 9 (1926).

70. *Id.* at 248.

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established he borrowed Rs40,000 at 12% interest. Carriages and horses cost him Rs6,550.[71] Monthly rent was Rs450, salary for sixty-three servants Rs666[72] and other expenses averaged Rs2,000 monthly. (His average living expense of Rs36,000 a year was equal to a judge's salary.) For fifteen years he was unable to clear off his debts in spite of a very good income.[73] His financial problems were due in part to his clever dishonest *bania* and his careless bookkeeping, and to the repeated misfortune of being responsible for the bad debts of others who had absconded or died. Wishing to retire with a modest fortune he spent his last five years in Calcutta practicing alone, living less lavishly, keeping careful records,[74] and earning much from fees and from his post as clerk of the Chief Justice. Upon retirement he paid all of his debts, extra gratuities to servants, ticket to England, and still had Rs92,000 net balance.[75]

The prestige and income of the solicitors was no less than that of the barristers. Both moved at the same level of society. New solicitors and barristers were invited to dinner at the Chief Justice's and councilmen's homes and invited to numerous dinner parties and breakfasts given by the elite of Calcutta.[76] The prestige of a lawyer depended upon his hospitality, manners, and friends, not upon whether he was an attorney or an advocate. An attorney could earn as much as a barrister. Some barristers, like Solomon Hamilton, found it even more profitable and to their liking to work as attorneys instead of as advocates.[77]

Besides reviewing cases, drafting briefs for advocates, preparing wills, preparing appeals of rich clients to the Privy Council, and handling the estates and business of wealthy merchants,[78] the attorneys' offices provided work and training for attorneys' clerks. Young attorneys fresh from England worked for several years as clerks in the offices of senior attorneys until one of the judges would recommend them to be attorney of one of the courts. Hickey, at one time, had three such clerks, one of whom was recommended by Justice Dunkin to serve as attorney in the Recorder's Court of Madras.[79]

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71. 3 SPENCER, *supra* note 42, at 171.
72. 4 *id.* at 36.
73. 3 *id.* at 202.
74. 4 *id.* at 341.
75. 4 *id.* at 397.
76. 2 *id.* at 134-36.
77. 3 *id.* at 146.
78. 4 *id.* at 257.
79. 4 *id.* at 18.

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Bench-bar relationships were close. Socially the lawyers were accepted as equals by the judges, all of whom had served as barristers, often in the same courts. Each judge chose one of his close friends from among the attorneys to be his official clerk. They came from the same social class in England and a number of them had been school chums. This close relationship made it possible for the advocates to address the bench quite frankly, and sometimes with great anger, rudeness or defiance.[80] Forthright expression and brilliant humor became established as part of the tradition of the Calcutta court.

The court maintained the right to admit, discipline, and dismiss attorneys and barristers. Attorneys were not admitted without recommendation from a high official in England or a judge in India. Permission to practice in the court could be refused even a barrister.[81, 82] The suspension of barristers in Bombay has already been noted.[83]

The bar and bench of the Mayor's, Recorder's and Supreme Courts were totally English.[84] Except for the four Indian solicitors in Calcutta,[85] the only Indians working in the latter courts were the interpreters and the Brahmin pandits and Muslim kazis who served as law officers or assessors on matters of Hindu and Muslim law. The charters of these courts had been concerned mostly with the qualifications and powers of the judiciary; the bar was left to develop without much formal regulation.

INDIAN LEGAL PRACTITIONERS— THE MOFUSSIL COURTS

From 1772 in Bengal and later in other places, the British undertook to administer justice to the occupants of their territories outside the presidency towns. In each presidency a dual hierarchy of civil

80. 4 *id.* at 174-76.

81. 4 *id.* at 60-63.

82. Robert Morris, an advocate with a bad reputation, was refused permission to practice before the Calcutta Supreme Court. Defying the refusal he appeared the next day in court wearing his gown and wig and claiming his right to practice in any of the King's Courts. He was again refused permission because of the "vile and disgraceful life you have led."

83. The court in Calcutta had a rule that names of attorneys absent for more than one year were to be struck off the rolls. They were readmitted if proper explanation was given.

84. VACHHA, *supra* note 2, at 30.

85. MISRA, *supra* note 53, at 327.

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and criminal courts (*adalats*), altered from time to time, for the *mofussil* or back-country, with a *Sudder* (chief) Court at the apex, existed from the late 18th century until they were merged with the Supreme Courts into a unified system after 1860. The law applied in these courts included an admixture of Muslim and Hindu law with the Regulations and the common law. The inferior judges were mostly Indian, but the *Sudder* Courts were staffed by British civil servants. The lawyers were entirely Indian both below and (until 1846) in the *Sudder* Courts. The legal profession in these courts developed with little contact with that in the Supreme Courts in the presidency towns.[86]

In contrast to the courts in the presidency towns, the legal profession in the *mofussil* was established, guided and controlled by legislation soon after its inception. Legal practice as carried on by Indian vakils and agents prior to 1793 was neither recognized nor controlled by the Dewanee courts.[87] Even before 1772 vakils had been appearing for litigants in the *zilla* courts of the Nabobs.[88] There were no laws concerning their qualification, relationship to the court, mode of procedure, or ethics of practice. There was little order; vakils pleaded cases by "simultaneous exchange of questions and answers." Clients would sometimes silence their vakil in the midst of pleadings and act themselves or have another agent take up the argument.[89]

There were two kinds of legal agents: untrained relatives or servants of the parties in court and professional pleaders who had, or claimed

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86. [On the system of *adalats*, *see* JAIN, *supra* note 35, at chs. VI, IX-XIV. On the law applied there, *see* Galanter, *The Displacement of Traditional Law in India*, J. SOCIAL ISSUES (1968).]

87. The rise of the profession is reflected by the evolution of the word "vakil." Vakil is an Urdu word meaning agent. It was first used in Muslim law books in connection with marriage settlement. In the early British period vakil meant a personal representative from a governor or general to the court of a Nabob or Raja. (2 FAWCETT, *supra* note 2, at 363, 375.) It was also used referring to agents of the district collector, a *zemindar*, or high official—either Indian or English (MISRA, *supra* note 19, at 163). In the context of the *zilla* courts under the Nabobs, vakil also meant an agent representing a party in court of law. After regulation establishing pleading as a profession for Indians, vakil means a pleader with legal training, and a license authorizing him to practice.

When the High Courts were formed in 1862 vakil meant one who had studied law in a university and had passed the High Court vakils' examination. Later it came to mean the graduate of a university with an LL.B. degree who as a full-fledged advocate can handle work without the help of counsel on either Appellate or the Original side. (P. S. SIVASWAMI AIYAR, A GREAT LIBERAL 207 [Nilakanta K. A. Sastri ed. 1965].)

88. 5 T. B. SAPRU, ENCYCLOPEDIA OF THE GENERAL ACTS AND CODES OF INDIA 176 (1938).

89. MISRA, *supra* note 53, at 164.

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to have, training in either Muslim or Hindu law. The Regulations describe these untrained pleaders:

> Equally with the first description of Vakeels, they were little versed in the laws and Regulations of the country; and not having the protection of a public character, and their situations in the court not being defined by any Regulations of Government, they were subject in the same degree to the intrigues and assumed influence of the ministerial officers of the courts, and unable to protect their employees from oppression and exaction.[90]

As there were no restrictions placed on these pleaders they were able to demand exorbitant fixed salaries and then prolong a case by devious means to draw that salary as long as possible.[91] With the great increase in Regulations, the frequent amendments and deletions, and increasing complexity in the court procedure, it became harder and harder for persons to plead their own cases, so they had to hire vakils who purported to have this knowledge.[92]

Bengal Regulation VII of 1793 brought order and some measure of quality to pleading and endeavored to establish it as a respectable profession:

> It is therefore indispensably necessary for enabling the courts to administer, and the suitors to obtain justice, that the pleading of causes should be made a distinct profession; and that no persons shall be admitted to plead in the courts but men of character and education, versed in the Mohammedan or Hindoo law and in the Regulations passed by the British Government, and that they should be subjected to rules and restrictions calculated to secure to their clients a diligent and faithful discharge of their trusts.[93]

The Sudder Dewanee Adawlut was empowered by the Regulation to appoint as many pleaders of the Muslim or Hindu religion as necessary, specifying the court in which they were empowered to plead, and to take oaths from each pleader upon his joining the court. These pleaders were to be selected from among the students of the Mohammedan Madrassa (college) at Calcutta and the Hindu College at Benares and were to be men of good character. They were required to acquaint themselves with the Regulations.

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90. 1 R. CLARKE, THE REGULATIONS OF THE GOVERNMENT OF FORT WILLIAM IN BENGAL 1793-1806 (1854). Regulation VII, pt. 1, §1, of 1793.

91. *Id.*

92. MISRA, *supra* note 53, at 166.

93. CLARKE, *supra* note 90.

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To regulate the profession a number of rules were laid down concerning receiving of retainers, execution of *vakalutnama* and amount of fees, the number of lawyers who could be engaged for each case, and distribution of fees. Causes for punishment of legal practitioners by fine, suspension, and dismissal were listed in Regulation VII: disrespect of court, promoting and encouraging litigious suits, fraud, willful delaying of suits, accepting gifts of more than the authorized amount of fees from a client, or dropping a client after receiving a retainer. In cases concerning suspension or dismissal the Sudder Dewanee Adawlut was to take the action only after the charge had been proved. It also made legal agents liable to prosecution by their clients for malpractice.

