Changing Facets of Legal Profession in Karnataka

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Registrar
Karnataka State Law University
Navanagar, Hubballi-580 025.

IQAC COORDINATOR
Karnataka State Law University
Hubballi-25.

I. INTRODUCTION

The Legal profession is anoble profession and all those who belongs to it are its honourable members of it.Lincon once said 'Honour is at the very core of what a lawyer and judge must be'.[1] Legal profession is the dignified profession and it commands great honour.The legal profession of law is essentially a service-oriented profession.In India Legal profession is considered as a sincere and serious occupation and also it has been considered to be a service and not a business. The legal profession is different from other professions. The legal profession is basis of the administration of justice which is the foundation of the civilized society.Lawyers are the preservers of our Constitution and they are considered as the guardians of the modern legal systems.

Law is a profession and an industry. The legal 'profession' refers to lawyers, their training, licensure, ethical responsibilities, client obligations, and other practice-related matters. The profession is about the passionate, ethical representation of individual clients. Lawyers also enter into a social compact to represent society by defending the rule of law. The 'industry' describes the inter-disciplinary, tech-enabled, global business of delivering legal services.[2] The predominant service providers are individual lawyers, small or family-based firms. Most of the firms are involved in the issues of domestic law and majority work under country's adversarial litigation system.[3]

The practice of the advocate has a public utility flavour. The primary attributes of a lawyer are that he must be willing to lend his assistance to the needy and oppressed and should never be discharged from his professional duties. As legal profession is related to the administration of justice and public good, an advocate shall not indulge in any activity which may tend to lower the image of the legal profession in society.*In Re Sanjiv Dutta*[4]Supreme Court has observed that, "the legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by the its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that

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[1] Raju Ramchandran, "professional ethics for lawyers" (lexis-nexis, Gurgoan,2014)
[2] Mark A. Cohen, 'Law Is a Profession and an Industry -- It Should Be Regulated That Way', Law Is a Profession and an Industry -- It Should Be Regulated That Way (forbes.com), accessed on 16-01-2023
[3] Adv.Swapnil Joshi, 'Changing Face of The Legal Profession in India in The Era of Globalization', Changing Face of The Legal Profession In India In The Era Of Globalization (legalserviceindia.com), accessed on 16-01-2023.
[4] 1995(3)SCC 619

what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligential of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life."

In Dhanraj Singh Chowdary Case[5]Justice R M Lodha observed that,the legal profession is a noble profession. It is not a business or a trade. A person practicing law has to practice in the spirit of honesty and not in the spirit of mischief-making or money-getting. An advocate's attitude towards and dealings with his client has to be scrupulously honest and fair.

In V.C. Rangaduraiv. D. Gopalan[6]and others Krishna Iyer, J. Stated: -"Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community." Any compromise with the law's nobility as a profession is bound to affect the faith of the people in the rule of law and, therefore, unprofessional conduct by an advocate has to be viewed seriously. A person practising law has an obligation to maintain probity and high standard of professional ethics and morality.

Lawyers in India had played a significant role not only in the freedom struggle, but in the earlier times also in bringing about social awareness, among the people. With the advent of India freedom, and enforcement of the Constitution of India, the legal profession has acquired a new mantle. Amongst the four commandments enjoined by the Constitution, the foremost is securing to the citizens justice, social, economic and political, and justice and law are synonymous. You cannot think of one, without the other. Lawyers' role becomes foremost in fulfilling the Constitutional mandate.[7]The first step in the direction of organizing a legal profession in India was taken in 1774 with the establishment of the Supreme Court at Calcutta. The Supreme Court was empowered "to approve, admit and enrol such and so many advocates, Vakils and Attorneys-atlaw" as to the court "shall seem meet". After independence of India, it was felt that the judicial administration in India should be changed according to the needs of the time. Presently, the legal profession in India is governed by the Advocates Act of 1961, which was enacted on the recommendation made by the Law Commission of India to consolidate the law relating to legal practitioners. Under the Advocates Act, the Bar Council of India has been created as a statutory body to admit persons as advocates on its roll, to prepare and maintain such roll, to entertain and determine instances of misconduct against advocates on its roll and to safeguard the rights, privileges,

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[5] (2012)1 SCC 741.
[6] AIR 1979 SC 281.
[7] Keshav Dayal, 'Reflections of a Lawyers', 2006, Universal Law Publishing Co. Pvt. Ltd., p-6.

and interests of advocates on its roll. The Bar Council of India is also an apex statutory body, which lays down standards of professional conduct and etiquette for advocates, while promoting and supporting law reform.[8]

Indian society has given a prominent position to lawyers, the country is having enormous legal profession in India the second largest after the USA with a strength of slightly less than half a million. The heart and core of a democracy lies in the judicial process. the Indian social order can sustain itself only if there is an effective judicial system. Integral to the successful functioning of that system is the profession of advocates. who is a link between people's justice and the judiciary inevitably advocates command influence and even power as officers of the court. They represent government and various sections of litigants in search of justice or to punish injustice. It is natural for such a profession to claim statutory recognition and autonomy in the matter of discipline and exercise of forensic role.

Over the centuries many things have gone on record about lawyers and few have been flattering. Lord Brougham described a Lawyer as "Learned gentleman who rescues your estate from your enemies and keeps it himself." Many sectors of the economy have stagnated over the past years but the practise of law has been a growing industry. Spurred by numerous factors like proliferating law, multiplication of crimes, increasing spurt in business disputes, frequency of accidents and personal injuries, growing service litigation and labour disputes, explosion of civil right protections among others, cybercrimes, legal advice in every step of the life all these made the demand for lawyers has roared dramatically.[9]

The legal profession in India is not static, it is dynamic one and according to the changing needs of the society it is also changing. Now the legal profession is not like earlier, the traditional image of lawyer as an independent practitioner has given way to a world in which the significant majority of lawyers now work either as employees in larger law firms or as in-house lawyers. This has undermined the independence and autonomy of the profession. This view has received its support in *Akzo Nobel Chemicals v. European Commission*[10] about the dramatic shift of profession. The corporate law firms have entered the legal market, now legal profession is not restricted to service and it converted into a full pledge business. Thus, this research paper deals with the changing facets of the legal profession in India with special focus on the state of Karnataka.

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[8] Report on Draft Bar Council of India Rules for Registration and Regulation of Foreign Lawyers in India, 2016 by Indian National Bar Association.

[9] Justice H.G.Balkrishna, New Dimensions of Law and Justice, 1ed., 1992, A.D.Aggarwal for snow white publications pvt. Ltd., Bombay 238

[10] http://www.mondaq.com/eu-law/111386/akzo-nobel-chemicals-v-commission, last visited on 01/11/20

From an 'Officer of Court' to 'An Advocate as of Right'

Dr.Chidananda Reddy S. Patil
Professor, Karnataka State Law University, Hubballi

I. Legal Profession's overarching dimension

All professions are noble as they are knowledge based and pursued for the good of others. Because of the *pro bono publico* commitment on the part of the professions, and it being knowledge based, society has accorded them hallowed place, and through time, it conferred varied status to professions. The movement of all professions, hitherto, has been from chaos to organisation, organization to consolidation and consolidation to autonomy and monopoly[1]. The professions should always strive and retain the prestigious positions accorded to them by the society.

Amongst all professions, legal profession occupies a place of pride for the reason that its members have provided leadership to the general public always. It is the profession which has a bearing on the lives of everyone in some way or the other. Krishnaswamy Iyer writes that the profession of law is a great profession, the most brilliant and attractive of all professions with responsibilities, both inside and outside it, which no person carrying on any other profession has to shoulder. It is a great controlling and unifying institution which places upon each his duties, gives to each his rights, and enforces from each his obligations. It is in the first place, a learned profession. It is a learned profession not merely in the sense that learning is displayed in the practice of it, but that it calls for the high and noble conduct which is a corollary and consequence of all true learning.[2]

In India, the legal profession is, among all the learned professions, the most independent one. Its independence, which can never be lost sight of, is the bed-rock upon which its claims to lead the country are based. No member of the legal profession ever hesitates to condemn injustice or tyranny. More than the judge he stands for Justice as he pleads for it.[3]Around the world the legal profession operates under varying degrees of independence. In a few places it is still self-regulated

in the sense that it defines its own rules of ethics and disciplines its own members. In other countries the Bar is heavily regulated by the political branches of government.[4]

The principle that the Bar must be self governing is globally recognised. There is a United Nations resolution to that effect and even Special Rapporteur on Independence of Judges and Lawyers finds that Bar Associations play a vital role in safeguarding the independence and integrity of legal profession and its members. The United Nations's Basic Principles on the Role of Lawyers published in 1990 noted that such institutions must possess independence and its self-governing nature.[5] The Bar has a crucial role to play in democratic countries.

That independent role requires the lawyer to oppose the government in defense of the client's legal interests. Lawyers independence from political branches of government is important to rule of law.[6]When the countries pass through bad times, the Bar and its members will be at their best to save the rule of law as evidenced in different parts of the world. Their standing in society is well brought out is the following statement of the eminent jurist Fali Nariman[7]:

> "The truth is that people- ordinary people (though not those working for governments)- regard lawyers as more equal than themselves. They look upon lawyers as trained to use the freedom granted by the county's constitution, as persons who know better than ordinary people how to use this freedom. In times of grave crisis- constitutional or national- they look at lawyers (and associations of lawyers) to see how they react. They have done so in the past- and will continue to do so in the future."

