LEGAL PRACTITIONERS ACT, 1879

BACKGROUND......

- This act was passed to consolidate and amend the law relating to legal practitioners of the high court.
- It empowered the high court, not established under the royal charter, to make rules, with the previous sanction of the provincial government, as to the qualification and admission of proper persons to be pleaders of the high court.
- In the chartered high court rules, apart from the attorneys there were advocates and lawyers.
- Advocates were the barristers of England or Ireland or members of the faculty of the advocates of Scotland. The High Courts other than the Calcutta High Court permitted the non-barristers as well to be enrolled as advocates under the certain circumstances.
- The vakils were the persons who had taken the law degree from the Indian university and fulfilled certain other conditions.

PROVISIONS OF THE ACT

- Under section 6 of the act the high court were given the power to make rules as to the qualifications, admission and the certificates of the proper persons to be pleaders of the subordinate courts.
- Also the law graduates who did not possess the additional qualification to enable them to be enrolled as the high courts vakils, and the non-law graduates after passing the pleadership examination conducted by the high courts, were enrolled as the pleaders to practice before the subordinate courts.
- Besides the pleaders there were mukhtars who passed by mukhtarship examination held by the high court after passing the matriculation or equivalent examination.

OTHER PROVISIONS

- Practitioners on the original and appellate side--
On the original side, in the Calcutta high court only the advocates e.g., the barristers of England and Ireland and the advocates of Scotland were entitled to appear and plead, on the instructions of an attorney.

These advocates were also entitled to appear and plead on the appellate side of the high court and the subordinate court.

The vakils of the Calcutta high court were not entitled to appear and plead on the original side or in appeals from the original side. This state of affairs was severely criticized as monopolistic and discriminatory. But the Madras high court followed no distinction between the barristers, vakils, and attorneys as regards their rights to appear and plead on the original side.

In the Bombay high court the vakils were not generally permitted to act or plead on the original side. This position was later changed and a non-barrister on passing the exam conducted by the high court became eligible for the enrolment as the advocate entitled to appear and plead on the original side. The only limitation was that the advocates of the original side, whether barristers or non-barristers, had to be instructed by an attorney before they could appear and plead on the original side.

THE CHAMBER AND INDIAN BAR COMMITTEE OF 1951

The bar was not satisfied with passing of the Indian bar council act of 1926, as this act did not bring the pleaders, mukhtars and revenue agents practicing in the mofussil courts and the revenue offices under its scope and consequently did not set up the unified bar committee.

Further the powers conferred on the bar councils constituted under the act were limited and the bar councils were neither autonomous nor had any substantial authority.

Hence the demand for the all India bar committee arose which sought to abolish the monopoly of British barristers on the original sides of Calcutta and Bombay high courts and the unfair distinction between the barristers and non-barristers received a new orientation with the advent of independence.

Due to all this the government of India appointed a committee under the chairmanship of justice S.R. Das of the Supreme Court.

COMMITTEE......

The committee made a detailed recommendations for the unification of the bar providing for a common roll of advocates who would be entitled to practice in all courts of the country.
Thus the grades were done away with and one integrated and autonomous all-India bar was formed.

RECOMMENDATIONS OF THE COMMITTEE

- Each state council should maintain a register of all the existing advocates entitled to practice in their respective high courts.
- All vakils and pleaders entitled to practice in the district and other subordinate courts, who are law graduates, should be entitled to be included in the roll of advocates maintained by the state bar council on the payment of certain fees.
- Vakils and pleaders who are not law graduates but who, under the existing rules, are enrolled as advocates, should be entitled to be placed on that register.
- The state bar council should send copies of such registers to all India bar council who are to compile a common roll of advocates in the order of seniority according to the original enrolment of the advocates in their respective high courts or the supreme court if they are not enrolled in any high court.
- The new entrants possessing the required minimum qualification may also apply to a state bar council for enrolment and their names should be forwarded by the state bar council to the all-India bar council for being entered on the common roll.
- There should be no further recruitment of non-graduate pleaders or mukhtars.
- The committee also felt that the essence of an all-India bar is the capacity or the right of its members to practice in all the courts of the country, from the highest to the lowest, and recommended that the requirement of leave for practicing in any other high court under section 4 of the legal practitioners act 1879 a.d should not exist.