Besides providing for discipline of the profession the Regulation offered greater opportunities for lawyers by requiring the appointment of Government pleaders. These Government pleaders were to be paid at the same rate, and had the privilege of working as private pleaders in other suits in which Government was not a party.[94]

Subsequent legislation concerning the profession followed the general pattern laid down in 1793. The rather lengthy and detailed Regulation XXVIII of 1814 extended the provisions for licensing, discipline, and removal of vakils to the Provincial Courts. Rules concerning fees, practice, government pleaders, and malpractice were considerably more detailed than before. The new sections of the 1814 Regulation indicate the kind of problems the courts were having with this rising profession. Section VIII stipulated that pleaders must take precaution to ascertain the real names of parties giving *vakalutnama* and would be liable for dismissal if a *vakalutnama* under a fictitious name were accepted. Furthermore, the pleader was warned to study plaints before they were filed and make sure that groundless, irrelevant points were not included, that useless witnesses were not summoned, and that all exhibits were examined previous to being filed. If a vakil continued, after warning, to produce irrelevant exhibits or witnesses he was to be fined Rs20 or made to forfeit his fee. Other provinces passed regulations almost identical to those of Bengal.[95]

Regulations provided that all pleadings were first to be completely written and then read out.[96] Then the court could make inquiries to

94. *Id.*

95. Madras Regulation 10 of 1802, Bombay Regulation 14 of 1802, and Northwest Provinces Regulation 10 of 1803 made the same provision for appointment of vakils as did Regulation VII of 1793. Regulations very similar to Bengal Regulation XVIII of 1814 were passed by Madras (Regulation 14 of 1816) and Bombay (Regulation 2 of 1817).

96. CLARKE, *supra* note 90, Madras Regulation XV, 1816.

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clarify issues, and call witnesses if necessary. Richard Temple, who served as a district judge before the Mutiny, described court procedure: "The vernacular proceedings covered reams of country-made paper. These documents were read out by native clerks with a distinctiveness and fluency which I had never known in any European language. I dictated my orders to the clerks which were read out before being initialed by me." [97]

Regarding the quality of the Indian pleaders, Raja Rammohun Roy reported to the Select Committee of the House of Commons in 1831 that: "Many pleaders of the Sudder Dewani Adawlut are men of the highest respectability and legal knowledge, as the judges are very select in their appointment and treat them in a way which makes them feel that they have a character to support." In the *zilla* courts, however, he stated, "Some respectable pleaders we met with, but proper persons for the office are not always carefully selected and in general I may observe that pleaders are held in a state of too much independence by the judges particularly in the interior courts which must incapacitate them from standing firmly in support of the rules of the court." [97a]

Professional respectability was hard to come by in spite of continuous legislation to control procedure and practice. Leaders such as Metcalfe and Elphinstone regarded lawyers as being the most undesirable aspect of a legal system which they believed was as a whole quite unfit for India. Elphinstone refers to "this institution, that mystery that enables litigous people to employ courts of justice as engines of intimidation and which renders necessary a class of lawyers who among the natives are great fomenters of disputes." [98] Macauley described the lawyers of Bengal as "ravenous pettifoggers who fattened on the misery and terror of an immense community." [99] These attitudes were shared by many: "The . . . whole public looked down upon [pleaders] as pests, but they were constantly employed because they were the only available guides in the new legal labyrinth." [100]

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97. R. TEMPLE, THE STORY OF MY LIFE 38 (1896).

97a. R. Rammohun Roy, *Exposition of the Practical Operations of the Judicial and Revenue Systems of India,* in THE ENGLISH WORKS OF RAMMOHUN ROY (Dr. Kalidas Nay and Dabajyoti Burman eds.) (1947).

98. K. A. BALLHATCHET, SOCIAL POLICY AND SOCIAL CHANGE IN WESTERN INDIA 144 (1957).

99. KAYE, *supra* note 17, at 330.

100. P. SPEAR, *Twilight of the Moghuls* 95 (1951).

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In 1882 Malabari described the *mofussil* vakil as "a column of vapor issuing from an Ocean of Emptiness. . . . He is brought alive by the Chief Justice, passes the day in the company of *chuprasis,* and . . . vegetates." [101] "His chemical composition is butter, brass and asafoetida." [102] He describes the successful vakil as one who is in the hands of a Marwari broker, who does his business in whispers in the corridors of the courthouse earning fees of Rs3 to Rs30.[103] However, we shall see that some of these humble pleaders rose to be great and highly respected men, and that many of their sons and grandsons became the great barristers, judges, and political leaders of India.

Besides the pleaders there were other legal agents, "employed . . . [as] inferior advisors or agents called *mukhtars* to advise them more or less as solicitors." [104] These men, though not licensed or recognized by the courts, did most of the attorney work. In his report to the Select Committee of the House of Commons in 1832 McKenzie stated that, though they were not included on the fees schedule, many of the *mukhtars* acted as professional men.[105]

William Hickey gives a graphic description of one opulent Memychuru Mulliah, a *bania* who had worked in close association with a number of solicitors for many years. He may be regarded as the prototype of the Indian nonlicensed solicitor:

> This man had acquired an extraordinary efficiency in our laws so much so that he had for many years been the advisor of all those who had anything to do with courts of justice and was competent to tell them whether they had sufficient merits in their cases to justify the commencement of or defence of a suit. He was also perfectly conversant with the distinction between an equitable and a legal title, and was in the practice of sitting every evening in his own house for a certain number of hours to hear the statements of the various persons that attended for the purpose of accompanying him, for which it was said . . . that he made those suitors whose causes he espoused and patronized amply repay him for his trouble and his time by exacting a very high percentage upon whatever the amount recovered or saved might be.[106]

Although pleading before the civil courts was limited to admitted practitioners, the *mukhtars* reaped a rich harvest by practicing in the

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101. B. M. MALABARI, GUJARAT AND THE GUJARATIS 178 (1882).
102. *Id.* at 181.
103. *Id.* at 185.
104. MISRA, *supra* note 53, at 171.
105. *Id.*
106. 4 SPENCER, *supra* note 42, at 348.

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criminal courts as well as acting as solicitors for the pleaders.[107] The *mukhtars* had enough persistence to survive the many regulations intended by Cornwallis to make them unnecessary,[108] the Legal Practitioners Act of 1846, and the formation of the High Courts with the accompanying rules. The *mukhtars* were recognized and brought under the control of the courts for the first time by Act XX of 1865, called the Pleader, Mukhtar, and Revenue Agents Act.[109] Revenue agents who worked in the revenue offices and courts were also given status as legal practitioners by this Act.[110] They were deemed to be the lowest in grade and did not play a significant part in the development of the legal profession.

Act I of 1846 enabled the barristers to increase their influence and income by extending practice to the *Sudder* Courts. "That every Barrister in any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sudder Courts of the E. India Company subject to all the rules in force in the said Sudder Courts applicable to Pleaders, whether relating to the language in which the Court is to be addressed or to any other matter" (§5). The barrister could also practice alongside the pleaders in the Small Cause Court.[111]

THE FOUNDING OF THE HIGH COURTS AND THEIR EFFECT

After the British Government assumed direct control of the territories of the East India Company (1858), the separate systems of the Company's courts in the *mofussil* and the royal courts in the presidency towns were consolidated into a unified judicial system in each of the three presidencies. At the apex of the new system were High Courts, chartered by the Crown, established at Calcutta, Bombay and Madras in 1862.[112]

The High Court bench was designed to combine the Supreme Court and *Sudder* Court traditions, thus uniting the "legal learning and judicial experience of the English barristers" with "the intimate experience of

107. MISRA, *supra* note 53, at 174.

108. *Id.* at 171.

109. 5 SAPRU, *supra* note 88, at 176.

110. *Id.*

111. O. TEMPLE, PRACTICE OF THE CALCUTTA COURT OF SMALL CAUSES 65 (1860).

112. [On the establishment of the High Courts, see M. P. JAIN, *supra* note 35, at ch. XVI.]

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Indian customs, usages, and laws possessed by the civil servants." [113] "At least one-third of the judges, including the Chief Justice, were to be barristers of the United Kingdom; another one-third to be recruited from the judicial branch of the Indian Civil Service and the remaining places were made available to members of the subordinate judiciary, and Indian lawyers practicing in the High Court." [114]

Each of the High Courts was given the "power to make rules for the qualifications of proper persons as Advocates, Vakeels, and Attorneys at Bar." [115] The admission of vakils to practice before the High Courts ended the monopoly that the barristers had enjoyed in the Supreme Courts and vastly extended the practice and prestige of the Indian lawyers by giving them opportunities and privileges equal to those enjoyed for many years by the British lawyers. This was not accomplished without a struggle. The commissioners appointed to arrange the *Sudder* Court-High Court merger had advocated that the High Court bench be exclusively British and the bar open only to barristers. Judge Trevelyan, opposing such restrictions, argued that exclusion of Indians from the bench would "nourish . . . class antipathies, and injure . . . at once the state and the individual by depriving the public of the service of the ablest men, preventing wholesome competitions, and unduely exalting some without reference to their personal merits and depressing others." [116] His statement of policy in regard to the bar shows the spirit and intention of the merger was to make possible the full development of the profession:

> . . . At present barristers, attorneys and vakils plead before the Sadr Court while barristers have exclusive audience before the Supreme Court. . . . It would be hard to deprive the natives of the privilege they have long enjoyed of employing a cheap and rapidly improving, though still generally less efficient description of the agency; and I am confident that English barristers do not require exclusive privileges to enable them to maintain their position. They are employed now by all who can afford it and will continue to be so. The same objections exist to this limitation as to that proposed in reference to the eligibility for the bench. We cannot afford the weakness consequent upon social heart burnings. We want, for the improvement of all, the wholesome influence of competition. A native Bar will gradually be formed, but it will be following the lead and imitating the example of our English barristers.[117]

113. VACHHA, *supra* note 2, at 43.
114. *Id.* at 44.
115. ORMAND, *supra* note 40, §9, at 123.
116. 2 B. S. BALIGA, STUDIES IN MADRAS ADMINISTRATION 346 (1960).
117. *Id.*

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Practicing side by side with British lawyers, the Indian vakils learned much of law, professional ethics, and standards of practice. Vachha acknowledges the debt owed by the Indian profession to the British.

