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AN ANALYSIS OF JUDICIAL ADMINISTRATION IN INDIA (A STUDY OF BAR BENCH RELATION)

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Abstract

In the early 17th century, the influence of serjeants as a professional group declined. As a result of this, apprentices became the more important group of pleaders and were the predecessors of today's barristers. By the middle of the 14th century, they created the Inns of Court. Although an attorney was a lawyer who represented the client in Court on the client's behalf, he was not allowed to plead. An attorney appeared on behalf of his client. This would be clear from the French verb attorner, which means 'to assign or depute for a particular purpose'. The attorneys' primary function was to appear in Court to manage the litigation of the client.

Keywords: *Indian Judiciary, Law and the legal system, judicial administration*

INTRODUCTION

The Indian Judiciary is based on the English Common Law and the legal system adopted by the British Raj.[1] It comprises of the Constitution, precedents, customs, usages and legislature. Further, it also includes set of rules, regulations and bye-laws. The judicial decisions of the highest court of the country i.e. the Supreme Court and the High Courts are also other headsprings of law. The local customs and the conventions which are not against the principles of morality or are not contravening with the Constitution are aptly taken into consideration by the courts while administrating justice to the aggrieved. The Supreme Court of India is the highest court in the land; the hierarchy is followed by the High Courts in the states and District level courts. The Judiciary is independent of the executive and the legislative branch of government. The primary function of the Judiciary is to provide justice to the aggrieved people. It ensures that the punishment is awarded to the perpetrators and redressal is given to the grievances of the victims. The Judiciary also acts as the guardian of the Constitution. It is the duty of the Judiciary to interpret and protect the Constitution. Any act which is against the Constitution of India must be declared ultra vires by the Judiciary. Further, the Judiciary is responsible to protect the rights of the people. A citizen can approach a court if his rights are violated and can seek remedy for the same.

LEGAL PROFESSION IN INDIA

In the early 17th century, the influence of serjeants as a professional group declined. As a result of this, apprentices became the more important group of pleaders and were the predecessors of today's barristers. By the middle of the 14th century, they created the Inns of Court. Although an attorney was a lawyer who represented the client in Court on the client's behalf, he was not allowed to plead. An attorney appeared on behalf of his client. This would be clear from the French verb attorner, which means 'to assign or depute for a particular purpose'. The attorneys' primary function was to appear in Court to manage the litigation of the clients.

The history of the legal profession in India can be traced back to the establishment of the First British Court in Bombay in 1672 by Governor Aungier. The admission of attorneys was placed in the hands of

[1] Setalvad, M. C. (1970). The Common Law in India. India: N. M. Tripathi.

the Governor-in-Council and not with the Court. Prior to the establishment of the Mayor's Courts in 1726 in Madras and Calcutta, there were no legal practitioners.

The Supreme Court of Judicature was established by a Royal Charter in 1774. The Supreme Court was established as there was dissatisfaction with the weaknesses of the Court of the Mayor. Similar Supreme Courts were established in Madras in 1801 and Bombay in 1823. The first barristers appeared in India after the opening of the Supreme Court in Calcutta in 1774.

In order to be a vakil, the candidate had to study at a college or university, master the use of English and pass a vakil's examination. By 1940, a vakil was required to be a graduate with an LL.B. from a university in India in addition to three other certified requirements. The certificate should be proof that a. he had passed in the examination b. read in the chamber of a qualified lawyer and was of a good character. In fact, Sir Sunder Lal, Jogendra Nath Chaudhary, Ram Prasad and Moti Lal Nehru were all vakils who were raised to the rank of an Advocate.

The High Courts of the three presidency towns had an original side. The original side included major civil and criminal matters which had been earlier heard by predecessor Supreme Courts. On the original side in the High Courts, the solicitor and barrister remained distinct i.e. attorney and advocate. On the appellate side every lawyer practiced as his own attorney.

However, in Madras the vakils started practice since 1866. In 1874, the barristers challenged their right to do original side work. However, in 1916, this right was firmly established in favour of the vakils. Similarly, vakils in Bombay and Calcutta could be promoted as advocates and become qualified to work on the original side.