THE ADVOCATES ACT, 1961

NEED......

- To amend and consolidate the law relating to the legal practitioners and to provide for the constitution of state bar councils and all India bar council.

PROVISIONS

- The act established the all-India bar and a common roll of advocates.
- An advocate on the common rolls has the right to practice in all courts from the highest to the lowest.
- The bar has been integrated into a single class of legal practitioners known as advocates.
- The act creates a state bar council in each state and a bar council of India at the center.
FUNCTIONS OF THE STATE BAR COUNCIL

- To admit persons as advocates on its roll.
- To prepare and maintain such rolls.
- To entertain and maintain cases of misconduct against advocates on its roll.
- To safeguard the rights, privileges and interests of advocates on its roll.
- To promote and support law reform.

FUNCTIONS OF THE BAR COUNCIL OF India

- To prepare and maintain the common roll of advocates.
- To lay down standards of professional conduct and etiquette for advocates.
- To lay down the procedure to be followed by the disciplinary committee of each state bar council.
- To safeguard the rights, privileges and interests of the advocates.
- To promote and support law reform.
- To exercise general supervision and control over state bar council.
- To promote legal education and to lay down the standards of such education in consultation with the universities whose degree in law shall be a qualification for enrollment of an advocate.

Significance of the act

- The act marked a new era in the history of the legal profession in India by vesting largely in the bar councils the power and the jurisdiction which the courts till then exercised.
- It also fulfills the aspiration of those who have been demanding the all-India bar and effecting a unification of the bar in India.
- It also facilitate the creation of the single class of practitioners with the power to practice in all the law 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 and privileges.
- Thus the legal profession can play a vital role in upholding individual rights, promoting more efficient and widespread and efficient justice and acting as an integrating force in national life.
• It is now a part of legal system which provides both the personnel and techniques for effective rational unity. The responsibility of the legal profession to the Indian society is indeed great and it has been its history.

**DOCTRINE OF PRECEDENT**

According to this theory, a decision of a court on a point of law is an authority to be followed by all inferior courts. Whatever his own opinion might be, a judge is bound to follow the decision of a court recognized as competent to bind him, and it becomes his duty to administer the law as declared by such a court.

**DEVELOPMENT OF THE DOCTRINE**

• A precedent is the making of the law by the recognition and application of new rules by courts themselves in the administration of justice.

• The precedent established is also a source of law and the courts are bound to follow it.

• *The doctrine of stare decisis:* the doctrine of the binding force of precedent. It states that before deciding the case before him a judge not only has the regards to precedents, but in certain cases he is bound to stand by the decided case and also to follow the principles of particular precedents whether he approves it or not.

• It was Dorin, a judge of sadar diwani adalat (1831) who first recognized the importance of the precedent and advocated giving statutory recognition to it.

• First time the doctrine of precedent was applied in Mata Prasad v. Nageshwar Sahai case.

• The government of India act, 1935 by section 212 provided that the judgment of the federal court and the Privy Council shall be binding on all the courts in India.

• Thus the decisions of the highest court of the land prior to the commencement of the constitution of India in 1950 are also governed by the doctrine of precedent if not overruled by the Supreme Court.

**ADVANTAGES**

• It tends to promote convenience and avoid delays.

• It brings uniformity and certainty of law in the administration of justice.

• Besides this it avoids the confusion and chaos because in one district a statute may be interpreted in one way while the same may be interpreted in different way by the court of another district, though of the same state.
DISADVANTAGE

- It should be stated that too rigid adherence to the precedents leads to the injustice and restricts the development of law.

- In peculiar circumstances, therefore, the Supreme Court may review and depart from its own judgment and can change the law.

FEATURES OF LAW REPORTING: 1773 TO 1950.

WHAT IS LAW REPORTING?

- Law reporting is the decisions of previous courts, distinguished legal luminaries and research of the some recognized organizations upon which the judgments of the courts are based.

- Law reporting started in India with the creation of the Supreme Court in 1774. In the beginning there was no organized system of law reporting. Early reporting was sporadic, with individual attempts at reporting being made by practicing lawyers and judges and the underlying purpose was “to prevent much contrariety of judgment and to produce uniformity of decision” on matters on which a conflict of judgment would be disastrous.