> It must be admitted that the development of law and the establishment of high standards of professional conduct in the High Court, in the first instance, have been to a large extent due to the example of British barristers who . . . brought with them to India what was most desirable in the practice and traditions of the English Bar.[118]

Gopalratnam shows that this learning of the best British traditions by Indian vakils began a sort of *guru*-disciple tradition:

> Men like Sir V. Bashyam Ayyangar, Sir T. Mulhuswami Ayyar and Sir S. Subramania Ayyar were quick to learn and absorb the traditions of the English Bar from their English friends and colleagues in the Madras Bar and they in their turn as the originators of a long line of disciples in the Bar passed on those traditions to their disciples who continued to do the good work.[119]

Additional High Courts were established in Allahabad (1886), Patna (1916), and Lahore (1919),[120] creating a demand for many more lawyers and stimulating the rapid growth of the profession. The High Courts "affected the legal unity of the country and brought into being a class of legal practitioners patterned alike on a national scale."[121] The High Courts had an upgrading effect upon the district and *mofussil* courts and bars. Many of the High Court judges encouraged leading members of the High Court bar to practice in the *mofussil* courts and aided them by giving adjournments. "This served a double purpose. It not only helped the pleader in promoting his own prestige and practice; but more important, the effect of the presence and the methods of conducting cases of experienced High Court lawyers, in the subordinate courts, would be to improve the standards of practice in these courts."[122, 123]

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118. VACHHA, *supra* note 2, at 53.

119. GOPALRATNAM, *supra* note 54, at 15.

120. E. J. TREVELYAN, THE CONSTITUTION AND JURISDICTION OF COURTS OF CIVIL JUSTICE IN BRITISH INDIA 71, 77, 78 (1923).

121. MISRA, *supra* note 19, at 172.

122. VACHHA, *supra* note 2, at 50.

123. Some High Court judges, *e.g.*, Justice Jenkins of Bombay, took an interest in activating the *mofussil* judiciary and periodically deputed a judge to inspect the *mofussil* courts (VACHHA, *supra* note 2, at 86).

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GRADES AND REGULATION OF THE PROFESSION—1862-1962

There were six grades of legal practice in India after the founding of the High Courts; advocates, attorneys (solicitors),[124] and vakils of the High Courts; and pleaders, *mukhtars* and revenue agents in the lower courts. The High Courts set up standards of admission for vakils which were much higher than requirements for the old vakil-pleader of the *zilla* courts. Vakil became a distinct grade above the pleader.[125]

The Legal Practitioners Act of 1879[126] brought all six grades of the profession into one system under the jurisdiction of the High Courts. Together with the Letters Patent of the High Courts the Act formed the chief legislative governance of legal practitioners in the subordinate courts of the country until the Advocates Act of 1961.

To be a vakil, the prospective lawyer had to study at a college or university, master the use of English, and pass the High Court vakils' examination.[127] Admission requirements were gradually raised so that by 1940 a vakil was required to be a graduate with an LL.B. from a university in India in addition to presenting a certificate saying that he had passed in the examinations, read in the chamber of a qualified lawyer, and was of good character.[128]

Though vakils were the lowest rank of the High Court practitioners their position was a most honorable one, and opened the way for promotion and wider practice. After ten years of service in the High Court many vakils were raised to the rank of advocate (*e.g.* Sir Sunderlal, Jogernanath Chaudri, Ram Prasad, and Motilal Nehru of the Allahabad High Court).[129]

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124. Provision was also made for attorneys to practice as advocates. An attorney who had served for ten years in the High Court at Calcutta was entitled to appear and plead. With less than ten years service, an attorney could take an examination which would entitle him to plead, if he had read for one year in the chambers of an advocate. ORMAND, *supra* note 40, 217-23.

125. 4 IMPERIAL GAZETTEER OF INDIA 155-56 (1909).

126. Act XVIII of 1879.

127. For example, Pandit Motilal Nehru never finished his college examinations, but he passed the High Court vakils' examination in 1883 and became one of the most brilliant lawyers of his time. P. SURI & A. PERSHAK, MOTILAL NEHRU 4-6 (1961). Dr. Katju passed the High Court vakil's examination in 1906 after two years of college. He passed the LL.B. examination a year later. KATJU, *supra* note 1, at 6-7.

128. ORMAND, *supra* note 40, at 240.

129. SURI & PERSHAK, *supra* note 127.

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In addition to their extensive appellate jurisdiction, the High Courts of the three presidency towns also had an Original Side, whose jurisdiction included the major civil and criminal matters that would earlier have been heard by the predecessor Supreme Courts. On the Original Side in these High Courts, the grades of solicitor (attorney) and advocate (barrister) remained distinct.[130] On the Appellate Side and in the other High Courts, "every lawyer practices as his own attorney."[131] Attorneys and solicitors, therefore, practiced almost exclusively in the three Presidency High Courts.[132] Practice on the Original Side was both lucrative and prestigeous.

In Madras vakils began to practice on the Original Side as early as 1866. However, the barristers were "handicapped" by this success of the vakils and in 1874 challenged their right to do Original Side work. The issue was brought up many times and finally in 1916 this right was firmly established for the vakils.[133] Vakils in Bombay and Calcutta could be promoted as advocates and become qualified to work on the Original Side.[134] By attending the Appellate Side and Original Side courts each for one year a vakil of ten years service in the court was permitted to sit for the advocates' examination. Mr. Setalvad did this and began a successful career on the Original Side in 1906.[135]

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130. Setalvad gives an amusing account of one attempt of an advocate to practice without a solicitor. The hot tempered barrister, Anstey, once insulted a solicitor so rudely that all of the solicitors of Bombay decided not to give him any briefs. He appeared in court having been instructed directly by a client. After two days of argument the judges refused to recognize his right to appear. He, therefore, persuaded a solicitor friend at the Madras High Court to move to Bombay. Because of Anstey's reputation his new solicitor soon had more of the desirable legal business in Bombay than the other solicitors. (C. H. SETALVAD, RECOLLECTIONS AND REFLECTIONS; AN AUTOBIOGRAPHY 9 [1946].)

131. KATJU, *supra* note 1, at 14.

132. Attorneys who had practiced before the Supreme Court of Judicature in England could be directly admitted into the High Courts. Attorneys from Ireland could be admitted after passing an examination. Attorneys from other High Courts were admitted if they had served a period of five years as attorney's clerk, and this was a requirement for fresh candidates as well. A graduate of an Indian university, with five years service as as an attorney's clerk, was admitted after paying a fee and passing the required examination. ORMAND, *supra* note 40, at 124.

133. GOPALRATNAM, *supra* note 54, at 123-24.

134. In Madras a similar provision to this was rejected by the vakils who as a body were struggling for rights and position equal to that of advocates. SIVASWAMI AIYAR, *supra* note 87, at 273.

135. SETALVAD, *supra* note 130, at 18.

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The Indian Bar Councils Act of 1926[136] was passed with the twofold purpose of unifying the various grades of legal practice and providing some measure of self-government to the bars attached to the various courts.[137] The Act required that each High Court constitute a Bar Council made up of the Advocate-General, four men nominated by the High Court of whom two should be judges, and ten elected from among the advocates of the bar.[138] The duties of the Bar Council were to decide all matters concerning legal education, qualification for enrollment, discipline and control of the profession.[139] It was most favorable to advocates as it gave them authority, previously held by the judiciary, to regulate the membership and discipline of their profession.[140] However, these rules had to be in accord with the High Court rules.

After independence, there was a growing opinion that there should be one bar for all of India. This is expressed by Chief Justice Mahajan:

> With the setting up of the Supreme Court and the creation of Supreme Court Bar, the necessity of having an all India Bar was strongly brought home to me. In the good—or bad if you would like to have it that way—old days advocates of one High Court sometimes found it difficult to appear in a case pending before another High Court. I have never been able to reconcile myself either to the distinction between solicitors and advocates or between advocates practicing on the original side and those on the appellate side. The prevailing business sometimes created amusing situations. An advocate entitled to practice before the highest court in the country, the Supreme Court, could easily be refused permission to appear in a lower court, the original side of a High Court. I was keen on the creation of an all-India Bar and advocated its cause whenever I went on . . . tours.[141]

To plan for the formation of an all-India Bar, a committee was appointed in 1951. They recommended that all grades be done away with and that one integrated and autonomous all-Indian Bar be formed.[142] The Advocates Act of 1961 was a great step in this direc-

136. Act XXXVIII of 1926.

137. Women were allowed to practice as lawyers even prior to 1923. As their right to practice had sometimes been questioned, it was clearly set forth in the Legal Practitioners (Women) Act of 1923. (Act XXIII of 1923.)