The Indian Bar Councils Act, 1926 was passed to unify the various grades of legal practice and to provide self-government to the Bars attached to various Courts. The Act required that each High Court must constitute a Bar Council made up of the Advocate General, four men nominated by the High Court of whom two should be Judges and ten elected from among the advocates of the Bar. The duties of the Bar Council were to decide all matters concerning legal education, qualification for enrolment, discipline and control of the profession. It was favourable to the advocates as it gave them authority previously held by the judiciary to regulate the membership and discipline of their profession.

BAR AND BENCH RELATION

The two basic bedrocks of the judiciary are the bar and the bench which gives recognition to the judiciary because if there will be no lawyers to argue the case and if there will be no judges to decide the matter then the third and one of the important wing of the government will cease to exist or we can say it will lapse. So now the question is that what comprises of bar and what is meant by bench?

Bench comprises of the judges who listen and decides the matter. Judges are very important part of the judiciary as our judiciary is facing the scarcity of judges. These judges are appointed by the President of India on the recommendation of collegium which further consists of Chief Justice of India along with four senior most judges and one senior most judge of the High Court. Bar can be defined as the association of advocates. As the members of the bar are basically lawyers, these people argue on behalf of their client. There are some set of rules in these association which also includes the moral code of conduct of the lawyers. The bar and the bench are considered as two pillars of judiciary. Further, they are connected with each other in such a way that if one of them fails to perform its function properly, the judiciary and the complainant will suffer the consequences. There are cases when the lawyers have gone on strike which has further delayed the judicial process. And in case of bench, there are situations when few judges do not perform their duty properly. This results in the increasing backlog of pending cases in the

country. So for prompt and efficient working of this wing it is necessary that they both co-ordinate with each other as they both go hand in hand and for the same they have certain duties towards each other access to Justice and law are of immense importance in a democracy. Whatever may be the level of economic development of a country, if there is no social, economic and political justice, there will be oppression, disappointment and anarchy. Our Constitution guarantees us right to life and personal liberty[2] and also provides various measures against deprivation of the same by anyone including state. This fundamental right can only be achieved successfully when everyone has equal access to justice. The Supreme Court of India has held in the case of Anita Kushwaha v. Pushap Sudan[3] that access to justice is a fundamental right. This right is guaranteed to the citizens by way of Article 145 and Article 216 of the Indian Constitution. The Constitutional bench of the apex Court further made an observation that the term 'life' includes a bundle of rights which makes life of a person worth living.

CHALLENGE OF DIVERSITY

The system recognises only the robed, litigation oriented, judge-dependent lawyers. The other categories of lawyers such as transactional and business lawyers, in-house corporate counsels, law teachers, public sector lawyers, paralegals, LPO lawyers and legal activists are not recognised.

There are no separate ethical codes for these categories, no regulatory mechanisms, no training facilities. The Government should consider setting up an independent guardian for the legal system like a 'centre for legal system policy' to promote research and develop thought on the legal system. This body should be accessible to the consumers of legal services also.

Such a centre could act as the single forum for better and transparent dialogue between the Bar, Bench, academia, policy makers and civil society. The continuous interaction between these groups is essential to tackle the challenges to the legal system. This centre could also put in place a grievance redressal mechanism for Bar and Bench relations without diluting the self regulatory scheme (the way the UK seems to be going). Law schools should also consider introducing chairs for promoting thought on the legal system policies.

The Bar must assert its central role as the longest-standing existing stakeholder of the legal system. It is our duty and privilege to be engaged in the administration of the legal system. An immediate area of work is to create a task force of lawyers to deal with the problem of 'slow justice is no justice'. Plenty of ideas that exist in matters of speeding up processes, court administration and use of technology should be adopted to retain public confidence.

On 24 October the Government released a 'vision document' to deal with litigation delays. This document must be studied and commented upon by the Bar to enable corrective action in the right direction. The Bar should consider building a 'citizens lawyer' initiative within each Bar Association to encourage lawyers to stay engaged with community needs and movements. Involve young lawyers in such initiatives to raise the consciousness and sensibilities of the Bar.

