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Lecture-8

HIGH COURTS

LECTURE: 8: High Court

HIGH COURTS

Three Categories of Practitioners

In 1861, legislation was passed by the British Parliament to establish High Courts at Calcutta, Madras, and Bombay. At this time, there were in existence three bodies of practitioners in the Supreme Courts and, the Sadar Adalats-Advocates, Attorneys and Vakils. CI9 of the Letters Patent of 1865 of the High Court of Calcutta empowered the Court "to approve, admit and enroll such and so many Advocates, Vakils and Attorneys as to the said High Court shall deem fit." These persons were "authorized to appear for the suitors of the High Court, and to plead or to act, or to plead and act for the said suitors, according to as High Court may by its rules and directions determine, and subject to such rules and directions."

CI.10 of the Letters Patent ran as follows:

"…the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be advocates, Vakeels, and Attorneys-at-law of the said High Court and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakeels, or Attorneys-an-laws ; and no person whatsoever, but such Advocates, Vakels or Attornies shall be allowed to act or to plead for on behalf of any suitor…"

Similar provisions were made in the Charters of the High Courts of Bombay and Madras.

The admission of Vakeels to practice before these High Courts put an end to monopoly which the Barristers had enjoyed in the Supreme Courts preceding the High Courts. This very much increased the practice and prestige of the India Lawyers by giving them opportunities however achieved without some struggle. The Commissioners appointed to arrange the merger of the Sadar Adalat and the Supreme Court had suggested that the proposed High Court benches be exclusively British and that the bar is open only to the Barristers. But, this suggestion was opposed by several persons on the ground that the exclusion of Indians would nourish class antipathies and injure "at once the state and the individual by depriving the public of the service of the ablest men, preventing wholesome competition, and unduly exalting some without reference to their personal merits and depressing others."

According to the rules framed by the Chartered High Courts, speaking broadly, there were three categories of legal practitioners: Attorneys, Advocates, and Vakils. Advocates were mainly the Barristers of England or Iceland or the members of the faculty of Advocates of Scotland. The Vakils were Indian Practitioners.

To begin with, on the Original side of the High Courts only Advocates were entitled to appear and plead, on the instruction of Attorneys. On the original side the High Court, solicitors and Advocates remain distinct. This differentiation in the function of legal practitioners was continued under the notion that the High Courts, in the exercise of its Ordinary original Jurisdiction, was the successor of the Supreme Court. On the other hand, the Advocates were entitled both to act and plead on the Appellate Side of the High Court and its subordinate courts. This was because of the feeling that the High Court, on its appellate side, inherited the jurisdiction and powers of the Sadar Adulates. Because of these distinctions, the Vakils were not allowed to act or plead on the Original Side, but they could both act and plead on the Appellate Side.

Madras H.C.

Within a short time, the Madras High Court altered its rules. As early as 1866, this Court permitted Vakils admitted under the rules of 1863 and Attorneys to appear, plead and act for suitors on the Original Side. The result, therefore, was that in the Madras High Court there remained no distinction between Barristers, Vakils and Attorneys as regards their rights to appear and plead on the Original Side. Under the new rules, while the vakils and Attorneys could also act on the original side, the Advocates had to be instructed by an Attorney.

These rules admitting Vakils on the Original Side were challenged by the Attorneys of the High Court in the High Court itself in In the Matter of the Petition of the Attorneys. Their grievance was that these rules had worked great injustice to the Attorneys and Advocates of the Court by taking away a large portion of their practice. Also, the rules had admitted to the Original Side a set of practitioners who were less specially and professionally educated for the practice of law than the Advocates and Attorneys. These rules were challenged as being ultra vires the explanatory letter of the Secretary of State enclosing the **Charter of 1862.**

The relevant clauses in the **Charter of 1865** concerning admission of Advocates, Attorneys and Vakils to practice in the Courts were challenged as being ultra vires the Indian High Courts Act. The High Court ruled that the rules permitting the Vakils to appear, plead and act on the Original Side of the High Court were not ultra vires. These rules were framed under Clauses 9 and 10 of the Letters Patent of 1865. The Court observed:

"…the High Court is empowered by the Letters Patent to enroll Vakils, who are thereby expressly authorized (if the Court so directs) to appear, plead and act for the suitors of the court and not merely for the suitors of the division of the Court."