138. Act XXXVIII of 1926.

139. SAPRU, *supra* note 88, at 175-76.

140. A. GLEDHILL, THE REPUBLIC OF INDIA: THE DEVELOPMENT OF ITS LAWS AND CONSTITUTION 2nd ed. 364 (1964).

141. MAHAJAN, LOOKING BACK 213-14 (1963).

142. [MINISTRY OF LAW, INDIA, REPORT OF THE ALL-INDIA BAR COMMITTEE (1953).]

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tion.[143] It repealed the Legal Practitioners Act of 1879 and stipulated that no more pleaders be enrolled. Those already practicing, who were law graduates, could become advocates by paying a fee of Rs250 to the Bar Council. Even law graduates not practicing as pleaders were given opportunity to take an advocates' examination, pay the fee and receive the grade. Pleaders who could not qualify were allowed to remain practicing as previously.[144]

"Though the Act continues the dual system of advocates and attorneys prevailing in the High Courts of Calcutta and Bombay, elsewhere it recognizes for the future only one class of legal practitioner, advocates." [145] An advocate must have a law degree from an Indian university, or must be a barrister. He must pass a State Bar Council examination and then will be admitted to the bar not by the court but by the bar association made up largely of advocates. Admission, practice, ethics, privileges, regulations, discipline and improvement of the profession as well as law reform are now all in the hands of the profession itself.[146]

EDUCATION

In the early Bengal courts every vakil was required to have studied either at the Hindu College in Benares (founded 1792)[147] or the Calcutta Madrassa (founded 1781). In the Madrassa Arabic, Persian, law, geometry, mathematics, astronomy, logic, rhetoric, grammar, theology, and natural philosophy were taught. For a number of years it was very poorly administered and the standard of education was very low.[148] Regulation XI of 1826 made it possible for students seeking to become lawyers to be educated in any of the public institutions.[149] Until 1826 knowledge of Persian was required of every vakil.[150] English gradually replaced Persian as the language of the courts and many new schools and colleges sprang up in Calcutta and the other presidency towns.

143. Act XXV of 1961.

144. A. C. GANGULY, CIVIL COURT PRACTICE AND PROCEDURES 250 (1963).

145. GLEDHILL, *supra* note 140, at 365.

146. *Id.*

147. N. S. BOSE, THE INDIAN AWAKENING AND BENGAL 57 (1960).

148. Between 1829 and 1851, 1,787 students passed through this institution in Calcutta. S. C. SANIAL (1915), 96. History of the Calcutta Madrassa, VIII, BENGAL PAST AND PRESENT 83-111, 125-50 (1915).

149. B. C. PAL, MEMORIES OF MY LIFE AND TIMES 4 (1932).

150. MISRA, *supra* note 53, at 169.

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Fort William College was founded in 1800 to train civil servants. The Hindu College of Calcutta was opened in 1817 by Mr. Hare, with the help of Rammohun Roy and Chief Justice Edward Hyde East.[151] Many famous lawyers and judges at the beginning of the High Court era in Calcutta were educated in this college. Among them were Presanna Kumar Tagore, and Justice Romesh Chunder Mitter.[152]

The standard of law courses taught in the Government schools was not severe. Richard Clarke, an eminent member of the Madras Civil Service, observed:

> . . . it is one of the duties of the college board to prepare vakeels or native pleaders, who are, however, not required to have so thorough a knowledge of the native law as those who are candidates for the office of cauzey [qazi] or pundit; but they are examined in the native law, and are further required to have a sufficient acquaintance with the regulations passed by the Government.[153]

Misra claims that the "anglicization of the indigenous legal profession" had begun by 1832 and quotes Clarke's statement about the education, testing, and granting of *sunnuds* by the college board: "the object of these arrangements was as much as possible to assimilate the native to the European bar, leaving it to the clients to make their own selection of their law advisers."[154] There is little evidence to show that this was the case. Clients had no choice but to engage Indian vakils in the *Sudder* Courts (until barristers began to practice in the *Sudder* Courts after 1846) and English lawyers in the Supreme Court.

Although English and Hindu jurisprudence (Blackstone and Manu) were taught in the ICS College at Fort William,[155] the emphasis in the schools where vakils were trained was on teaching rules and regulations rather than principles of law. A writer in the *Calcutta Review* in 1847 criticized the schools for putting so much emphasis on the regulations. He noted that the regulations as contained in Marshman's Guides "comprised the total library of most native judges and district magistrates and was the main object of study by the Indian lawyer." He warned that unless education stressed principles of law and jurisprudence Indian lawyers would turn out to be "pettifoggers ignorant of everything but

151. BOSE, *supra* note 147, at 61.
152. C. E. BUCKLAND, DICTIONARY OF INDIAN BIOGRAPHY (1906).
153. MISRA, *supra* note 53, at 169.
154. *Id.* at 170.
155. 5 CALCUTTA REVIEW 99 (1846).

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rules and forms, acts and regulations and reports—stirring up litigations to make their own fortunes out of it." [156]

In spite of this warning, many of the graduates of this early, inadequate legal education rose to greatness. An outstanding example is Sambhunath Pandit (1820-67) who studied in the Benares Oriental Seminary, worked as a record-keeper in the Sadr Court at Rs20 a month, then became a pleader, junior government pleader in 1853, and senior pleader in 1861. He was called to be professor of law at the Presidency College in 1855 and called to be the first Indian High Court judge in 1863.[157]

Law classes were made a permanent part of the curriculum in Hindu College, Calcutta; Elphinstone College, Bombay; and at Madras in 1855.[158] The University Act in 1857 established study of law as a permanent part of each university and gave scope for eventual full development of legal education.[159]

A high school education was enough for those who wished to practice in the lower courts as pleaders or *mukhtars*. Mahajan, who later became Chief Justice of India, was licensed as a *mukhtar* after he finished high school.[160] Sardar Patel took the district pleaders' examination after he had finished high school.[161] His brother, Vithalbhai, finished high school and studied for a time at Gokhale Law Class in Bombay "which coached students for the District Pleaders' examination." [162] The stress was on passing the examination and the institution where one studied was not very important.

Before there were separate law colleges, law instruction was given in classes attached to the arts colleges. The university law standards were low. The only requirement for entrance was matriculation—*i.e.*, graduation from secondary schools. The arts examinations were more difficult than law examinations. The descriptions of law classes at Lahore, Allahabad, Madras, and Bombay at the turn of the century given by Mahajan, Katju, Aiyar, and Setalvad are much alike. Attendance was marked but not enforced.[163] One student would call present

156. 7 CALCUTTA REVIEW 109 (1847).
157. BUCKLAND, *supra* note 152.
158. MISRA, *supra* note 53, at 173.
159. BOSE, *supra* note 147, at 75.
160. MAHAJAN, *supra* note 141, at 5.
161. S. JAYSREE, THE IRON MAN OF INDIA 36 (1951).
162. G. L. PATEL, VITHALBHAI, PATEL, LIFE AND TIMES 17-18 (1950).
163. SIVASWAMI AIYAR, *supra* note 87, at 226.

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for six names and students worked out attendance rotation.[164] Few of the students read law books or took notes. Mehr Chand Mahajan relates that most of his friends studied only the abbreviated pamphlets that enabled them to pass the examinations and "were sarcastic at my preference for reading original books on legal subjects."[165] Katju remembers that "everyone used cribs and aids to scramble through no matter how poor his grounding in legal principles or how meagre his reading of those classics that are the very life blood of our law."[166] "The general College Library contained a law section but was poorly patronized by the students, and during my two years at College I never heard any lecturer recommending the study of a particular legal textbook or precedent."[167]

Teachers were poorly paid. A full professor received Rs400 a month and a lecturer Rs150.[168] The teacher-pupil ratio was 3:400 when Setalvad attended law school. He noted that teachers were appointed "not always on merits but for making provision for young barristers struggling at the Bar."[169]

In Bombay, the university's standards were so low that some of the leading lawyers, Badruddin Tyabji, Nayayan Chandavarkar, Rustom K. R. Cama, and N. V. Gokhale, formed a managing board to found a good law college and secured the services of six competent professors. Their request to Bombay University to open this new school was refused because of opposition by the Government, which feared its teaching might be seditious. However, this effort resulted in the upgrading of the existing law school in line with the aspirations of the board members.[170]

The number of law students as well as practitioners was much greater in Calcutta than in the other presidencies as the following table of Bachelor of Law graduates shows:[171]

	Calcutta	Madras	Bombay
1864-73	704	78	33
1874-82	924	232	156

164. SETALVAD, *supra* note 130, at 161.
165. MAHAJAN, *supra* note 141, at 27.
166. KATJU, *supra* note 1, at 5.
167. *Id.* at 4.
168. *Id.* at 3-4.
169. SETALVAD, *supra* note 130, at 161.
170. *Id.* at 162.
171. MISRA, *supra* note 53, at 325.

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Though large numbers (nearly 3,000 a year by 1910) were graduating from the poorly equipped and staffed law colleges, a law degree did not signify a sound preparation in law or professional competence. These assets were more often gained as the young lawyer worked as an apprentice or junior to some well-known, experienced lawyer.[172]

In England where social life and "eating of dinners" were an important part of legal training at the Inns of Court, standards of legal education were not much better.[173] For a time the exams for the barristers were actually easier than the LL.B. and High Court Pleaders' exams in India.[174, 175] This fact and the higher prestige and advantages open to the barristers induced many young men to study for the bar in England.