LAW REPORTING: SUPREME COURT

- Sir Francis Macnaghten published “Considerations upon hindu law”.

- Sir William Macnaghten published “Dissertations on mohammedan law”. Both these works are on personal laws.

- In 1829 Longueville Clarke published “rules and orders of the supreme court”. This contains notes on cases.

- Morton’s reports compiled from the notes of sir r.chambers and other judges of the supreme court covering a period of 1774 to 1841 a.d was a publication leading to a definite development of law reporting in india.

- The other examples are Fulton’ report, Montriou’s select cases ,Montriou’s report,Boulois report, Gasper’s commercial cases, George Taylor’s report, Taylor’s and Bell report, etc.

SIGNIFICANCE

- The value of the old decisions was great both for the professional lawyer and academic researcher because the cases contain not only the cases of the good law ,but also they
were of great historical interest, as they depicted how in the early days, the English lawyers and judges laid the foundation of the anglo-indian jurisprudence in India.

SADAR DIWANI ADALAT

- On the side of sadar diwani adalat sir william hay macnaghten was the pioneer of law reporting covering a period from 1791 to 1849 he published seven volumes .the first volume was prepared by Dorin .
- As regards sadar diwani adalat of madras only a single volume entitled “decrees in appeal suits determined in the courts of sadar adalat” was published in 1843 covering a period from 1805 to 1826.

SADAR DIWANI ADALAT

- On this side only two series containing criminal cases were published.
- The first series (1949) comprised of five volumes and other series which covered a period from 1827 to 1846 a.d was published by Bellasis the deputy registrar of the Bombay sadar diwani adalat in 1950.
- For decisions for the Sadar Diwani Adalats at Bombay, there are 2 collections available. Series of reports by Borradaile and a small anonymous publication which appeared in 1843. Only 2 series of reports appear to have been printed for criminal cases. One comprises 5 volumes and contains sentences of the Nizamat Adalat at Calcutta. The 2nd series contains reports of criminal cases determined in the Sadar Faujdari Adalat of Bombay from 1827 to 1846.

LAW REPORTING: HIGH COURT

- After the establishment of the high court there was the acceleration and fineness in regular law reporting.
- The madras high court reports in eight volumes were published which covered a period from 1862 to 1875.
- Similar reports came out from Bombay (12 volumes, 1862-1875) and Calcutta high courts.
- The various High Court Reports were published by the government through the help of official reporters. Along with these official reports there came into existence some private publications also, such as, the Weekly Reporter, Indian Jurist at Calcutta, Madras Jurist at Madras etc.
**INDIAN LAW REPORT ACT (1875)**

Sir James Fitzjames Stephen, the Law Member of the Government of India, severely criticised the system of law reporting prevailing in the country at that time and brought to light its manifold drawbacks. The Law Member pointed out that the private commercial enterprises published the reports did not make any distinction between cases worth reporting and those not worth reporting, and so the private reports contained many cases falling in the latter category.

- The act was passed in order to improve the quality of reporting and to make reporting an activity under the supervision and authority of the government.
- Law reporting should be regarded as a branch of legislation and that was hardly a less important duty of the government to publish that part of law which enunciated by the tribunals in their judgment than to promulgate its legislation.
- The roots of the binding theory of legislation, was firmly laid down by the act.
- However the act could not stop the publication of the private reports and as we see and read in the law reports the official publication of law reports are rarely cited.

**LAW REPORTERS: PRIVY COUNCIL, FEDERAL COURT ETC**

- On privy council side J.W Knapp was the first person to publish the cases of the privy council on appeal from India in 3 volumes covering a period from 1829 to 1836 a.d.
- From 1836 to 1862 another series was published by E.F. Moore.
- Moore also published another series from 1862 to 1873.
- From 1872 onwards to 1950 the Privy Council decisions were reported in 77 volumes from England under the supervision and control of the incorporated council of law reporting (ICLR).
- From 1935 to 1950 the decisions of the federal court of India were published under the name of federal court reports. With the establishment of the Supreme Court from 1950 onwards the reports are known as Supreme Court reports.