Destroy the Bar and you will destroy a bulwark of civil and criminal justice, nay you will destroy the very foundation of security and liberty. 'A government of law is the supreme manifestation of civilisation,' and, as Lord Bacon said, 'law is the great organ through which the sovereign power (of society) moves.'[8]

The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one, considering the nature of duties to be performed and its impact on the society. In India, the independence of the Bar and autonomy of the Bar Council has been ensured statutorily by the *Advocates Act, 1961*, in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where the Bar has not performed the duty independently and has become a psychopath, that ultimately results in the denigrating of judicial system and the judiciary itself. A strong judicial system cannot exist without an independent Bar. The nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and expands through interpretation to meet new challenges.[9]

Sir John Davys puts the legal profession higher than the medical profession when he says that we must honour the physician as the wise man prescribes; we have to respect the lawyers much more for the same cause. For neither do all men at any time, nor any one man at all times, stand in need of physician; because greatest number of men are in health. But all men, at all times and in all places, do stand in need of justice; and of law which is the rule of justice and of interpreters and ministers of the law, which give life and motion unto justice.[10]

In this article, an attempt is made to appreciate the changing status of profession over a period of time; from enactment of *Advocates Act, 1961*, through enforcement of advocates right under that act to practice throughout India after 50 years, till date. Part-I of the article presents how the legal profession is superior among all professions and how it is most relevant for a constitutional democracy. The principal reasons for conferring professional autonomy and monopoly on legal profession are discussed in Part-II. The legal framework providing for professional autonomy is traced in Part-III. Position of an advocate as an officer of the court before the enforcement of right under Sec.30 of the *Advocates Act* to practice, on June 15, 2011 and how the independence and autonomy was compromised is discussed in Part-IV. After acquiring the status of a fundamental right after enforcement of Sec.30, the changes that occur to the status of profession are brought out in Part-V. Concluding remarks as to enhanced responsibility of the Bar Councils to regulate the professionals and to sustain its autonomy are to be found in Part-VI.

II. *Raison de être* for Professional Autonomy

The movement of all professions, hitherto, has been from chaos to organization, organization to consolidation and consolidation to autonomy and monopoly.[11] The prime reason for conferring autonomy and monopoly by the society on the professionals is the fact that they are a body of learned persons and the interest of society and individuals is safe in their hands. This becomes obvious when oneperuses through the accepted definitions of profession. "Professions" are a select body of superior occupations where commercialism cannot be tolerated, and which are pursued not for pecuniary gains but out of a sense of duty to serve society[12].

According to Roscoe Pound, professions are callings in which men pursue a learned art and are united in the pursuit of it as a public service- no less a public service because they may earn a livelihood out of it. He writes in the *Lawyer from Antiquity to Modern Times*:[13]

> "There is much more in a profession than a traditionally dignified calling. The term refers to a group of men pursuing a learned art as a common calling in the spirit of public service- no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of public service is the primary purpose".

Brandies J. of the U.S. Supreme Court applied the three criteria to professions, viz:[14]

> "First: A profession is an occupation for which the necessary preliminary training is intellectual in character, involving knowledge and to some extent learning, as distinguished from mere skill;
> Second: it is an occupation which is pursued largely for others and not merely for one's self;
> Third: it is an occupation in which the amount of financial returns is not the accepted measure of success."

To the same effect are the observations of V.R.Krishna Iyer J. in the case of *Bar Council of Maharastra v. M.V.Dabholkar*[15]:

> "The Bar is not a private guild, like that of barbers, butchers, and candlestick makers, but, by bold contrast, a public institution committed to public justice and *pro bono publico* service. If these are the high expectations of what is described as a noble profession, its members must set an example of conduct worthy of emulation".

Thus, in a profession, public service motivation and intellectualised expertise for community good are dominant, with a spirit of discipline and high ethic to guide their exercise. Like other professions, the legal profession also has autonomy and consequent monopoly over practice, which society has historically created. Having reposed trust in the profession, the society expects, in return auto-regulation on its part to retain that trust and protect citizens from exploitation and inadequate service. The professions are expected to evolve their own rules for upholding professional standards and enforce them against those guilty of professional misconduct.That is, the professional peers are authorised to sit in judgment over the allegations of professional misconduct by the clients. The *quid pro quo* for professional autonomy can never be less than a *pro bono publico* commitment.

III. Framework of Autonomy of Legal Profession

The Indian society created an exclusive right on the part of the advocates to appear on behalf of others in courts and created a monopoly in favour of them by enacting *The Advocates Act, 1961*. This Act has marked the beginning of a new era in the history of the legal profession by vesting largely in the Bar Councils the power and the jurisdiction which the courts till then exercised, by fulfilling the aspirations of those who had been demanding an All India Bar and effecting a unification of the Bar in India, by the creation of a single class of practitioners with power to practise in all the courts and bound by rules made and a code of conduct laid down by their own bodies to which the members could resort to for the protection of their rights, interests or privileges.[16]

With the coming into force of *The Advocates Act,* advocates are the only one class of persons who are entitled to practice the profession of law.[17] The Act further debars all other persons from practicing law unless they are enrolled as advocates under this Act.[18] The power of enrolment of legal practitioners and the disciplinary jurisdiction in respect of them are now vested in the State Bar Councils[19] and the Bar Council of India[20]. Now it is the function[21] of the State Bar Council,

inter alia, to admit persons as advocates on its roll, to prepare and maintain such roll and to entertain and decide cases of misconduct against advocates on its roll. The functions[22] of the Bar Council of India include *inter alia*, preparing and maintaining a common roll of advocates, laying down standards of professional conduct and etiquettes for advocates, laying down the procedure to be followed by its disciplinary committee and the disciplinary committees of State Bar Councils. Any person aggrieved by an order of the disciplinary committee of the State Bar Council may prefer an appeal to the Bar Council of India.[23] Further, any person aggrieved by an order of the disciplinary committee of the Bar Council of India may prefer an appeal to the Supreme Court of India and the Supreme Court may pass such order including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India as it deems fit.[24] Thus, it is the professional bodies, the State Bar Council and the Bar Council of India which have power to decide who shall be on the rolls and who shall be disbarred.

It is to be noted that, by contrast Sec.34(1) of the *Advocates Act* empowers the High Court to make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto. Further, Art. 145 of the Constitution of India empowers the Supreme Court to make rules for regulating generally the practice and procedure of the court including rules as to the persons practicing before the court. Therefore, an advocates right to practice before a court is subject to the rules made by the High Court under Sec.34(1) of the *Advocates Act* and Art.145 of the Constitution of India. However, these provisions do not affect the power of the Bar Councils to enrol eligible people as advocates and enquire into complaints of professional misconduct. Hence an advocate has no absolute right to practice before courts. This position was reinforced by the fact that Sec.30 had not come into force.

IV. Advocate as an Officer of the Court: Position prior to June 15, 2011

Sec.30 of the *Advocates Act* is a very crucial article. It confers a right to practice in courts on an advocate. The text of the Sec. is as under:

"30. Right of advocates to practice.- Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practice throughout the territories to which this Act extends-

i. in all courts including the Supreme Court;
ii. before any tribunal or person legally authorised to take evidence;
iii. before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice."

At this juncture, it is very important to note that this Sec. come into force only on June 15, 2011, the date that was appointed by the Central Government for enforcing Sec. 30 of the *Advocates Act*. Till then the status of an advocate had not changed from being an officer of the court.[25] This becomes clear from the analysis of the following decisions of the Supreme Court.

A dent into the prerogative of the Bar Councils to discipline its members was made by the decision of the Supreme Court in *Re Vinay Chandra Mishra's case*[26]. In this case, the Court found the contemner, an advocate, guilty of committing criminal contempt of court for having interfered with and "obstructing the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language". The Court held:

> "The facts and circumstances of the present case justify our invoking the power under Article 129 read with Art.142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of criminal contempt as under:
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> a. The contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of Court within the said period; and
> b. The *contemner shall stand suspended from practicing as an advocate* for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an advocate, shall stand vacated by him forthwith".[27]

Aggrieved by the direction that the "contemner shall stand suspended from practicing as an Advocate for a period of three years", the Supreme Court Bar Association, through its Honorary Secretary filed a writ petition under Article 32 of the Constitution before the Supreme Court. In this

case,*Supreme Court Bar Association v. Union of India*[28], it was argued that the disciplinary committees of the Bar Councils set up under the *Advocates Act,1961*, alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practicing law for professional or other misconduct, arising out of punishment imposed for contempt of court or otherwise.

In this case, the question for consideration was whether the Supreme Court of India while dealing with contempt proceedings exercise power under Art.129 read with Art.142 of the Constitution or under Art.142 of the Constitution can debar a practicing lawyer from carrying on his profession as a lawyer for any period whatsoever. The Constitution Bench of the Supreme Courtheld:[29]

> "The power of the Supreme Court to punish for contempt of court, though wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go bye to the procedure prescribed under the Advocates Act. The power to do complete justice under Art.142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner, while dealing with a case of contempt of court. The Supreme Court cannot in exercise of its jurisdiction under Art.142 read with Art.129 of the Constitution, while punishing a contemner for committing contempt of court, also impose a punishment of suspending his licence to practice, where the contemner happens to be an Advocate. Such a punishment cannot even be imposed by taking recourse to the appellate powers under Sec.38 of the Act while dealing with a case of contempt of court and not an appeal relating to professional misconduct as such."

Observing so, the Court overruled the *Re Vinay Chandra Mishra's case*and restoredto the Bar Councils the poweron their members.

Another point of view about the gamut of power under Art.142 is that the judges of the highest court, conferred with this extraordinary power, are apparently empowered to disregard statutory prohibitions and pass orders. To be at all meaningful, the words 'complete justice' must comprehend a power to disregard statutory provisions in exceptional circumstances, unless the provisions are themselves based on some fundamental principles of public policy.[30] But, it is to be

appreciated that the Supreme Court has paid due attention to the autonomous nature of the profession and held that it is the Disciplinary Committees of the Bar Councils which have power to suspend or remove any advocate from their rolls.

The matter was further clarified by the Supreme Court in *Ex-Capt. Harish Uppal v. Union of India.*[31] Addressing the question of strike by lawyers, it held that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. Strikes interfere with administration of justice. Advocates cannot thus disrupt court proceedings and put interest of their clients in jeopardy[32]. This is a very important decision of Five Judge Bench, which has analysed the concerned provisions of the *Advocates Act* as also Art.145 of the Constitution and demarcates the power spheres of the Bar Councils to lay down conditions subject to which an advocate may continue on the rolls of the Bar and the power sphere of the courts to lay down conditions subject to which an advocate can practice in courts.Asserting its power to regulate the right of appearance the Supreme Court held:[33]

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> Courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Sec. 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an Advocate) can practice in the Supreme Court and / or in the High Court and Courts subordinate thereto. ... Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, Courts may now have to consider framing specific rules debarring Advocates, guilty of contempt and / or unprofessional or unbecoming conduct, from appearing before the Courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of Bar Councils. It would be concerning the dignity and orderly functioning of the Courts."