INDIAN BARRISTERS

Few Indians could afford the long[176] expensive training program for barristers that could be had only in England. The earliest candidates were predominately sons of rich Parsi merchants.[177] One forward looking Parsi leader recognized the potential that barristers would have for leading Indian society and provided funds for this training:

> For some years before this [1864], it was being realized more and more in India that a barrister's profession was a natural avenue for the advancement of India not only culturally, socially and educationally, but as a means of getting her legitimate claims advanced and grievances redressed. The profession which sought justice protected and fought for the rights of a subject in court, was the profession most suited to seek justice, claim protection, and fight for the rights of the people as against the government. In appreciation of this fact and from a sense of patriotism, Mr. Rustomji Jamshedjee Jijeebhoy, who was a highly enlightened and philanthropic man . . . made a trust of Rs. 1,50,000 for the selection of five Indians to proceed to Europe to be called to the Bar. The scholar-

172. KATJU, *supra* note 1, at 19.

173. *Id.* at 5; and G. WIJEYEKOON, RECOLLECTIONS 17 (1951).

174. SETALVAD, *supra* note 130, at 146.

175. When Dr. Katju took the High Court Pleader's examination in 1906 only fifteen out of several hundred passed the examination (KATJU, *supra* note 1, at 6).

176. Requirement for admission as a student to an inn of court was matriculation. Many of the early Indian students studied for the matriculation exam in England for two or three years before studying law and therefore needed four to five years stay in England before being called to the bar.

177. Six of the first ten students admitted by Lincoln's Inn were Parsis (2 LINCOLN'S INN, ADMISSION OF STUDENTS TO LINCOLN'S INN, 1861 TO 1893) at pt. II, 298 [1893]).

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> ship was Rs. 30,000 to each of them. The proposal was made for a Parsi, a Hindu, and a Portuguese from Bombay and a Mahomedan and Hindu from East India or Calcutta or Madras.[178]

Sir Jijeebhoy's hopes were amply fulfilled. One of these five students was Womesh Chunder Bonnerji, who had been one of the four Indian lawyers practicing as a solicitor at the Supreme Court in Calcutta.[179] He joined the Calcutta High Court as a barrister in 1868, became president of the Law Faculty at Calcutta in 1880, served as a member of the Bengal Legislative Council, and as the first President of the Indian National Congress in 1885. From 1901 he practiced before the Privy Council in England.[180]

Pherozshah Mehta was another of these first five scholarship students.[181] After practicing for a few years as a barrister of the Bombay High Court he devoted his time fully to politics and reform. He became the most influential member of the Bombay Legislative Council, a member of the university, and a "pillar" in the Indian National Congress and served as the sixth Congress President.[182]

A study of the list of admissions into Lincoln's Inn (one of the four Inns) reveals that from 1861 to 1893 one hundred Indian students studied there to become barristers, increasing from one or two a year at first to five or six annually toward the close of this period.[183] Of these, four already had law degrees from Indian universities, and twenty-two were the sons of pleaders or magistrates.[184]

The biographer of Justice Tyabji (the first Muslim to become a barrister) describes the work required by the student at an inn of court:

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178. H. B. TYABJI, BADRUDDIN TYABJI; A BIOGRAPHY 22 (1952).

179. MISRA, *supra* note 53, at 327.

180. BUCKLAND, *supra* note 152.

181. TYABJI, *supra* note 178.

182. BUCKLAND, *supra* note 152; and VACHHA, *supra* note 2, at 40.

183. High caste Hindu barristers found that when they returned from England they had to go through a *prayaschit* (purification) ceremony. Mahajan refers to three young men from the Punjab who after being admitted to the bar in England, had to undergo this humiliating ceremony in order to satisfy their orthodox relatives. MAHAJAN, *supra* note 141, at 36. Motilal Nehru, who visited England in 1899, refused to submit to the *prayaschit* and was excommunicated. His spirited defiance helped to end this strict orthodoxy. B. R. NANDA, THE NEHRUS 39-40 (1963).

184. The lists include the names of several English lawyers who had been vakils at the Madras High Court and wished to return to India as barristers. LINCOLN'S INN, *supra* note 177, at 349.

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> He now resumed his terms reading in the chambers of the barristers. Here he devoted himself to learning the routine of legal proceedings, the work of a common law barrister, then an equity lawyer and a conveyancer. He attended also the offices of Mr. John Morris the solicitor . . . and drew pleadings, wills, conveyances, mortgages, deeds of trust, petitions. . . . He attended the law courts and studied the conduct of cases by eminent lawyers. When thus equipped a friendly solicitor entrusted him with some briefs and reported that he conducted the cases creditably.[185]

The first Indian barristers to practice in the High Courts were disappointed to find that they could not make a success of practicing on the Original Side, where the lucrative commercial cases were. Work on the Original Side could only come to a barrister through a solicitor. The solicitors' firms were all British, and they did all of the work for the Government departments and the great shipping and industrial firms. They did not want to patronize an untried Indian barrister. Nor did the few individual Indian solicitors who were struggling to expand their practice wish to risk the blame that would come upon them if some inexperienced Indian barrister mishandled a case.[186] Tyabji, who joined the Bombay High Court in 1867, was the first to win success on the Original Side:

> He had one advantage over the others. He had the support of his own brother who was an eminent solicitor. Immediately on Badruddin being admitted an advocate, he received from his brother Camruddin a brief of two gold mohors, for drawing a written statement. . . . In the very first year of his practice in 1868, he received a good deal of drafting work, mostly from his brother but also from four Hindu solicitors and an English firm Manisty and Fletcher. His work was skillfully done. He was then tried with a ten mohors case, and he justified their expectations. Henceforth, it was only a question of time and experience.[187]

Even after Tyabji's success a number of other prominent Indian advocates failed to establish themselves on the Original Side. Not only British firms, but also Indians preferred to be represented by British solicitors and advocates—perhaps because it was believed they would have more influence with the English judges.[188] The preference for

185. TYABJI, *supra* note 178, at 23.

186. *Id.* at 28-29.

187. *Id.* at 29.

188. Katju has pointed out that it is not uncommon for Indian clients to select a lawyer who is of the same caste or community as the judge, for much the same reason. KATJU, *supra* note 1, at 33.

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English practitioners was widespread. Vachha reports that due to confidence in their impartiality and inaccessibility to extend pressures "throughout the 19th century the inhabitants of Bombay preferred to trust their legal business, including the administration of estates, to the British solicitors, and to refer their disputes to the arbitration of English barristers." [189] After Tyabji, Telang was the first barrister to overcome these prejudices against Indian lawyers and to work successfully on the Original Side.[190]

After 1900 vakils who had been promoted to be advocates were enabled to work on the Original Side. After attending the Appellate Side courts for one year and the Original Side for another year a vakil could be permitted to sit for the advocates' examination, a most difficult one.[191] Setalvad was one of the first to accomplish this, but experienced the usual prejudice that made establishing Original Side practice difficult. However, these attitudes changed:

> When one evening in 1906 Craigie of Craigie, Lynch & Owen, a leading firm of solicitors, walked into my chamber and delivered to me a heavy brief in a case that lasted two months before Justice Beaman and marked the fees I mentioned, I realized that the ghost of racial prejudice had been buried once for all at least as far as the legal profession was concerned.[192]

The bench gave much more encouragement to the barristers and helped them gain equality with the British practitioners. Many Indian lawyers in their memoirs or autobiographies mention some British judge who gave encouragement, help, and honor to new, inexperienced lawyers.[193] Lawyers such as Telang showed the whole country that Indians could achieve the same eminence in the profession as could Englishmen. He was "head and shoulders above all of his Indian contemporaries" and one of the foremost practitioners, including the many experienced Englishmen, at the bar. He was promoted to the bench at the age of thirty-two in 1889 but died less than three years after this appointment.[194]

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189. VACHHA, *supra* note 2, at 14.

190. SETALVAD, *supra* note 130, at 18-19.

191. *Id.* at 18.

192. *Id.* at 19.

193. One such judge was Justice Sargent of Bombay. "He was free from political and racial bias, and encouraged young rising Indian advocates like Tyabji and Telang, the latter whom he raised to the Bench regardless of his absurdly youthful age." VACHHA, *supra* note 2, at 72.

194. *Id.* at 81.

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Professional equality was achieved by Indian advocates asserting their rights in court and by able demonstration of professional competence. Indian lawyers learned to defend their positions as assertively as did their British colleagues. Barrister Kali Mohan of Calcutta once had charges framed against him for arguing with Judge Jackson: "I am surprised, my Lord, that though you have been a District judge for so many years I cannot make you understand what even a student of law can very easily follow." The full bench of the High Court dismissed the charges against Mohan as they judged that the principle he had been maintaining was correct.[195] When Indian barristers won cases against famous English lawyers (as C. R. Das successfully defended Aurobindo against Mr. Eardly Norton) they proved that the English barristers no longer had an insuperable advantage.[196] The bringing together of the talent, learning, and tradition of Indians and Englishmen on the bench as well as the bar of the High Courts gave legal practice a color and scope that it had never had before.

The only profession preferred to that of barrister was the civil service. As it was extremely difficult for Indians to pass the examinations and be accepted into the civil service, the great majority of the young Indians trained in England were called to the bar and returned to India "transformed into English gentlemen." [197]

INCOME AND PRESTIGE

The great volume of legal business, high fees, and the prestige conferred by the High Courts combined to make the practice of law the most important of the professions in late 19th century India.[198] In 1881 there were 1.6 million civil suits valued at 16.54 *crores*. By 1901 there were 2.2 million suits. Some areas, notably where the *zamindari* system was in force, had an extremely high incidence of litigation.[199, 200] This volume spurred the growth of the profession.