Perhaps the Bar Association of India could take the initiative to create a 'policy lawyering wing' that will function as an informed participant in national policy debates. There are so many areas where the Bar must guide the Government in formulating appropriate policy such as on issues of space debris, sharing of satellite space, international piracy laws and trade policies. The regulatory functions of the Bar need

[2] The Constitution of India, Art 21
[3] (2016) 8 SCC 509

greater visibility for adoption of stringent disciplinary norms and proactive measures, in the absence of which even good lawyers are being touted as 'hooligans'. Witness the media's attempts to interpret the Justice Srikrishna Report after the 19 February 2009 police attacks on the Madras High Court campus and 'mobocracy' within the Bar. They are a serious threat to our dignity.

The time has come to have a FULL TIME professional regulator to enforce discipline amongst members of our large fraternity, which alone cannot be done part time by busy practitioners. We need far more elaborate codes of ethics to raise our collective consciousness against unethical practices or violations of professional responsibility. We must test the law graduate on professional ethics at the stage of entry into the Bar and have periodic assessments thereafter and when migrating from one service category to another.

The Bar Councils must diversify their functions and eradicate the politics of numbers. The executive and disciplinary functions must be made separate from the general council. It must be under full-timers with prescribed minimum years of practice qualification to ensure that these wings are manned or advised by wisdom and experience. Provision must be made for non-elected advisors, who may not vote, but have a moral authority to guide. We need a formal client funds protection mechanism. Theft of client's trust funds should be a concern to the entire lawyer community.

Since the main thrust of the legal profession is learning, there should be opportunities for post-qualification 'organised learning'. We must have an academy for lawyers along the lines of the National Judicial Academy to offer focused short duration courses on new developments in law, refresher courses, use of technology to increase efficiencies and more. Such an academy could then be associated with a 'centre for legal system policy', as discussed above, and may use the infrastructure of existing law colleges or operate as departments of the law colleges.

A certain minimum number of course credits should be made necessary for being designated a senior counsel or being eligible for judgeship, government posts or bar association/councils posts. Forums like the Committee for Judicial Accountability (COJA); Forum for Independence, Accountability and Transparency in the Legal System (FIAT Legal) and Forum for Judicial Accountability (FJA) that work on legal reform activism should be encouraged.

- Demystify the system and play down the contempt of courts act.
- Humanise it. Make courts and law offices client friendly.
- Demand excellence as the only quality required to practice the legal profession.

Only when we can demand that at the Bar do we enrich ourselves morally to demand it on the Bench. Litigation lawyers, transactional lawyers and in-house corporate counsels have different ethical challenges. We require elaborate model codes of ethics for these categories separately. The transactional lawyer's ethics committee must also focus on cross border transactions ethics issues and multi-jurisdiction lawyering skill sets. Diversification of our professional regulation should be considered to handle the different categories of lawyers separately and provide appropriate focus, training, infrastructure and support to each.

Energy appears to be building up for legal system reforms. The voice of positive change is reflected by the Bar constructively engaging itself in the process of judicial appointments and judges being willing to take a stand against a mutually protective 'brotherhood'.

The practice of law and the administration of justice is vitally important to each other. There is no other office in the state that possesses the same level of authority as that of the judge. Judges carry enormous power, far exceeding that of any other official in the government or military. The common people's lives and liberty, individual domestic happiness, property, and public image are subordinate to the judges' wisdom, and citizens are held accountable for their judgments. If judicial power is corrupted, there is no longer any assurance of life, liberty is forfeited, and there is no longer any guarantee of personal or domestic happiness. A strong judiciary that is active, unbiased, and competent is the most important thing a state can have. Judges must carry out their responsibilities due to the importance of judges in the maintenance of civil and orderly society.

The administration of justice is not limited to the courtroom. It also has significance for the Bar. The preservation of cordial relations between the Bar and the Bench necessitates respect and understanding on both sides of the bar. The roles of attorneys and judges are supplementary to one another. The primary source of judges' recruitment is the legal profession. As a result, they are both members of the same community. The Bar and bench need to sustain cordial relations with one another. However, because of the nature of the responsibilities that attorneys and judges must fulfill, they may engage in dialogues that are sometimes amusing, sometimes heated, and sometimes tough.

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