Having upheld the legality of the rules, the High Court did however point out an anomaly in the existing situation, viz., "The largest powers are 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 and professional skills." Therefore, the Court suggested that "some change is required in the present system of admitting Vakils and in the rules of the ascertainment of their qualifications whereby we hope to secure professional attainments proportioned to their large privileges."

The matter again came before the High Court in 1916 in **Namberumal Chetty v. Narasimhachari**, and the rules permitting the Vakils to appear, plead and act for suitors in the matters of ordinary original jurisdiction were held to be within the powers conferred on the Court by the Letters Patent of 1865. The Court also ruled that **S4** of the **Legal Practitioner Act, 1879,** did not prevent a Vakil from appearing on the Original Side of a High Court.

Bombay H.C.

The Original Side of the Bombay High Court was initially a close preserve of the Barristers alone could be enrolled as Advocates entitled to appear and plead on the Original Side on the instructions of any Attorney. The Vakils were not originally permitted to act or plead on the Original Side. This position, however, was relaxed in course of time and a non-Barrister, on passing an examination conducted by the High Court, became eligible for enrolment as an 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.

The Vakils of the Calcutta High Court was not entitled to act or plead on the Original Side or in appeals from the Original Side. The High Court maintained this distinction right up to the year 1932.

Calcutta H.C.

In course of time, the Calcutta High Court also liberalized its rules so as to permit non-Barrister Advocates to practice on its Original Side as well which so far had been preserve of the Barristers only. Thus, the distinction between Barristers and Advocates was abolished. There was really no rational reason for any such distinction. In this way what, in the words of K.M. Munshi, was "a hated monopoly or at least an anomaly foisted on them by an alien race" came to an end. However, no Advocate, whether Barrister or not, could act on the Original Side but had to appear and plead on the instruction of an Attorney on record.

In no High Court other than the three High Courts, of Bombay, Calcutta, and Madras, there was original jurisdiction. Consequently, in the other High Courts except for these three high Courts, there was no distinction maintained between Advocates and Solicitors as well as between Advocates (who were Barristers) and Vakils as regards their respective rights to appear act and plead.

Non-Chartered H.C.s

In the non-Chartered High Courts, there used to be the Advocates were usually the Barristers, Pleaders, and Mukhtars differed from High Court to High Court in the courts below the High

Courts, there used to be different classes of legal practitioners. The setting up of a regular hierarchy of courts of varying jurisdiction and important necessarily led to the creation of different categories of legal practitioners. Because, of paucity of law graduates, permission was granted, to others also to practice as Vakils after having passed an examination conducted by the High court concerned.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	In 1861, legislation was passed by the ……to establish High Courts at Calcutta, Madras, and Bombay.	British Parliament	American Parliament	Indian Parliament	None of above
2	……of the High Court of Calcutta empowered the Court "to approve, admit and enroll such and so many Advocates, Vakils and Attorneys as to the said High Court shall deem fit.	Letters Patent of 1865	Letters Patent of 1866	Letters Patent of 1866	Letters Patent of 1868
3	……appointed to arrange the merger of the Sadar Adalat and the Supreme Court had suggested that the proposed High Court benches be exclusively British and that the bar is open only to the Barristers	The Commissioners	Advocate	Lawyers	Vakil
4	……were mainly the Barristers of England or Iceland or the members of the faculty of Advocates of Scotland	Advocates	Lawyers	Vakil	Judge
5	…….were Indian Practitioners.	The Vakils	Advocates	Lawyers	Judge

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