195. P. C. RAY, LIFE AND TIMES OF C. R. DAS 2 (1927).

196. *Id.* at 58-64.

197. NANDA, *supra* note 183, at 37.

198. MISRA, *supra* note 53, at 307.

199. *Id.* at 325.

200. Hunter maintained that this mass of litigation from the villages represented the opening of an avenue of redress for the accumulated injustices of many years. "That the litigation is beneficial is proven by the fact that out of 108,559 original suits, 77,979 were decided in favor of the plaintive." He pointed out that before 1790 only one out

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The charging of high fees, which had been part of the pattern of Supreme Court practice, continued in spite of attempts at control. In spite of the often-revised fee tables,[201] very high fees could be earned by the more skilled lawyers. Bepin Chandra Pal reported that his father, a pleader in the district court, earned Rs200-300 a month, "quite a high income in those days—a man generally counted rich Rs. 100 a month."[202] Mahajan reported that his first fee was Rs300. In those days (1913) when courts were held in different places as the collector toured, a lawyer could make "good money" as "fees for going on tour were substantial."[203] Lawyers' fees were much higher than the salaries of most police officials; in 1901 a police subinspector received less than Rs75 a month.[204]

The biggest earners were men like C. R. Das and Motilal Nehru. By 1886, in his thirties, Motilal was averaging Rs2,000 a month and after ten more years he was earning *lakhs*.[205] He lived like a prince, had the first cars in Allahabad and a palatial house. In the famous *Damraon Case* which he lost to C. R. Das he cleared two *lakhs* in eight months.[206] C. R. Das did even better. From 1917 to 1919 he earned three *lakhs* a year. In 1920 his earning was Rs50,000 every month. In January of the following year he gave all of this up and joined Gandhi's noncooperation movement.[207]

Though few lawyers earned as did these nabobs of law, many of them earned a good living. In 1914 a good lawyer could be retained for Rs20 in an appeal case and for Rs50 in a civil suit.[208] Mahajan averaged Rs300 to 500 a month and hoped for the day when he could earn Rs1,000 a month as did the leading lawyer of the Gurdaspur Bar.[209] After five years of practice, by 1914, Katju was making Rs400-500 per month, yet could not afford a carriage and went to court on a bicycle.[210]

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of 10,000 inhabitants dared to use the courts, but by 1864 one out of every 260 inhabitants was using the courts. HUNTER, ANNALS OF RURAL BENGAL (1868) 342-43.

201. The Legal Practitioners Act of 1879 (Act XVIII of 1879) specified that the High Court should "fix and regulate fees and that table of fees should be published in the local official gazette." These fee tables were often revised.

202. PAL, *supra* note 149, at 22.

203. MAHAJAN, *supra* note 141, at 34.

204. MISRA, *supra* note 53, at 316.

205. NANDA, *supra* note 183, at 27.

206. *Id.* at 176.

207. RAY, *supra* note 195, at 66.

208. MAHAJAN, *supra* note 141, at 40.

209. *Id.* at 40-41.

210. KATJU, *supra* note 1, at 44.

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One reason that fee income was so high was that an average case moved very slowly. Cases were (and are) not heard on consecutive days but at wide intervals and only a fraction of the day was given to each hearing. Cases often lasted a generation. In 1955 the average duration of first appeals in the Allahabad High Court was 2,145 days.[211] For this reason clients sometimes asked for a lump sum agreement. Mavalankar reported that his first case was the defense of a bigamist. His client asked for a lump sum agreement. Thinking it would last no more than three sittings he agreed to Rs15 (Rs5 a sitting being the low rate for cases in the lower court in those days). It lasted twenty.[212] Another reason for high fees is the insistence of many litigants on having the most eminent counsel and the frequent unwillingness to compromise, even when urged to do so by counsel and judge.[213]

There was little specialization at the Indian bar. Many advocates handled criminal and civil work, trial and appellate cases, commercial law and Hindu law at the same time, "switching off from one subject to another."[214] Dr. Katju delighted in the variety of practice that challenged the Indian advocate and himself won famous cases concerning Hindu law, inheritance, business, and criminal matters.[215]

Besides the prospects of making a good living, the prestige and honor shown to the successful members of the legal profession encouraged many to study law. Leading counsel of the High Courts received many honors and promotions. The possibilities of rising in the profession were almost limitless. Mahajan, who as a college student had practiced as a *mukhtar*, became an LL.B. in 1912 and practiced as a vakil in the district court, then as a vakil in the High Court at Lahore, judge of the High Court in 1943, Federal Court judge in 1948 and Chief Justice of the Supreme Court in 1954.[216] The highest position of honor and responsibility open to an Indian during British rule was a cabinet post in the Viceroy's Council. In 1910 Mr. Satyendra Prasanna Sinha, a leading barrister of Calcutta, was appointed as Law Member of the Viceroy's cabinet. This "opened all positions of honour and dignity in the State to Indians of ability and integrity."[217]

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211. GLEDHILL, *supra* note 140, at 13.
212. G. V. MAVALANKAR, MY LIFE AT THE BAR 15 (1955).
213. SETALVAD, *supra* note 130, at 156.
214. *Id.* at 157.
215. KATJU, *supra* note 1, at 43, 44, 49, 247.
216. MAHAJAN, *supra* note 141, at 209-15.
217. RAY, *supra* note 195, at 73.

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As the profession that drew the elite of the country into its ranks the legal profession "dominated all public life." [218] Lawyers "organized and managed philanthropic and educational institutions and charitable societies. Socially, membership of the profession conferred status and dignity." [219] The wealth, prestige, style of living, and influence on society of the Indian lawyers during the first years of the 20th century attracted great numbers to the profession just as the opportunities for the British lawyer in 19-century India had attracted a flood of lawyers from Britain.

GROWTH OF THE PROFESSION

Before 1920 more students studied law than all the other professions put together, as shown by the following table:[220]

	Law Students	Students of Other Professions
1911-1912	3,036	3,135
1916-1917	5,426	4,595
1921-1922	5,234	6,755
1931-1932	7,151	7,954
1939-1940	6,749	10,378
1949-1950	9,464	31,170

As more territory was annexed by the British, the judicial system was extended and more and more lawyers were needed to practice in the newly opened courts and to advise the people in these new territories who had little knowledge of Anglo-Indian law and court procedure. In the Punjab in 1866 there were only eleven practicing lawyers but in that same year there were 166,000 suits in the Punjab courts.[221] By 1910 there were 1,277 lawyers to share in this volume of legal work and by 1918 Punjab had 1,837 lawyers. There were different evaluations of this phenomenal growth. Spain refers to the lawyers of the Punjab as a horde of half-trained men who promoted litigation and kept the feuds of the Pathans alive.[222] The editor of the *Lahore Law Journal* on the

218. KATJU, *supra* note 1, at 13.
219. *Id.*
220. MISRA, *supra* note 53, at 333.
221. I LAHORE L.J. xvii.
222. J. W. SPAIN, PATHANS OF THE BORDERLAND 114 (1963).

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other hand attributed the growth of the profession to the lawyers' hard work, honesty, sympathy with the public, and usefulness to the people of the Punjab.[223] Both views give only a partial picture. As great numbers came to be lawyers the most outstanding and capable of the ethical practitioners won great prestige for the profession at the same time that the unscrupulous promoters of litigation caused the "lawyer to be regarded as a parasite feeding on society."[224]

Numerically India has the second largest legal profession in the world (after the United States). It has proportionately more lawyers than other non-Western countries.[225] The great appeal of the profession which created this phenomenal growth in numbers very early led to overcrowding and unemployment at the bar. After 1890 the phrase "briefless barrister" described the grim reality experienced by young lawyers.[226] As brilliant a lawyer as C. R. Das, who joined the bar at Calcutta in 1893, spent the first fifteen years of his career experiencing the "daily round of almost hopeless waiting at the Bar library in company of more than a hundred equally hopeless members of the learned brotherhood."[227] He took to writing to keep busy, fell into debt of Rs40,000 and was declared bankrupt by the court. He did not make a success of legal practice until he won sudden fame for his defense of Aurobindo in the *Alipore Bomb Case* in 1908.[228] The more important the court, the more crowded was the bar.[229] Although Madras presidency had twenty-six district courts, nearly half of the advocates in the presidency were practicing in Madras City.[230] The chances of starting practice in the villages at the taluk courts were very poor.[231] An ambitious young lawyer could learn and progress in his profession only by working in close association with an experienced senior lawyer, and these men were found only at the district and High Courts.

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223. I, LAHORE L.J. xv.

224. MAVALANKAR, *supra* note 212, at 15.

225. *See* Galanter, Introduction to this issue, Table 1.

226. NANDA, *supra* note 183, at 26.

227. RAY, *supra* note 195, at 24.

228. *Id.* at 64.

229. Setalvad complained in 1946 that there were between three hundred and four hundred advocates practicing just on the Original Side of the High Court of Bombay. SETALVAD, *supra* note 130, at 147.

230. The Madras High Court Bar was reported to have been crowded from 1897 when there were more than one hundred lawyers in the Vakils Association. By 1938 there were 3,790 advocates registered in the Madras presidency of whom 1,600 were practicing in Madras City. SIVASWAMI AIYAR, *supra* note 87, at 276.

231. *Id.* at 278.

