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FACULTY OF JURIDICAL SCIENCES

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Lecture-6



Company Adalats

LECTURE 6: Company Adalats

COMPANY'S ADALATS

Regulation VII of 1793.

In the Company's adalats, the deplorable state of affairs concerning the legal profession has been graphically narrated in the preamble to **Bengal Regulation VII of 1793**. The Vakils were and largely ignorant of the law and were subject to harassment and extortion from the ministerial officers of the courts. The professional Vakils charged exorbitant fees. **Regulation VII** called itself on "for the appointment of Vakils or native pleaders in the courts of civil judicature in the Provinces of Bengal, Bihar, and Orissa." The regulation stated in its preamble the objects of its enactment as follows:

Object of Enactment: "It is therefore indispensably necessary for enabling the courts duly to administer and the suitors to obtain justice, that the pleading of causes should be made a distinct profession and that no persons should be admitted to plead in the Courts but men of passed by the British Government, and that they should be subjected to rules and restrictions calculate to secure to their clients a diligent and faithful discharge of trusts. The pleaders therefore on either side whilst they will bring the merits of every case to light and collect into one point of view of the information necessary to enable the courts to form their opinion upon it, will be a check upon them by exposing every deviation from the law in their judgments."

Provisions: The regulation thus laid emphasis on the useful role which a sound legal profession can play in the administration of justice. The Regulations were enacted with a view to strengthening the legal profession in the best interests of the litigant public, the members of the bar serving trustees of their clients and thus helping in the sound administration of justice. The Regulation created for the first time a regular legal profession for the Company's adults. The Regulation brought some order and measure of quality to pleading and sought to establish practice of law as a pleaders and also a scale of professional fee based on a percentage of the value of the property. He could not demand or accept any fee, goods, effects or valuable consideration from his clients over and above the sanctioned fees. The ultimate punishment for such a violation was dismissal of the lawyer. Thus, the theory of freedom of contact between the Vakil and his client was not recognized. The fees of the pleaders were payable only after decision, and not before, the Court being practically the paymaster.

An interesting provision made was that after a party retained a pleader, he was to execute a vakalatnama constituting him pleader in the clause and authorizing him to prosecute or defend the matter and binding himself to abide by and confirm all facts which such pleader might do or undertake in his behalf in the cause, in the same manner as if he has been personally present and consenting. This provision is the genesis of the modern vakalatnama.

An extraordinary feature of this Regulation was that only Hindus and Muslims could be enrolled as pleaders. Persons for the purpose were to be selected from amongst the students of the Muhammadan College at Calcutta and the Hindu College at Benaras. The Sadar Diwani Adalat could appoint other proper persons of good character and liberal education if sufficient number of persons qualified from the said college were not available. Vakeels attached to one court were not permitted to plead in any other court without the sanction of the Sadar Diwani Adalat.

Every pleader was required to attend the court to which he was attached punctually and regularly. If he was unable to attend the court due to any reason he had to notify it in writing to the Registrar of the court. Failure to do so made him liable to a fine. The courts exercised several disciplinary powers over the Vakils. A pleader showing disrespect to the court in open court could be fined up to one hundred rupees by the court. The court could suspend a pleader if convicted of encouraging litigious suits, frauds, or gross misbehavior. Further action against the lawyers could be taken by the Sadar Adalat. A Vakil found to charge more fee than authorized by the Regulation could be dismissed by the Sadar Adalat. Taking note of the drastic control which was imposed on the legal profession in 1793 by Regulation VII, a commentator has observed:

“What was intended to be the first charter of the profession turned out to virtually its death warrant. The legal profession which had retained its independent existence down to 1793 was broken up and the members of the bar were made, in a sense, subordinate to the Courts and they were still left an appearance of freedom within narrowly circumscribed limits.”

The provisions in the Regulation were not fully consistent with the objects stated in the Preamble thereto. In effect, the Vakils were converted into servants of the court. It was doubtful if Vakils being under tight control and supervision of the courts could effectively discharge another function envisaged of them in the Preamble, viz., to point out any deviations from the law made by the courts.