The Court noted that the right of an advocate to practice envelops a lot of acts to be performed by him in professional capacity. Apart from appearing in the Court, he can give consultation to clients, he can give legal opinion, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any firm as a law officer, he can appear for clients before an arbitrator, etc. The Court held that the right to appear and conduct cases is a matter on which the Courts must and do have supervisory and controlling power. Conduct in court is a matter concerning the court and hence the Bar Council

cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers.[34] As far as the other acts of law practice of an advocate outside the court are concerned, they would be subject to conditions laid down by the Bar Councils.

The distinction between the power of the courts to lay down conditions subject to which an advocate can have right to practice before them and the power of the Bar Councils to lay down rules subject to which an advocate will be on the rolls is well brought out in the following para of the judgment:

> "…. Sec. 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an Advocate shall have a right to practice i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the Court including *inter alia* rules as to persons practicing before this Court. Similarly Sec. 34 of the Advocates Act empowers the High Courts to frame rules, *inter alia* to lay down conditions on which an Advocate shall be permitted to practice in Courts. Article 145 of the Constitution of India and Sec. 34 of the Advocates Act clearly show that there is no absolute right to an Advocate to appear in a Court. An Advocate appears in a Court subject to such conditions as are laid down by the Court. It must be remembered that Sec. 30 has not been brought into force and this also shows that there is no absolute right to appear in a Court. Even if Sec. 30 were to be brought into force, control of proceedings in Court will always remain with the Court. Thus even then the right to appear in Court will be subject to complying with conditions laid down by Courts just as practice outside Courts would be subject to conditions laid down by Bar Council of India."[35]

Thus the prerogative of the court to confer the privilege of being an officer of the court on an advocate and lay down the conditions subject to which an advocate will have right to practice continued in the absence of enforcement of Sec.30 of the Act. However, the observation that even if Sec.30 were to be brought into force, the control of proceedings in court will always remain with court is to be taken with a pinch of salt as the rules framed by the courts may be required to pass the test of reasonableness.

In *Mahipal Singh Rana, Advocate v. State of Uttar Pradesh,*[36] a Three Judge Bench of the Supreme Court has delivered a decision of far reaching implication in the area of suspending/debarring an advocate who is convicted of criminal contempt from the rolls and from

appearance in the courts. What is the prerogative of the courts and what belongs to the power of the Bar Councils is elaborately dealt with in this case wherein the questions involved were: (1) whether an advocate convicted of criminal contempt and sentenced to imprisonment can be debarred from appearing in courts; and (2) whether on conviction for criminal contempt, an advocate can be allowed to practice. Addressing these questions, the Supreme Court has laid down the following four propositions. First, regulation of right of appearance in court is within the jurisdiction of courts and not Bar Councils. Thus the court can bar a convicted advocate from appearing/ practicing before any court for an appropriate time, till convicted advocate purges himself of the contempt, even in the absence of suspension or termination of enrolment. Second, the bar on appearance in any court till the contempt is purged can be imposed by court in terms of High Court Rules framed under Sec. 34 of *Advocates Act*, if such rules exist. Even in the absence of such rules, conviction results in debarring such an advocate from appearing in court, even in absence of suspension or termination of enrolment. Third, even post enrolment, Sec. 24-A of the *Advocates Act* leads to debarment/ suspension of enrolment of convicted advocate for a maximum of two years as prescribed thereunder.[37] Fourth, such additional suspension/ termination of right to practice beyond two years can be imposed under Secs. 35 to 37 of the Advocates Act by the State Bar Council or Bar Council of India in the first instance upon conviction of an advocate. On failure of the Bar Council to act after the misconduct is brought to its notice, the said sanction can be imposed *suo motu* by the Supreme Court under Sec. 38 of *Advocates Act* or by High Court under Art.226 of the Constitution.

V. Fundamental Right of an Advocate to practice: Position post June 15, 2011

With the enforcement of Sec.30 of the *Advocates Act*with effect from June 15, 2011, every advocate whose name is entered in the State roll got a right to practice throughout the territories to which the Act extends, in all courts including the Supreme Court;before any tribunal or person legally authorised to take evidence;before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice. Now it is to be considered, if the enforcement of Sec. 30 has reduced the power of the courts and the legislature to regulate the law practice.

a. Access to fora hither prohibited to Advocates opened

The Punjab and Haryana High Court considered in *Paramjit Kumar Saroya v. Union of India and Another,*[38] the question of the effect of Sec.17[39] of the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Maintenance Act)*, which seeks to prohibit representation by a legal practitioner before a tribunal or appellate tribunal in the context of Section 30 of the *Advocates Act* which remained un-notified for five decades, but was finally notified by the notification dated 09-06-2011. The Court scanned the anatomy of Sec.17 of the *Maintenance Act* in light of Sec. 30 of the Advocates Act and held that Sec.17 would not come in the way of legal representation on behalf of parties post 15-06-2011 in view of Sec. 30 of the Advocates Act having come into force. The court observed that while Sec.17 was being enacted, the fact that Sec.30 of the *Advocates Act* was not in force was known to the parliament. However, the situation has subsequently changed on account of Sec. 30 of the *Advocates Act* having come into force. The right conferred under Sec. 30, subject to the provisions of the Advocates Act, is on every advocate so far his name is entered in the State roll to practice throughout the territory to which the Act extends. Such right isalso available before any Tribunal or person legally authorised to take evidence. The Tribunals and Appellate Tribunal under the *Maintenance Act* being legally authorised to take evidence, there is right in the advocate to practise before them. The Court further held that the over-riding provisions of the *Maintenance Act* under Sec. 3[40] in the context of Sec. 17 of the said Act have to be appreciated in the context of the law prevalent when that Act was enacted. The ground reality has changed on account of Sec. 30 of the *Advocates Act* having come into force on 15-06-2011. It was held that "Sec. 17 would not come in the way of legal representation on behalf of parties post 15-06-2011 in view of Sec. 30 of the *Advocates Act* having come into force."

The Kerala High Court, in the case of *Adv. K.G. Suresh* v. *Union of India,*[41] has dealt with the effect of enforcement of Sec.30 of the *Advocates Act* on Sec. 17 of the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*. It held that, from 15-6-2011, the restrictions imposed on advocates are taken away and Article 19 of the Constitution of India, which guarantees the freedom to practice any profession, enables the advocates to appear before all the courts and the

tribunals, subject to Sec. 34 of the *Advocates Act*. It went further and declare Sec. 17 of the *Maintenance Act*as *ultra vires* of Sec. 30 of the *Advocates Act*. This decision of Kerala High Court was followed by the High Court of Delhi in *Taruna Saxena v. Union of India and Others*.[42]

In the case of *Mohan Madhukar Sudame v. State Of Maharashtra & Ors.*,[43]the petitioners had challenged Sec. 64 of the *Maharashtra Universities Act, 1994* under which legal practitioners were not entitled to appear before the College Tribunalas being repugnant to Section 30 of the *Advocates Act*. The Nagpur Bench of the High Court of Bombay held that the right of an advocate to practise before the courts of India includes high courts, tribunals or any person authorised to take evidence, must be taken as flowing from Sec. 30 of the *Advocates Act*. Since Sec. 64 of the *Maharashtra Universities Act* deals with exclusion of right of an advocate to practise before the University and College Tribunal, the provision must be held to be repugnant to Sec. 30 of the *Advocates Act* and consequently void as per Article 254(1) of the Constitution of India.[44]

b. The Right is subject to statutory regulation:

The decision of the Supreme Court in the case of *N.K. Bajpai v. Union of India*[45]is a very important decision. In this case it was held that right to practice, is not only a statutory right under theprovisions of the *Advocates Act* but would also be a fundamental right under Article 19(1)(g) of the Constitution subject to reasonable restrictions. The following observations of the Court are very important for the reason that it makes clear that the right to practice is subject to statutory regulation:[46]

> "…. The Advocates Act provides for various aspects of the legalprofession. Under Section 29 of the Advocates Act, only one class of persons is entitled to practice the profession of law, namely, advocates. Section 30 of the Advocates Act provides that subject to the provisions of the Act, every advocate whose name is entered in the State rolls shall, as a matter of right, be entitled to practice throughout the territories to which this Act applies, in all courts including the Supreme Court of

> India. Such an Advocate would also be entitled to practice before any tribunal or person legally authorised to take evidence and before any other authority or person before whom such an advocate is, by or under any law for the time being in force, entitled to practice. Section 33 of the Advocates Act further states that except as otherwise provided in that Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under the Advocates Act. A bare reading of these three provisions clearly shows that this is a statutory right given to an advocate to practice and an advocate alone is the person who can practice before the courts, tribunals, authorities and persons. But this right is statutorily regulated by two conditions - one, that a -person's name should be on the State rolls and second, that he should be permitted by the law for the time being in force, to practice before any authority or person. Where the advocate has a right to appear before an authority or a person, that right can be denied by a law that may be framed by the competent Legislature. Thus, the right to practice is not an absolute right which is free of restriction and is without any limitation. ...
>
> Therefore, the right to practice, which is not only a statutory right under the provisions of the Advocates Act but would also be a fundamental right under Article 19(1)(g) of the Constitution is subject to reasonable restrictions."

Thus there can be laws to regulate legal profession. But those laws should pass the test of reasonableness as evolved by the Supreme Court to test any law for violation of fundamental rights.