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As the profession grew bar associations, libraries, and law journals were established at each of the High Courts. Bar associations were founded for each grade of lawyer.[232] Each association had its own library and facilities.[233] At every district and High Court the library was used as a gathering place for the fraternity. Cases and judgments were discussed. Young lawyers were especially interested to hear what was being said about their work in the law library gossip sessions.[234] Setalvad conveys to us the atmosphere of the bar association library:

> The Bar library is one spot where I find it delightful to pass my time whenever I can. It is a place to which laws of libel, slander, and sedition do not apply, and judges, practitioners, and the government and their measures are freely discussed without any restraint.[235]

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232. The associations at Lucknow are a good example. The Oudh Bar Association founded in 1901 was for advocates only. Membership fee was Rs200, there was a good library, 131 members were registered. The Central Bar Association founded in 1908 was open to any legal practitioner not below the rank of pleader. Membership fee was Rs50, there was a library, 175 members were registered. The District Bar Association founded in 1935 is open to students training to be vakils. Admission fee is Rs15, there were 88 members. The Lucknow Lawyers Association founded in 1928 is open to any legal practitioner. There is a library, membership fee is Rs5 and there were 74 members. 37 UTTAR PRADESH DISTRICT GAZETTEER 284-85 (1959).

233. *E.g.*, the Vakils Association of the Madras High Court raised enough subscriptions to build a library of more than 30,000 volumes. The library and reading room are housed in the High Court building at Madras. SIVASWAMI AIYAR, *supra* note 87, at 272. The tradition of bar libraries at the courts goes back to that established at the Supreme Court in Calcutta in 1825. George W. Johnson, a Calcutta barrister, gives the following account of its founding:

> I may observe here, for the guidance of immigrating barristers that there is a law library connected with the Supreme Court. This useful collection of books was founded chiefly through the exertion of one of the advocates, Mr. Languerville Clarke, in June 1825—the bar then was composed of ten barristers and they, with the officers of the court, subscribed Rs. 100 each toward the purchase of a professional library which was offered to them. The valuation amounted to Rs. 5,928 and the balance left due was gradually to be liquidated by the annual subscription of each member, fixed at two gold mohurs (64 shillings) (Rs. 25) per term. Justice Buller obtained for the proposed library a room opening into the Supreme Court and the books by purchase and donations have gradually accumulated into a nearly complete series of reports ancient and modern and in a respectable though more deficient collection of text books. There is a difftree (native librarian) continually in attendance to find the required volumes and take receipts for such as are borrowed from the library . . . . 1 G. W. JOHNSON, THE STRANGER IN INDIA OR THREE YEARS IN CALCUTTA 91-92 (1843).

234. KATJU, *supra* note 1, at 27.

235. SETALVAD, *supra* note 130, at 158.

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FAMILY TRADITION

From the early days of the profession the practice of law became the traditional occupation of many families. We have already noted that one-fourth of the Indian barristers who passed through Lincoln's Inn in the 19th century were sons of lawyers and judges. Among the famous families that have a legal tradition of several generations are Chimanlal Setalvad, Mahajan, and Nehru. Further research would reveal that many more famous Indian families have this tradition. Nehru's great-grandfather had served as a vakil of the East India Company in Delhi before the Mutiny.[236] His paternal uncle, Bansi Dhar, was a judgment writer in the Sadar Diwani Adalat at Agra, and his father Motilal, a leader at the bar of the Allahabad High Court.[237] The Setalvad family has a tradition of judicial and legal practice for the last four generations.[238] The family of C. R. Das was totally involved in the profession. His grandfather, two paternal uncles, father, he himself and his younger brother (whom he educated) all practiced law.[239]

The advantages of being raised as the son of a judge or lawyer are quite evident. Traditions of the profession were absorbed in the home. The friends and guests who frequented the home were lawyers, judges and leading men of the community. Conversation and discussion concerned interesting legal cases, politics, and social reform. When a son of a vakil or advocate began to practice in the court many members of the bar and bench were old friends of the family.

Without the help of a practicing family member or relative many a well-trained talented new lawyer had little chance to show what he could do to succeed at the bar. A well-known vakil of Madras, Sivaswami Aiyar, referring to the very crowded conditions at the Madras bar writes, "Unless a beginner has influential relations or connections or can get the chance of devilling to appreciative and generous leaders in the Bar, he has no means of making himself known to the client world or to the judges in the Courts."[240] The failure of C. R. Das to get a good start as a barrister in the High Court of Calcutta is attributed to the retirement of his solicitor father which made it impossible for

236. NANDA, *supra* note 183, at 18.
237. *Id.* at 21.
238. SETALVAD, *supra* note 130, at 3.
239. RAY, *supra* note 195, at 16.
240. SIVASWAMI AIYAR, *supra* note 87, at 277.

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his father to see that legal business came his way.[241] A practicing father, interested in his son's legal career could spell the difference between failure and success at the bar.

Mahajan was more fortunate than Das. Although his father was only a *mukhtar* he had wide experience and knowledge of law and a busy practice. He trained a clerk in his office to be ready to serve his son when he finished his legal education. During law school vacations Mahajan worked in his father's office and learned how to accept and refuse briefs. He writes of his father, "He taught me drafting of plaints, pleadings and petitions and made me draw out conveyancing documents."[242] For the first few months he worked as apprentice to his father and attended cases when his father was too busy to appear. In this way his ability came to be recognized by the bench, bar and the public and his career was successfully begun.

Families with long and rich legal tradition supplied the Indian bar with an abundance of highly trained talented leaders who maintained high professional standards and won great honor for the bar.

POLITICAL LEADERSHIP

A glance at any listing of leaders of the Indian national independence movement will reveal a predominance of lawyers and men who had had legal training. The bars of every section of the country supplied a number of great national leaders. Gujarat is a good example: "Of five great men that the sacred soil of Gujarat created in recent years, four were lawyers and were called to the bar in England: Mahatma Gandhi, Mohammed Ali Jinnah, Sardar Patel, and Vithalbhai Patel."[243]

Lawyers strove for the cause of nationalism in several ways. They worked through the courts for rights and equality between Indians and Englishmen; they gained membership and power in the provincial legislative councils; and they founded and built up the Indian National Congress. Only the lawyers had the knowledge of the individual rights to which an Indian was entitled, the mastery of the English language, skills, and independence which enabled them to "stand up to the bureaucracy of the day."[244] Lawyers were in a better position to work

241. RAY, *supra* note 195, at 24.
242. MAHAJAN, *supra* note 141, at 31.
243. JAYSREE, *supra* note 161, at 25.
244. KATJU, *supra* note 1, at 13.

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for the cause of nationalism than were other men of their educational level who were in Government or Government aided services. Their income and positions were independent of Government pressure.[245]

Political events stirred even busy lawyers who were not directly involved in public life. When a leading Calcutta barrister, Mr. Branson, led the Anglo-Indian fight against the Ilbert Bill,[246] he created a great deal of hard feeling among the lawyers. The Indian solicitors at the High Court refused to send him any more briefs, ruined his practice, and forced his early retirement to England.[247]

The growing power and leadership of lawyers in the provincial councils and municipalities was viewed with alarm by many Englishmen. Andrew Frazer regarded the lawyers as having a "disastrously undue influence" on all local governments and quoted a friendly pro-British rajah as saying, "You have thrown all power into the hands of the pleaders. They rule the courts, they have all the power of the local bodies, they have a practical monopoly on the legislative councils, we cannot oppose them." [248] This influence of the lawyers, disparagingly referred to as Vakil-Raj, was repeatedly denounced in Anglo-Indian literature. "Throughout the country there is a growing distrust in what is called Vakil-Raj. This power of the Bar is regarded by people generally as a power which undermines the prestige and diminishes the beneficience [sic] of British rule." [249]

Fearing that a separation of the judicial and executive branches of the government would endanger the security of the country and strengthen the power of the lawyers, Sir A. T. Arundell wrote that this "would be a concession to the large number of native vakils scattered throughout the country who are the prime movers in political agitation

245. Only a few men in government service had the courage to openly support nationalism. One of these was Justice Ranade. When he was a judge in Poona he used his position and influence to awaken political consciousness in that area. Chief Justice Westropp of Bombay warned him that his writings were standing in the way of his promotion. He answered, "I am grateful to you, Sir. So far as my wants are concerned, they are few and I can live on very little. Concerning my country's welfare, what seems to me true, I must speak out." SETALVAD, *supra* note 130, at 141.

246. [In the early 1880's the Ilbert Bill's proposal to empower Indian judges in the *mofussil* to try criminal cases involving European defendants provoked the fierce opposition of the resident British community. A watered down version, known as the Ilbert Act, was passed in 1884, providing for mixed Indian and European juries in such cases.]

247. RAY, *supra* note 195, at 120.

248. A. H. L. FRASER, AMONG INDIAN RAJAHS AND RYOTS 65 (1912).

249. *Id.* at 64.