**Private reporters**

- Between 1774 and 1977 there were around 127 private law reporters. Now the number has grown to above 300.
But this uncontrolled growth in the number of the private reporters had led to the fungus growth of the below-par journals and has become the threat to the administration of justice.

What is however not appreciated is the total disinterest of the courts themselves in helping the situation. At present the total effort is directed towards disposal of cases and little or no attention is paid to make it convenient for the law reporters to get copies of all the judgments nor is there any attempt towards a comprehensive and complete list of judgments delivered.

PRINCIPLES OF LAW REPORTING

If indiscriminate reporting is allowed that would create chaos leading to the maze of decisions that dazzles the eyes of lawyers and the judges.

The reporter may well omit to report cases:

1. Where the decision relates only to a question of fact.
2. Where it did not introduce a new rule of law or materially modify a principle or rule or settle a doubtful question of law.

Where it is a mere question of document unless there is good reason for including them.

Where the decision has been given per incuriam i.e. By reason of relevant statute not having been called to attention of the court.

Where the decision is unimportant or is of no general interest.

Where the decision is on an interlocutory matter and the final decision of the case is yet pending.

NECESSITY

The report should contain proper head-notes.

The editorial notes should be crisp and short and aim at throwing more light when the judgment is silent or possibly erroneous or contradictory to the established precedents.

Judgments related with the construction of documents may be omitted except when the state defines rules or principles of law which are aids to construction.

Where the law under which the judgment was delivered is repealed if the decision yet contains valuable pronouncement involving legal principles which are not obsolete, such decision may be reported.

Minority judgments cannot be omitted as the dissenting view is equally important.


- Quotations may not be omitted since without them, the judgment may not make any sense.
- Judgment of a single judge may not be omitted if they contain binding principless of law.

**ADDITIONAL**
- Supreme Court in association with the n.i.c launched the judgment information centre called the *judis*.
- A more comprehensive and versatile system was launched by the publishers of supreme court cases entitled *SUPREME COURT CASE FINDER ON CD-ROM* under the banner *SCC ONLINE*

**HISTORY AND AIMS OF LEGAL EDUCATION**

**History of Legal Education**
- Compared with science, technology and medicine the legal education was considered less technical or less professional. In the beginning to become a vakil, knowledge of Persian language was necessary but after 1826 English replaced Persian.
- At that time no principles of law were taught; what was taught was only rules and regulations. It was only in 1885 that Law were made permanent feature in Bombay, Calcutta and Madras.
- In 1857 study of law was replaced as a permanent part of each University.
- Many prominent persons of India began their career as Mukhtars.
- A number of commissions and committees were appointed between 1917 to 1958, to examine the question of legal education. Those committees suggested a number of measures to improve legal education but so far nothing noteworthy had been done.
- Consequently, Law colleges did not have a place of high esteem either at home or abroad and the study of law and legal research was discarded. Law colleges were mostly crowded with students who have been refused admissions in other faculties.
- The Bombay Legal Education Committee stressing the need for re-orientation of Legal Education and academic and vocational training reported that 'there is no real antimony between the professional and cultural aspects of Law.'
A lawyer will be a better lawyer and a judge a better judge, if he has studied the science of law. A thorough grounding in the principles of law is absolutely necessary in the makeup of a real lawyer.

Aims of Legal Education

Aims are varied and have differed at various times and places. It may be aimed broadly at understanding the functioning of Law in society, as training for administrators and civil servants as much as for legal practitioners; or it may be more narrowly aimed at training persons for legal practice.

The aims, methods and contents of legal education have differed in different countries, affected particularly by whether there were or were not professional schools concentrating on practical branches of Law, the relative importance of Legal treaties and decisions of courts, the relative standing of professors and judges and other factors.

If we look to the West, the legal studies there have been much concerned with the development of intellectual capacity in Law rather than with inculcating professional expertise.

For the attainment of this ideal, attention should always been given to jurisprudence, constitution, legal history and all other allied topics.

Moreover, our firm belief that law is a subject of study in colleges and universities and that it has nothing to do with at school level which is the grass-root level is quite unfortunate.