The case of *Thyssen Krupp Industries India Private Limited v. Suresh Maruti Chougule and Others,*[47] involved an appeal arising out of the dismissal by the High Court of a writ petition challenging the constitutional validity of Sec. 36(4) of the *Industrial Disputes Act, 1947*(I.D.Act). Sec. 36(4) of the I.D.Act provides that a party to a dispute in a proceeding before a Labour Court, Tribunal or a National Tribunal may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal as the case may be. The scope of Sec. 36(4) of the I.D.Act was examined in *Paradip Port Trust, Paradip v. Their Workmen.*[48] In that case, it was urged on behalf of the appellant therein that an advocate shall be entitled to practice in all courts including the Tribunal as of right. The Supreme Court had held that Sec. 30 of the *Advocates Act* has not come into force in view of which there is no right that could be claimed by Advocates to appear before the Labour Courts. Moreover, the Court opined that the I.D.Act is a special piece of legislation with the avowed aim of labour welfare; being a special Act it will prevail over the *Advocates Act*, which is a general piece of

legislation with regard to the subject matter of appearance of lawyers before all Courts, Tribunals and other authorities. As the judgement in *Paradip Port Trust* was by a Bench of 3 judges, and taking into account the importance of the issues raised the Court held that these matters be referred to a larger Bench. Given the fact that Sec.30 of the Advocates Act has come into force, Sec. 36(4) of the ID Act should be declared unconstitutional.

The question of interpretation of Secs 8 & 9 of the *Insolvency and Bankruptcy Code, 2016* which had a non-obstante clause in Sec. 238 of the Code in the context of Sec. 30 of the *Advocates Act* was considered in the case of *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*[49] The Court observed that the non-obstante clause will not override the *Advocates Act*, because while construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent to one another and such statutes should be harmonised. Observing so, the Court held:

> "Since there is no clear disharmony between the two parliamentary statutes in the present case which cannot be resolved by harmonious interpretation, it is clear that both statutes must be read together. Also we must not forget that Sec. 30 of the Advocates Act deals with the fundamental right under Article 19(1)(g) of the Constitution to practice one's profession. Therefore, a conjoint reading of Sec. 30 of the Advocates Act and Sec.s 8 & 9 of the 2016 Code together with the Adjudicatory Authority Rules and Forms thereunder would yield the result that a notice sent on behalf of an operational creditor by a lawyer would be in order. (Para 49)
>
> The expression "an operational creditor may on the occurrence of a default deliver a demand notice..." under Sec. 8 of the 2016 Code must be read as including an operational creditor's authorised agent and lawyer.... (Para 51)

By such harmonious construction the Court has enhanced the sphere of operation of the advocates and enhanced their access to fora that were hitherto not accessible for them.

c. Deference to powers of Bar - SC Rules of Practice/ HC Rules of practice

Exercisingthe powers under Article 145 ofthe Constitution, the Supreme Court, with the approval ofthe President, has framed the *Supreme Court Rules, 2013*.[50] These rules have come into force with effect from 19th August 2014. Order IV of the Rules titled "Advocates" manifests the

deference showed by the Supreme Court for the statutory powers of the Bar Councils under the *Advocates Act* while exercising its constitutionally conferred power. This very fact reflects that when society has created autonomy and monopoly in favour of the legal profession, the Supreme Court also exercises its power commensurate with the trust reposed by the society in the profession.

As per these rules, only an advocate whose name is entered on the roll of any State Bar Council maintained under the *Advocates Act* is entitled to appear before the Supreme Court provided he is an Advocate-on-Record. Only an Advocate whose name is there on the roll of any State Bar Council for a period of not less than four years is qualified to be registered as an Advocate-on-Record provided he fulfils other conditions. No advocate other than an Advocate-on-Record shall appearfor a party, plead and address the Court in a matter. An advocate on the roll for less than one year is entitled to mention matters in Court for the limited purpose of asking for time, date, adjournment and similar such orders, but shall not be entitled to address the Court for the purpose of any effective hearing. However, the Court may, if it thinks desirable to do so for any reason, permit any person to appear and address the Court in a particular case.

There is a procedure contemplated in these rules whenever a party wants to appear and argue the case in person. First he/she shall file an application alongwith other details required by the rules. It will be placed before the Registrar who will interact with the party-in-person and give opinion in the form of a report as to whether the party-in-person will be able to give necessary assistance to the Court for proper disposal of the matter or an advocate may be appointed as *amicus curiae*.If the application is allowed by the Court then only the party-in-person will be permitted to appear and argue the case in person. It is to be noted that this procedure in not applicable to an advocate whose name is entered on the rolls of any State Bar Council who wants to appear and argue the case in person. This exemption was created through an amendment of the Rules in 2019.[51]

Rule 9 accords a high pedestal to the prerogative of the Bar to regulate its member when it provides that when the name of an Advocate-on-Record is suspended or removed from the State roll he will be deemed to be suspended or removed from the register of Advocate-on-Record. The rule reads asunder:

> Rule 9. Where an advocate-on-record is suspended or his name is removed from the State roll maintained under the Advocates Act, 1961 [25 of 1961], he shall, unless

otherwise ordered by the Court, be deemed as from the date ofthe order of the State Bar Council or the Bar Council of India, as the case may be, to be suspended or removed from the register of advocates on record for the same period as is mentioned in the order of the State Bar Councilor the Bar Council ofIndia, as the case may be.

The power to either temporarily or permanently remove the name of advocate from the register of Advocates-on-Record remains with the Supreme Court. The exercise of this power requires following of the due process contemplated under Rule 10 which is extracted below.

> Rule 10. When, on the complaint of any person or otherwise, the Court is of the opinion that an advocate-on-record has been guilty of misconduct or of conduct unbecoming of an advocate-on-record, the Court may make an order removing his name from the register of the advocates- on- record either permanently or for such period as the Court may think fit and the Registrar shall thereupon report the said fact to the Bar Council of India and to State Bar Council concerned.
>
> Provided that the Court shall, before making such order, issue to such advocate-on-record a summons returnable before the Court or before a Special Bench to be constituted by the Chief Justice, requiring the advocate-on-record to show cause against the matters alleged in the summons, and the summons shall, if practicable, be served personally upon him with copies of any affidavit or statement before the Court at the time ofthe issue ofthe summons.
>
> Explanation.- For the purpose ofthese rules, misconduct or conduct unbecoming ofan advocate-on-record shall include
>
> (a) Mere name lending by an advocate-on-record without any further participation in the proceedings ofthe case;
>
> (b) Absence ofthe advocate-on-record from the Court without any justifiable cause when the case is taken up for hearing; and
>
> (c) Failure to submit appearance slip duly signed by the advocate-on-record ofactual appearances in the Court.

The question of reasonableness of restrictions imposed by the High Court Rules arose in the case of *Jamshed Ansari v. High Court of Judicature at Allahabad.*[52] The constitutional validity of Rule 3 and Rule 3-A of Chapter XXIV of the *Allahabad High Court Rules, 1952* was considered in this case by the Supreme Court. As per Rule 3, an advocate who is not registered with the Bar Council of the State of Uttar Pradesh is not allowed to appear, act or plead in the Allahabad High Court unless he files his vakalatnama along with an advocate who is enrolled with the Bar Council of the State of Uttar Pradesh and is ordinarily practicing in the Allahabad Court (local advocate). Separate rolls of advocates were to be maintained for the Allahabad High Court and Lucknow

Bench. Rule 3-A imposed a further rider that if the name of an advocate is not on the respective rolls, unless the court grants leave, his appearance should be with a local advocate. The Court held that the rules in question amount to reasonable restrictions which are imposed in public interest and not in violation of the right under Article 19(1)(g) of the Constitution and Sec.30 of the *Advocates Act*. This was held so because the object of these rules was to make the lawyers accountable, to ensure the presence of an advocate when the cases are listed, and to minimise the cases being dismissed for default. The Court held that:

> "... the right to appear and conduct cases in the courts is a matter on which court must and does have major supervisory and controlling power. Hence, the courts cannot be and are not divested of control or supervision of conduct in courts merely because it may involve the right of an advocate."

The corollary of this decision is that if the restrictions imposed on the advocates right of appearance, they may be struck down as unconstitutional and to be in violation of Sec. 30 of the *Advocates Act*.

The power of the courts to punish an advocate for contempt is totally different from the power of the Bar Councils to take action against advocates in disciplinary proceedings for professional misconduct. The latter is the supervisory power conferred by the *Advocates Act* on Bar Councils. The power of the High Courts under Sec. 34(1) of the *Advocates Act* to make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and its subordinate courts is not to be confused with the power to supervise the professionals which belongs to Bar Councils. The autonomy of the profession cannot be taken away by courts. This is abundantly clarified by the Supreme Court in the case of *R.Muthukrishnan v. The Registrar General of the High Court of Judicature at Madras*,[53] wherein certain of the rules made by High Court of Madras exercising the power under Sec. 34(1) were held to be *ultra vires* the power of the High Court.

The Madras High Court amended the *Rules of High Court of Madras, 1970*after 46 years paving the way for debarring from practice lawyers who browbeat or abuse judges, lay siege to court halls, tamper with court records, appear in court under the influence of liquor, spread unsubstantiated allegations against judges or accept money either in the name of a judge or on the pretext of influencing him. This was done by adding Rules 14A, 14B, 14C and 14D[54]. Through

these rules, the High Court was empowered to debar an advocate, who has committed any misconduct from appearing before it and all subordinate courts. Similar power was vested in the Principal District Judge also. These rules were challenge in a petition filed under Article 32 of the Constitution questioning their vires in *R.Muthukrishnan v. The Registrar General of the High Court of Judicature at Madras.*[55]The Court held Rules 14-A to 14-D to be *ultra vires* the power of the High Court. It observed:

> ".... The Rules have been framed in exercise of the power conferred under Sec. 34 of the Advocates Act. Sec.34 of the Advocates Act does not confer such a power to frame rules to debar a lawyer for professional misconduct.... The High Court has no power to exercise disciplinary control. It would amount to usurpation of the power of the Bar Council conferred under the Advocates Act. However, the High Court may punish an advocate for contempt and the debar him from practicing for such a specific period as may be permissible in accordance with law, but without exercising contempt jurisdiction by way of disciplinary control no punishment can be imposed. As such the impugned Rules could not have been framed within the purview of Sec. 34. Provisions clearly impinge upon the independence of the Bar and encroach upon the exclusive power conferred upon the Bar Council of the State and Bar Council of India under the Advocates Act.[56]

This decision quashing of the rules framed by the High Court under Sec. 34 of the *Advocates Act* mirrors the respect shown by the Supreme Court to the independence and autonomy of the Bar as ordained in under the Constitution and the statutes. This approach is to be highly appreciated for the reason that the Court appreciates that creation of a psychopath Bar is not good for the society under a Constitution based on rule of law. This approach of the Court has enhanced the responsibility on the part of the Disciplinary Committees of the State Bar Councils and the Bar Council of India to effectively regulate its members to retain the much valued independence and autonomy.

d. Enhanced Professional Responsibility of the Bar

The way the Supreme Court has framed rules exercising the power under the Constitution and the High Courts exercising the power under the *Advocates Act* to regulate the behaviour of advocates in courts and the way they are interpreted by the higher judiciary when challenged for constitutional validity and vires illustrate the respect shown by the judiciary to the higher scheme of

organising independent Bar and the Bench under the Constitution and the laws. Constituting an independent profession through legal framework enhances the responsibility of the Bar to rise up to the expectations of the society in discharge of its responsibility of regulating its members. The society should never feel that it has faultered by reposing trust in the Bar and creating autonomy and monopoly in its favour expecting auto-regulation on its part in return. All this goes to enhance the responsibility of the Bar.