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and who welcome any change that furthers the interests of themselves and their class." [250]

At the founding of the Indian National Congress in 1885 W. C. Bonnerjee, a barrister of Calcutta, was elected President. Other important leaders there were the Bombay lawyers Pherozeshah Mehta, Telang, Chandavarkar and Ranade. Chandavarkar was one of the delegates chosen by this first Congress to represent the cause of the Indian people to the people of England.[251] Many of the great lawyers of the late 19th and early 20th centuries were representatives in their regional legislative councils and also members of the National Congress.[252] During this time an increasing number of men with legal training entered into the political life of the country. Legal training was regarded as the best preparation for a political career.[253, 254]

For the first twenty years the Congress program was moderate, and concerned with limited constitutional reforms. Extremism was growing within the ranks during this period, but the moderates had firm control of the party as a whole. The political control of the party was in the hands of Pherozeshah Mehta[255] and the popular exponent of reform by constitutional agitation was Gokhale, a disciple of Ranade. The leaders with their Western educations and legal training understood parliamentary procedure and constitutional methods. They had confidence in the British sense of justice and were confident that the Irish members in Parliament and their own member, Dr. Dadabhai Naoroji, would be a great help to their cause.[256] His biographer describes Motilal Nehru, then a moderate who had little patience with the extremists, as believing that "able advocacy was as sure to succeed at the bar of British opinion as at the bar of the Allahabad High Court." [257]

The extremists under the leadership of Bal Gangadhar Tilak, Lala Lajpat Rai and Bepin Chandra Pal had grown very strong by 1905 and split off from the Congress in 1907, to remain separate until after Gandhi had entered the Indian political scene. Two of these leaders, Tilak and

250. 2 B. S. BALIGA, STUDIES IN MADRAS ADMINISTRATION 5 (1960).

251. BUCKLAND, *supra* note 152.

252. A reading of all the lawyer biographies in Buckland's DICTIONARY OF INDIAN BIOGRAPHY reveals that most of them were quite active politically.

253. MAVALANKAR, *supra* note 212, at 8.

254. Mavalankar relates how Pherozeshah Mehta, D. E. Wachla, Gokhale and Balchandra Krishna all advised him to study law with a view to enter politics. *Id.*

255. V. J. MAHAJAN, THE NATIONALIST MOVEMENT IN INDIA AND ITS LEADERS (1962), at 76.

256. *Id.* at 9.

257. NANDA, *supra* note 183, at 59.

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Lala Lajpat had been trained as lawyers. Tilak had never practiced before a court but Lajpat Rai had left a very successful practice at Lahore when he turned to public life.

When Gandhi began his work for the cause of national independence in India he found many lawyers who were willing to spend much of their time to help. As he began his first great project, the Champaran investigation, he spoke to a gathering of vakils at Patna:

> I shall have little use of your legal knowledge. I want clerical assistance, and help in interpretation. It may be necessary to face imprisonment, but much as I would love you to run that risk you would go only so far as you feel yourselves capable of going. Even turning yourselves into clerks and giving up your profession for an indefinite period is no small thing . . . we cannot afford to pay for this work. . . . It should all be done for love and out of a spirit of service.[258]

A number of vakils volunteered to make themselves available. For more than a year they toured the Champaran in teams using their skill at cross examination to obtain statements (Gandhi stressed the need for truthful statements) from more than 22,000 *kisans* (peasants) who were being exploited by the indigo planters.[259] This *satyagraha* broke the grip of the planter on the peasants of the area and proved to the country what great public service could be achieved by well-motivated lawyers working together for the cause of human rights. Rajendra Prasad describes the great effect this work had on the legal profession of that area:

> Most of us who joined Gandiji in Champaran were lawyers and not one had joined him with the idea of giving up the profession. But when we started working in Champaran, our whole outlook changed. We found it impossible, once we had undertaken it, to go back to our avocations without completing the task in hand . . . people who went there for a few days remained for months. When we had finished the work in Champaran, we returned home with new ideas, a new courage, and a new programme. . . . We could feel and realize that if the public life of Bihar was to be at all effective, some of us would have to devote ourselves to it to the exclusion of everything else.[260]

Gandhi commanded the respect of the profession. When he established the Satyagraha Sabha following the Rowlatt Bills,[261] some of the

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258. M. K. GANDHI, THE STORY OF MY EXPERIMENTS WITH TRUTH 409 (1950).

259. R. PRASAD, AUTOBIOGRAPHY 91-92 (1957).

260. *Id.* at 100.

261. [The Rowlatt Acts, passed in 1919, gave Government broad emergency powers (*e.g.*, abolition of juries in political cases, internment without trial). The Acts were deeply resented and became a rallying point for nationalists.]

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lawyers of the Bombay High Court, including barristers Varajrai Desai and Vallabhai Patel, signed the *satyagraha* pledge. They were warned by Justice Macleod, but no definite action was taken against them.[262]

The massacre at Jallianwalla Bagh at Amritsar in 1919 brought the leading lawyers of the country to the forefront of the struggle for independence.[263] Motilal immediately went out to defend those who had been arrested under martial law and who were in danger of receiving the death penalty. When refused permission to enter the Punjab he cabled directly to Lord Montagu, Secretary to India and to Lord Sinha who was residing in London, and received permission to go to Amritsar over the head of General O'Dwyer and the Viceroy Chelmsford. He was able to save the Congress leader Harkishenlal and was instrumental in shortening the period of martial law. Motilal neglected his own practice and used all of his influence and the facilities of his own solicitors in London to bring the appeals of those who had been condemned up to the Privy Council.[264] Gandhi, C. R. Das, M. R. Jayakar, Abbas Tayabji (Tyabjee), and Motilal Nehru were chosen by the Congress to be a committee of inquiry into the Amritsar situation.[265] By working in close association with Gandhi these leading lawyers of the day came to respect him and regard him as their leader.[266]

Finally the time came when Gandhi called for a boycott of titles, honorary offices, law courts, legislatures, foreign goods, and Government owned or aided schools and colleges. Motilal Nehru, C. R. Das, Rajagopalachari and many other lawyers gave up their princely incomes, resigned from their respective legislative assemblies, and began to live simple, austere lives.[267] The requirements of leadership were so great

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262. SETALVAD, *supra* note 130, at 153-54.

263. [*I.e.*, the firing by British troops on an unarmed crowd at Amritsar on April 13, 1919, in which 379 Indians died and 1,200 were wounded. For a full account, *see* RUPERT FURNEAUX, MASSACRE AT AMRITSAR (1963).]

264. NANDA, *supra* note 183, at 59.

265. Jayakar gives a graphic description of this committee at work:

> Gandhi invariably assumed the role of the stern judge in sifting the chaff from the substance. He took infinite pains to see that what was to be put before the public was the quintessence of truth. The occasions were not infrequent when we differed violently as to what was the truth . . . Das and I advocated our view with great insistence; Das often thumped the table with a vigorous gesture which was his favorite habit when putting forward his point of view. Motilal did the same but with great restraint. Gandhi often stood alone against all this fusillade. 1 M. R. JAYAKAR, THE STORY OF MY LIFE 322 (1958).

266. NANDA, *supra* note 183, at 170.

267. *Id.* at 184; and RAY, *supra* note 195, at 66.

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that it was perhaps a good thing for the future of the country that practicing lawyers who had been only part-time leaders of the national movement now gave all of their time and energy to the task. C. R. Das and Motilal Nehru would no longer "cross swords in the court room during the day and discuss poetry and politics over a bottle of whiskey in the evening" as they often had during their last year of practice.[268] Both C. R. Das and Motilal were to enter the legislative assemblies again in opposition to the view of Gandhi and many of the Congress leaders. By setting up the Swarajist Party and successfully obstructing the functioning of the legislature they paralyzed the functioning of dyarchy government, especially in Bengal, and laid the ground for its abolition.[269] They did this as full-time political leaders.

After Gandhi's leadership became the most dominant force in Indian politics, practicing lawyers no longer led the national movement. From 1920 "Lawyers still led everywhere, but they were no longer practicing lawyers. Many great leaders of the day were lawyers no doubt—lawyers renowned in their generation—who had sacrificed their careers and devoted themselves to national service as whole time servants." [270] The activities of these great leaders from 1920 to the present day is beyond the scope of this paper; their activity concerns the nation as a whole but not specifically the development of the profession of law. During the 1930's the national movement had an adverse effect upon the legal profession by discrediting the courts and competing for the interest of the young men of the country.

CONCLUSION

In view of the impressive history of the legal profession, the place it holds in postindependence India is disappointing. It is an active and essential profession, but it no longer has the limelight. By the time of independence, widespread unemployment among the legally trained caused university graduates to seek training in other professions such as teaching, medicine, and engineering. No longer did the most talented men of the country study law. The prestige of the profession has greatly diminished. Katju, regretting this decline in the quality of the profession, has observed that previously only members of the higher classes,

268. NANDA, *supra* note 183, at 181.
269. RAY, *supra* note 195, at 200-3.
270. KATJU, *supra* note 1, at 13.

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coming from families with a tradition of learning, studied for this profession. Now, however, students of law are drawn from all of society and often study law only because they cannot get seats in the other, more preferable professions.[271]

The legal profession no longer offers the most honored and profitable work that can be attained in India. It no longer draws the best students, and it no longer dominates the social and political life of the country. The monopoly it had on the leadership of the country for over a century is now gone. In a way the rest of society has caught up with the profession.

Still it can play a vital role in upholding individual rights, promoting more efficient and widespread justice, and acting as an integrating force in national life. It has great traditions on which to build. It now has a unified bar and controls the quality of its education, requirements, and ethical standards. It has an extensive literature and a great deal of experience. It is part of a "modern legal system" which "provides both the personnel and the techniques for effecting national unity."[272] The responsibility of this profession to the society of such a developing nation is indeed great, as has been its history.

271. 1 ALL INDIA RPTR. (1965).

272. M. Galanter, *Hindu Law and the Development of the Modern Indian Legal System*, mimeograph, Chicago, University of Chicago (1965).

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