Regulation XXVI of 1814:

From time to time several other Regulations were passed to regulate the legal profession in the Company's adalats in Bengal, Bihar, and Orissa. Then came a rather lengthy and detailed regulation. **Regulation XXVII** of 1814, passed on 29 November 1814, which consolidated the law on the subject. The purpose of the Regulation as stated in its Preamble was:

“For reducing into one regulation, with amendments and modifications the several rules which have been passed regarding the office of the Vakeel or native pleader in the Courts of Civil Judicature.”

Provisions: This consolidating and amending Regulation came into force on 1 February 1815 throughout the whole of the territory subject to the Presidency. The power for licensing, disciplining and removal of Vakils which was hitherto vested in the Sadar Adalat was now conferred by the Regulation in the Provincial court also. Whenever the appointment of a Vakeel was required in any court, the judge was to nominate some suitable person for the approval of the

Provincial Court. The only person of Hindu or Muhammadan persuasion were eligible for appointment as pleaders.

The rule concerning fees, practice, government pleaders and malpractice were considerably more detailed than before. Preference for enrolment as Vakils was to be given to candidates educated in any of the Muhammadan or Hindu Colleges established or supported by the Government provided that such candidates were in other respects duly qualified for the position. Vakeels were to subscribe to several agreements as required by the Regulations, viz., not to receive less than the prescribed rates of fees; not to plead in other courts than to which attached. The disciplinary powers over the Vakeels were re-enacted in substantially the same form as in the 1793 Regulations.

The power of dismissing Vakeels has vested in the Sadar Diwani Adalat as well as the Provincial Court, and a Zillah and city court could suspend a Vakeel. Even the professional work of the Vakeels came under the scrutiny of the courts. The courts were required to carefully point out to the notice of the Vakeels such part of their pleadings as were irrelevant, and otherwise objectionable, and to record their censure of any Vakeel whose conduct was opposed to the practice of the court as laid down by rules or otherwise demanded an inadversion.

Regulation of 1831

Regulation V of 1831 prescribed that vakils need not Hindu or Muhammadan, but could be persons belonging to any religion. Bengal Regulation XII of 1833 modified the provisions of the earlier regulations regarding selection, appointment remuneration of the pleaders. The regulation permitted any qualified person of whatever nationality or religion to be enrolled as a pleader of Sadar Diwani Adalat. The parties were also given freedom to settle with the pleaders any fees for their professional services.

Madras and Bombay Regulations

Madras Regulation X of 1802 copied verbatim **Bengal Regulation VII of 1793** with minor verbal attractions. One notable difference being that pleaders were permitted to stipulate for more, but not less, than the regulation fee payable to them. **Madras Regulation XIV of 1816** was modeled on **Bengal Regulation XXVII of 1814**. It provided for some decentralization of powers of the courts over Vakils.

In Bombay, **Regulation XIV of 1802** was a consolidating regulation modeled entirely on Bengal regulation verbatim with minor variations here and there. Further consolidation of the regulations relating to legal practitioners was affected by **Regulation I of 1827** which repealed all the previous Regulations on the subject. The Regulation went much further than the Bengal regulations e.g., every person duly qualified was entitled to get a sannad to practice without any reference admitted to practice in a court and henceforth any qualified person of good character was enacted between the Vakil and the client was recognized and a lawyer could agree with his client for a larger or smaller fee than the established fee.

SELF-TEST QUESTIONS

S.N O	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	Company's adalats regulated by	Bengal Regulation VII of 1793	Bengal Regulation VII of 1794	Bengal Regulation VII of 1795	Bengal Regulation VII of 1796
2	The professionalcharged exorbitant fees	Vakils	Advocate	Lawyer	None
3	Thecould appoint other proper persons of good character and liberal education if sufficient number of persons qualified from the said college were not available.	Sadar Diwani Adalat	Sadar Muffasil Adalat	Supreme Court	High Court
4prescribed that vakils need not Hindu or Muhammadan, but could be persons belonging to any religion	Regulation V of 1831	Regulation V of 1832	Regulation V of 1833	Regulation V of 1834
5between the Vakil and his client was not recognized.	The theory of freedom of contact	The theory of freedom of quasi-contact	The theory of freedom of tort	none

Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)