The Supreme Court in *Muthukrishnan's case* has reasoned that it is the lawyers who bring the cause to the court who are supposed to protect the rights of individuals, of equality and freedom as constitutionally envisaged, and to ensure that the country is governed by the rule of law. The independence of the Bar becomes imperative and cannot be compromised given the significance of the Bar in maintaining the rule of law, egalitarianism and enforcement of fundamental rights and to ensure that various institutions work within their parameters. What the lawyers are supposed to protect is the legal system and due process of law.[57] The Court noted that the Disciplinary Committees of the Bar Councils have failed to deliver the good and disciplinary control is not effective as it should be, because of the dilatory approach adopted in dealing with complaints. The Court delivered the following note of caution to the Bar.[58]

> "It is high time the Bar Council, as well as the various State Bar Councils, should take stock of the situation and improve the functioning of the disciplinary side. It is absolutely necessary to maintain the independence of the Bar and if the cleaning process is not done by the Bar itself, its independence is in danger. The corrupt, unwanted, unethical element has no place in the Bar. If nobility of the profession is destroyed, the Bar can never remain independent. Independence is constituted by the observance of certain ideals and if those ideals are lost, the independence would only remain on paper, not in real sense."

Emphasising that it is the statutory duty of the Bar to make it more noble and also to protect the Judges and the legal system, the Court hoped that the Bar would improve upon the functioning of Disciplinary Committees so as to make them more accountable and publish performance audit on the disciplinary side of various Bar Councils.[59] To make the profession more noble, and preserve the rich ideals on which it struggled for the values of freedom, it is absolutely necessary to remove the black sheep from the profession. It is basically not for the court to control the Bar.

VI. Conclusion

"It is better late than never" is a popular expression when things occur in a delayed manner. It is a perplexing question whether 50 years is a reasonable delay when it comes to the enforcement of the right of appearance of advocates in courts and authorities throughout the territory of India under Sec.30 of the *Advocates Act*, when it came into force on June 15, 2011. As discussed earlier this is the provision which is crucial for the independence of the profession. Till the enforcement of Sec. 30, the higher judiciary has referred to fact of non enforcement in several judgments. Even in the absence of enforcement, it is to be appreciated that the Supreme Court has always held that it is for the Bar to supervise the professionals and sit in judgment over the complaints of professional misconduct by its members. With the enforcement of Sec. 30, the status of an advocate has changed. He was an officer of the court till then. It was for the court to decide, who shall be its officer who will assist it in administration of justice and it had complete jurisdiction of supervision over his appearance in court and conduct. Now an advocate on the rolls of Bar Council of a State has not merely a statutory right but a fundamental right to practice before any court or authority or person legally authorised to take evidence as stipulated in Sec. 30. Freedom of profession! As with other fundamental rights this right of advocates also is not absolute but is subject to reasonable restrictions.

As seen earlier, the Supreme Court rules of practice, framed in exercise of power under Article 145 of the Constitution, have shown due deference to the supervisory power of the Bar over its members. The rules of practice framed by the High Courts using their power under Sec.34 of the *Advocates Act* are open for scrutiny for their reasonableness under the Constitution. If they are not reasonable, they will be struck down as *ultra vires*. All this goes to enhance the auto-regulation obligations of the organised Bar in India, which has the distinction of spearheading the independence movement and successfully providing leadership during the dark days of emergency.

Pouvoir arrête le pouvoir, power stops power is a tested principle of controlling power in public law sphere. Power shared is power controlled is another equation. The makers of the Constitution and the parliamentarians who enacted the *Advocates Act* have gone for a scheme of discrete division of power to regulate different aspects of legal profession. With the enforcement of Sec. 30, the scheme has become complete and wholesome. All this enhances the responsibility of the legal profession. The professionals should behave and conduct in a manner befitting of the noble profession understanding their accountability to the society. The society one day should not feel that it faltered by reposing trust in legal profession.

II. History of Legal Profession in India

Legal history or the history of law is the study of how law has evolved and why it changed. Legal history is closely connected to the development of civilizations and is set in the wider context of social history.[1] Notwithstanding this, the development of 'law' as a profession is only a recent phenomenon. A well-organized and independent legal profession is an essential condition for proper administration of justice.[2]An organized legal profession is also essential ingredient in the maintenance of the Rule of Law.[3]

Legal Profession is most Ancient:

In all ages and in all times, in every country having any claim to civilisation whether ancient or modern, wherever we find any properly constituted tribunals, there have been great men who pursued advocacy as a profession. Since from the ages we find that the profession of the advocate was an honoured and a Nobel profession. In the times of ancient Hindu sovereigns, in the days of Roman republic, under the rule of the ancient Greecian City states, during the period of the Mohammedan rulers, learned and saintly men certainly graced the tribunals of justice, as councillors and assessors to the king or judge. There were also men of note or fame, who made themselves the representatives of contesting litigants, and made it their task to pick out.[4] In Greece it would appear that there was no special class of people who adopted advocacy as a profession. In the State of Rome lawyers occupied a foremost place. As the complexity of the law increased, in course of time its interpretation rested largely with eminent non-official lawyers, whose opinions, called *Responsa Prudentium*[5], were generally adopted by the actual dispensers of justice. Besides them, there was also another class of lawyers known as *Juris Consulti*[6]who were paid for their services and who might be compared to the modern chamber lawyers.Pleaders and advocates existed in England in very early times, as early as the time of William Rufus.[7] There is perhaps no

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[1]Rudransh Sharma, Debayan Banerjee, and Kripalini Mandal, NLUJAA, 'History of Legal Profession in India', History Of Legal Profession In India - Academike (lawctopus.com), accessed on 02-01-2023

[2] 1st Law Commission report, 1958,'Reform of Judicial Administration', p.556, https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080514.pdf, accessed on 02-01-2023.

[3]Report Of Committee on International Congress of Jurists, January 5-10, 1959, https://www.icj.org/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf, accessed on 02-01-2023.

[4] P. RamanathaAiyer, 'Advocate-His Mind & Art', 3rd ed., 2009, LexixNexisButterworths Wadhwa, Nagapur, p-15.

[5]The responses or opinions of eminent lawyers or professional jurists on legal questions addressed to them compare obiter dictum

[6]A person authorised to give legal advice.

[7]William II, byname William Rufus, the king of England (1087-1100).

country in the world where the conduct of advocates has been made so little the subject of legislative interference as in England. In England there were different class of practitioners, ex: barristers, solicitors, special pleaders, Draughtsmen in Equity and Conveyancers and Notaries Public. These division of practitioners in England is according to the nature of the work they do. In France the profession achieved a most exalted position in the early times. They were known as "*noblesse de-la,*"their only patent of nobility being their admission on the roll of advocates.[8]

Legal Profession in India:

In ancient Hindu law parties to a lawsuit had a right to be represented by other persons. India has a recorded legal history starting from the Vedic ages and some sort of civil law system may have been in place during the bronze age and the Indus Valley civilization.[9]However, the institution of lawyering reportedly existed even during the period of classical Hindu Law. The Halhed's Code of Gentoo Laws (1777)[10], translating the *Vivadarnavasetu*,[11] did have a section (ch. III, II) explicitly called "of appointing a vakeel (or attorney)." Its say 'if the plaintiff or defendant have any excuse for not attending the court, or for not pleading their own cause, or, on any other account, excuse themselves, they shall, at their own option, appoint a person as their vakeel; if the vakeel gains the suit, his principal also gains; if the vakeel is cast, his principal is cast also.'[12]Legal historians record instances of legal practitioners indigenously known as "pleaders" or "*niyogis*"representing parties in litigation at least from the time of *Manu Smriti*.[13]In India during the earlier period, people live in small groups. The head of these groups or tribes delivered justice under the open sky before all the members. There was no specialist like a lawyer during those days. When kingship was established, the king delivered justice. King was advised by his councillors. The law of those days was rooted in Hindu religion and custom. From the stories of *Maryada*

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[8]P. RamanathaAiyer, 'Advocate-His Mind & Art', 3rd ed., 2009, LexixNexisButterworths Wadhwa, Nagapur, p-15-25.

[9]http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/ accessed on 02-01-2023

[10]The Gentoo Code (also known as A Code of Gentoo Laws or Ordinations of the Pundits) is an 'Anglo-Brahminical' legal code which was created under Warren Hastings, the Governor General of India.

[11]Vivādārṇavasetu (विवादार्णवसेतु) as mentioned in Aufrecht'sCatalogusCatalogorum: —a digest compiled by order of Warren Hastings, by Bāṇeśvara and others.

[12] Nimisha Jha, 'Legal profession in ancient India', The Lex-Warrier: Online Law Journal (2018) 4, pp. 195 - 210, ISSN (O): 2319-8338, http://www.lex-warrier.in/wp-content/uploads/2019/02/Legal-profession-in-ancient-India.pdf, on 04-01-23

[13]Ludo Rocher, 'Lawyers in Classical Hindu Law', Vol. 3, No. 2/3, Special Issue Devoted to Lawyers in Developing Societies with Particular Reference to India (Nov., 1968 - Feb., 1969), pp. 383-402 (20 pages), https://www.jstor.org/stable/3053008, accessed on 03-01-2023.

Ramayana and *Vikramaditya*, we are well aware of the wise men who solved the critical cases of those days. During those days, the sufferer presented complaints before the king and the king with the help of his religious heads and wise courtier delivered the judgment.[14]In those times the courts derived their authority from the king. The king was considered the fountain head of the justice. The kings' court was the highest court of appeal. The institution of lawyers as it exists today was not in existence during this period. The general principle was that the decision should not be given by a person singly and therefore a Bench of two judges was always referred.[15]

During the Muslim rule of India, the legal profession was not organized. The king was regarded as servant of the God on the earth and his duty was to see that his laws were obeyed[16]and there was no group of lawyers though there were people known as Vakils who performed functions of modern lawyers. A Vakil was a representative, although not necessarily a legal representative, his job was to negotiate with equals superiors of his employer, in order to obtain desired goal such as trading privileges, a reduction of revenue demand, a military alliance or a favourable decision in a civil or criminal court.[17]Obviously, the status and prestige of the profession or whatever existed by that name in ancient times were very low.

The story of evolution of the legal profession from such low status to the position of great respect and influence in Indian Society is closely linked with the nationalist movement and the growth of education in general and legal education in particular.[18]While the roots of this profession lie before Independence in India. The legal profession as it exists in India today had its origin in the early period of the British rule and is the natural outcome of that legal system which the Britishers introduced in India.[19]Legal profession in India has grown over a short period of less than 50 years to become the world's largest and most influential

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[14]Shivangi Chauhan, 'Legal Profession in India: Evolution, Historical Development, and Regulations', https://www.legalserviceindia.com/legal/article-7695-legal-profession-in-india-evolution-historical-development-and-regulations.html accessed on 02-01-2023.

[15]Dr. Kailash Rai, 'History of Courts, legislature and legal profession in India', 6th ed., 2013, Allahabad Law Agency, Faridabad, Haryana, Pp-389.

[16]Dr. Kailash Rai, History of Courts, legislature and legal profession in India, 6th ed., 2013, Allahabad Law Agency, Faridabad, Haryana, Pp-389

[17]Philip B. Calkins, 'A Note on Lawyers in Muslim India', Vol. 3, No. 2/3, Special Issue Devoted to Lawyers in Developing Societies with Particular Reference to India (Nov., 1968 - Feb., 1969), pp. 403-406 (4 pages), https://www.jstor.org/stable/3053009, on 3-1-23.

[18]Prof. N.R. Madhav Menon's 'Reflections on Legal and Judicial education', edited by Dr.G. Mohan Gopal, 2009, Universal Law Publishing Co.Pvt. Ltd., Delhi, p-20

[19] Prof. N.R. Madhav Menon's 'Reflections on Legal and Judicial education', edited by Dr.G. Mohan Gopal, 2009, Universal Law Publishing Co.Pvt. Ltd., Delhi, p-20

in the governance of the country.[20]Therefore, we trace the history of the Legal Profession in India form the advent of British rule.[21]

Legal Profession in British India:

The modern Legal System was developed in India during this period. Full-fletched proceedings happened Vakeels argued from both sides, there was a Jury to decide the fate of the case. A legitimate form of Legal profession begun in India only after the Advent of the British reign. In Britain, the Legal profession started during the 13th Century and it had become quite talented at handling Legal affairs by the time it started ruling India. Britishers did have a way with the imposition of their own cultures on their colonies, so as they can function efficiently and hence the formal Legal culture in India was inherited from Great Britain.[22]However it is notable that in early days of the British Period the legal profession was not paid due attention and it was not well organised. Actually, the East India Company was not interested in organising the legal profession. There was no uniform judicial system in the settlements of the East India Company.[23] The initiation of formal Legal profession can be traced back to the establishment of the First Court in Bombay in 1672.

First Court in Bombay-1672

After the island of Bombay changed hands as a dowry from the King of Portugal to Charles II, the then King of England, by a Charter of 1668 transferred Bombay from the Crown to the East India Company authorizing it to make laws and set up law courts. The first Court was established in Bombay in 1672 by the then Governor Gerald Aungier – the architect of the judicial system in India.[24]This led to the beginning of a culture of Attorneys, Barristers, Judges and Juries for imparting Justice. However, the formal introduction of practitioners in India only began after the establishment of the Mayors Court in 1726 in three presidency town.

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[20]N. R. Madhava Menon,'Raising the bar for the legal profession', https://www.thehindu.com/opinion/lead/raising-the-bar-for-the-legal-profession/article3897883.ece, accessed on 02-01-2023

[21]Rudransh Sharma, Debayan Banerjee, and Kripalini Mandal, NLUJAA, 'History of Legal Profession in India', History of Legal Profession In India - Academike (lawctopus.com), accessed on 02-01-2023

[22]'What is the history of Legal Practitioners in India and How has Legal Practice developed in India?, https://www.lawinsider.in/columns/what-is-the-history-of-legal-practitioners-in-india-and-how-has-legal-practice-developed-in-india, accessed on 05-01-2023

[23]Dr. Kailash Rai, 'Legal Ethic:Accountability for Lawyers and Bench-Bar Relations', 6th ed., 2020, Central Law Publications, Allahabad, p 15.

[24]Dr. Birendra Saraf, Senior Advocate, Hugh Court of Bombay, 'Exploring the History of Bombay High Court: Then and Now', https://lawanthology.com/2020/06/19/exploring-the-history-of-the-bombay-high-court-then-and-now/ accessed on 05-01-2023.

Mayors Court in 1726

The Charter issued to the Company by King George I on the 24th September, 1776, turned over a new leaf in the evolution of judicial institutions in the three Presidency Towns. No Specific provisions was made laying down any particular qualifications for the persons who would be entitled to act or plead as legal practitioners in these courts. No organised legal profession came into being in the Presidency Towns during the period of the Mayor's Courts. Those who practiced law were devoid of any legal training or any knowledge of law. They had adopted the profession in the absence of anything better to do.[25]There was no regulation of legal profession under Charter of 1726 and there was no provision of legal training too. Many persons having no knowledge of law were practicing. Thus, the legal profession was not paid due attention. Even after this Charter the judicial administration remained in the hands of non-professional persons. In 1753 another Charter was issued to modify the Charter of 1726. Even this 1753 Charter could not introduce professional judges. The Charter of 1753 did not contain significant provisions for legal training and legal education of legal practitioners. The legal profession was not organised.[26]Mayors Courts failed to prove the efficiency after realising the Supreme Court was established.

Supreme Court of India

The real step in the direction of organising a legal profession in India was taken in 1774 when the Supreme Court was established in Calcutta with one chief justice and three judges (Elijah Empay was the 1st Justice)[27] pursuant to the Regulating Act, 1773.[28]Clause 11 of the Supreme Court Charter empowered the court "to approve, admit and enrol such and so many advocates and attorneys at law" as the court "shall seem fit". They were to be attorneys of record and were authorised "to appear and plead and act for the suitors" of the court. The court could remove the said advocates and attorneys "on reasonable cause". No other person whatsoever, but such advocates and attorneys so admitted and enrolled were to be "allowed to appear and plead or act" in the court, for or on behalf such suitors. the Court was thus an exclusive preserve for members of the British Legal Profession. The same powers of enrolment were later conferred on the Supreme Court established at Bombay and

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[25]M.P.Jain, Outlines of Indian Legal and Constitutional History, 7th ed, 2019, LexisNexis, Guragaon, Haryana, p-766.

[26]Dr. Kailash Rai, History of Courts, legislature and legal profession in India, 6th ed., 2013, Allahabad Law Agency, Faridabad, Haryana, Pp-390-391.

[27]Dr. A. Ravisankar,Regulating Act, 1773 and Pitts India Act, 1784, https://gacbe.ac.in/pdf/ematerial/18BHI34A-U5.pdf, accessed on 06-01-2023

[28]V.D.Kulashrestha, Landmarks in Indian Legal and Constitutional History', , Eastern Book Company, lucknow,Pp-596-603.

Madras.[29]Even the Charter of 1774 didn't provide for the appearance of the Indian Legal Practitioners to appear andtopleadbeforetheSupremeCourt.'Advocate'meansBritishandIrishBarristers.'Attorney'means the British Attorney or Solicitor.[30]

The Bengal Regulation Act of 1793: This Act created for the first time a regular legal profession for the Company's Court. The Regulation authorised the Sardar Diwani Adalat to enrol pleaders for Company's Courts. Under this regulation only Hindus and Muslims could be enrolled as pleaders. Bengal Regulation of 1814 also made provisions in order to organise the legal profession.The 1833 Bengal Regulation modified the provisions of the earlier regulations regarding the appointment of the pleaders. It permitted any qualified person of whatever nationality or religion to be enrolled as a pleader of the Sardar Diwani Adalat.[31]

The Legal Practitioners Act, 1846

The Legal Practitioners Act 1846 allowed at the people of any nationality or religion to act as leaders. Section 4 of the Act removed the religious test. It also allowed attorneys and barristers enrolled in any of Her Majesty's courts in India to plead in the company's Sadar Adalat. Then comes the Legal Practitioners Act, 1853, the Act authorized the Barristers and Attorneys of the Supreme Court to plead in any of the Sadar Adalat and other subordinate courts established by East India Company, subject to rules in force in the such subordinate courts as regards language or otherwise.[32]

Indian High Courts Act, 1861

East India Company rule was abolished in India after the First War of Independence in 1857, after which it was substituted by the direct rule of the Crown in 1858. Before the commencement of the Act, a double system of administration of justice prevailed in India: on the one hand, there were the British Crown Courts (Supreme Court) and, on the other hand, the Company Courts. This created many problems as the jurisdictions of the Company Courts and the Supreme Court were not clearly demarcated. Hence, if a dispute concerning jurisdiction arose between the parties, the Government found itself in a challenging position. Thus, by the recommendation of the Second Law Commission, the Indian High Courts Act,

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[29]V.D.Kulashrestha, Landmarks in Indian Legal and Constitutional History', 9thned.,2011, Eastern Book Company, lucknow,Pp-596-603.

[30]Rudransh Sharma, Debayan Banerjee, and Kripalini Mandal, NLUJAA, History of Legal Profession in India', History Of Legal Profession In India - Academike (lawctopus.com), accessed on 02-01-2023

[31]Dr. Kailash Rai, 'Legal Ethic: Accountability for Lawyers and Bench-Bar Relations', 6th ed., 2020, Central Law Publications, Allahabad, p-17.

[32]Ajay Pal Singh, 'Historical Development of the Modern Legal Profession, International Journal of Legal Science and Innovation', [Vol. 3 Iss 4; 774, Historical-Development-of-the-Modern-Legal-Profession.pdf (ijlsi.com), accessed on 06-01-2023.

1861 was passed.[33]The first High Court in British India was the High Court of Calcutta, established on May 14, 1862. The Charters of the Bombay and Madras High Courts were ordered in June 1862.

At this time, there were in existence three bodies of practitioners in the Supreme Court and in Company Courts- Advocates, Attorneys and Vakils.clause 9 of the Letters Patent of 1865 of the High Court of Calcutta empowered the Court "to approve, admit and enrol such and so many advocates, Vakils and Attorneys as to the said High Court shall deem fit.[34]

As discussed, aforesaid there were three types of practitioners at that time. Advocates were mainly the Barristers of England or Ireland or the members of the Faculty of Advocates of Scotland. The Vakils were the Indian Practitioners and Vakils were not allowed to take originals side but they were allowed to act and plead on the appellant side. Only Advocates were entitled to appear and plead, on instruction of Attorney.

Meanwhile as 1866 Madras High Court changed its rules and Vakils were allowed to take original side. The result was that in Madras High Court there was no distinction between Barristers, Vakils and Attorneys. This rule was challenged in the High Court in *the Matter of the petition of the Attorneys*[35]having upheld the legality of the rules, the High Court pointed out that an irregularity in the existing situation, *viz.:* "the largest power is given to one class of practitioners (the Vakils) who are certainly not in advance of the Advocates and Attorneys of the Court in respect of attainment professional skills." Therefore, Court suggested some changes in the system of admitting Vakils and in the rules for the ascertainment of their qualification to secure professional attainments. The matter again came before High Court in 1916 in *Namberumal Chetty v. Narasimhachari,*[36]again High Court upheld the rules permitting Vakils to appear, plead and act for suitors in the matters of ordinary jurisdiction. Initially in Bomabay High Court also closed to Vakils to take original suit, however this position was relaxed in course of time and a non-Barrister, on passing an examination conducted by High Court, become eligible for enrolment as an advocate. An Advocate was entitled to appear and plead the original side. Slowly Calcutta High Court also liberalised the rules for Vakils.[37]

Legal Practitioners Act, 1879:

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[33]By the recommendation of the Second Law Commission, the Indian High Courts Act, 1861 was passed.
[34]MP Jain, p-770-774
[35]ILR (1876-78) 1 Mad.24.
[36] (1916) 31 MLJ 698.
[37]MP Jain, p-770-774

It was enacted to consolidate and amend the law relating to legal practitioners. It provided that an Advocate or Vakil on the roll of any High Court can practice in all the courts subordinate to the courts on the roll of which he was entered. According to this Act, the High Court was empowered to make rules consistent with the act as to suspension and dismissal of Pleaders and Mukhtars (Indian Practitioners).[38]Such rules were required to be published in the Official Gazette.

Indian Bar Committee 1923:

The Vakil expressed dissatisfaction about the distinction that existed between barristers and Vakil. There was also a demand for creating an All-India Bar in the Country. Consequently, the Government of India in 1923, constituted the Indian Bar Committee under the chairmanship of Sir Edward Chamier to study the issues. The committee did not consider it practicable at the time to organise or to constitute an All-India Bar Council.[39] The Committee was of the view that a bar council should be constituted for each High Court and in all High Court a single grade of the practitioner should be established, they should be called Advocates. Further suggested that the Bar committee should have the power to enquire matters calling for the disciplinary action against a lawyer and High Court should be given disciplinary power to punish the guilty.[40]

Indian Bar Council Act, 1926:

On the recommendation of the Indian Bar Committee 1923, the Indian Bar Councils Act, 1926 was passedwhich resulted in establishment of Bar Council for each High Court and consolidation of law relating to legal practitioners. The Act made separate provisions for advocates, the High Courts had to prepare and maintain a roll of advocates, Vakil, and pleaders entitled to practice immediately before the commencement of the Act. For fresh enrolment,the Bar Council was to make rules with the previous sanction of the High Court.The Act contained provision that, women shall not be disqualified for admission as an advocate by reason only of her sex.[41] By 1926 Act, Bar Council still remained next to High Courts. All powers over advocates vested in High Courts,[42]the function of the Bar Council was merely advisory in nature. The 1926 Act did not remove discrimination amongst vakils and advocates and it did not affect the power of the High Courts of Calcutta and Bombay to

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[38]Rudransh Sharma, Debayan Banerjee, and Kripalini Mandal, NLUJAA, History of Legal Profession In India', History Of Legal Profession In India - Academike (lawctopus.com), accessed on 02-01-2023

[39]Kulashresta, p-600

[40]Rudresh Sharma

[41] Prof. Madav Menon, 'Reflection on ...p-23

[42]Dr. G.P. Tripathi, 'History of Courts and Legislation', 1st ed., 2009, Central Law Publication, Allahabad, p-369.

prescribe qualifications to be possessed by persons applying to practice on the original sides.[43]

Legal Profession in India After Independence:

All India bar Committee, 1951:

The Bar was not satisfied with the passing of the Bar Council Act, 1926, as it did not allow pleaders, *mukhtars* and revenue agents who were practicing in the *Mofussil* courts and revenue offices under its scope and consequently did not set up a unified Indian Bar. Further, the powers conferred on the Bar Councils were limited and the Bars were neither autonomous nor had any substantial authority.[44]

In 1951, the All-India Bar committee was constituted under the Chairmanship of Justice S.R. Das. The committee in its Report recommended the establishment of an All-India Bar Councils and State Bar Councils. It recommended the powers of enrolment, suspension or the removal of advocates to the Bar Council. It recommended the common role of advocates should be maintained and they should be authorized to practice in all courts in the country. It further recommended that there should be no further recruitment of non-graduated pleaders or mukhtars. The similar recommendations Were made by the fifth Law Commission of India in its fourteenth report.[45] Because of determined and widespread demand, the Government of India constituted All India Bar Committee under the chairmanship of Justice S.R. Das to examine about desirability of unified bar, bar at each state, dual system of counsel, different classes of practitioners, establishment of separate Bar Council for Supreme Court, various enactments relating to legal practitioners and all other concerned matters.The All-India Bar Committee submitted its detailed report on March 30, 1953. The report contained the proposals for constituting a Bar Council for each state and an All-India Bar Council at the national level as the apex body for regulating the legal profession as well as to supervise the standard of legal education in India.[46] It recommended the powers of enrolment, suspension, or the removal of advocates to the Bar Council. Further recommended that there should be no further recruitment of non-graduated pleaders or Mukhtars.[47]

The Law Commission of India Report, 1953:

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[43]Kulashresta, p-601-603
[44]Kulashresta, p-602
[45]https://www.iilsindia.com/study-material/630578_1612709890.docx accessed on 09-01-2023
[46]http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/history/, accessed on 03-01-2023.
[47]Kulashresta, p-602

Meanwhile, the Law Commission of India had been assigned the job of preparing a report on the reforms of judicial administration.[48]The Law Commission made its famous Fourteenth Report in 1958, in which among other things, it recommended of a unified All-India Bar, preparation of common roll of Advocates with right to practice in all courts.[49]The Commission emphasized on principle of autonomy of the Bar on which the Bar Committee of 1951 has laid stress. Therefore, the Bar Councils ought to be entirely autonomous bodies consisting wholly of the members of the profession.[50]

In 1958 the Law Commission in its report on the reform of Judicial Administration endorsed the recommendation of All India Bar Committee. In 1959, the legal practitioners Bill incorporating all the recommendations of the Bar Committee was introduced in the Parliament which later got adopted with the changed name of the Advocates Act, 1961.[51]

Advocates Act, 1961:

In 1961 the Parliament enacted the Advocates Act. It marked the beginning of a new era in the history of the legal profession. It brought revolutionary changes in the legal profession in India. It sets out to achieve the utility and dignity of the profession of law on an All-India basis. The preamble of the act says that the act amends as well as consolidates the law relating to legal practitioners.[52]

The Advocate Act,1961 is enacted to amend and consolidate the law relating to legal practitioners and to provide for the constitution of State Bar Councils and an All-India Bar Council. The Act establishes an all-India Bar and a common roll of advocates. An advocate on the common rolls has the right to practice in all courts in India from the highest to the lowest.The Bar has been integrated into a single class of legal practitioners known as advocates.[53]

After the establishment of this Act, 1961 all the old classes of experts and legal practitioners were abolished and were assembled into a single kind known as "Advocates". They enjoy the privilege to practice in all courts throughout India. All India Bar Council was established for the first time ever in India. The Bar Council of India is entrusted with numerous functions necessary for fulfilling the purpose of achieving an effective and organized Legal Profession.Thus, admission of advocates, their practice, ethics, privileges as

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[48]http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/history/, accessed on 03-01-2023.
[49]https://lawcommissionofindia.nic.in/reports/, accessed on 09-01-2023.
[50]MP Jain, p-785.
[51] Prof. Madhav Menon, P-24.
[52]Rudransh Sharma, Debayan Banerjee, and Kripalini Mandal, NLUJAA, History of Legal Profession In India', History Of Legal Profession In India - Academike (lawctopus.com), accessed on 02-01-2023
[53]Kulashresta, p-605.

well as regulating and discipline their conduct for the improvement of the profession are now all vested in the profession alone.[54]The legal profession has achieved its long-cherished object of having a unified Bar on an All-India basis.[55]

Legal profession in Present Scenario:

Since from the ancient civilization till the enactment of Advocates Act, 1961 legal profession has travelled a long journey. The legal profession, evolving as it has done from colonial India, has undergone a huge transformation since its independence. The efforts of the members of the bar to achieve excellence in all spheres of their practise through stiff competition is not only apparent in their every dealing with newer challenges due to technological and other developments, but also in the recognition earned by them in a globalized world.Now the Indian legal profession is one of the largest in the world, with over 1.4 million enrolled advocates nationwide. The estimated total value of the Indian legal market is $1 billion (Rs. 6400 crore) mark by March 2018.[56]

The legal profession has gone through enormous changes before shaping into what it today has become. The Corporate, LLPs, Cyber Law as well as many other sectors have certainly seen growing number of practitioners in these fields as litigation solely does not pay much to a newcomer so there has been a paradigm shift from litigation towards the Corporate Law recently by the lawyers as well as law students which fulfils the need of a job security required by new professionals in the field to survive.[57]From being a male-dominated profession once, it is now coveted and practiced by many talented women as well, thereby adding up to the number of skilled law professionals in the nation. Now also there has been an increase in the level of education required for admission into law schools, and this has allowed for the emergence of better professionals and law firms have begun using technologies such as artificial intelligence, which has changed how they operate and interact with clients and the legal market.[58]Now a days together with the developments, the legal profession is facing some challenges too.

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[54]Kirti Bhushan,'Evolution of Legal Profession in India,'https://lexpeeps.in/evolution-of-legal-profession-in-india/ accessed on 09-01-2023.
[55] MP Jain, P-785
[56]https://www.consultancy.in/news/337/legal-market-worth-13-billion-the-top-largest-40-law-firms-in-india accessed on 10--1-2023.
[57]Kirti Bhushan, Evolution of Legal Profession in India, https://lexpeeps.in/evolution-of-legal-profession-in-india/ accessed on 09-01-2023.
[58]Evolution of the Legal Profession in India, https://anangpuria.com/evolution-of-the-legal-profession-in-india/

In the recent years the biggest challenge faced by the legal profession was the falling standards of the Bar. As an immediate measure the Bar Council of India has taken some steps in order to maintain standard of Bar. In 2010 Bar Council of India has passed resolution with regard to conduction All India Bar Examination, the passing of which would entitles the Advocate to a certificate of practice which would the him/her to practice the legal profession of law under the Advocates Act, 1961.[59]Apart from this recently, the Law Commission of India has submitted its 266th Report titled "The Advocates Act, 1961 (Regulation of Legal Profession)"[60] for consideration to the Central Government for regulating the increasing misconduct of the legal professionals.

[59] MP Jain, p-791.

[60] https://lawcommissionofindia.nic.in/cat_legal_profession/ accessed on 09-01-2023.

III. CONSTITUTIONAL STATUS TO LEGAL PROFESSION:

Free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life and personal liberty. In landmark judgement of 1986 in *Sukhdas V. Union Territory of Arunachala Pradesh*[1], the three-judge bench of Supreme Court observed that every accused person has the right to be represented by a lawyer of his choice. The right to life guaranteed under art 21 of the Constitution of India includes right to legal aid. Article 39(A) further mandates equal justice and free legal aid. Section 303 and 304 of Cr.P.C speaks of the right of an accused to be defended by a lawyer and the states duty to provide legal aid.

Indian lawyers have followed this great tradition the revolutionaries in Bengal during British rule were defended by our lawyers the Indian communist were defended in the Meerut conspiracy case, the Razakers of Hyderabad were defended our lawyer's sheik Abdulla and his co-accused were defended by them and so were some of the alleged assassins of Mahatma Gandhi and Indira Gandhi. In recent times Dr. Binayak Sen has been defended no Indian lawyer of repute has ever shirked responsibility on the ground that it will make him unpopular or that is personally dangerous for him to do so. Article 22(1) of our Constitution guarantees that no person who is arrested shall be denied in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by legal practitioner of their choice. However, disturbing news is coming now from several parts of country that Bar Associations are refusing to defend certain accused persons.

The Constitution has given every accused a fundamental right to legal representation and it is rather horrifying to see that bar associations are themselves seeking to deprive accused persons of this precious right. We have witnessed in few cases in which there was an outcry against the discrimination against the new citizenship law brings. Courts which are meant to be places of refuge from injustice a place for all to be heard and a forum were every person including a person accused of the most heinous crime can receive a fair trial are turning into mob houses, preventing legal representations for accused persons.

Lawyers become disreputable when they choose at their own pleasure not to appear for clients in courts, tribunals and authorities before which we have a special privilege and right to practice. They demean ourselves and our profession when we resolve to strike work and so paralyze the working of courts, tribunals and statutory authorities where public cases

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[1]AIR 1986 SC 991

and causes demand our expertise, intercession and assistance we also discredit ourselves and our profession when we curry favor with those in authority and power, and do not stand up and defend the rights of the citizens. Americans trial lawyers said that an advocate should never turn back on any defendant no matter what the charge is defendant needs the lawyer most. Law provides that he should have a law.

In two separate instances advocates associationsin Karnataka have passed resolutions preventing any legal representations for persons who were involved in protests against CAA and charged under different criminal offences. The first instance was in Mysore in January when a young student who was participating in an anti CAA protest, holding a poster stating "free Kashmir and many others were charged with sedition. The Mysore district bar association passed a resolution to all its member advocates not to represent her.[2]

In another instance, two Kashmiri students were charged with sedition again in relation to protest against the CAA, the Hubli bar association passed a resolution ordering lawyers not to appear these students and represent them. Despite directions the Karnataka High Court permitting the lawyers to represent them and directing that there should be police protection provide the lawyers were manhandled and faced violence when they attempted to file bail applications for them, such actions are illegal and criminal when coupled with violence, it is also a violation of fundamental right to legal representation guaranteed to all accused persons.

In Ajmal Khasab's matter supreme court as well as laws have been clear that even a foreign national is entitled to rights under article 14 (equality before law) article 21 (right to personal liberty) and article 22 cl (1) (2) that confers the right to be represented by a lawyer.[3]

The legal profession has accorded Constitutional status but it stands validated only when a lawyer does not deny a brief, provided a client is willing to pay his fees, and the lawyer is not otherwise engaged. Hence, the action of any bar association in passing such a resolution that none of its members will appear for a particular accused, whether on the ground that he is a policeman or on the ground that he is a suspected terrorist, rapist, mass murderer etc., is against all norms of the constitution, the statute and professional ethics. Such a resolution is in fact, a disgrace to the legal community. In times of grave crisis, it may be

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[2]Jayna Kothari," Bar Association in Karnataka instructing members not to represent accused in sedition cases violates constitutional morality ", http://indian express.com/article/opinion/column/benched-by -the-bar-delhi-violence-6291699/. last visited 30/09/2020.

[3]ShibuThomas, Kasabcan't be denied legal aid, say experts, http://m. times of india.com/india/kasab: can't:be: denied: legal; aid: say; experts/articleshow/3836854.cms, last visited 29/09/2020

Constitutional or national crises they look at lawyers to see how they react and will continue to do so in future.

The Supreme Court has taken a gigantic innovative step forward in humanizing the administration of criminal justice by suggesting that free legal aid be provided by the State to poor prisoners facing a prison sentence. When an accused has been sentenced by a Court, but he is entitled to appeal against the verdict, he can claim legal aid: if he is indigent and is not able to afford the counsel, the State must provide a counsel to him. The Court has emphasized that the lawyer's services continued an ingredient of fair procedure to a prisoner who is seeking his liberation through the Court's procedure, Bhagwati, J., has observed *In Hussainara Khatoon Case.* [4]

To ensure free legal aid to citizen of India Art 39A is inserted in part IV of the constitution which states that, 'The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Accordingly, sufficient safeguard has been provided under Indian Constitution to get Legal representation.

In Nandini Satpathy v. P.L. Dani[5] the Supreme Court observed that Article 22 (1) directs that the right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22 (1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice. Lawyer's presence is a constitutional claim in some circumstances in our country also, and in the context of Article 20(3) is an assurance of awareness and observance of the right to silence. *Nandini Satpathy's* Case makes a clear departure from the literal interpretation stance of the Supreme Court in earlier cases. The case added an additional fortification to the right to counsel. The Supreme Court went a step forward in holding that Article 22(1) does not mean that persons who are not strictly under arrest or custody can be denied the right to counsel. The Court enlarged this right to include right to counsel to any accused person under circumstances of near-custodial interrogation.

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[4] (1980) 1 SCC 98

[5] 1978 SCR (3) 608

In Joginder Kumar V. State of U.P.[6] The Supreme Court held that right of arrested person upon request, to have someone informed about his arrest and right to consult privately with lawyers are inherent in Articles 21 and 22 of the Constitution. The Supreme Court observed that no arrest can be made because it is lawful for the Police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest should be made by Police Officer without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.

In M H Hoskot case,[7] One of the ingredients of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. The Indian socio-legal milieu makes free legal service at trial and higher levels, an imperative processual piece of criminal justice where deprivation of life or personalliberty hangs in the judicial balance.

Nandlal Bajaj v. State of Punjab,[8] the Court allowed legal representation to the detainee through a lawyer even when Section 11 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and Sec 8(e) of COFEPOSA-1974 denied legal representation in express term, because state had been represented through a lawyer. The SC observed even when the law does not allow legal representation to the detenu, he is entitled to make such a request and the advisory board is bound to consider this request on merit, and Board is not precluded to allow such assistance when it allows the state to be representedthrough a lawyer

In this context the recent judgement of supreme court of India as *MohammedRafi v. State of Tamil Nadu*[9]should be of interest. It was an appeal against an order of high court of madras on a writ petition. The issue in that case was a resolution of the Coimbatore bar association thatno member of the Coimbatore bar would defend the accused policeman in the criminal

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[6] 1994 SCC (4) 260
[7] AIR 1978 SC 1548
[8] 1981 SCR (1) 718
[9] (2011) 1 SCC 688

case against them in the case. The supreme court cited the above-mentioned rule on professional standards and ruled that every accused was entitled to be represented.